

STATE OF VERMONT

**SUPERIOR COURT
Windsor Unit**

**CIVIL DIVISION
Docket No. 404-8-15 Wrcv**

**JAMES A. MANNING,
Petitioner**

v.

**ANDREW A. PALLITO,
Respondent**

DECISION

Cross-Motions For Summary Judgment

Petitioner seeks review under Rule 75, Review of Governmental Action, of a Department of Corrections disciplinary decision. Both parties have filed motions for summary judgment. The Petitioner is represented by Kelly Green, Esq. and the Respondent is represented by Assistant Attorney General Andrew Gilbertson.

Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” V.R.C.P. 56(a). Motions for summary judgment must be supported by admissible evidence. V.R.C.P. 56(c). On summary judgment, the court does not consider the weight of the evidence. *Fritzeen v. Trudell Consulting Engineers, Inc.*, 170 Vt. 632, 633 (2000) (mem.). “It is not the function of the trial court to find facts on a motion for summary judgment.” *Id.*

Facts

The parties agree that there are no disputes of material fact in this case and the case is suitable for resolution on the papers. The following facts are undisputed:

1. On May 20, 2015, the Petitioner was issued a Major A disciplinary report for making a false allegation.
2. The violation is defined as “intentionally and/or knowingly making a false allegation against any staff person or any person under contract to the Department of Corrections.”
3. A hearing on the Report was held on May 23, 2015.
4. At the hearing, the hearing officer received Assistant Superintendent Marsh’s memorandum.

- a. Superintendent Marsh indicated that the Petitioner called the inmate hotline to report misconduct by SOS Rutherford, specifically that SOS Rutherford had grabbed the Petitioner by the shirt.
 - b. When Superintendent Marsh interviewed the Petitioner, the Petitioner reported that SOS Rutherford had grabbed the Petitioner by the shirt.
 - c. However, in three grievance forms filed by the Petitioner regarding this incident, the Petitioner stated that SOS Rutherford grabbed his ID tag and lanyard, not his shirt.
 - d. When these discrepancies were brought to his attention, the Petitioner stated that “he was too excited to include being grabbed by his shirt.”
 - e. SOS Rutherford admitted that he took hold of the Petitioner’s ID tag, but without force.
5. Two inmates gave statements and testified at the hearing. One testified that SOS Rutherford grabbed the Petitioner by the shirt, while the other testified that SOS Rutherford grabbed the Petitioner’s ID tag.
 6. The hearing officer found Plaintiff guilty of the Major A infraction.

Conclusion

This is a Rule 75 review of a Department of Corrections disciplinary hearing as to sufficiency of evidence. The parties agree that the standard of review in this type of case is the “some evidence” standard, such that this court will uphold the hearing officer’s decision “if it is supported by some evidence in the record.” *Herring v. Gorczyk*, 173 Vt. 240, 243 (2001).

The Petitioner challenges the sufficiency of the Department’s evidence as to his intent or knowledge in giving false or misleading statements. The Petitioner argues that the discrepancies in his statements regarding his interaction with SOS Rutherford were the result of excitement, and thus he did not intentionally or knowingly lie when he stated that SOS Rutherford grabbed his shirt.

The court concludes that the Department has some evidence that the Petitioner’s statements were intentional or knowing, and thus the finding of a Major A disciplinary report must be upheld. While there is no direct evidence of his intent or knowledge, the Petitioner has challenged the element of intent, which, absent an admission, generally requires proof by circumstantial, rather than direct evidence. *State v. Cole*, 150 Vt. 453, 456 (1988) (“Intent is rarely proved by direct evidence; it must be inferred from a person’s acts and proved by circumstantial evidence.”).

There is sufficient circumstantial evidence here to support the hearing officer’s finding. At the hearing, the Petitioner appears to have argued that SOS Rutherford did, in fact, grab his

shirt, rather than his ID tag. Thus, it was his position that his three written grievances, rather than his statement to the hotline, were incorrect.¹ The hearing officer concluded, after receiving testimony from two inmate witnesses and reviewing the written record, that SOS Rutherford did not grab his shirt. As such, it was within the hearing officer's discretion to infer from the circumstantial evidence that Petitioner knowingly or intentionally misstated that SOS Rutherford grabbed his shirt, and that this statement was not made out of confusion or excitement.

Order

Petitioner's motion for summary judgment is *denied*. The Respondent's motion for summary judgment is *granted*. Respondent's attorney shall prepare a judgment.

Dated in Woodstock, Vermont this 23rd day of May, 2016.

Mary Miles Teachout
Superior Court Judge

¹ This can be inferred from the Petitioner's statement to Superintendent Marsh that "he was too excited to include being grabbed by his shirt."