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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5119-14T4

IN THE MATTER OF JOSEPH ISAACSON
AND TOWNSHIP OF HARDYSTON.

Argued December 21, 2016 – Decided February 27, 2017

Before Judges Simonelli, Carroll and Gooden
Brown.

On appeal from the Superior Court of New
Jersey, Law Division, Sussex County, Docket
No. L-0640-12.

Eric L. Harrison argued the cause for
appellant Township of Hardyston (Methfessel &
Werbel, attorneys; Mr. Harrison, of counsel
and on the briefs; Jennifer M. Herrmann, on
the briefs).

Jeffrey D. Catrambone argued the cause for
respondent Joseph Isaacson (Sciarra &
Catrambone, L.L.C., attorneys; Mr. Catrambone,
of counsel and on the brief).

PER CURIAM

Appellant Township of Hardyston (Township) appeals from the
May 20, 2015 Law Division order, which vacated the termination of
respondent Joseph Isaacson from his employment as a police officer,
imposed a ten-day suspension, and reinstated Isaacson with back
pay and benefits. The Township also appeals from the June 10,

2015 order, which awarded Isaacson attorney's fees pursuant to N.J.S.A. 40A:14-155. We reverse both orders.

I.

The procedural history and factual background of this case are set forth in our opinion in Isaacson v. Public Employment Relations Commission, No. A-2991-14, issued simultaneously with this opinion and incorporated herein. We reiterate some of those facts and add facts that are pertinent to this appeal.

In 2008, Isaacson began his employment as a police officer with the Township of Hardyston Police Department (HPD). During his tenure, he had always been at the top of the HPD's list for issuing the most summonses.

On May 16, 2012, Isaacson was on duty when he stopped at a delicatessen on Route 23 in Franklin Borough (Franklin). After leaving the delicatessen, he proceeded onto Route 23 south in Franklin, where he saw a vehicle with a cracked windshield turning onto the roadway. Isaacson followed the vehicle and entered the license plate number into the mobile data terminal in his patrol vehicle. After discovering that the driver, Christopher Smith, had an outstanding warrant and suspended license, Isaacson stopped the vehicle in the parking lot of a restaurant located in Franklin.

Despite knowing he was in Franklin and that he never observed Smith's vehicle in Hardyston, Isaacson falsely informed the HPD

dispatcher that his location was "23 on the mountain," referring to a location in Hardyston. Approximately eleven minutes later, Isaacson falsely informed the HPD dispatcher that he was moving into the parking lot of the restaurant. When HPD Police Officer Andrew Norman arrived at the scene, Isaacson twice lied to him about where he first saw Smith's vehicle.

The HPD has a standard operating procedure (SOP) that prohibits its police officers from serving or attempting to serve legal process in another jurisdiction without being accompanied by an officer from that jurisdiction (the out-of-jurisdiction SOP). Isaacson requested that an officer from the Franklin Police Department respond to the scene, but no officer responded. Isaacson made no further request and, without being accompanied by a Franklin police officer, issued two summonses to Smith from the Hardyston Municipal Court, on which he falsely certified that Smith unlawfully operated his motor vehicle in Hardyston. Isaacson placed Hardyston municipal codes on the summonses and marked the word "rural" in the area designation. Isaacson also filed a police report with the HPD, which falsely stated that the stop occurred on Route 23 in Hardyston. He also collected bail from Smith for the outstanding warrant, completed a bail recognizance form, and submitted the bail form and summonses to the HPD.

Suspecting that Isaacson had lied about the location of the stop, the HPD began an internal affairs investigation. During his internal affairs interview, Isaacson initially lied about where he first observed Smith's vehicle and first called in the stop to the HPD dispatcher. He eventually admitted that he never observed Smith's vehicle in Hardyston; knew the location of the Hardyston town line; knew he was in Franklin when he stopped Smith; and knew he was required to notify the out-of-jurisdiction agency of the stop, but did not do so.

After the investigation was completed, the Township suspended Isaacson with pay and charged him with violating several HPD rules and regulations (HPDRR) and SOPs by: (1) leaving his patrol vehicle running while unoccupied; (2) operating the mobile data terminal on his patrol vehicle while driving; (3) serving a warrant on a person in Franklin without requesting backup from the Franklin police; (4) lying and/or making a misrepresentation while on a motor vehicle stop and in connection with an internal affairs investigation; and (5) intentionally falsifying documents relating to a motor vehicle stop and arrest in Franklin. The Township sought Isaacson's termination.

A hearing was held before a neutral hearing officer, who sustained all of the disciplinary charges against Isaacson. The hearing officer found that Isaacson: (1) knew the traffic violation

he observed occurred outside the boundaries of Hardyston; (2) admitted he was in another jurisdiction when he observed Smith's vehicle; and (3) despite knowing he was outside of Hardyston, still served a summons in Franklin without being accompanied by a Franklin police officer. The hearing officer concluded that Isaacson violated the out-of-jurisdiction SOP.

The hearing officer found several instances where Isaacson lied during both the motor vehicle stop and his internal affairs interview. The hearing officer determined that despite never observing Smith's vehicle in Hardyston, Isaacson issued two Hardyston summonses to Smith. The hearing officer noted it was undisputed that Isaacson observed Smith's vehicle only in Franklin, and thus, was legally required to issue appropriate summonses on a Franklin summons book. The hearing officer also noted that writing a summons for a violation that occurred outside Hardyston "would be the equivalent to a false official public record." The hearing officer also found that Isaacson knowingly and willfully made false entries on the two summonses. The hearing officer concluded that Isaacson violated the HPDRR that required HPD police officers to be truthful at all times whether under oath or not, and the HPDRR that prohibited HPD police officers from knowingly and willfully making a false entry in a departmental report or record.

In determining the appropriate penalty, the hearing officer cited to the Township's Law Enforcement Code of Ethics, which requires police officers to be honest and exemplary in obeying the law. The hearing officer concluded as follows:

The evidence, in this case, overwhelmingly proves Isaacson is no longer true to the ethics of police service because Isaacson's conduct is proven, by the preponderance of all credible evidence presented in this case, to have violated the honorable calling of being a law enforcement officer.

Based on the seriousness of Isaacson's conduct, offering individual penalties for the sustained charges would be senseless; therefore, wavering adherence to such a moral philosophy will earn for Isaacson the disrespect and ill-support of the public and once that trust is shattered (as it is in this case), the only acceptable resolution is separating the law enforcement officer from their publically held position. As a result, Isaacson's actions unthinkably undermined a fundamental prerequisite for being a law enforcement officer; *honesty*. Therefore, the only acceptable penalty for any irreversible sworn employee's incredible behavior is termination.

The Township adopted the hearing officer's decision and terminated Isaacson, effective September 19, 2012. Following his termination, Isaacson filed a request with the Public Employment Relations Commission (PERC) for special disciplinary arbitration and the appointment of an arbitrator pursuant to N.J.S.A. 40A:14-150, -209, and -210, and N.J.A.C. 19:12-6.1. On February 18,

2013, the arbitrator rendered an order and final decision sustaining only the less serious charges of leaving a patrol vehicle running while unoccupied, and operating the mobile data terminal on the patrol vehicle while driving. The arbitrator rescinded Isaacson's termination, imposed a ten-day suspension without pay, and required the Township to immediately reinstate him with full back pay, rights, and benefits.

On February 21, 2013, Isaacson filed an order to show cause, seeking temporary restraints and a preliminary injunction to enforce the arbitration award. The Township opposed the order to show cause and filed a motion to vacate the arbitration award.

Following a de novo review, the trial judge affirmed the arbitration award and denied the Township's motion to vacate. On April 17, 2013, the judge entered an order requiring the Township to immediately reinstate Isaacson with back pay and full benefits. On June 27, 2013, the judge entered an order awarding Isaacson attorney's fees pursuant to N.J.S.A. 40A:14-155.

The Township appealed both orders. We reversed PERC's appointment of an arbitrator and the arbitration award, and remanded to PERC to determine whether the matter was arbitrable under either N.J.S.A. 40A:14-209 or -210. Twp. of Hardyston v. Isaacson, Nos. A-3425-12 and A-4180-12 (App. Div. July 9, 2014) (slip op. at 12), certif. denied, 220 N.J. 98 (2014). We also

reversed the award of attorney's fees, finding that Isaacson was not entitled to attorney's fees under N.J.S.A. 40A:14-155 because he was not acquitted of all charges. Id. at 13-14. On remand, PERC determined that Isaacson was not eligible for arbitration and dismissed his request for arbitration. We affirmed PERC's decision in the opinion filed simultaneously with this opinion. See Isaacson v. Pub. Emp't Relations Comm., supra, (slip op. at 18).

The matter returned to the same judge, who held a hearing at which Isaacson testified. On direct examination, Isaacson testified that he was never trained with respect to out-of-jurisdiction motor vehicle stops; there was no written HPD policy for out-of-jurisdiction stops; and he was not trained in the police academy on how to conduct an out-of-jurisdiction stop. On cross-examination, however, Isaacson conceded that he had admitted during his internal affairs interview that he was required to notify the out-of-jurisdiction agency of the Smith stop, but did not do so.

Isaacson also testified on cross-examination about two documents that he had prepared two years prior to the Smith stop. One document concerned an incident that occurred in Franklin, where Isaacson asked the HPD dispatcher to request that a Franklin police officer respond to the scene. Isaacson admitted that this document showed he knew he had to notify the Franklin Police

Department for an incident that occurred in Franklin. The second document concerned an incident that occurred in Hamburg, where Isaacson notified the Hamburg Police Department and remained on the scene until they arrived. Isaacson admitted that he knew he was not in Hardyston and had to call the Hamburg Police Department for backup.

In his oral opinion, the judge criticized the involvement of the Sussex County Prosecutor's Office in this matter, stating it had the capacity to deprive Isaacson of his rights. This criticism was unwarranted and not supported by the record. Because this matter indicated the possibility of a criminal act, the Prosecutor's involvement was required. See Isaacson v. Pub. Emp't Relations Comm., supra, (slip op. at 7-9).

More importantly, however, the judge found that Isaacson had a full evidentiary hearing before a "neutral" hearing officer who made "very specific findings" by a preponderance of the evidence. The judge determined that the hearing officer's factual findings were "fully supported by the evidence[,]" and affirmed the hearing officer's conclusions that Isaacson violated the HPDRRs and SOPs; lied numerous times during the motor vehicle stop and his internal affairs interview; and knowingly and willfully falsified public documents.

Despite this ruling, the judge determined that the penalty of termination was excessive. The judge found that the lack of training with regard to this out-of-jurisdiction situation mitigated Isaacson's conduct, and thus, progressive discipline was appropriate. The judge viewed Isaacson's conduct as less serious than police conduct that warranted termination, such as violence perpetrated on individuals or efforts to deprive citizens of their civil rights.

The judge entered an order on May 20, 2015, vacating the Township's removal of Isaacson; imposing a ten-day suspension without pay; and ordering Isaacson's reinstatement with full benefits, among other things. The judge stayed the order pending appeal. On June 10, 2015, the judge entered an order awarding Isaacson attorney's fees pursuant to N.J.S.A. 40A:14-155.

II.

On appeal, the Township argues that the judge erred in disregarding the penalty imposed by the Township and in imposing a ten-day suspension despite the hearing officer's findings that Isaacson lied multiple times and knowingly and willfully falsified

public documents. The Township concludes that Isaacson's proven dishonesty warranted his termination.¹ We agree.

We begin with a review of the relevant statutes governing police disciplinary proceedings, N.J.S.A. 40A:14-147 to -151. A police officer cannot be removed "for political reasons or for any cause other than incapacity, misconduct, or disobedience of rules and regulations" and may not "be suspended, removed, fined or reduced in rank" without "just cause[.]" N.J.S.A. 40A:14-147. An officer must be apprised of any such charges by way of written complaint and is entitled to a hearing. Ruroede v. Borough of Hasbrouck Heights, 214 N.J. 338, 354 (2013).

If the hearing officer upholds the charges, the police officer can seek review from the Superior Court, which hears the matter de novo on the record below. Id. at 355 (citing N.J.S.A. 40A:14-150). The court may allow the parties to supplement the record, but its powers are statutorily limited in that it may reverse, affirm or modify the conviction; it may not remand to the hearing officer for a new disciplinary hearing. Id. at 355, 360; see also N.J.S.A. 40A:14-150.

¹ We decline to address Isaacson's responding arguments that he did not commit the alleged violations and the hearing officer was not independent, neutral, and unbiased. The trial judge found that the hearing officer was "neutral" and affirmed the hearing officer's findings and conclusions that Isaacson was guilty of the disciplinary charges. Isaacson did not appeal the judge's ruling.

On de novo review, the trial court makes its own findings of fact. In re Phillips, 117 N.J. 567, 578 (1990). Our role in reviewing the de novo proceeding is limited. Id. at 579. Unlike the trial court, we do not ordinarily make new factual findings, but merely "decide whether there was adequate evidence before the . . . [c]ourt to justify its finding[s]." Ibid. We should not disturb the trial court's de novo findings unless we find that the court's decision was arbitrary, capricious or unreasonable or "[un]supported by substantial credible evidence in the record as a whole[.]" Ibid. (alteration in original) (citations omitted). Our review of the court's legal conclusions is plenary. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). Applying these principles, we reverse the judge's decision to vacate Isaacson's termination.

"[A] police officer is a special kind of public employee" held to a higher standard of personal integrity and dependability than a civilian employee because he is a sworn law enforcement officer. Twp. of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). A police officer's "primary duty is to enforce and uphold the law." Ibid. The officer "represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public[.]" Ibid.

Although the concept of progressive discipline, which promotes uniformity and proportionality in the discipline of public employees, has long been a recognized and accepted principle, West New York v. Bock, 38 N.J. 500, 523 (1962), our courts have also long acknowledged that "some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record." In re Carter, 191 N.J. 474, 484 (2007). "[T]he question for the courts is whether such punishment is so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness". Ibid. (citation omitted). In cases involving police discipline, "public safety concerns may also bear upon the propriety of the dismissal sanction." Id. at 485. In such cases, the court must be careful not to substitute its judgment for the judgment exercised by those charged with making disciplinary decisions. Id. at 486.

Here, there was no credible evidence in the record supporting a mitigation of the penalty of termination based on a lack of training for out-of-jurisdiction stops. Contrary to Isaacson's self-serving testimony, the credible evidence showed that he knew of the out-of-jurisdiction SOP prior to the Smith stop and followed it on two prior occasions. In addition, he admitted during his internal affairs interview that he knew he was required to notify

the out-of-jurisdiction agency of the Smith stop, but did not do so. Isaacson was not a rookie police officer with limited experience. He had approximately five years' experience with the HPD at the time he stopped Smith and was consistently at the top of the HPD list for issuing the most summonses. Having years of experience, he knew or should have known of the out-of-jurisdiction SOP.

The hearing officer concluded, and the judge affirmed, that Isaacson lied numerous times, violated the HPDRRs and SOPs, and knowingly and willfully falsified public documents. The record established that Isaacson acted inappropriately for a person holding the public trust as a police officer, knew or should have known of the HPDRRs and SOPs he violated, and knew or should have known not to lie or make misrepresentations during the stop and course of the internal affairs investigation and not to falsify public documents. Isaacson's egregious conduct "call[ed] into question his honesty, integrity, and truthfulness, essential traits for a law enforcement officer." Ruroede, supra, 214 N.J. at 362. His dishonesty was significant and potentially criminal. See Isaacson v. Pub. Emp't Relations Comm., supra, (slip op. at 14-15). His conduct, and the disciplinary charges for which he was convicted, clearly supported termination of his employment as a police officer.

III.

The Township argues that the judge erred in awarding Isaacson attorney's fees under N.J.S.A. 40A:14-155. We agree.

We determined the attorney's fee issue on the merits in Twp. of Hardyston v. Isaacson, supra, (slip op. at 14). If an issue has been determined on the merits in a prior appeal, it cannot be re-litigated in a later appeal of the same case, even if of constitutional dimension. Washington Commons, LLC v. City of Jersey City, 416 N.J. Super. 555, 564 (App. Div. 2010) (citation omitted), certif. denied, 205 N.J. 318 (2011).

In any event, we reiterate that to be entitled to reimbursement of attorney's fees under the statute for a disciplinary matter, the police officer must be acquitted of all charges. Twp. of Waterford v. Babli, 158 N.J. Super. 569, 572, (Cty. Ct. 1978), aff'd o.b., 168 N.J. Super. 18 (App. Div. 1979). Because Isaacson was not acquitted of all disciplinary charges, he was not entitled to attorney's fees under N.J.S.A. 40A:14-155.

Reversed.

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


CLERK OF THE APPELLATE DIVISION