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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3787-14T3

IN THE MATTER OF SHANIKA MCNAIR.

Submitted December 5, 2016 – Decided April 24, 2017

Before Judges Nugent and Haas.

On appeal from the Civil Service Commission,
Docket Nos. 2014-3069 and 2014-6.

C. Elston & Associates, LLC, attorneys for
appellant Shanika McNair (Catherine M. Elston,
of counsel and on the briefs).

Christopher S. Porrino, Attorney General,
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of Corrections (Adam Verone, Deputy Attorney
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Assistant Attorney General, of counsel).

Christopher S. Porrino, Acting Attorney
General, attorney for respondent Civil Service
Commission (Pamela N. Ullman, Deputy Attorney
General, on the brief).

PER CURIAM

Appellant Shanika McNair appeals from an April 24, 2014 Civil Service Commission (CSC) final administrative decision removing her from her position as a corrections officer recruit with the Department of Corrections (DOC). She also appeals from the CSC's

March 9, 2015 final administrative decision denying her request for reconsideration. We affirm.

On May 1, 2013, Northern State Prison – DOC (NSP) served McNair with a Preliminary Notice of Disciplinary Action (PNDA) charging her with inability to perform duties, N.J.A.C. 4A:2-2.3(a)(3); conduct unbecoming an employee, Human Resource Bulletin (HRB) 84-17 as amended C-11; falsification – intentional misstatement of material fact in connection with work, employment application, attendance or in any record, report, investigation or proceeding, HRB 84-17 as amended C-8; improper or unauthorized contact with inmate, undue familiarity with inmates, parolees, their families or friends, HRB 84-17 as amended D-4; violation of a rule, regulation, policy, procedure, order or administrative decision, HRB 84-17 as amended E-1; and other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12).

Following a departmental hearing, NSP served McNair with a Final Notice of Disciplinary Action (FNDA) upholding the charges against her and removing her from employment. McNair appealed, and the CSC transferred the matter to the Office of Administrative Law (OAL) for a hearing. An Administrative Law Judge (ALJ) conducted a two-day hearing and issued an initial decision dismissing the inability to perform duties and other sufficient

cause charges, affirming the remaining charges, and reducing McNair's penalty from removal to a 120-day suspension.

The DOC and McNair filed exceptions to the ALJ's initial decision. On April 24, 2014, the CSC issued a final decision adopting the ALJ's findings but rejecting the modification of McNair's penalty. The CSC upheld McNair's removal from employment and denied her motion for reconsideration. This appeal followed.

The evidence that NSP and the DOC presented to the ALJ established the following facts. McNair began work as a corrections officer recruit at NSP on March 27, 2013. A few weeks later, she submitted a special custody report stating she had a brief relationship with one of the inmates prior to her employment. McNair explained the inmate had intimate knowledge of her home life and knew some of her family members, and that her first encounter with the inmate at the DOC occurred on April 21, 2013. She requested the inmate be moved to another facility.

NSP investigator Manuel Alfonso reviewed McNair's orientation form and found she did not list any inmates with whom she had an existing relationship, despite having been carefully instructed to do so. McNair later stated she did not remember the inmate when she completed the form.

From his review of McNair's assigned posts, Alfonso believed McNair should have encountered the inmate while performing a head

count of her assigned unit on April 12, 2013. Alfonso searched the inmate's property, including his visitor sheet and telephone records, but found no indication of a relationship with McNair. A review of the facilities at which the inmate previously resided revealed he listed McNair on his Union County Correctional Center's visitor sheet, though the facility had no record of McNair ever visiting.

Nonetheless, the Special Investigations Division Office conducted a videotaped interview with McNair. During the interview, McNair admitted she met the inmate as a college freshman when he pulled up to her car and asked for her telephone number. McNair gave the inmate her telephone number, met him shortly thereafter in Newark, invited him into her home, and had numerous text message exchanges with him. After his incarceration, McNair wrote to the inmate, sent him two pictures of herself, and spoke with him on the telephone. McNair maintains she stopped communicating with the inmate by November 2011, before she began to go through the DOC hiring process.

McNair admitted she first saw the inmate at NSP on April 12, 2013, when he approached her regarding a light fixture in his cell. The inmate also approached McNair on April 21, 2013, and again requested a cellular telephone. McNair's special custody

report did not mention her April 12th interaction with the inmate or his request for a cell phone.

Following the interview, Alfonso reviewed the inmate telephone system and discovered the inmate had been calling McNair on a telephone number not listed in McNair's paperwork. The inmate made thirty-four phone calls to McNair between July 6, 2011, and March 6, 2012. The DOC recorded every phone call, eleven of which were completed.

During a July 23, 2011 phone call, McNair told the inmate she was heartbroken because she had not heard from him, and acknowledged she could no longer be on his visitor list because she was pursuing an internship at NSP and preparing to take the corrections officer's exam. In subsequent phone calls, McNair and the inmate discussed their personal and intimate lives. In their last phone call on March 6, 2012, McNair gave the inmate her new telephone number because she was going to turn off the phone she had been using.

Based on these facts, the CSC found McNair's "failure to report [her] prior relationship with [the inmate], her contacts with him in the prison, and his request for a cell phone . . . utterly inappropriate" and determined the matter was "compounded by the fact that [McNair] was well aware [the inmate] was incarcerated when she began her training as a [COR]." The CSC

ultimately held McNair's conduct was sufficiently egregious to warrant removal.

We affirm the CSC's decision, substantially for the reasons set forth in its April 24, 2014 final decision. We add only the following comments.

Our review of a final agency decision is limited, and we "do not ordinarily overturn such a decision 'in the absence of a showing that it was arbitrary, capricious or unreasonable, or that it lacked fair support in the evidence.'" In re Carter, 191 N.J. 474, 482 (2007) (citations omitted). Further, we may not substitute our judgment for that of the agency's when "substantial credible evident supports [the] agency's conclusion[.]" Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992) (citations omitted). Instead, we "defer to an agency's expertise and superior knowledge of a particular field." Ibid. (citations omitted).

We review an agency's disciplinary sanction under a deferential standard and only modify a sanction "when necessary to bring the agency's action into conformity with its delegated authority." In re Herrmann, 192 N.J. 19, 28 (2007) (quoting In re Polk, 90 N.J. 550, 578 (1982)). We will affirm a sanction that is not illegal or unreasonable. Ibid. (citation omitted).

McNair first contends the CSC's decision to remove her from employment with the DOC was arbitrary, capricious and inconsistent

with similar CSC rulings. We disagree. Article III, Section 4 of the DOC Law Enforcement Personnel Rules and Regulations required McNair to report, in writing and to an administrator, superintendent or agency chief, all prior relationships with inmates. This requirement is consistent with the need to preserve proper interactions between inmates and corrections officers, "who are required to maintain order and enforce discipline[.]" Bowen v. Bayside State Prison, 268 N.J. Super. 301, 305-06 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).

McNair did not report her relationship with the inmate, nor did she report the inmate's request for a cellular telephone. Violating "rules barring relationships of familiarity . . . between corrections officers and inmates [constitutes] conduct which the system cannot safely tolerate." Id. at 306. McNair's argument she forgot the inmate resided at the facility is contradicted by the CSC's finding that McNair was well aware of the inmate's incarceration when she began her DOC training.

The evidence amply supports the CSC's decision to remove McNair from employment, and that decision was neither arbitrary nor capricious. As the CSC concluded, McNair's failure to report the relationship was "utterly inappropriate" and "a security risk to the prison which cannot be ignored."

We also disagree with McNair's contention the sanction imposed is disproportionate to her charges. McNair argues the CSC did not implement progressive discipline but instead imposed the most severe sanction and failed to consider various mitigating factors, such as her inexperience, the intimidation caused by the inmate's gang membership and knowledge of her residence, the lack of a relationship or contact with the inmate for one year prior to her employment with the DOC, her refusal to favor the inmate, and her reporting her previous relationship with the inmate after their second encounter, which occurred shortly after their first encounter. Nonetheless,

judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.

[Hermann, supra, 192 N.J. at 33.]

The severity of McNair's offense warranted the imposition of the sanction, and her arguments in favor of progressive discipline do not, as the CSC noted, "obviate the severity of her inactions." As determined by the CSC, the egregiousness of McNair's offense justified her removal from employment with the DOC.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.