

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Angela Hawkins,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1386 C.D. 2013
	:	Submitted: March 21, 2014
State Civil Service Commission	:	
(State Correctional Institution at	:	
Graterford, Department of Corrections),	:	
Respondent	:	

**BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE P. KEVIN BROBSON, Judge  
HONORABLE ANNE E. COVEY, Judge**

***OPINION NOT REPORTED***

**MEMORANDUM OPINION  
BY JUDGE BROBSON**

**FILED: May 30, 2014**

Petitioner Lieutenant Angela Hawkins petitions this Court for review of an order of the State Civil Service Commission (Commission), which dismissed her appeal and sustained the thirty-day suspension of Lt. Hawkins from her regular employment with the Department of Corrections (DOC) at the State Correctional Institution at Graterford (SCI-Graterford) as a Corrections Officer (CO) 3. The Commission concluded that SCI-Graterford established good cause for suspending Lt. Hawkins under Section 803 of the Civil Service Act (Act).<sup>1</sup> We affirm.

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<sup>1</sup> Act of August 5, 1941, P.L. 752, *as amended*, 71 P.S. § 741.803. Section 803 of the Act provides, in pertinent part, that “[a]n appointing authority may for good cause suspend without pay for disciplinary purposes an employe holding a position in the classified service.”

This case arises out of an incident at SCI-Graterford in which Lt. Hawkins supervised the use of force against Inmate Jones. Following an investigation and Pre-Disciplinary Conference, SCI-Graterford suspended Lt. Hawkins without pay for thirty days. Lt. Hawkins appealed the decision to the Commission, which engaged in extensive fact finding. The Commission's Findings of Fact are summarized below.

Lt. Hawkins has worked at SCI-Graterford since 1989, and has been employed as a Lieutenant (CO3) since 1998. (Findings of Fact (F.F.) Nos. 3-4.) On January 12, 2012, Lt. Hawkins worked the 2:00 p.m. - 10:00 p.m. shift and was assigned to work in the Assessment Unit (AU). (F.F. No. 23.) As part of her responsibilities, Lt. Hawkins was assigned to interview Inmate Jones, and then conduct a routine escort so he could be placed in the Restricted Housing Unit (RHU). (F.F. No. 24.) Inmate Jones was one of seven inmates to be escorted from the AU to the RHU that evening. (F.F. No. 25.) An inmate being escorted from the AU to the RHU is always escorted by two COs: they direct the inmate to face the back of the cell, enter the cell, conduct a pat search of the inmate, and then handcuff the inmate from behind. (F.F. Nos. 21-22.) During a routine escort, the COs must physically enter the AU cell in order to handcuff the inmate, as the AU cells are not equipped with wickets—openings which would allow the COs to handcuff an inmate without entering the cell. (F.F. Nos. 20, 22.)

Inmate Jones was in an AU cell and had refused several orders to be handcuffed for movement to the RHU. (F.F. No. 27.) Lt. Hawkins contacted the Day Captain's Office and requested a video camera be sent down. (F.F. No. 29.) When the video began, Inmate Jones was secure in his cell. Lt. Hawkins explained on camera that Inmate Jones was refusing orders to be handcuffed in preparation

for his move to the RHU. (F.F. No. 30.) Approximately fourteen COs are standing behind Lt. Hawkins on the video. (F.F. No. 31.) CO Stephens issued Inmate Jones two direct orders to back up to the wall. Inmate Jones complied with the directive. (F.F. No. 32.) Lt. Hawkins directed CO Daring to turn the key to Inmate Jones' cell. (F.F. No. 33.) When the cell door opened, COs Stephens and Brooks entered Inmate Jones' cell. (F.F. No. 34.) Inmate Jones began swinging at CO Stephens, and began spitting and kicking. (F.F. No. 35.) Several COs then entered the cell, grabbed Inmate Jones, and pinned him against the back wall. (F.F. No. 36.) CO Hoderick struck Inmate Jones with his left hand. (F.F. No. 37.) A CO ordered "Get him down," and Inmate Jones was brought to the floor. (F.F. No. 38.) CO Hoderick then requested a spit hood and leg irons. (F.F. Nos. 39-40.) CO Williams used his left foot and stomped on Inmate Jones' back. (F.F. No. 41.) After Inmate Jones was handcuffed with the spit mask in place, Lt. Hawkins ordered the COs to bring Inmate Jones out of his cell. (F.F. Nos. 42-44.) CO Hoderick refused to move Inmate Jones until the leg irons were brought and in place. (F.F. No. 45.)

After the leg irons were in place, Lt. Hawkins again ordered that Inmate Jones be brought out of his cell, and the COs carried Inmate Jones out of his cell and down the hall. (F.F. Nos. 46-48.) Lt. Hawkins then ordered Inmate Jones to be examined by a nurse. (F.F. Nos. 48-49.) After carrying Inmate Jones for some time, he was placed on the ground and ordered to walk. (F.F. No. 51.) Inmate Jones stood and walked with the COs to the RHU, during which time Lt. Hawkins radioed ahead to advise that they were arriving "seven on one." (F.F. Nos. 52-53.)

Once they arrived at the RHU, Lt. Hawkins addressed the camera and stated: “We had an unplanned use of force in the Assessment Unit. There will be 121s [Extraordinary Occurrence Reports] [(EROs)] coming behind it. We turned the inmate over to [the RHU].” (F.F. Nos. 54-56 (first alteration in original).) After the incident, Lt. Hawkins telephoned Captain Flaim, her shift commander, to inform him of the incident, although she had not contacted him prior to the incident to seek authorization for the use of force. (F.F. Nos. 57-59.) After Captain Flaim learned of the incident and the video, an investigation into the incident commenced, led by Lieutenant Randy Evans. (F.F. Nos. 60-61.)

As part of his investigation, Lt. Evans reviewed Lt. Hawkins’ ERO and the video, and he interviewed Lt. Hawkins. (F.F. Nos. 63-64.) As part of the interview, Lts. Evans and Hawkins reviewed the video, which “shocked and surprised” Lt. Hawkins because she had not observed several issues—namely, CO Hoderick’s striking of Inmate Jones and CO Williams’ use of his foot on Inmate Jones—during the actual event. (F.F. Nos. 67-68.) Lt. Evans’ investigation concluded that Lt. Hawkins violated several DOC policies regarding the use of force. (Certified Record (C.R.), Item No. 1 at 71.)

DOC has extensive policies regarding the use of force. (*See, e.g.*, Reproduced Record (R.R.) 37a-55a.) These policies establish a use of force hierarchy, (R.R. 37a), all of which require the prior authorization of the Shift Commander before use. (F.F. No. 12.) A planned use of force, if authorized, should proceed along the following continuum: a show of force, use of a hostage negotiator, use of a three-man compliance team, and use of a cell extraction team. (R.R. 52a; C.R., Item No. 1 at 276.) Failure to receive authorization of the Shift Commander prior to a planned use of force is a violation of DOC Policy.

(C.R., Item No. 1 at 82.) Failure to properly brief, equip, and direct the COs involved in the planned use of force is also a violation of DOC policy. (C.R., Item No. 1 at 84-86; C.R. Item No. 2 at 345-46.)

Following the investigation, DOC conducted a Pre-Disciplinary Conference (PDC). (F.F. No. 72.) The PDC findings revealed that Lt. Hawkins violated various DOC policies, including the DOC Code of Ethics, Section B#2, DOC Policy 6.3.1, Sections 32 (Use of Force) and 35 (Cell Extractions/Three Member Compliance Teams), and DOC Policy DC-ADM 001, Inmate Abuse Allegation Monitoring, III. (C.R., Item No. 1, Comm'n Ex. A.) As a result of these findings, DOC suspended Lt. Hawkins without pay for thirty days and issued a final warning. (*Id.*) Lt. Hawkins appealed the decision of the PDC to the Commission.

On appeal to the Commission, Lt. Hawkins argued that DOC did not have good cause to suspend her. (R.R. 56a.) Following three days of hearings, the Commission issued an adjudication, containing numerous specific findings of fact, which are summarized above. In addition to these specific findings, the Commission made the following general findings: (1) that SCI-Graterford presented sufficient evidence to support the charges; (2) that the testimony of Lt. Evans, Captain Flaim and Deputy Superintendent Ondrejka was credible; (3) that Lt. Hawkins conducted a planned use of force without authorization and without properly equipping the COs; and (4) that Lt. Hawkins did not properly conduct a briefing or control the situation. (*Id.* at 75a.) The Commission reasoned that Lt. Hawkins' "inability to follow the use of force policy, properly equip COs, and control the situation clearly negatively reflects upon her job duties," and concluded that SCI-Graterford had good cause to suspend Lt. Hawkins under

Section 803 of the Act. (*Id.* at 75a-76a.) Lt. Hawkins then filed a petition for review with this Court.

Lt. Hawkins essentially raises two issues for review.<sup>2</sup> First, Lt. Hawkins argues that the Commission's findings are not supported by substantial evidence, because she did not conduct a planned use of force. Second, she argues that the Commission erred in concluding that DOC had good cause to suspend her, because she could not violate the planned use of force policies when she did not conduct a planned use of force. The Commission argues that there was overwhelming evidence to support its finding that Lt. Hawkins oversaw a planned use of force and that Lt. Hawkins' failure to adhere to the policies established for planned uses of force constitutes good cause for her suspension.

Substantial evidence is such evidence as a reasonable mind might accept to support a conclusion. *Shade v. Civil Serv. Comm'n*, 749 A.2d 1054, 1056 n.5 (Pa. Cmwlth. 2000). The Commission is the sole fact finder in civil service cases, and it is axiomatic that the Commission, not this Court, possesses the exclusive authority to assess witness credibility, weigh evidence, and resolve evidentiary conflicts. *Bosnjak v. State Civil Serv. Comm'n*, 781 A.2d 1280, 1286 (Pa. Cmwlth. 2001); *Shade*, 749 A.2d at 1056. Thus, this Court will not disturb the Commission's determinations regarding credibility or weight of the evidence. *Bosnjak*, 781 A.2d at 1286. In reviewing the Commission's decision, this Court

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<sup>2</sup> Our scope of review of a decision by the Commission is limited to determining whether the Commission's findings of fact are supported by substantial evidence, whether an error of law has been committed, or whether constitutional rights have been violated. *Pa. Bd. of Prob. & Parole v. State Civil Serv. Comm'n*, 4 A.3d 1106, 1112 n.11 (Pa. Cmwlth. 2010).

must view the evidence and all reasonable inferences arising therefrom in the light most favorable to DOC as the prevailing party below. *Id.*

At the heart of this dispute is the question of whether the incident with Inmate Jones was a planned or unplanned use of force. Lt. Hawkins testified that it was an unplanned use of force, which occurred because Inmate Jones became spontaneously combative. (C.R., Item No. 2 at 486-87.) CO Brooks and CO Phillips both testified that they were tasked with performing a routine escort. (C.R., Item No. 2 at 437; C.R., Item No. 3 at 797.) Conversely, Lt. Evans, Captain Flaim, and Deputy Superintendent Ondrejka each testified, based upon their review of the video, that the incident was a planned use of force. (C.R., Item No. 1 at 68-69, 243-44, 260; C.R., Item No. 2 at 391, 418.) Deputy Superintendent Ondrejka testified that he believed the incident began as an unplanned use of force, but became a planned use of force when Inmate Jones “became combative, verbalizing [h]is threats.” (C.R., Item No. 2 at 418.) Lt. Evans testified that he considered the incident to be a planned use of force because Inmate Jones was secure in the AU cell, by himself, not harming anyone or anything, refusing to cooperate, and that the decision to deal with Inmate Jones made it a planned use of force. (C.R., Item No. 1 at 68-69.) Similarly, Captain Flaim testified that although Lt. Hawkins initially told him the incident was an unplanned use of force, he concluded that it was a planned use of force because Inmate Jones was in the AU cell with the door closed, COs entered the cell on Lt. Hawkins’ order, got into a use of force situation, restrained Inmate Jones, and then escorted him to the RHU. (*Id.* at 243-44, 260.)

It is clear from the Commission’s decision that it credited the testimony of Lt. Evans, Captain Flaim, and Deputy Superintendent Ondrejka and

resolved the evidentiary conflict in DOC's favor. In fact, the Commission was explicit on this point: "We find the testimony of Evans, Flaim and Ondrejka credible that appellant conducted a planned use of force without authorization and without properly equipping the COs." (R.R. 75a.) Lt. Hawkins' substantial evidence argument essentially asks that we disregard the Commission's credibility determinations, reweigh the evidence, and resolve the evidentiary conflict in her favor. This, we cannot do. The Commission is the sole arbiter of credibility, and it is not an error or abuse of the Commission's fact finding authority for it to credit DOC's witnesses over Lt. Hawkins'. *See Shade*, 749 A.2d at 1056. Furthermore, having watched the video, we note that its contents support the testimony of Lt. Evans, Captain Flaim, and Deputy Superintendent Ondrejka. We conclude, therefore, that there was substantial evidence to support the Commission's finding that the incident was a planned use of force.

Lt. Hawkins also argues that there was not substantial evidence to support the Commission's finding that she violated DOC policies regarding the use of force because the incident was an unplanned use of force and, therefore, the policies were not applicable. Having found that substantial evidence supports the Commission's finding that this was a planned use of force, we are not persuaded by her argument that the policies were not applicable. Lt. Hawkins makes no argument in the alternative that her actions complied with all DOC policies even if the incident was a planned use of force, and she points to no testimony that suggests her actions were, in fact, in accordance with DOC policy. DOC, on the other hand, produced testimony at length from Lt. Evans, Captain Flaim, and Deputy Superintendent Ondrejka on the various ways in which Lt. Hawkins' actions during the incident violated DOC policy. (C.R., Item No. 1 at 71-89, 276,

332-35, 340-49, 378-79, 387-88, 395, 420-22.) We conclude, therefore, that the Commission's finding that Lt. Hawkins violated various DOC policies concerning the use of force was supported by substantial evidence.

Lastly, Lt. Hawkins argues that the Commission erred in concluding that DOC had good cause to suspend her. Section 803 of the Act requires that disciplinary suspension without pay be for good cause. 71 P.S. § 741.803. Regulations promulgated under Section 803 have defined good cause to include violations of law or rule or lawful and reasonable department orders. 4 Pa. Code § 101.21(a). This Court has held that good cause must relate to an employee's competence and ability to perform his or her job duties, or it must result from conduct that hampers or frustrates the execution of the employee's duties. *Bruggeman v. State Civil Serv. Comm'n*, 769 A.2d 549, 552 (Pa. Cmwlth. 2001). The appointing authority bears the burden of showing an employee was suspended for good cause. *Shade*, 749 A.2d at 1057.

The Commission found that Lt. Hawkins committed a planned use of force, and in doing so, violated multiple DOC policies. As discussed above, these findings are supported by substantial evidence and will not be disturbed upon review by this Court. Lt. Hawkins' failure to follow established DOC policy delineating how to handle uncooperative inmates clearly relates to her ability and competence to perform her job duties. We acknowledge that there was no finding by the Commission that Lt. Hawkins' behavior was malicious or even that she intended to violate DOC policy, and that such a finding would not be supported by the evidence of record. Intent or maliciousness, however, is not required to find a violation of policy occurred, and that Lt. Hawkins should have been aware of the

policies in place. As such, we conclude that DOC met its burden to show good cause for suspending Lt. Hawkins.

For the foregoing reasons, we affirm the adjudication and order of the Commission.

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P. KEVIN BROBSON, Judge

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(State Correctional Institution at	:	
Graterford, Department of Corrections),	:	
Respondent	:	

**ORDER**

AND NOW, this 30th day of May, 2014, the order of the State Civil Service Commission is hereby AFFIRMED.

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P. KEVIN BROBSON, Judge