COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
CIVIL ACTION
NO. 2012-0197

THOMAS BOWEN

vs.

CIVIL SERVICE COMMISSION

MEMORANDUM OF DECISION AND ORDER ON THE PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

The plaintiff, Thomas Bowen (Bowen), a state employee, seeks a reclassification of his position as Recreational Facilities Supervisor I to Recreational Facilities Supervisor III. Bowen brings this action seeking judicial review of the Civil Service Commission's (CSC) denial of his motion to remand his appeal to the Human Resources Division for a hearing before the Human Resource Division's (HRD) personnel administrator. Bowen does not challenge the CSC's denial of his reclassification, but instead, argues that as a matter of law he was entitled to a hearing before the personnel administrator, which he did not receive. Now before the court is the Plaintiff's Motion for Judgment on the Pleadings pursuant to G. L. c. 30A, § 14 and Superior Court Standing Order 1-96. For the reasons that follow, the Plaintiff's Motion for Judgment on the Pleadings is **ALLOWED**.

BACKGROUND

Judicial review is limited to the administrative record. G.L. c. 30A, §14(5). The record reveals the following facts.

Bowen has been an employee of Massachusetts' Department of Conservation and Recreation (DCR) since 1996. On January 25, 2010, Bowen applied to the DCR for a reclassification of his position from Recreational Facilities Supervisor I to Recreational Facilities Supervisor III. The DCR performed an interview audit of Bowen. In a letter dated June 22, 2010. the DCR denied Bowen's request for reclassification, stating that upon the audit of his position, the agency found the "duties being performed by you do not warrant the reallocation of your position and that you are properly classified." The letter further states that "[y]ou may appeal this decision to the Human Resources Division as provided in the General Laws, Chapter 30, Section 49. Appeals should be directed in writing to the Human Resources Division . . . ." The letter does not specifically state that Bowen has a right to a hearing, but does reference G.L. c. 30, § 49, which provides a right to a hearing. Likewise, the letter does not advise Bowen that he must request a hearing in order to receive one.

Bowen submitted a classification appeal to the HRD on August 17, 2010. Bowen did not request a hearing in his Appeal to the HRD. In a letter dated April 25, 2011, the HRD denied Bowen's appeal, stating that "[w]e concur with the agency's decision that Recreation Facilities Supervisor I is the most appropriate job classification for your position and therefore we must deny your appeal." The letter further states that "As provided in the Massachusetts General Laws, Chapter 30, Section 49, you may appeal HRD's classification decision to the Civil Service Commission. The CSC has a form that should be used in filing a job reclassification appeal."

The letter does not state that Bowen may request a hearing before the HRD's personnel administrator.

On April 28, 2011, Bowen filed an appeal to the CSC, using the CSC's Reclassification Appeal Form. The form references G.L. c. 30, § 49, but does not state that Bowen has a right to request a hearing before the personnel administrator. Bowen did not indicate on his completed Reclassification Appeal Form that he was requesting a hearing before the personnel administrator.

On July 11, 2011, a full evidentiary hearing was held by an administrative magistrate at the office of the Division of Administrative Law Appeals. At the outset of the hearing, Bowen's counsel submitted a motion titled "Motion to Remand to Personal[sic] Administrator for Hearing". The motion argued that G.L. c. 30, § 49 mandated remand to the personnel administrator for a hearing. The administrative magistrate denied the motion. On August 29, 2011, counsel for Bowen submitted a memorandum of law in support of Bowen's motion to remand to the personnel administrator for a hearing. On October 20, 2011, the administrative magistrate issued a recommended decision denying Bowen's appeal of his classification. The magistrate's recommended decision states that the motion to remand was denied at the hearing, but does not set forth any reason for denial. On November 17, 2011, Bowen's counsel sent an objection to the magistrate's recommended decision, again arguing that the law entitled him to a hearing before the personnel administrator. On December 15, 2011, the CSC voted to adopt the magistrate's recommendation.

DISCUSSION

I. Standard of Review

General Laws c. 30A and Superior Court Standing Order 1-96 provide the framework for the court's analysis of the plaintiff's motion for judgment on the pleadings. In this action for judicial review, the plaintiff bears the burden of demonstrating the invalidity of the Civil Service Commission's decision under the standards set forth in G.L. c. 30A. See Bagley v. Contributory Retirement Appeal Bd., 397 Mass. 255, 258 (1986).

In reviewing the Civil Service Commission's decision, the court must "give deference to the [Civil Service Commission's] expertise and experience in areas where the Legislature has delegated to it decision-making authority [and] shall uphold an agency's decision unless it is based on an error of law, unsupported by substantial evidence, unwarranted by facts found on the record as submitted, arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." Fitchburg Gas & Elec. Light Co. v. Dep't of Telecomm. & Energy, 440 Mass. 625, 631 (2004), quoting Massachusetts Inst. of Tech. v. Dep't of Pub. Utils., 425 Mass. 856, 867-868 (1997); see G.L. c. 30A, § 14.[1] The court must "accord special deference to an agency's interpretation of its own regulation and only disturb the agency's interpretation if it is patently wrong, unreasonable, arbitrary, whimsical, or capricious", and the court may not substitute its judgment for that of the agency. Goldberg v. Bd. of Health of Granby, 444 Mass. 627, 636 (2005) (internal citations omitted); see Southern Worcester County Reg. Vocational Sch. v. Labor Relations Comm'n, 386 Mass. 414, 420-421 (1982). Pursuant to G. L. c. 30A, §

[1] Substantial evidence is defined as "such evidence as a reasonable mind might accept as adequate to support a conclusion." G.L. c. 30A, §1. A decision is arbitrary and capricious "when it lacks any rational explanation that reasonable persons might support." City of Cambridge v. Civil Serv. Comm'n, 43 Mass. App. Ct. 300, 303 (1997).

14, this court may reverse, remand, or modify an agency decision.

II. Analysis

Bowen's sole contention on this appeal is that the CSC erred by denying his motion to remand the case to the personnel administrator for a hearing. Bowen argues that he was prejudiced by not having the opportunity to argue before the personnel administrator. Bowen's contends that the personnel administrator, as an employee within the DCR, was more familiar with the circumstances of his employment than the CSC, and therefore, might have found in his favor after a hearing. Bowen does not challenge the merits of the CSC's decision. The court agrees with Bowen that the CSC erred as a matter of law by denying his motion to remand.

General Laws c. 30, § 49 provides in pertinent part: "[a]ny manager or employee of the commonwealth objecting to any provision of the classification affecting his office or position may appeal in writing to the personnel administrator and *shall be entitled to a hearing* upon such appeal." (emphasis added). If a manager or employee is dissatisfied with the personnel administrator's decision, the statute provides a right of appeal to the CSC. See G.L. c. 30, § 49. The statute requires the CSC to "hear all appeals as if said appeals were originally entered before it." Id. Thus, G.L. c. 30, § 49 sets up a two tiered system of review, with a right of appeal to the personnel administrator, as well as a de novo right of appeal to the CSC.

The CSC contends that the HRD has interpreted the language of G.L. c. 30, § 49, "shall be entitled to hearing", to mean that a hearing before the personnel administrator is only necessary where the employee requests a hearing. The CSC maintains that based on this statutory language, the HRD has a policy of only allowing a hearing when an employee requests one, presumably before the HRD issues a decision based on the written submissions. The CSC

contends that the HRD's interpretation of the ambiguous statutory language is reasonable, and therefore, is entitled to deference by the court.

The CSC is correct that as a fundamental principle of administrative law, where statutory language is ambiguous, the court must defer to an agency's reasonable interpretation of that language if it is within the agency's enabling statute. See Goldberg v. Bd. of Health of Granby, 444 Mass. 627, 632-633 (2005); Chevron U.S.A. Inc. v. Natural Resources Defense Council, 467 U.S. 837, 842-843 (1984) (landmark case). However, the court must only defer to interpretations contained within properly promulgated regulations, meaning those that were subjected to the notice, comment, public hearing, and other mandates of the Administrative Procedure Act. See Goldberg, 444 Mass. at 632; G.L. c. 30A. The CSC has provided the court with no indication that the HRD's "policy" of only providing a hearing when requested, is a properly promulgated regulation.

However, even assuming that the HRD's policy was properly promulgated, this interpretation cannot stand as it was applied in the instant case. An agency's interpretation of statutory language must be reconcilable with the governing language. Id. ("[I]f the Legislature has not addressed directly the pertinent issue, we determine whether the agency's resolution of that issue may be 'reconciled with the governing legislation'", quoting Nuclear Metals, Inc. v. Low-Level Radioactive Waste Mgt. Bd., 421 Mass. 196, 211 (1995)). The HRD's interpretation is irreconcilable with the statutory scheme because Bowen was not provided notice of his right to a hearing before the personnel administrator. The Administrative Procedure Act allows an agency to "place on any party the responsibility of requesting a hearing if the agency notifies him in writing of his right to a hearing *and of his responsibility to request the hearing* . . . ."

(emphasis added). G.L. c. 30A, § 10[2]. By letter dated June 22, 2010, the DCR notified Bowen of his right to appeal to the HRD the decision, pursuant to G.L. c. 30, § 49. Although the letter references the statute that provides the right to a hearing, this letter does not apprise Bowen of his right to a hearing or of his responsibility to request a hearing. Similarly, the April 25, 2011 decision letter of the HRD does not notify Bowen of his right to a hearing before the personnel administrator or his responsibility to request a hearing. Because Bowen was not notified of his responsibility to request a hearing, G.L. c. 30A, § 10 prevents HRD from placing the responsibility of requesting a hearing on Bowen.[3] Accordingly, this case must be remanded to the personnel administrator at the HRD for a hearing.[4]

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2 Section 10 also provides: "When a party to an adjudicatory proceeding has the opportunity, by provision of any law or by regulation, to obtain more than one agency hearing on the same question, whether before the same agency or before different agencies, it shall be sufficient if the last hearing available to the party complies with the requirements of this chapter, and the earlier hearings need not so comply." The court finds that this provision does not restrict an agency's responsibility to provide notice that a party must request a hearing. The court is unaware of any authority applying this part of § 10 to the notice of a right to a hearing requirement. Cf. Space Building Corp. v. Comm'r of Revenue, 413 Mass. 445, 450 (1992) (holding that hearing at bureau of the Department of Revenue need not comply with the procedural requirements of G. L. c. 30A, § 11 (7), where subsequent hearing at Appellate Tax Board complies with § 11).

3 Bowen requested a remand to the personnel administrator for a hearing at the outset of the hearing before the CSC's administrative magistrate, therefore, the plaintiff cannot rightly be accused of procedural gamesmanship. For instance, it would be inconsistent with the two-tiered statutory scheme if Bowen could have waited until after the conclusion of the hearing before the administrative magistrate to then request a hearing before the personnel administrator at the HRD.

4 The court need not address the plaintiff's contention that the CSC violated his right to procedural due process. See Doe v. Sex Offender Registry Bd., 452 Mass. 764, 770-771 (2008) (following prudential principle that courts should avoid deciding constitutional issues where there are other grounds for decision).

ORDER

For the foregoing reasons, it is hereby **ORDERED** that the Plaintiff's Motion for Judgment on the Pleadings is **ALLOWED**, and the decision of the Civil Service Commission is **VACATED**. Pursuant to G.L. c. 30, § 49, the case shall be remanded to the Human Resources Division for a hearing before the personnel administrator.

Bonnie H. MacLeod
Justice of the Superior Court

DATED: January 7, 2013

Notice sent
01.09.13
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