



STATE OF NEW JERSEY

In the Matter of Shreekk Crawford,
Essex County, Department of
Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2020-1824
OAL Docket No. CSV 01316-20

ISSUED: JUNE 28, 2023

The appeal of Shreekk Crawford, County Correctional Lieutenant,¹ Essex County, Department of Corrections, 30 working day suspension, on charges, was heard by Administrative Law Judge Andrew M. Baron (ALJ), who rendered his initial decision on May 26, 2023. Exceptions were filed on behalf of both parties and a reply to exceptions was filed on behalf of the appellant.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply filed by the parties, the Civil Service Commission (Commission), at its meeting on June 28, 2023, adopted the ALJ's Findings of Fact and Conclusions and his recommendation to modify the 30 working day suspension to a four working day suspension.

As mentioned above, the Commission has thoroughly reviewed the exceptions and reply filed in this matter, and finds them unpersuasive in all respects. Notably, the ALJ's decision was based on his assessment of the credibility of the witnesses. In this regard, upon its *de novo* review of the record, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See also, In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the

¹ At the time of the incident, the appellant was a County Correctional Sergeant.

record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. See *N.J.S.A. 52:14B-10(c)*; *Cavalieri u. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). In this matter, the ALJ found that the appellant testified credibly about the circumstances underlying the incident, which mainly served as mitigation of the penalty imposed, as there was no serious dispute as to whether the appellant was guilty of the charges lodged against him. Based on those mitigating factors, the ALJ found that a reduction in the penalty was warranted. In its review of the exceptions filed by the parties, the Commission is not persuaded that the ALJ's credibility determinations, or his findings and conclusions based on those determinations, as well as the recommended reduction in penalty, were arbitrary, capricious or unreasonable. While the Commission agrees that the appellant "could have and should have handled himself in a different manner," given the mitigating factors presented, the reduction in penalty is warranted.

Since the suspension has been modified, the appellant is entitled to be 26 working days of back pay, benefits, and seniority pursuant to *N.J.A.C. 4A:2-2.10*. However, he is not entitled to counsel fees. *N.J.A.C. 4A:2-2.12(a)* provides for the award of counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in the disciplinary appeal is the merits of the charges. See *Johnny Walcott v. City of Plainfield*, 282 *N.J. Super.* 121,128 (App. Div. 1995); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In the case at hand, although the penalty was modified by the Commission, the charges were sustained, and discipline was imposed. Consequently, as appellant has failed to meet the standard set forth at *N.J.A.C. 4A:2-2.12*, counsel fees must be denied.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. The Commission therefore modifies the 30 working day suspension to a four working day suspension. The Commission further orders that the appellant be granted 26 working days of back pay, benefits and seniority. The amount of back pay awarded is to be reduced as provided for in *N.J.A.C. 4A:2-2.10(d)3*. Proof of income earned shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Counsel fees are denied pursuant to *N.J.A.C. 4A:2-2.12*.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 28TH DAY OF JUNE, 2023

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 01316-20

AGENCY REF. NO. 2020-1824

SHREEKK CRAWFORD,

Petitioner,

v.

**ESSEX COUNTY, DEPARTMENT OF
PUBLIC SAFETY AND CORRECTIONS,**

Respondent.

Zinovia Stone, Esq., for appellant (Caruso Smith Picini, P.C., attorneys)

Jeanne-Marie Scollo, Esq., for respondent Essex County (Office of County
Counsel, attorneys)

Record Closed: April 11, 2023

Decided: May 26, 2023

BEFORE **ANDREW M. BARON**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Shreek Crawford, now a Lieutenant with the Essex County Department of Corrections, appeals a Final Notice of Disciplinary Action which assessed a thirty-day suspension from work, without pay, as a result of an accusation of insubordination that at the conclusion of a double shift, he refused to file a formal report concerning an incident involving one of the inmates which occurred earlier in the day.

The matter was transmitted to the Office of Administrative Law (OAL) on January 28, 2020, for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

DISCUSSION

On September 7, 2019, Shreek Crawford, at the time, was a Sergeant and fourteen-year veteran working for the Essex County Department of Corrections. He has documented with his employer that he suffers from migraines and hypoglycemia. He testified he is very familiar with the protocol for issuing incident reports, which cannot be done until a number is assigned to the case. In fact, he teaches CPR, first aid, and report writing to newly promoted sergeants and lieutenants. On the morning of September 7, 2019, one of the inmates complained of a potential prison rape allegation, which later turned out to be unfounded.

At 7:47 A.M., the Shift Commander, Lt. Pires, to whom Sgt. (now Lieutenant) Crawford reported to on that day, testified that he advised Sgt. Crawford to have the inmate seen by the mental health unit, document everything without an incident report, and enter the situation that occurred in the logbook, but to await the outcome of the inmate being examined by medical and mental health professionals.

Both Lt. Pires, (now Captain) and Sgt. (now Lt) Crawford both indicated and agreed that Pires did not provide a case number to Crawford at the time, and the tape of the interactions which was played during the course of the hearing confirms this.

Both men testified that there was no further communication between Pires and Crawford concerning this incident throughout the day. Crawford until the end of Crawford's sixteen hour double shift when Pires, who hadn't previously given Crawford an incident report number, asked for the report. It is undisputed that without such a number, the report cannot be completed and filed. It is undisputed that Crawford worked a double" sixteen-hour shift that day.

As he was getting ready to go off shift, Lt. Crawford testified that Capt. Regateiro asked him whether he had "finished that report yet." After extensive back and forth concerning this issue, Crawford told Pires that he had never received an incident number, and after working sixteen hours he wasn't sure if he could clearly think. Believing that the documentation he previously entered earlier in the day in the logbook was temporarily sufficient, Crawford asked if he could file the report the next day when he could think more clearly. He indicated he was extremely fatigued, hadn't eaten, and couldn't focus. The request was refused, and Captain Pires again insisted on having the report filed before Crawford went home.

After pressing Crawford, who was extremely fatigued and not feeling well to file the report, and declining Crawford's request to complete the report the next day, Lt. Crawford remarked, "it's not gonna happen" and instead sought medical assistance and a union rep for assistance dealing with what now had become an escalating conflict between the two men, and Lt. Regateiro who was also in charge that day. It is this exchange that seems to be the genesis of why the County brought charges against Lt. Crawford, resulting in a thirty-day suspension, without pay. During their testimony, both Pires and Regateiro confirmed that Crawford is a diligent and reliable worker who is respected among his peers.

Lt. Crawford, who is a diabetic, ended up with high glucose numbers and a heart blood pressure rate of 160/100, which is dangerously high. He testified that he is familiar with high readings, since he also serves as an emergency technician. After being seen by a doctor and resting at home, he did return to the facility later that evening and ultimately filed a report, concerning the morning's incident in question, together with the events surrounding the conflict between himself and his superiors which occurred at the end of his sixteen-hour shift.

Both sides presented experts on the issue of insubordination, each of whose testimony, while credible, essentially cancelled each other out. Petitioner's expert David Zawacki testified that a supervisor must use the word "order" in order for the recipient to understand what is being said must be carried out.

Respondent's expert Paul Lagana testified that regardless of the circumstances including the double shift, and Lt. Crawford's extreme fatigue and health, and the fact that the incident was already recorded in the logbook, the lack of clarity on the need to file such a report earlier in the day without a proper incident report number, there were no circumstances that justified Lt. Crawford's refusal to file the report before he went off shift.

Neither of these experts, both respected and recognized for their knowledge and experience in the field of corrections, were able to present a compelling case to the trier of fact regarding the underlying circumstances of the situation.

Captain Williams, now retired, who wrote up the actual complaint against Lt. Crawford, refused to appear and did not testify. Though requested to make a negative inference finding by petitioner, I am not doing so here. Michael Radice testified for the County as well to discuss Lt. Crawford's prior disciplinary history, which for the most part consisted on Final Dispositions of between two to seven days.

UNDISPUTED FINDINGS OF FACT

Based on the testimony of the witnesses, together with the evidence presented, set forth below, I make the following **FINDINGS OF FACT**.

1. On September 7, 2019, Shreek Crawford was a Sergeant working for the Essex County Department of Corrections. On this day, he volunteered to work a double shift of sixteen hours, so the facility would have sufficient coverage to watch over the prisoners.
2. Lt. Crawford is respected by his peers, and volunteers for many extra assignments including being an instructor for fellow Corrections Officers.
3. He suffers from migraines and hypoglycemia, which is documented with his employer.
4. Both Captain Pires and Lt. Rigateiro confirmed that Lt. Crawford is a good employee, who takes his duties seriously and works hard.
5. Earlier in the day, a female inmate complained that she had been sexually assaulted. Following appropriate protocols, then Sgt. Crawford sought

- direction as to how to proceed from his superiors and was told to take her to be evaluated for medical and mental health issues.
6. Among their duties and responsibilities, corrections officials in Lt. Crawford's position are expected to file incident reports before they go off shift.
 7. Asking if a report should be immediately filed, Crawford was told not at that time, and he was not given the standard incident report number. Instead, he was told to keep notes and record the incident in the jail's logbook, which he did.
 8. Sgt. Crawford (now Lieutenant) did not hear anything else from his supervisors throughout the day concerning this incident, and so, he went about his other duties.
 9. With twenty minutes left at the end of his double shift, Crawford was asked where his report was. He responded that he had already documented the incident in the logbook, and since no number was assigned, he did not believe a report was necessary.
 10. After some back and forth with his superiors, he was directed to file a report before he left the facility.
 11. Crawford, who was extremely fatigued, asked for permission to file the report on his next day of work. The request was denied, and he was again directed to file the report.
 12. Not feeling well, he responded: "Not gonna happen." Instead, he asked for an intermediary to step in.
 13. Upon leaving the facility without filing the report, Lt. Crawford sought a medical evaluation, and learned that his blood pressure was 160/100, and his sugar levels were out of appropriate levels.
 14. He returned later that evening and filed a consolidated report, which included the incident and the subsequent interactions and conflict between himself and his superiors towards the end of his double shift.
 15. Due to his refusal to file the report before he completed his double shift, he was assessed a thirty-day suspension, which constitutes "major" discipline.
 16. Subsequent to this incident, Shreek Crawford qualified for and was in fact promoted to the position of Lieutenant.

LEGAL ANALYSIS AND CONCLUSIONS

N.J.S.A. 11A:1-1 through 12-6, the Civil Service Act," established the Civil Service Commission in the Department of Labor and Workforce Development in the Executive Branch of the New Jersey State government. The Commission establishes the general causes that constitute grounds for disciplinary action, and the kinds of disciplinary action that may be taken by appointing authorities against permanent career service employees. N.J.S.A. 11A:2-20. N.J.S.A. 11A:2-6 vests the Commission with the power, after a hearing, to render the final administrative decision on appeals concerning removal, suspension or fine, disciplinary demotion, and termination at the end of the working test period., for permanent career service employees.

In this type of proceeding, the appointing authority, (Essex County) has the burden of proving the charges by a preponderance of the evidence. N.J.A.C. 4A:2-1.4 (a). See also: In re Michelle Adams, Camden Vicinage Judiciary, 2019 CSC LEXIS 216. Appeals before the Civil Service Commission are de novo hearings. N.J.S.A. 11A:2-13. See also: West New York v. Brock, 38 N.J. 500 (1962). Though they have partially met that burden that some form of discipline was appropriate for saying the words, "not gonna happen," I **CONCLUDE** the burden was not met as to the excessive "major" thirty day penalty that was imposed, given the other factors that were not considered, including but not limited to the lack of communication about the report and incident number, the fact that Crawford was coming off a voluntary sixteen hour double shift, and Crawford's documented medical condition.

The Civil Service Commission may increase or decrease the penalty imposed by the appointing authority, though removal cannot be substituted for a lesser penalty. N.J.S.A. 11A:2-19. When determining the appropriate penalty, the Commission must utilize the evaluation process set forth in the Brock case, and consider, among other things, the employee's history of promotions, commendations, and the like, as well as formally adjudicated disciplinary actions and instances of adjudicated misconduct.

Insubordination is generally interpreted to mean the refusal to obey an order of a supervisor. In re Williams, 443 N.J. Super. 532 (App. Div. 2016). See N.J.A.C. 12"17-

10.5 (a1). a State Unemployment regulation regarding discharge or suspension for insubordination includes where an employee refused without good cause to comply with instructions from the employer, which were lawful, reasonable, and did not require the individual to perform services beyond the scope of his or her customary duties.

Obedience requires knowledge of that which is to be obeyed. Perrine v. Broadway Bank 53 N.J. Eq. 221 (E&A 1895). See also: In the Matter of Sean McGovern, CSC No. 2013-286 (May 7, 2018) (refusal to write a report due to stress.)

As it relates to the case before me, corrections officers are held to a high standard, similar to police officers who are sworn to maintain peace and enforce laws in a community. Chaparro v. Department of Corrections, OAL docket No. CSV 4112-10. The importance of maintaining discipline in a correctional facility in light of the inherent danger when order and discipline are disrupted or destroyed is widely recognized. See: Bowden v. Bayside State Prison Dept. of Corr., 268 N.J. Super 301 (App. Div. 1993) (citing Henry v. Rahway State Prison, 81 N.J. 571 (1988)).

The question in this case though involves degree of the offense, and whether there were any mitigating circumstances or alternative forms of penalty that the County could have imposed against Lt. Crawford, short of the thirty-day unpaid suspension. The County says Crawford has no defense to his conduct, which was inexcusable. But the case law itself suggests that the determination of an appropriate disciplinary infraction cannot be decided in a vacuum. See: Moorestown v. Armstrong, 89 N.J. Super 560 (App. Div. 1965) cert. denied 47 N.J. 80 (1966). And see: In re Phillips 117 N.J. Super 567 (1990), cited for the principle that "the position of corrections officer requires significant responsibility and calls for individuals in that position to be able to handle conditions of great stress." If an individual is unable to handle those work conditions they pose a risk to fellow officers and inmates, and perhaps should not serve in such a position. In the Matter of John Bell, Dkt. No. A-0596-06T5 (App. Div. June 17, 2008).

I CONCLUDE that while in a perfect world, Lt. Crawford could have and should have handled himself in a different manner, there were mitigating circumstances such that a thirty-day suspension which constitutes a "major" penalty on his record was

excessive under the circumstances, given certain factors at play here, which the County did not consider. **I THEREFORE CONCLUDE**, that while some degree of penalty is appropriate for saying to a direct supervisor: "not gonna happen," circumstances warrant that the thirty-day major penalty should be reduced to a **four day** "minor" penalty.

First, Crawford's refusal to issue the report came at the end of a double sixteen-hour shift, which he volunteered to cover when someone else was unable to appear for their shift, which would have left the Corrections Facility short staffed on the day in question. Lt. Crawford, a diabetic, admitted during the course of the hearing to being extremely fatigued.

Though the County questions Lt. Crawford's medical condition at the end of the shift, and challenges his credibility, **I FIND AND CONCLUDE** that his version of the events of that day is **credible**. Lt. Crawford is a decorated officer, who, in the middle of the case, was promoted from Sergeant to Lieutenant. He is often called upon to lecture fellow Corrections Officer at the Academy on proper techniques and prison policy. At the time of this proceeding, he was working towards an advanced degree. Most important, he presented proof of an outside medical evaluation immediately following the end of his shift, that showed his blood pressure reading was at 160/100. **I take judicial notice of and FURTHER CONCLUDE** that high a blood pressure number, left untreated, can put an individual in danger of suffering a stroke and other related medical conditions. (Crawford also indicated he had not eaten in several hours due to his work responsibilities).

Lt. Crawford did not deny he used the words "not gonna happen" when asked to issue another report before going off shift. Captain Pires does not deny that he never gave Crawford an incident report which is required to file the report itself, nor does he deny there were no further discussions or requests from him to Crawford concerning the need for a report throughout the entire day.

I THEREFORE CONCLUDE that as an experienced and veteran corrections officer, and example to others, Lt. Crawford should have handled the situation in a different manner. However, **I ALSO CONCLUDE** his health condition at the time, fatigue

from a sixteen hour double shift which he volunteered for, and the fact that Captain Pires never communicated with him throughout the day regarding the report, nor was an incident report number issued in a timely fashion, are all grounds to reduce this penalty to a "minor" **four day penalty**, which acknowledges the incident, but does not excessively penalize Lt. Crawford.

ORDER

IT IS HEREBY ORDERED, that the thirty-day suspension which constitutes a "major" penalty on Lt. Crawford's record is hereby reduced to a **four day "minor penalty,"** and Lt. Crawford's record and personnel file should be adjusted accordingly.

IT IS FURTHER ORDERED, that if Lt. Crawford was not paid for the other twenty-six days which is the difference between the original penalty of thirty days, and the **three-day penalty** imposed now, he should be reimbursed for those days, and/or if he used vacation, personal and sick time for those twenty-seven days, those days should be restored to his bank of benefits.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

May 26, 2023
DATE



ANDREW M. BARON, ALJ

Date Received at Agency: May 26, 2023

E-Mailed to Parties: May 26, 2023

lr

APPENDIX

LIST OF WITNESSES

For Petitioner:

David Zawacki
Shreek Crawford

For Respondent:

Lt. Antonio Pires
Lt. Joseph Regateiro
Michael Radice
Paul Lagana

LIST OF EXHIBITS IN EVIDENCE

Joint Exhibits:

- J-1 Audio of 9/7/19 phone conversations (played by Asst. County Counsel memorialized on pp. 16-24 of October 26, 2022 Transcript)
- J-2 Video footage 9/7/19 (played by Asst. County Counsel memorialized on pp 49-51 of October 26, 2022 transcript).

Petitioner:

- P-1 Expert C.V.
- P-2 Expert report
- P-3 9/7/19 log book entries
- P-4 Logbook entries
- P-5 Lt. Crawford's 9/7/19 written report
- P-5A Add'l pages from Crawford's 9/7/19 memo
- P-6 State employee medical visit documentation

Respondent:

- R-1 Not presented
- R-2 Capt. Rigotero's report

- R-3 Lt.Pires' report dated 9/10/19
- R-5 Lt. Crawford's 9/7/19 tour report
- R-7 Capt. Pires' shift commander unusual incident report
- R-8 Lt. Crawford's 9/7/19 status change report
- R-9 Capt. Rigotero's 9/7/19 incident report
- R-10 9/7/19 0600-1400 shift schedule
- R-11 9/6/19 2200-0600 shift schedule
- R-13 Mr. Laganas C.V
- R-14 Mr. Lagana's report
- R-15 Not presented
- R-16 Not presented
- R-17 Lt. Crawford's disciplinary history