



STATE OF NEW JERSEY

In the Matter of Joshua McGann,
Department of Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-2883

Minor Discipline Appeal

ISSUED: AUG 18 2017 (JET)

Joshua McGann, a Correction Sergeant with Mountainview Youth Correctional Facility, Department of Corrections, represented by Francis Cascarelli, Staff Representative, NJLESA, appeals his official written reprimand.

By way of background, the appellant was charged with violation of a rule, regulation, policy, procedure, order, or administrative decision and other sufficient cause. Specifically, the appointing authority alleged that on October 15, 2016, the appellant applied handcuffs to an inmate on the east side of the facility during a Code 33 emergency and the appellant submitted inaccurate reports pertaining to the incident that occurred.

A hearing was conducted on January 26, 2017. The hearing officer found that the appointing authority's policy, IMP 2-03, requires a black box to be used for all trips regardless of an inmate's custody status. In this regard, the policy provides that a black box must be utilized when transporting an inmate on a 911 trip since an outside medical trip creates an increased likelihood of an escape attempt. Further, the hearing officer found that the appointing authority provided evidence that, in response to a code on the date of the incident, the appellant handcuffed an inmate and secured him for transport to the support building. In this regard, the appellant explained that he secured the handcuffs for a 911 trip as a result of a Code. The hearing officer noted that, although it was not disputed that the appellant was not responsible for the application of the black box for the transport on the 911 trip, his reports did not accurately reflect the reason for handcuffing the inmate nor the reason for his failure to use a black box. As such, the hearing officer

determined there was a lack of due diligence on the appellant's part with respect to the information contained in his reports. Accordingly, the hearing officer determined that, based on the evidence, the appointing authority met its burden of proof and recommended an official written reprimand.

On appeal to the Civil Service Commission (Commission), the appellant maintains that he is not guilty of the charges. Specifically, the appellant asserts that he was not the supervisor in charge of the black box or in charge of identifying the inmate on the date of the incident. The appellant explains that, contrary to the investigator's report, he did not provide misleading information in his reports and he accurately reported that the inmate was placed in handcuffs for the 911 trip. The appellant states that he did not transport the inmate on the trip and, as such, was not responsible for application of a black box. Rather, he maintains that there were two transporting officers who were in charge of the black box on the date of the incident. The appellant adds that he remained in his unit and conducted an investigation, and he was not located in the building from which the inmate left for the 911 trip. Further, the appellant maintains that nothing in his reports was misleading. The appellant asserts that he submitted the reports to his supervisors before the end of his shift, and at no time was he informed that his reports were misleading or inaccurate. In this regard, the reports were reviewed and signed by his supervisors, Lieutenant Cicerale and Lieutenant Melnik. The appellant maintains that if there were any discrepancies in his reports, his supervisors would have brought it to his attention at the time.

Additionally, the appellant asserts that he was not provided with the opportunity to cross-examine any witnesses at the January 26, 2017 hearing. The appellant maintains that his union representative should have been afforded the opportunity to cross-examine the witnesses. The appellant adds that the appointing authority did not meet its burden of proof in this case. As such, the appellant requests that the charges be dismissed and the penalty rescinded given the lack of credible proof provided by the appointing authority.

The appointing authority, despite being provided the opportunity, did not provide a response.

CONCLUSION

N.J.A.C. 4A:2-3.7(a) provides that minor discipline may be appealed to the Commission. The rule further provides:

1. The [Commission] shall review the appeal upon a written record or such other proceeding as the [Commission] directs and determine if the appeal presents issues of general applicability in the interpretation of law, rule or policy. If such issues or evidence are not fully presented,

the appeal may be dismissed and the [Commission's] decision will be a final administrative decision.

2. Where such issues or evidence under (a)1 above are presented, the [Commission] will render a final administrative decision upon a written record or such other proceeding as the [Commission] directs.

This standard is in keeping with the established grievance and minor disciplinary procedure policy that such actions should terminate at the departmental level. In the present matter, while this appeal provides an issue of general applicability in the interpretation of law, rule, or policy, which is further discussed below, there is no basis on which to grant the appellant's appeal.

In considering minor discipline actions, the Commission generally defers to the judgment of the appointing authority. In this matter, the responsibility for the development and implementation of performance standards, policies and procedures is entrusted by statute to the Department of Corrections. Additionally the Commission will not disturb hearing officer findings or credibility judgments in minor discipline proceedings unless there is substantial credible evidence that such judgments and conclusions were motivated by invidious discrimination considerations such as age, race or gender bias or were in violation of Civil Service rules. *See e.g., In the Matter of Oveston Cox* (CSC, decided February 24, 2010). A review of the record evidences no showing that either factor, which would warrant further Commission review, is present in this case.

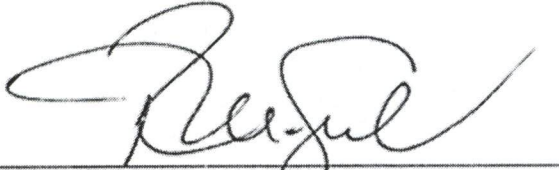
In this case, the appellant argues that he was not responsible for the black box on the night of the incident and he properly handcuffed the inmate. However, such information does not change the outcome of the matter. The hearing officer determined that the appointing authority presented credible evidence to confirm that the appellant did not properly complete his reports as required. Aside from his unpersuasive contentions that his supervisors should have informed him if his reports were inaccurate, the appellant does not provide any substantive evidence to refute the charges against him. Further, the appellant did not provide any substantive evidence to show that the hearing was improperly conducted or that he was unable to cross-examine the witnesses at the January 26, 2017 hearing. Regardless, even if that was the case, that procedural irregularity does not overcome the evidence that his reports were not properly completed. Accordingly, no further review will be conducted by the Commission.

ORDER

Therefore, it is ordered that this appeal 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 16th DAY OF AUGUST, 2017



Robert M. Czedo, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Joshua McGann
Francis Cascarelli
Colleen Velekei
Kelly Glenn