

NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION NO. 2009-05313-B

WILLIAM CROWLEY

VS.

CIVIL SERVICE COMMISSION & another¹

MEMORANDUM AND ORDER ON PLAINTIFF'S
MOTION FOR JUDGMENT ON THE PLEADINGS

INTRODUCTION

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(mc) This matter involves a dispute over disciplinary action taken by the defendant Department of Correction ("DOC") against plaintiff William Crowley ("plaintiff"), a correction officer at the Massachusetts Correctional Institute-Cedar Junction ("MCI-Cedar Junction"). A magistrate at the Division of Administrative Law Appeals ("DALA") recommended upholding the plaintiff's five-day suspension, and the defendant Civil Service Commission ("Commission") adopted that recommendation.

The plaintiff has appealed the matter to this court pursuant to G. L. c. 30A § 14 and seeks judgment on the pleadings pursuant to Mass. R. Civ. P. 12(c). After hearing, and for the reasons set forth below, the motion is DENIED.

FACTUAL BACKGROUND

The following facts are taken from the administrative record. At all relevant times, the plaintiff was a correction officer at the MCI-Cedar Junction correctional institution. On August 23, 2007, an inmate at MCI-Cedar Junction, referred to in the record as "Inmate A," reported

¹ Department of Correction

feeling chest pains. He was examined by Licensed Practical Nurse Jacquelyn Bernard ("Nurse Bernard"), who determined that he should be transported to the Health Services Unit ("HSU") for further assessment. Sergeant Stephen Hocking ("Sgt. Hocking") was the senior sergeant that evening and, therefore, was responsible for preparing Inmate A's transport to the HSU. The plaintiff and Correction Officer Nicholas Kenney ("Officer Kenney") were asked to assist. As Inmate A was being placed in restraints, he spit in Sgt. Hocking's face.

A security video from the evening of August 23 shows Inmate A being "hands on" escorted from his cell by the plaintiff and Officer Kenney at approximately 9:35 p.m. The plaintiff and Officer Kenney flanked Inmate A, Sgt. Hocking walked behind him, and Sergeant William Roach ("Sgt. Roach") was positioned behind Sgt. Hocking. Before the parties moved around a corner and out of view, the video showed Sgt. Hocking placing his hands on the shoulders of Officer Kenney and the plaintiff. Both escorting officers reacted by looking at Sgt. Hocking.

During this time, Nurse Bernard was seated in a chair near the end of the tier; and Correction Officer Derek Teixeira ("Officer Teixeira") was positioned by the door. As the transport team approached, Nurse Bernard observed Sgt. Hocking strike Inmate A on the back of the head with an open hand and saw Inmate A fall to the ground.

According to Nurse Bernard, shortly after the incident Sgt. Hocking asked her, "Are we okay?," and told her he would supply her with a copy of the incident report he planned to write. Later that day, Nurse Bernard reportedly also had a conversation with the plaintiff and Officer Kenney in the MCI-Cedar Junction parking lot. During this conversation, Officer Kenney revealed that Sgt. Hocking intentionally stepped on Inmate A's leg irons, causing him to fall.

Several officers wrote reports about this incident. Sgt. Hocking wrote a disciplinary report concerning Inmate A's conduct of spitting in his face. The plaintiff, Sgt. Roach, and Officers Kenney and Teixeira also filed incident reports. The plaintiff used Sgt. Hocking's computer to draft his report, claiming that his own IMS log-in was having connectivity issues. After speaking with the Technology Services Division, investigators determined that there was no documentation of connectivity issues with the plaintiff's account. The reports written by the plaintiff and Officer Kenney were nearly identical.

PROCEDURAL HISTORY

On August 23, 2007, Inmate A reported to medical staff that Sgt. Hocking had struck him on the head. That same day, Nurse Bernard reported the incident to Captain Steven Fairley and Director of Nursing Jeffrey Fisher. Based on these reports, Captain Edward McGonagle ("Capt. McGonagle") of the Office of Investigative Services began an internal investigation.

Capt. McGonagle interviewed the plaintiff on August 24 and September 21. During these interviews, the plaintiff denied witnessing the alleged incident or having any knowledge of it. He stated that Inmate A intentionally stumbled to his knees and that Sgt. Hocking did not make any contact with him.

After completing his investigation, Capt. McGonagle found that evidence was not sufficient to support the allegations that Inmate A was mistreated. However, upon executive review on February 11, 2008, the Deputy Commissioner determined that Sgt. Hocking did use excessive force and that Officer Kenney, Sgt. Roach, and the plaintiff filed false reports and were not truthful during the investigation. He also found that evidence was not sufficient to support

allegations against Officer Teixeira.

On March 18, 2008, the plaintiff was charged with violating Rule 19(c) of the Rules and Regulations Governing All Employees of the DOC, which requires a full and prompt response during employee investigations, and G. L. c. 268 § 6A, which prohibits the filing of a false report. On October 2, 2008, Sgt. Hocking admitted to striking Inmate A in a confidential incident report.

The plaintiff received a hearing on December 10, 2008; and the DOC found that the he had filed a false report and had not been truthful during the investigation of the August 23, 2007, incident. On January 19, 2009, he was suspended for five days and issued a warning.

The plaintiff appealed his suspension to the Commission” pursuant to G. L. c. 31 § 43, and the Commission assigned the matter for a hearing at DALA. After a hearing, DALA determined that the plaintiff’s account of the events on August 23 lacked credibility and recommended upholding the five-day suspension. The Commission adopted the recommendation. The instant administrative appeal ensued.

DISCUSSION

Pursuant to G. L. c. 30A, § 14(7), this court may affirm, reverse, remand, or modify an agency decision if “the substantial rights of any party may have been prejudiced” because the agency decision is in violation of constitutional provisions, is in excess of statutory authority, is based on an error of law or an unlawful procedure, is arbitrary and capricious, is unwarranted by facts found by the agency, or is unsupported by substantial evidence. See G. L. c. 30A, § 14(7). The burden of showing that the agency’s decision is invalid is on the party challenging the

decision. *Merisme v. Board of Appeal on Motor Vehicle Liab. Policies & Bonds*, 27 Mass. App. Ct. 470, 474 (1989).

In reviewing the agency's decision, the court must give "due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it." G. L. c. 30A, § 14(7). The court may not substitute its judgment for that of the agency, and it is the duty of the agency to determine the credibility of witness testimony. See *Southern Worcester County Reg. Voc. Sch. Dist. v. Labor Relations Comm'n*, 377 Mass. 897, 903 (1979); *Catrone v. State Racing Comm'n*, 17 Mass. App. Ct. 484, 486 (1984). Further, the "court may not displace an administrative board's choice between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it de novo." *Labor Relations Comm'n v. University Hosp., Inc.*, 359 Mass. 516, 521 (1971).

In this case, the plaintiff argues that the Commission's decision was not based on substantial evidence and that his punishment was arbitrary and capricious.

A. Substantial Evidence

The plaintiff argues that the DALA recommendation and the eventual Commission decision were not supported by substantial evidence. Substantial evidence, as defined by statute, is "such evidence that a reasonable mind might accept as adequate to support a conclusion." G. L. c. 30A, § 1(6). When reviewing whether a decision was supported by substantial evidence, a court must give due weight to the experience, technical competence and specialized knowledge of the agency and should defer to the agency on questions of fact. G. L. c. 30A § 14(7); *Flint v.*

Commissioner of Pub. Welfare, 412 Mass. 416, 420 (1992); *Hotchkiss v. State Racing Commission*, 45 Mass. App. Ct. 684, 691-695 (1998). “[T]he substantial evidence test accords an appropriate degree of judicial deference to administrative decisions, ensuring that an agency’s judgment on questions of fact will enjoy the benefit of the doubt in close cases, but requiring reversal by a reviewing court if the cumulative weight of the evidence tends substantially toward opposite inferences.” *Cobble v. Commissioner of Dept. of Social Services*, 430 Mass. 385, 391 (1999). In its evaluation, the court should examine the entirety of the administrative record. See *id.* at 390.

After hearing evidence and evaluating witness testimony, the DALA magistrate (and, by recommendation, the Commission) determined that the plaintiff either saw or heard his superior officer strike Inmate A, that he collaborated with other officers to hide Sgt. Hocking’s wrongdoing, that he filed a false report, and that he was not forthcoming during the investigation. The following evidence provides substantial support for those findings.

As mentioned above, Sgt. Hocking placed his hands on the plaintiff and Officer Kenney in what has been described as a “separating” motion just prior to the reported assault. In response, the plaintiff turned his head towards Inmate A and the Sergeant. The plaintiff did not recall this gesture, while Sgt. Hocking explained that it was intended to warn the officers of Inmate A’s unruliness. DALA found the plaintiff’s lack of memory suspicious and did not credit Sgt. Hocking’s explanation. Rather, as interpreted reasonably by the agency, the evidence suggests that Sgt. Hocking separated the escorting officers in order to strike the inmate and that the plaintiff witnessed the strike.

Even if the plaintiff did not see the assault, as he alleges, he was in such close proximity

to Inmate A during the escort that he would have heard sounds of any assault. Therefore, the DALA magistrate was convinced that the plaintiff either saw the assault or heard the impact when Sgt. Hocking struck Inmate A. Despite this, the plaintiff consistently denied witnessing the event and wrote a report omitting the assault. Thus, DALA concluded that the plaintiff's report, which described the inmate diving to the ground, was intentionally misleading. Given the near identical language in the two reports,² DALA also found that Officer Kenney copied the plaintiff's report, demonstrating a deliberate effort on the officers' part to collaborate in concealing Sgt. Hocking's actions.

Finally, the DALA magistrate credited Nurse Bernard's testimony regarding the conversation among Officer Kenney, the plaintiff, and herself in the parking lot on the day of the incident. According to Nurse Bernard, Officer Kenney revealed in that conversation that Sgt. Hocking intentionally stepped on Inmate A's leg irons. When questioned about this on September 21, the plaintiff recalled having a conversation with Nurse Bernard but did not recall whether anyone else was present and insisted that they did not discuss anyone striking an inmate or stepping on his leg chain. Again, the magistrate found this lack of memory suspect and found that the plaintiff lacked credibility.

This court must defer to the agency's expertise, including its determinations of credibility, and cannot displace an agency decision between two fairly conflicting views. *Lisbon v. Contributory Retirement Appeal Bd.*, 41 Mass. App. Ct. 246, 257 (1996). Therefore, in light of

² For example, both the plaintiff and Officer Kenney used the following verbatim language in their reports: "[When] we got to the end of the tier inmate A dove to the ground yelling, 'Hocking hit me in the back of the head. Did you see that!' We assisted inmate A to his feet and escorted him to the HSU without incident." Compare with Officer Teixeira's similar, but not identical, language: "While being escorted off the tier, inmate A fell to the floor near the tier entrance gate and shouted, 'Hocking hit me in the back of the head. Did you see that.'"

the evaluation of the facts and testimony presented by DALA and the Commission, there was substantial evidence to support their decision.

B. Arbitrary Punishment

The plaintiff also argues that his punishment was arbitrary and that he was not disciplined comparably to other officers. General Law Chapter 30A, Section (7)(g) expressly provides that the court may modify an agency decision if it is arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law. An arbitrary and capricious decision is one that “lacks any rational explanation that reasonable persons might support.” *City of Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 303 (1997). In reviewing administrative action, the court “must apply all rational presumptions in favor of the validity of the administrative action.” See *Long v. Commissioner of Public Safety*, 26 Mass. App. Ct. 61, 65 (1988), quoting *Purity Supreme, Inc. v. Attorney Gen.*, 380 Mass. 762, 776 (1980).

Here, the plaintiff asserts that he received disparate treatment because Officer Teixeira, who was also in the vicinity at the time of the incident, was not disciplined. However, Officer Teixeira was not in direct contact with Inmate A as part of the transport team; and the investigators credited his statement that he was not paying significant attention to the escort. Therefore, the plaintiff’s punishment should not be compared to that received by Officer Teixeira but, instead, should be compared to that received by Officer Kenney. The plaintiff and Officer Kenney were similarly situated during the escort, wrote similar reports, and were both allegedly present during a conversation with Nurse Bernard where Sgt. Hocking’s culpability was discussed. Officer Kenney and the plaintiff both received five-day suspensions. These

circumstances do not suggest that the agency took "willful and unreasoning action without consideration and in disregard of facts and circumstances." See *Long v. Commissioner of Public Safety*, 26 Mass. App. Ct. 61, 65 (1988). Accordingly, the plaintiff has failed to meet his burden of showing that he was not disciplined comparatively and that the agency's decision to uphold this punishment was arbitrary or capricious.

ORDER

For all the foregoing reasons stated, it is hereby **ORDERED AND ADJUDGED** that the plaintiff's motion for judgment on the pleadings be **DENIED** and that the Commission's decision of November 13, 2009, be **AFFIRMED**.



Linda E. Giles,
Justice of the Superior Court

DATED: December 1, 2011.