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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0656-21**

**IN THE MATTER OF ERNEST
FARLEY, ADULT
DIAGNOSTIC AND
TREATMENT CENTER,
DEPARTMENT OF
CORRECTIONS.**

Argued March 22, 2023 – Decided June 30, 2023

Before Judges Enright and Bishop-Thompson.

On appeal from the New Jersey Civil Service Commission, Docket No. 2021-1244.

Donald C. Barbati argued the cause for appellant Ernest Farley (Crivelli, Barbati & DeRose, LLC, attorneys; Donald C. Barbati, on the briefs).

Kendall J. Collins, Deputy Attorney General, argued the cause for respondent New Jersey Department of Corrections (Matthew J. Platkin, Attorney General, attorney; Kendall J. Collins, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent New Jersey Civil Service Commission (Debra A. Allen, Deputy Attorney General, on the statement in lieu of brief).

PER CURIAM

Appellant Ernest Farley appeals from the October 6, 2021 final agency decision of the Civil Service Commission (CSC) upholding Farley's removal from his position as a correctional police lieutenant with the New Jersey Department of Corrections (DOC). We affirm.

I.

We discern the undisputed facts from the record. Farley started his employment with the DOC in 1999. In January 2006, he was promoted to sergeant. Four years later, he was promoted to the rank of lieutenant. In 2010, Farley was assigned to the Adult Diagnostic and Treatment Center (AD&TC).

Farley had a Facebook account which identified him as a "Lieutenant at New Jersey Department of Corrections" on his public profile page. He was also a member of a private, invitation-only Facebook page entitled "Back the Blue Ocean County."

On July 24, 2020, citizen Ann Endress, joined the "Back the Blue" Facebook group and posted the comment, "We should support our president and God Bless him because he support[s] the police." Endress reported she made the post under the impression that the group supported the then-President of the United States. Farley posted a response to Endress on the group's page that

stated, "Ann Endress, hey stupid, shut the fuck up and go kill yourself you ignorant sack of shit. You support a traitor and a coward and then invoke Jesus's name[]. Fuck you! Oh, by the way, I am a [p]olice [s]upervisor and I don't want scum like you backing me." The message thread linked to Farley's comments was publicly accessible.

In reply, Endress posted, "Good job for a lieutenant for the NJ Department of Corrections. Sending a letter out to them referencing your message. This is a serious threat made to me." She messaged the Back the Blue Ocean County administrator and stated she had reported the group to Facebook. Facebook found Farley's comments violated its policy and removed all of the posts in connection with the incident. Endress further stated that Farley's message to her was "very abusive" and that she was "taking legal action."

Thereafter, Endress filed a police report with the Roselle Park Police Department regarding the Facebook incident. The report detailed the messages between Farley and Endress noting that she felt "harassed" and "due to Ernest Farley being a [l]aw [e]nforcement officer who [was] armed[,] she [did] not know what he [was] capable of doing." She did not pursue criminal charges against Farley.

Endress notified the DOC and subsequently an investigation was initiated by the DOC's Special Investigations Division (SID). SID investigators conducted a telephone interview with Endress, who provided a copy of the filed police report which identified the Facebook incident as "[h]arassment [N.J.S.A.] 2C:33-4." During the interview, Endress denied feeling threatened by Farley and described the social media interaction as only harassment.

SID's search of Farley's Facebook account appeared to match the page depicted in the exchange between Farley and Endress. SID investigators also viewed the publicly accessible content on Farley's page and several posts seemed to have characterized persons of particular social, racial, and religious classes as immoral or traitors, if their ideology differed from Farley's. Despite the various Facebook posts made by Farley, SID had not received any complaints prior to Endress's.

The investigation further revealed Farley's page displayed posts with inflammatory statements in which he appeared to advocate acts of physical violence or unlawful force against a sixteen-year-old minor who had settled lawsuits against various media outlets. Farley posted, "I'm not being manipulated at all, that smug, little piece of [s]hit . . . and his friends should have had their skulls caved in with bats and left to die on the sidewalk." When

challenged by another Facebook member regarding the appropriateness of the force advocated by Farley, he stated, "Confronting hatred and bigotry with force is always appropriate."

On August 11, 2020, SID conducted an interview with Farley with his union representative present. Farley acknowledged that he maintained a Facebook account under the username Ernest Farley and listed his employment as a lieutenant. He denied identifying his occupation as a correctional police lieutenant. However, he admitted to stating he was a police supervisor.

SID questioned Farley about the various Facebook posts he made. When shown a post which read, "racism is not a deal breaker," he acknowledged that he "shared a lot of different stuff." He "guessed" that a post depicting a white male officer kneeling on an African-American male's neck with the narrative, "I can't breathe," related to the George Floyd incident and characterized a class of people as opposed to an individual. Farley likewise acknowledged sharing posts regarding evangelicals and others who "lack[ed] morals, ethics and humanity" and supported the former President. When questioned about whether his posts "exhibit[ed] a prejudice against the various classes of persons"—i.e., "Bible believers, Black America, White America," etc.—addressed by the posts, Farley replied, "A prejudice to a political party, yes, and a political stance[,] yes."

Farley understood that specific classes of people were identified in his posts, but characterized all posts as having a "political premise." He acknowledged a narrative description of his position did not accompany the posts, and, as such, the posts were subject to interpretation by the general public.

When asked about the posts exchanged with Endress, Farley stated his response was an "intolerance for her political opinion." Later, Farley stated he would not characterize his position as intolerance for Endress's political beliefs, however, he "[thought] she [was] stupid for her political beliefs." Farley also conceded his use of language was "rude " and "mean," and he admitted to "attacking" Endress for her political beliefs.

Farley stated he did not think the public's confidence and trust was compromised concerning his "ability to be impartial and unbiased in the performance of his duties," even though 500 people were on the message thread. Nor did he believe any of his other posts brought discredit or disrepute to the DOC.

Additionally, Farley acknowledged that he received DOC training which included the department's code of ethics. During the interview, Farley was presented with and reviewed department policy and the Standards of Professional Conduct. Following his review of the policies, Farley stated he

understood the DOC's position concerning maintaining the public's confidence and trust.

After SID completed its investigation, the DOC issued a preliminary notice of disciplinary action (PNDA). The notice charged Farley with violating: N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming an employee; N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause; and Human Resources Bulletin (HRB) 84-17, as amended, specifically C11, conduct unbecoming an employee; C27, the use or attempt to use one's authority or official influence to control or modify the political view of any person; and E1, violation of a rule, regulation, policy, procedure, order or administrative decision.

After a departmental hearing, the DOC sustained the disciplinary charges and issued a final notice of disciplinary action (FNDA). Effective February 11, 2021, Farley was removed from employment.

Farley appealed from his removal to the CSC, and the matter was subsequently transferred to the Office of Administrative Law (OAL). Both parties moved for summary decision.

On August 25, 2021, in a comprehensive initial decision, the Administrative Law Judge (ALJ) granted the DOC's motion and recommended the CSC sustain the disciplinary charges and uphold Farley's removal. The ALJ

concluded summary decision was appropriate because "the material facts were not in dispute." The ALJ denied Farley's motion.

Based upon a review of the parties' submissions, the ALJ made the following findings:

Farley's message to Endress was rude, offensive, demeaning, disrespectful, and public

....

Farley [made] his political views clear on his Facebook page and anyone visiting this public page would have no difficulty determining where he [stood] on current issues. Though Farley did not always include his own words.

[W]ith each posting, Farley communicated his position on a social, racial, political, and/or religious issue and his criticism of people whose position he oppose[d].

Farley publicly advocate[d] the use of violence in response to action taken by others with whom he disagree[d], advocate[d] the use of force in response to bigotry and propose[d] a violent death for specific minors with whom he [did] not agree.

Farley's public comments [were] offensive and disrespectful and show[ed] an absence of discretion.

Farley's action on Facebook showed a lack of good judgment and understanding as to the sensitive nature of his position and his responsibility to uphold the public trust. Even though in many cases, the subject of Farley's posts were current events, the images and comments were offensive and insulting to religious and racial groups and advocated violence (and in some

cases, violent death) for persons with whom Farley did not agree politically.

Farley's personal account . . . was public and . . . his profile show[ed] he was a correctional police lieutenant, [so] his fairness and impartiality toward the people he serves bec[ame] even more suspect.

In rejecting Farley's argument that the posts were protected speech under the First Amendment, the ALJ determined Farley "did not act as a private citizen as he used his employment status in both his Facebook profile and certain statements. Therefore, Farley ha[d] no First Amendment protection to the reaction of his employer to such speech." See Garcetti v. Ceballos, 547 U.S. 410, 418 (2006). The ALJ further determined Farley was a "correctional police lieutenant, his conduct and speech [was] restricted twenty-four hours a day to ensure a higher level of conduct, awareness, and sensitivity." The ALJ explained Farley's "daily speech [wa]s not afforded an automatic guarantee of privacy, like that of other members of the public, because he [chose] to be employed as a correctional police lieutenant and voluntarily accept[ed] the restrictive conditions of his employment." Additionally, the ALJ noted Farley admitted that in most cases he did not add his own interpretation of an image; however, when he did add his own comments, "he typically added more insults." Therefore, the ALJ concluded Farley's comments to Endress in the Back the

Blue Ocean County group thread and on his own Facebook page were not protected free speech under the First Amendment to the United States Constitution.

The ALJ also found the CSC met its burden and proved Farley's posts and messages to Endress on Facebook constituted conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6). Citing Karins v. City of Atlantic City, the ALJ noted "[c]onduct unbecoming a public employee" is an "elastic" phrase, which encompasses conduct that "adversely affects the morale or efficiency" of a governmental unit or that "has a tendency to destroy public respect" in the delivery of governmental services. 152 N.J. 532, 554 (1998). The ALJ further concluded that while the "implicit standard of good behavior" expected of public employees is also not defined, none of Farley's posts regarding "the use of offensive language when addressing another person in a public forum; publicly recommending and/or endorsing the use of violence against minors and/or persons with whom you disagree; publicly repeating and spreading slanderous statements about persons who practice a specific religion" would qualify.

Based on those findings, the ALJ also found the CSC proved Farley violated departmental policy HRB 84-17, C11, conduct unbecoming a public

employee. The ALJ further concluded by a preponderance of credible evidence that Farley used his job title on Facebook to influence people to modify their political and/or social views in violation of HRB 84-17, C27, the use or attempt to use one's authority or official influence to control or modify the political view of any person.

Lastly, the ALJ found although the DOC did not have a specific social media policy, the Professional Conduct Policy and the rules and regulations were sufficient to prohibit the use of social media to engage in certain conduct. The ALJ stated, "Put another way, the fact that Farley's alleged conduct was limited to his social media account does not free him from his continuing obligation to adhere to NJDOC policies and regulations."

In reviewing Farley's disciplinary history, the ALJ noted it included a November 2007 five-day suspension for a violation of E1, violation of a procedure concerning disrespectful conduct; an April 2013 suspension for a violation of section D20(c) for "accessing non-work related [i]nternet websites for which he could have been removed;" a July 2013 suspension for a violation of D07 for the failure to follow protocol during a code 22; and an official reprimand in 2019 for violating "[s]ection C11, conduct unbecoming a public employee, for sending an email to the [J]DOC Office of Information and

technology which contained 'inappropriate, insulting and unprofessional language.'" Based on this disciplinary history, as well as the range of penalties recommended in the DOC's policies, the ALJ concluded removal was "reasonable and consistent" with progressive discipline and appropriate for the sustained charges.

On October 6, 2021, the CSC issued its final administrative action. The CSC accepted and adopted the findings and conclusions of the ALJ's initial decision. The CSC found Farley's removal by the DOC was justified and affirmed his removal.

II.

On appeal, Farley argues the CSC's final agency decision was arbitrary, capricious, and unreasonable because it erred in adopting the ALJ's initial decision affirming removal, the ALJ's decision was not supported by credible evidence in the record, and the CSC erred in upholding Farley's removal and rejecting the ALJ's recommendation to modify his disciplinary penalty. We reject these contentions.

Judicial review of final agency decisions is limited. Allstars Auto Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (citing Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)). An agency

decision will be upheld "unless there is a clear showing that (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence." In re Virtua-W. Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008); see also In re Stallworth, 208 N.J. 182, 194 (2011).

We "afford[] 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't Prot., 82 N.J. 530, 539 (1980)). That presumption is particularly strong when an agency is dealing with specialized matters within its area of expertise. Newark, 82 N.J. at 540. We therefore defer to "[a]n administrative agency's interpretation of statutes and regulations within its implementing and enforcing responsibility...." Wnuck v. N.J. Div. of Motor Vehicles, 337 N.J. Super. 52, 56 (App. Div. 2001). "A reviewing court 'may not substitute its own judgment for the agency's, even though the court might have reached a different result.'" Blanchard v. N.J. Dep't of Corr., 461 N.J. Super. 231, 238-39 (App. Div. 2019) (internal quotation marks omitted) (quoting In re Stallworth, 208 N.J. at 194). However, if there is "any fair argument" supporting the agency action, it must be affirmed. In re Stormwater Mgmt. Rules, 384 N.J. Super. 451, 465-66 (App.

Div. 2006). The party challenging the administrative action bears the burden of demonstrating that the agency's action was arbitrary, capricious, or unreasonable. Lavezzi, 219 N.J. at 171. A reviewing court is not, however, "bound by [an] agency's interpretation of a statute or its determination of a strictly legal issue." Allstars, 234 N.J. at 158 (alteration in original) (quoting Dep't of Child. & Fams. v. T.B., 207 N.J. 294, 302 (2011)).

Applying those standards to our review of the record and Farley's contentions, we affirm substantially for the reasons expressed in the ALJ's thorough initial decision, which were accepted and adopted by the CSC. We add the following comments.

The CSC adopted and agreed with the ALJ's determination that Farley's conduct involving the use of technology, the internet, and social media was egregious, demonstrated poor judgment and character which was incompatible with his duties as a corrections lieutenant and undermined the public's confidence and faith in the DOC. The record also supports the agency's determination that the penalty of removal was warranted and not "so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness." In re Carter, 191 N.J. 474, 484 (2007) (quoting In re Polk, 90 N.J. 550, 578 (1982)). Therefore, considering Farley's

significant disciplinary history, we reject his contention that the CSC "failed to adhere to the principles of progressive discipline in upholding his removal." In sum, we decline to conclude the decision of the CSC was arbitrary, capricious, or unreasonable.

To the extent we have not specifically discussed any remaining arguments raised by Farley, we conclude they lack 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