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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-5264-15T4

OTTO KRUPP,

Appellant,

v.

NEW JERSEY DEPARTMENT OF
CORRECTIONS,

Respondent.

Submitted March 7, 2018 – Decided March 27, 2018

Before Judges Nugent and Geiger.

On appeal from the New Jersey Department of
Corrections.

Otto Krupp, appellant pro se.

Gurbir S. Grewal, Attorney General, attorney
for respondent (Melissa H. Raksa, Assistant
Attorney General, of counsel; Christopher C.
Josephson, Deputy Attorney General, on the
brief).

PER CURIAM

Otto Krupp, a state prison inmate who at all times relevant
to this appeal was an inmate at New Jersey State Prison (NJSP),
appeals from the July 5, 2016 final administrative decision of the

Department of Corrections (DOC) that upheld a hearing officer's decision finding him guilty of prohibited act *.002, assaulting any person, N.J.A.C. 10A:4-4.1(a)(1)(ii). Krupp's charge resulted from an incident during which he threw two containers of orange juice at another inmate. We affirm.

On June 14, 2016, Krupp was a patient in the NJSP infirmary. At approximately 9:45 a.m., inmate A. Arroyo entered Krupp's room to retrieve a bedside commode, at which time Krupp threw two containers of orange juice at him. Krupp's actions were witnessed by Corrections Officers D. Powell and J. Negrone. Arroyo reported the assault to Nurse Manager S. Wheelock, who observed yellow stains on Arroyo's shirt and pants.

On June 16, 2016, Krupp was charged with the *.002 charge. That same day, Sergeant Pate served Krupp with the disciplinary charge and conducted an investigation. Finding the charge had merit, Pate referred the charge to a hearing officer to conduct a disciplinary hearing. Krupp pled not guilty to the charge. He was offered the assistance of a counsel substitute but declined. Krupp also declined the opportunity to confront witnesses. Krupp's request for a polygraph examination was denied in writing by Assistant Superintendent Chetirkin.

The hearing took place on June 28, 2016. Krupp put on a defense at the hearing. Krupp gave both verbal and written

statements claiming he did not assault Arroyo and was physically incapable of doing so due to his medical conditions. He also claimed he was "set up" and the victim of retaliation by Officer Powell because he had sued Powell. Krupp was given the opportunity to call witnesses on his behalf and did so. He also requested a statement from Arroyo. In a written statement, Arroyo stated: "He threw it at me while I was in the room, I never went back in that room." The hearing officer received and considered Arroyo's statement.

After hearing the testimony, reviewing the evidence, and considering Krupp's arguments, the hearing officer found Krupp guilty of the *.002 charge. Krupp was sanctioned to 181 days' administrative segregation, 181 days' loss of commutation time, and 30 days' loss of recreational privileges. Following Krupp's administrative appeal, the Assistant Superintendent upheld the hearing officer's decision. This appeal followed.

On appeal, Krupp argues the hearing officer's decision is not based on credible medical evidence, that he was denied every attempt at a defense, and his constitutional right to due process was violated.

We preface our analysis by recognizing our review of the DOC's decision is limited. Reversal is appropriate only when the agency's decision is arbitrary, capricious, or unreasonable, or

unsupported by substantial credible evidence in the record as a whole. Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980); see also In re Taylor, 158 N.J. 644, 657 (1999) (holding that a court must uphold an agency's findings, even if it would have reached a different result, so long as sufficient credible evidence in the record exists to support the agency's conclusions). However, "although the determination of an administrative agency is entitled to deference, our appellate obligation requires more than a perfunctory review." Figueroa v. N.J. Dep't of Corr., 414 N.J. Super. 186, 191 (App. Div. 2010) (quoting Blackwell v. Dep't of Corr., 348 N.J. Super. 117, 123 (App. Div. 2002)).

An incarcerated inmate is not entitled to the full panoply of rights in a disciplinary proceeding afforded a defendant in a criminal prosecution. Avant v. Clifford, 67 N.J. 496, 522 (1975). An inmate is entitled to written notice of the charges at least twenty-four hours prior to the hearing; an impartial tribunal; a limited right to call witnesses and present documentary evidence; a limited right to confront and cross-examine adverse witnesses; a right to a written statement of the evidence relied upon and the reasons for the sanctions imposed; and, where the charges are complex, the inmate is permitted the assistance of a counsel substitute. Id. at 525-33. The record refutes defendant's claim that he was denied due process generally, and specifically the

right to confront witnesses and present evidence. We are satisfied Krupp received all due process protections afforded to him.

An inmate does not have the right to a polygraph test. Johnson v. N.J. Dep't of Corr., 298 N.J. Super. 79, 83 (App. Div. 1997) (citing N.J.A.C. 10A:3-7.1(c) ("An inmate's request for a polygraph examination shall not be sufficient cause for granting the request.")). Instead, N.J.A.C. 10A:3-7.1 "is designed to prevent the routine administration of polygraphs, and a polygraph is clearly not required on every occasion that an inmate denies a disciplinary charge against him." Ramirez v. Dep't of Corr., 382 N.J. Super. 18, 23-24 (App. Div. 2005). "[A] prison administrator's determination not to give a prisoner a polygraph examination is discretionary and may be reversed only when that determination is 'arbitrary, capricious or unreasonable.'" Id. at 24. "[A]n inmate's right to a polygraph is conditional and the request should be granted when there is a serious question of credibility and the denial of the examination would compromise the fundamental fairness of the disciplinary process." Id. at 20.

Impairment [of fundamental fairness] may be evidenced by inconsistencies in the [senior corrections officer's] statements or some other extrinsic evidence involving credibility, whether documentary or testimonial, such as a statement by another inmate or staff member on the inmate's behalf. Conversely, fundamental fairness will not be effected when there is sufficient

corroborating evidence presented to negate any serious question of credibility.

[Id. at 24.]

Here, the assault by Krupp was witnessed by two officers. A nurse manager saw the orange juice stains on Arroyo's clothing. The record contained adequate evidence for the hearing officer to determine credibility. Because adequate corroborating evidence was presented to confirm the officers' credibility, Krupp "has failed to demonstrate that the denial of his request for a polygraph negated the fundamental fairness of the disciplinary proceeding which would compel the granting of his request for a polygraph." Id. at 26. We are satisfied the Assistant Superintendent did not abuse his discretion by denying the request for a polygraph examination.

We next consider whether there was adequate evidence to find Krupp guilty of assault. "A finding of guilt at a disciplinary hearing shall be based upon substantial evidence that the inmate has committed a prohibited act." N.J.A.C. 10A:4-9.15(a). "Substantial evidence" is "such evidence as a reasonable mind might accept as adequate to support a conclusion." Figueroa, 414 N.J. Super. at 192 (quoting In re Pub. Serv. Elec. & Gas Co., 35 N.J. 358, 376 (1961)). In other words, it is "evidence furnishing

a reasonable basis for the agency's action." Ibid. (quoting McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 562 (2002)).

The record demonstrates there was ample credible evidence to find Krupp guilty of prohibited act *.002, assaulting of anyone else. Krupp's assertion that the Assistant Superintendent's decision was somehow ill-informed or biased is not supported by the record. Because the guilty finding was supported by substantial credible evidence, the determination that Krupp committed prohibited act *.002 was not arbitrary, capricious, or unreasonable.

Krupp's remaining arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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



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