

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2773-08T2

IN THE MATTER OF CHARLES
HAWKINS, III, WOODBRIDGE TOWNSHIP.

Submitted October 18, 2011 - Decided November 9, 2011

Before Judges Fisher and Baxter.

On appeal from the Civil Service Commission,
CSC Docket No. 2005-4017.

Alterman & Associates, LLC, attorneys for
appellant Charles Hawkins, III (Christopher
A. Gray and Christopher D'Amore, on the
brief).

Genova, Burns & Giantomasi, attorneys for
respondent Woodbridge Township (Nicholas J.
Repici, of counsel; Lawrence Bluestone, on
the brief).

Paula T. Dow, Attorney General, attorney for
respondent Civil Service Commission (Todd A.
Wigder, Deputy Attorney General, on the
statement in lieu of brief).

PER CURIAM

Appellant Charles Hawkins, III, appeals a Civil Service Commission's final decision which upheld the determination of Woodbridge Township to remove Hawkins as a police officer with its police force. Specifically, Hawkins does not challenge the Commission's findings, only the determination that removal was

appropriate, arguing the concept of progressive discipline warranted a lesser sanction. We disagree with his arguments and affirm.

The record reveals that in the early morning hours of June 15, 2004, Hawkins was off duty, patronizing a local bar with a friend, Gerald Connell. When another patron walked past, Hawkins said something to him and as the patron approached, Hawkins displayed his police badge and shoved him. The fight that quickly ensued, soon joined by others, was captured on videotape. Hawkins acknowledged, as the Commission found and as the videotape demonstrated, that he "struck [the patron] first." The Commission also rejected the factual contention that Hawkins engaged the patron in order to assist the bartender in removing him and his companion from the bar.

When Hawkins later left with Connell, the patron he fought with, as well as his companion, were outside. According to the Commission, Hawkins "bent the license plate on his vehicle in order to prevent" others "from reading his license plate number." Connell and Hawkins then drove away "despite knowing that the police were on the way." The Commission recognized that Hawkins took these steps to "avoid getting in trouble." The investigating officer who later arrived at the bar ascertained the identity of the police officer involved and

called Hawkins, leaving a message for Hawkins to call him. According to the Commission, Hawkins "did not return the call."

The Commission determined, based on the videotape, that Hawkins was the aggressor, observing in its written opinion that:

[Hawkins] does not deny that he struck [the patron] first, as is clear on the videotape of the incident, and the excuses for this behavior presented by [Hawkins], i.e., that he was intoxicated and that [the patron] had invaded his "personal space," are not convincing. [Hawkins] is a Police Officer, who is trained and expected to maintain self-control at all times. His irresponsible use of alcohol, which led to his participation in a public brawl, cannot excuse his behavior. Further, whether or not [the bartender] expressed her desire that [the two patrons] leave is essentially irrelevant. Even if [the bartender] asked [Hawkins] to assist her, he did not have license to physically attack [the patron] in order to get him to exit the bar.

As noted at the outset, Hawkins does not contest these findings or the Commission's conclusion that he engaged in conduct unbecoming a public employee and neglected his duty upon failing to respond to the investigating officer's telephone call. Instead, Hawkins, who had not previously been found to have committed a major disciplinary violation, argues in a single point that the Commission "imposed an overly harsh penalty that does not comport with New Jersey's policy of progressive discipline."

The Commission's determination that removal was appropriate was not arbitrary, capricious or unreasonable, the standard that governs our review. In re Stallworth, 208 N.J. 182, 194 (2011); Karins v. City of Atlantic City, 152 N.J. 532, 540 (1998). Progressive discipline, first recognized in West New York v. Bock, 38 N.J. 500, 522-23 (1962), addresses the "necessary desire to promote proportionality and uniformity in the rendering of discipline of public employees." Stallworth, supra, 208 N.J. at 195. The concept, however, is not "fixed and immutable." Id. at 196 (quoting In re Carter, 191 N.J. 474, 484 (2007)). It involves consideration of the nature and seriousness of the misconduct, the duties of the public employee, and the employee's disciplinary record. See Carter, supra, 191 N.J. at 483-86. As a result, an employee's lack of a prior disciplinary history may be outweighed when the employee has engaged in "severe misconduct." Stallworth, supra, 208 N.J. at 197; see also In re Herrmann, 192 N.J. 19, 33 (2007). This is of particular interest in disciplinary actions involving police officers who, by the very nature of their duties, are held to a higher standard of conduct than other public employees. As the Court has explained

a police officer is a special kind of public employee. His primary duty is to enforce and uphold the law. . . . He represents law and order to the citizenry and must present

an image of personal integrity and dependability in order to have the respect of the public.

[Carter, supra, 191 N.J. at 486 (quoting Judge (later Justice) Sullivan's opinion for this court in Twp. Of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966)).]

In applying these principles, the Commission determined that removal was appropriate because Hawkins had "unnecessarily engaged in a physical altercation in a bar, which he instigated, and he subsequently engaged in conduct aimed at preventing his identification in the incident, such as shielding his license plate from view, leaving the premises before the authorities arrived, and ignoring a message from a superior officer regarding the incident." The Commission held that "[s]uch irresponsible behavior cannot be tolerated of a law enforcement officer," a conclusion amply supported in our jurisprudence. See, e.g., Carter, supra, 191 N.J. at 476, 486-87 (finding the Appellate Division erroneously intervened, the Court reinstated the agency's removal of a police officer for sleeping on duty). Considering the nature of the incident and the fact that Hawkins was "a relatively short term employee, having been employed for approximately four years at the time of the incident," the Commission determined that removal was not harsh or

disproportionate despite the fact that Hawkins had not committed any other disciplinary infractions.

It is not this court's function to "substitute its own judgment for the agency's" even were we inclined -- though we are not -- to a different view of what might constitute an appropriate sanction. Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992). The question for this court is "whether such punishment is 'so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness.'" Carter, supra, 191 N.J. at 484 (quoting In re Polk License Revocation, 90 N.J. 550, 578 (1982)). Having carefully reviewed the record in light of the arguments posed, we conclude that the sanction imposed by the Commission was not shocking and was not arbitrary, capricious or unreasonable. The Commission was entirely justified in sanctioning the removal of Hawkins from the Woodbridge police force because he instigated a bar fight, after he flashed his police badge, and then attempted to conceal his involvement in the incident.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION