

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1826-16T3

IN THE MATTER OF DOUGLAS
FOSTER.

Argued March 20, 2018 – Decided May 1, 2018

Before Judges Summers and Moynihan.

On appeal from the Civil Service Commission,
CSC Docket No. 2016-2539.

Mark A. Gulbranson, Jr., argued the cause for
appellant Douglas Foster (Attorneys Hartman,
Chartered, attorneys; Katherine D. Hartman and
Mark A. Gulbranson, on the brief).

Joseph G. Antinori argued the cause for
respondent Township of Pennsauken (Brown &
Connery, LLP, attorneys; Joseph G. Antinori,
on the brief).

George N. Cohen, Deputy Attorney General,
attorney for respondent New Jersey Civil
Service Commission (Gurbir S. Grewal, Attorney
General, attorney; George N. Cohen, on the
statement in lieu of brief).

PER CURIAM

Appellant Douglas Foster appeals from the final agency
decision by the Civil Service Commission (CSC) upholding an
administrative law judge's (ALJ's) initial decision removing him

as a Pennsauken Township police officer. The charges – conduct unbecoming an officer; neglect of duty; failure to give suitable attention and perform required and directed duties; failure to promptly and accurately prepare and submit reports; and submission of "fabricated, factually inaccurate or intentionally misleading" communications – stem from an incident on June 5, 2014, when Foster wrote in his Daily Officer Patrol Log (log) that he was patrolling a section of the township between 1:50 a.m. and 2:20 a.m., but was actually in police headquarters at that time.

Foster reiterates his prior arguments, contending the ALJ's findings failed to account for "several critical factors" including that the proofs were insufficient to show he deliberately falsified the log because the clocks and GPS used to gauge the timeframe were inaccurate. He denies that he deliberately falsified the log. He also argues the penalty imposed – removal – was "excessive and contradictory to Civil Service precedent." We find none of the arguments persuasive and affirm.

In our limited appellate role, we will affirm an ALJ's findings if "they are supported by substantial credible evidence in the record." In re Hendrickson, 451 N.J. Super. 262, 272-73 (App. Div.), certif. granted, 231 N.J. 143 (2017). In making that determination, we consider the following factors:

(1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[In re Stallworth, 208 N.J. 182, 194 (2011) (quoting In re Carter, 191 N.J. 474, 482-83 (2007)).]

We extend "a 'strong presumption of reasonableness' to an administrative agency's exercise of its statutorily delegated responsibilities." Lavezzi v. State, 219 N.J. 163, 171 (2014) (quoting City of Newark v. Nat. Res. Council, Dep't of Env'tl. Prot., 82 N.J. 530, 539 (1980)). As a general rule, we give "due regard to the opportunity of the one who heard the witnesses to judge of their credibility . . . and . . . [give] due regard also to the agency's expertise where such expertise is a pertinent factor." Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 587 (1988) (alterations in original) (quoting Close v. Kordulak Bros., 44 N.J. 589, 599 (1965)).

Adhering to that limited review standard, we conclude the ALJ's findings were well-supported by the record, and that his decision was not arbitrary, capricious or unreasonable. It was undisputed that the log entry was incorrect. Foster, in his merits

brief, concedes that "[t]here is no question that the log inaccurately reflected Foster's location from 1:50 a.m. through 2:20 a.m., as he has in [h]eadquarters, not patrolling [the sector to which he was assigned]." The ALJ considered video footage from police headquarters that showed Foster "in that building during the period from before 1:50 a.m. and [he] remained there until he [was] viewed . . . exiting the rear door at 2:17 a.m."; and testimony about the GPS records from Foster's vehicle which showed the vehicle was at headquarters until 2:20 a.m. The ALJ also considered the testimony of: Chief John Coffey, Detective Lieutenant Scott Gehring, Captain Thomas Connor, Officer Michael DiCamillo and Foster. In a detailed nineteen-page written decision, the ALJ weighed Foster's reasons for initially going to and, thereafter, staying at headquarters,¹ and seemingly accepted them, at least arguendo; but he found Foster had no excuse for remaining in headquarters after 1:50 a.m. until 2:20 a.m. The ALJ, in fact, noted that Foster acknowledged he had no reason to be at headquarters after 1:50 a.m. The ALJ deduced that Foster

either had to leave the time unaccounted for or list himself at headquarters for some reason that he might not be able to justify, or for no reason at all. Instead of these

¹ The ALJ noted Foster "list[ed] as his reasons for his presence at headquarters plausible grounds for his being there: a bathroom break, a meal and relief of [an information officer] who was having his own meal."

choices, at least as the log shows, he covered that half-hour by asserting in an official record that he was on patrol in [his assigned sector], which of course he was not.

The ALJ meticulously debunked Foster's contention that the inaccurate log resulted from inaccurate clocks, concluding "Foster's story is simply not credible." He found all of the leveled charges were proved because Foster

simply left at 2:20 [a.m.] to resume his patrol, that he needed to cover the half-hour of time after the Information Officer returned from dinner, that he did not patrol [his assigned sector] for anywhere near a half-hour, if he did so at all before [presumably going to a known location on "normal patrol"], and that his entry on the log was knowingly false and intended to deceive.

These findings, influenced by the ALJ's credibility assessment, are supported by the record and are entitled to our deference.

So too, we conclude Foster's termination was proper. Foster's contention that the sanction violates the principle of progressive discipline is based on the premise that his mistake was inadvertent, he lacked a prior disciplinary history, he received commendations and an award, and other officers were not terminated for the "same offense."

As established, Foster's actions were deliberate. And the ALJ found he "had previously received a number of written reprimands, as detailed in the [s]tipulation of his prior

disciplinary record," including one for willfully making a false report, as well as a thirty-day suspension for conduct unbecoming and neglect of duty.

The ALJ did not simply adopt the departmental regulation² that provides that "[r]epeated violations of the rules and regulations, policies, procedures, directives or orders" are "indicative of an employee's disregard of the obligations of all employees and shall be cause for dismissal . . . regardless of the severity of the offense." Instead, he concluded that termination was warranted because the higher standard to which police officers are held, see Twp. of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), included honestly reporting police activities. In his discussion of Capt. Connor's testimony, the ALJ noted, "The integrity of police documentation of activities 'must be untainted' and the failure to assure accuracy violates the public trust." And as Chief Coffey testified, the logs required by the department are used to list an officer's activities and "hold officers accountable[; t]hey are therefore expected to be accurate." The importance of the logs' accuracy was tied to the department's goal in assigning officers to specified township

² Pennsauken Police Department, § 4.1.6 (2012).


sectors in order to, as the Chief explained, maintain "appropriate response time[s] and accountability for incidents."

The ALJ's meted penalty was not arbitrary, capricious or unreasonable. See Stallworth, 208 N.J. at 194. We see no error in his decision.

We determine the balance of Foster's arguments to be without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION