IN THE SUPREME COURT OF THE STATE OF NEVADA

GLENN MARR,
Appellant,
vs.
STATE OF NEVADA, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES; AND STATE OF NEVADA PERSONNEL COMMISSION,
Respondents.

No. 50844

FILED

APR 09 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in an employment matter. Ninth Judicial District Court, Douglas County; Miriam Shearing, Judge.

BACKGROUND

Appellant Glenn Marr was terminated from his position as a classified employee of respondent State of Nevada, Department of Conservation and Natural Resources (DCNR). Prior to his termination, Marr had worked for DCNR as a helicopter pilot, and a significant portion of this work entailed fighting forest fires on federal land. Marr administratively appealed his termination and a hearing officer entered a decision affirming the termination. In his decision, the hearing officer listed three primary reasons for the termination of Marr's employment. First, Marr's involvement in certain aggressive verbal confrontations constituted discourteous treatment of fellow employees and members of the public. Second, Marr's recordkeeping of his flight hours was neglectful and inadequate. And, third, Marr falsified his timesheets for a training session in Orlando, Florida, thereby improperly inflating the number of hours he claimed to have worked.

Marr timely petitioned for judicial review in the district court. The district court ultimately concluded that the hearing officer's findings regarding Marr's aggressive confrontations, neglectful recordkeeping of flight hours, and falsifying of timesheets were all supported by substantial evidence. The district court also concluded that the decision to terminate Marr's employment rather than impose a lesser degree of punishment was not excessive or an abuse of discretion because Marr's inflation of his timesheets indicated dishonesty. On that basis, Marr's petition for judicial review was denied. This appeal followed.

DISCUSSION

Under NAC 284.646(1)(b), an appointing authority may dismiss an employee for any cause set forth in NAC 284.650 if the seriousness of the offense or condition warrants such dismissal. The causes set forth in NAC 284.650 include, among other things, "[d]isgraceful personal conduct which impairs the performance of a job or causes discredit to the agency," NAC 284.650(2), "[d]iscourteous treatment of the public or fellow employees while on duty," NAC 284.650(4), "[i]nexcusable neglect of duty," NAC 284.650(7), "[d]ishonesty," NAC 284.650(10), and "[f]alsification of any records." NAC 284.650(17). When considering an appeal from an agency's termination of an employee, the hearing officer need not defer to the appointing authority's decision. Knapp v. State, Dep't of Prisons, 111 Nev. 420, 424, 892 P.2d 575, 577 (1995). Rather, a hearing officer should determine whether there is evidence showing that a dismissal would serve the good of the public service. Id; see also NRS 284.385(1)(a).

In reviewing an administrative decision, this court may not substitute its judgment for that of the administrative tribunal on the weight of the evidence on any question of fact. NRS 233B.135(3).

Nonetheless, an administrative decision may be set aside if it is "affected by error of law [or] clear error in view of the reliable, probative, and substantial evidence of record," Dredge v. State ex rel. Dep't Prisons, 105 Nev. 39, 43, 769 P.2d 56, 58-59 (1989), or the decision is arbitrary or capricious or constitutes an abuse of discretion. NRS 233B.135(3)(f). Substantial evidence is "that which 'a reasonable mind might accept as adequate to support a conclusion.'" State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986) (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971)).

On appeal, Marr challenges whether substantial evidence supports the hearing officer's decision. We address, in turn, the hearing officer's three primary reasons for terminating Marr's state employment. For the reasons set forth below, we conclude that the hearing officer's decision is supported by substantial evidence, and we therefore affirm the district court's decision.

Confrontation issues

Marr first challenges the hearing officer's determination that he engaged in inappropriate confrontations constituting discourteous treatment of fellow employees and members of the public that warranted termination of his employment. Having reviewed the record, we conclude that substantial evidence supports the hearing officer's determination that Marr's confrontations with coworkers and other professionals constituted "[d]isgraceful personal conduct which impairs the performance of a job or causes discredit to the agency," NAC 284.650(2), and "[d]iscourteous treatment of the public . . . while on duty." NAC 284.650(4)); see also Hilton Hotels, 102 Nev. at 608, 729 P.2d at 498. Multiple witnesses testified regarding an incident between Marr and a Bureau of Land Management (BLM) employee, and their testimony indicated that Marr

was acting in a loud and aggressive manner towards the BLM employee and had to be separated from the BLM employee by coworkers. Additionally, Pete Anderson, the State Forester for the Nevada Division of Forestry, expressed concern over the number of similar incidents Marr had been involved in and the developing pattern of aggressive behavior Marr exhibited. This allusion appears to be in reference to three other documented incidents recounted in the hearing officer's decision and supported by the record: (1) a 1998 physical altercation with a coworker that resulted in a three-day suspension without pay, (2) a 2002 verbal confrontation resulting in a letter to Marr from his supervisor, and (3) a 2005 verbal confrontation with another BLM employee.

Recordkeeping of pilot hours

Next, Marr challenges the hearing officer's finding that his neglectful and inadequate recordkeeping of his flight hours supported the termination of his employment. Specifically, Marr contends that although his employer testified that Marr flew only 118 hours, while he had certified 119.8 hours of flight time, this small discrepancy does not warrant a neglect of duty finding and the termination of his employment.

We again conclude that substantial evidence in the record supports the hearing officer's determination that the issues with Marr's recordkeeping of his flight hours constituted inexcusable neglect of duty. See NAC 284.650(7); Hilton Hotels, 102 Nev. at 608, 729 P.2d at 498. Marr's framing of this issue is misleading. The record clearly reveals that Marr was not terminated because of any minor discrepancy between 119.8 versus 118 hours of flight time. The record indicates that the United States Forest Service requires that helicopter pilots fighting fires on federal land have flown 100 hours in the preceding 12 months. Marr's initial filing for the Forest Service stated that he had flown well above the

100 hour minimum over the past 12 months. When Marr's number was questioned by the Forest Service, however, a second document was filed, indicating that Marr had flown only 90.4 hours, approximately 10 hours under the required 100-hour minimum for the preceding 12 months. Thus, the issues with Marr's recordkeeping arose because his filing after questioning from the Forest Service indicated that he actually had not met the hours requirement for fighting fires on federal land. Moreover, according to Anderson, Marr's lack of professionalism in recordkeeping threatened confidence in the Department's entire fire management aviation program. Anderson testified that he actually decided to shut the program down after these flight hour discrepancies came to light.

Submission of timesheets relating to the training in Orlando, Florida

Lastly, Marr challenges the finding that he submitted false timesheets. Specifically, Marr argues that the hearing officer improperly discredited his unrefuted testimony and contends that the evidence presented on this issue does not constitute substantial evidence to support the decision to terminate his employment with the State.

Contrary to Marr's assertions, we agree with the district court that substantial evidence in the record supports the hearing officer's conclusion that Marr engaged in dishonest conduct and falsified his records relating to his trip to Orlando, Florida. While three days were scheduled for the Orlando training session, the training was completed in only two days. Marr's timesheet nevertheless claimed that he worked 11 hours on that third day. Although Marr claimed that he spent the 11 hours in his hotel room studying the materials he received at the training session, the hearing officer did not find his testimony credible. The hearing officer also concluded that evidence that Marr had accrued over 300 miles on his rental car did not support Marr's version of events.

Additionally, as noted by the district court, Marr admitted in his testimony that the time he recorded for dinner for that third day was inconsistent with the time he claimed was required for roundtrip travel to the particular restaurant and to eat dinner. Accordingly, because we conclude that a reasonable mind could conclude that Marr submitted a false timesheet, and, as noted above, we will not substitute our judgment for that of the appeals officer regarding the proper weight to attribute to particular evidence, we conclude that this finding is supported by substantial evidence. Hilton Hotels, 102 Nev. at 608, 729 P.2d at 498.

Consequently, we conclude that the hearing officer's decision to affirm the termination of Marr's employment was, as a whole, supported by substantial evidence, Dredge, 105 Nev. at 43, 769 P.2d at 58-59, and was not arbitrary or capricious or an abuse of discretion. NRS 233B.135(3)(f).[1] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

[1]To the extent that any of Marr's appellate arguments are not specifically addressed in this order, we note that we have considered those arguments and conclude that they lack merit.

cc: Ninth Judicial District
Hon. Miriam Shearing, Senior Justice
David Wasick, Settlement Judge
Jeffrey A. Dickerson
Attorney General Catherine Cortez Masto/Carson City
Douglas County Clerk