



STATE OF NEW JERSEY

In the Matter of Simonne Ali,
Plainfield, Department of Public
Affairs and Public Safety

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2023-1684

Request for Stay

ISSUED: March 29, 2023 (SLK)

Plainfield, represented by Edward J. Kologi, Esq. and Michael S. Simitz, Esq., requests a stay of the Civil Service Commission (Commission) decision in *In the Matter of Simonne Ali* (CSC, decided December 7, 2022), pending its appeal to the Appellate Division.

By way of background, Ali, a Police Aide with Plainfield, was working a double shift on April 14, 2017 at the City’s jail, when a detainee died due to a drug overdose. Ali was removed, effective September 28, 2017, on charges related to the incident. Ali appealed her removal to the Commission and the matter was transmitted to the Office of Administrative Law as a contested case. The Administrative Law Judge (ALJ) rendered his initial decision on November 2, 2022, recommending to reverse the removal. The Commission, at its meeting of December 7, 2022, affirmed the ALJ’s initial decision. Additionally, the Commission ordered Ali’s reinstatement with mitigated back pay and reasonable counsel fees.

In its request, Plainfield presents that the Preliminary Notice of Disciplinary Action (PNDA) issued against Ali, included a second charge, Failure to Perform Duties, which included a charge of lying for entering false information in the jail logs, as recognized by the ALJ. It states that as part of her Police Aide duties, Ali was to conduct face-to-face wellness checks of all prisoners every 30 minutes as mandated under *N.J.A.C. 10:34-4.1*. Further, according to policy, these checks were to be time

stamped by the Police Aide as evidence that they were completed and if no physical check was done, the Police Aide was not to stamp the log.

Plainfield indicates that Ali was the only Police Aide on duty at the time of the incident and she was charged with the care of seven prisoners, include the subject detainee. Ali conducted a physical face-to-face check of the prisoners, including the detainee, at 7:09 a.m. on the date of the incident when she brought them breakfast. However, it provides that this was the last time Ali checked on the detainee that day. Therefore, Plainfield asserts that Ali failed to conduct 21 mandated face-to-face prisoner checks from 1:33 a.m. until 12:36 p.m. on the incident date. It presents that when Debra Barlow, a Police Aide, had just come on shift, she found the detainee dead during a face-to-face physical check. The investigation revealed that the detainee died due to an overdose of cocaine and fentanyl.

Plainfield provides that the detainee's final movements were observed on video at 9:38 a.m. It indicates that the next face-to-face inspection should have been conducted at approximately 10:00 a.m. Plainfield states that as the jail log indicated that Ali was busy booking another prisoner, the ALJ concluded that given contradictory instructions she received, she was free to disregard the face-to-face inspection as she was busy booking a prisoner. However, Plainfield argues that there is undisputed evidence that Ali fabricated this story as the prisoner that she booked did not arrive until 10:18 a.m., which is well after the time 10:00 a.m. It indicates that video evidence shows that she was at her desk at 9:45 a.m. until 10:18 a.m. Plainfield claims, as she did with the time stamps, she fabricated the jail log to indicate that she was busy booking a prisoner who did not arrive for another 18 minutes. Plainfield reiterates that its policy was that Police Aides were to conduct face-to-face physical checks every 30 minutes, which was to be documented by a time stamp, and if no physical check was done, there was to be no time stamp, and it was improper for a Police Aide to fail to note an entry in the jail log, whether the physical check was completed or not.

Plainfield argues that Ali stipulated that she fabricated every time stamp on the jail log to falsely indicate that she conducted physical checks of prisoners and neither the ALJ nor the Commission addressed this charge. It states that under New Jersey law, deliberate falsification warrants termination and the failure to address this specification warrants a stay. Plainfield also argues that she fabricated the jail log to indicate that she was booking a prisoner at 10:00 a.m. in lieu of conducting a face-to-face check at that time as the undisputed video evidence demonstrates that Ali was at her desk between 9:45 a.m. until 10:18 a.m. Therefore, it asserts that the ALJ's conclusion that Ali was booking a prisoner at 10:00 a.m. and therefore excused from having to perform the required face-to-face check was not supported by the evidence. Plainfield presents case law that provides that falsifying reports and records in a prison setting is highly relevant in determining discipline, and in such cases, termination is usually warranted. Therefore, it asserts that the Commission

is violating its principles by ignoring that Ali stipulated to falsifying records. Further, it contends that the undisputed evidence provides that Ali was not booking a prisoner at 10:00 a.m. and fabricated this jail log entry as the video and documentary evidence demonstrates that she did not book the next prisoner until 10:18 a.m. Consequently, Plainfield believes that the Commission's decision is arbitrary and capricious, and it will likely succeed on the merits at the Appellate Division. Moreover, Plainfield states that it will suffer immediate or irreparable harm if its request is not granted as Ali is charged with caring for prisoners, and she has already demonstrated that she will neglect prisoners and falsify records to cover up her neglect. It asserts that it cannot "roll the dice" and hope that another prisoner under her care will not overdose, commit suicide, or suffer some other misfortune. However, Plainfield argues that Ali will suffer no injury if its request is granted as she will receive back pay if its appeal is unsuccessful and it is simply maintaining the status quo. Finally, it asserts that it is in the public interest to ensure the safety of inmates and to have employees in charge of inmate safety perform those duties in a diligent fashion without falsifying records.

In response, Ali, represented by Ira W. Mintz, Esq., asserts that Plainfield makes unfounded allegations not raised in its exceptions nor in the Final Notice of Disciplinary Action and its claim that Ali falsified her jail log to cover up that she "neglected a prisoner to his death" is unsupportable. She highlights that she completed her jail log in a manner consistent with her training and before the detainee was found dead. Ali asserts that misrepresentations of the record to deflect from its own policy failures are not a justification for a stay.

Ali presents that Plainfield now realizes that it can no longer challenge that it trained Police Aids to skip cell block inspections when they are performing other duties so now it is alleging that she falsified records, even suggesting that she stipulated to this. However, she states that she did not fabricate or falsify records. Ali provides the different times she "punched" the time stamp machine. She reiterates that she did not stipulate that she falsified record as nowhere did she admit that she entered time stamps to reflect that physical checks were done. Further, a Lieutenant William Tyler testified that time stamping did not mean that a Police Aide did a face-to-face with a detainee.

Ali notes that although fabrication was not mentioned in either the PNDA or FNDA, the ALJ found that the accusation that she entered false information in the jail logs was part of the charge of failure to properly perform her duties. She asserts that it is a misrepresentation to state that neither the ALJ nor the Commission addressed Plainfield's fabrication claim. Rather, after reviewing the evidence, the ALJ and Commission found that the half-hourly face-to-face checks was not a strictly followed policy and that Ali complied with the directions she was given. Also, the ALJ concluded that it would be unfair to impose discipline upon an employee where the employer's workplace rules were unclear or contradictory. She asserts that

because the ALJ properly found that based on the contradictory sets of instructions received by Police Aides and because she performed other duties and wrote them in the jail log, she did not fail to perform or neglect her duties. Ali claims there is no basis to conclude that the ALJ did not consider and then reject the claim that she falsified the jail log.

Ali states that Plainfield, for the first time, asserts that she was not booking a prisoner at 10:00 a.m. She notes that there is nothing in the record that indicates that the cell block inspection had to be on the hour and half-hour and none of her time stamps were on the hour or half-hour. Further, there is nothing in the record that indicates that the time stamps were intended to indicate a specific time. Regarding Plainfield's claim that there is undisputed video and documentary evidence indicating that she was at her desk at 9:45 a.m. until 10:18 a.m. until a new prisoner arrived for booking, she presents that Plainfield chose not to introduce the best evidence as to what she was doing during her double shift and there is no video evidence in the record of all her duties that she was performing. Additionally, Detective Adam Green, who reviewed the video and wrote notes, did not testify that Ali was seated at her desk from 9:45 to 10:18 a.m. Moreover, Ali states that Green's notes do not indicate what she was doing most of the time. She asserts that if she was not performing her duties near the end of her second shift, Plainfield could have entered the video showing what she was doing, but it chose not to do so.

Concerning Plainfield's claim that it will likely succeed on appeal, Ali presents that the ALJ found that Lieutenant Tyler's testimony that Police Aides need to physically check cells every 30 minutes without consideration of various exigencies that arise in the course of police activities was not credible. Further, she indicates that the ALJ found that Tyler was remiss in his duties in that he did not investigate every skipping of face-to-face checks that he discovered and upper echelons in the department were remiss for failing to act on Tyler's report of said violations which demonstrates that it was the Police Department's motivation to deflect blame for the death of the detainee from certain members of the Police Department and place all the blame on her. Therefore, she argues that given the overwhelming evidence in the record that Police Aides were trained to skip face-to-face checks when performing other duties and Plainfield cannot prove that she falsified records, Plainfield is unlikely to succeed on the merits.

Additionally, Ali states that Plainfield's claim that it will suffer immediate or irreparable harm if the stay is not granted, ignores the record which indicates that other Police Aides skipped hour-inspections and were trained to do so when performing other duties. In this regard, Lieutenant Jeffrey Plum ordered Police Aides to skip half-hour face-to-face checks, and Detective Green, who reviewed the videos of her and the cell where the detainee died, did not testify that she was not busy or that she was preoccupied on her cell phone as charged. Ali believes that Plainfield has effectively acknowledged the dangers of having Police Aides working

alone and leaving them to do both cell block checks and perform other duties, such as booking, fingerprinting and answering the telephone and radio, as it has changed its policy and Police Aides no longer work alone. Further, she indicates that Plainfield has eliminated the use of the time stamp machine and Police Aides must now conduct physical checks at the detainee's cell and fill out a Confinement Form stating their actual observations of the detainee. She provides that she did what she was trained to do which led to the ALJ and the Commission concluding she did not neglect her duties. Ali indicates that it was a series of inadequate procedures that likely led to the detainee's death, such as the fact that the detainee was not adequately searched for drugs after his arrest and Police Aides worked alone and were trained to skip cell block inspection while performing other duties. She asserts that there is no reason to find that she poses any greater threat to detainees than all the other Police Aides who skipped inspections, the Plainfield officials who trained Police Aides, the watch commanders responsible for signing off on the jail logs of all the Police Aides who skipped inspections, or the Plainfield officials who ultimately are responsible for its detainee detention policies. Ali notes that Plainfield's own witness, Police Aide Barlow, admitted that she skipped cell block inspections for six consecutive half-hour long periods and other Police Aides skipped inspections when performing other duties; yet none of these Police Aides were disciplined or removed from duty because they posed a danger. She states that upon her return to work, she will perform the duties as she is trained to do, which includes completing the new Confinement Form. Moreover, Ali asserts that she will suffer substantial injury if the stay is granted as she was unjustly terminated five years ago as she is not earning what she previously earned and back pay at the end of an appeal does not eliminate the continuing day-to-day harm she now suffers. Finally, she agrees that it is in the public interest and legislative policy to ensure prison safety. However, she emphasizes it was Plainfield's policies that led to this incident. She states that she simply wants to return to her job under the new policies that developed because of her appeal.

CONCLUSION

Pursuant to *N.J.A.C. 4A:2-1.2(c)*, the standards to be considered regarding a petition for stay are:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm if the request is not granted;
3. Absence of substantial injury to other parties if the request is granted;
and
4. The public interest.

In this matter, the Commission finds that Plainfield has not met the standards for a stay. Plainfield asserts that Ali falsified information in the jail logs, which is grounds for removal and, therefore, it will likely win on appeal to the Appellate Division. It presents that Police Aides were mandated to perform face-to-face wellness checks of the prisoners every 30 minutes and these checks are to be time

stamped as evidence when completed. Ali stipulated that while she did time stamp the jail log at specified times, she did not actually perform the physical checks. Therefore, Plainfield argues that the time stamps are fabrications. However, a review of the testimony does not reveal that Ali admitted that because she “punched” the time stamp machine, this was to signify that she performed a physical check. Further, a review of Lieutenant Tyler’s testimony indicates that he was not a proponent of the stamp machine because all a time stamp meant was that you stamped the machine and it did not mean that you did the face-to-face inspection. Therefore, the Commission finds that there is nothing in the record that indicates that Ali falsified the records to indicate that she performed a face-to-face check of the prisoners when she did not.

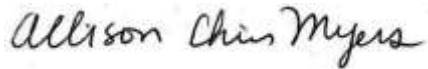
Plainfield also alleges that Ali falsified records by claiming that she was booking a prisoner at 10:00 a.m., and therefore skipped the 10:00 a.m. physical inspection of prisoners, when the booking of the next prisoner did not occur until 10:18 a.m. It claims that video evidence shows that Ali was sitting at her desk from 9:45 a.m. until 10:18 a.m. However, there is nothing in the record that indicates that the physical inspections were to be performed on the hour or the half-hour. Additionally, the record indicates that Police Aides were instructed not to perform the physical inspections if they were performing other duties. Further, Ali highlights that Plainfield did not submit video evidence into the record. Instead, it had Detective Green testify regarding his review of the video and he did not testify that she was sitting at her desk from 9:45 a.m. until 10:18 a.m. Also, a review of the video log does not indicate that she was sitting at her desk the whole time during this period as there are entries such as “10:00:36 – Ali goes back towards booking & cell area.” Therefore, there is nothing in the record that indicates that Ali was not performing duties instead of physical checks as she was trained to do. Accordingly, the record does not indicate that she falsified any logs regarding her duties. It is noted that as there is nothing in the record that indicates that Ali entered or modified any logs after the detainee was found dead, there is no indication that she attempted to falsify or fabricate records in order to cover her alleged neglect. Instead, the record indicates that Police Aides were trained to skip physical inspections when they were performing other duties, and there is nothing in the record that indicates that she was not performing duties, which is why she skipped the physical inspections. Therefore, there is no basis to find that Plainfield will likely succeed on appeal. Moreover, as Ali was not found to have done anything that conflicted with her training, there is no reason to believe that Plainfield will be harmed if she is reinstated or that she will not perform her Police Aide inspection duties under the new policies. Also, Ali is the one who will be substantially injured if the matter is stayed as she has been wrongfully removed since September 2017 and it is in the public interest if the Commission’s orders are followed.

ORDER

Therefore, it is ordered that these requests be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 29TH DAY OF MARCH, 2023



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