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SUFFOLK SUPERIOR COURT

Ruling of the Court

BUDKA

V.

DEPARTMENT OF CORRECTION AND STATE CIVIL SERVICE COMMISSION

Case: 08-4199 Pleading: Plaintiff's Motion: Judgment on the Pleadings Date: June 26, 2009

Herein, Plaintiff Budka appeals a decision of the Department of Correction (DOC) to bypass him for the promotional position of Correctional Officer III. His motion is **DENIED**.

Plaintiff adopts the findings made in the Commissioner's decision. On October 3, 2003, plaintiff was involved in a work incident which resulted in discipline. The hearing officer determined that this discipline was the reason why Budka was bypassed for promotion.

Budka claims the hearing officer failed to recognize that, for one day per week, he has been acting in the Correction Officer III (CCO III) position. He also claims disparate treatment; he proffers four other DOC employees who were promoted despite past discipline. Further, he claims that his post-discipline evaluations have been exemplary.

Pursuant to the Massachusetts Administrative Procedure Act, judicial review of an agency's decision under G.L. c. 30A is limited to the administrative record. G. L. c. 30A, § 14(4), 14(5); *Cohen v. Bd. of Registration in Pharmacy*, 350 Mass. 246, 253 (1966). The party appealing an administrative decision bears the burden of demonstrating that the decision is invalid. *Merisme v. Bd. of Appeals on Motor Vehicle Liab. Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989). The Supreme Judicial Court has noted that "[a] state administrative agency in Massachusetts has considerable leeway in interpreting a statute it is charged with enforcing." *Berrios v. Dept. of Pub. Welfare*, 411 Mass. 587, 595 (1992).

Under G.L. c. 30A, this court must give due weight to the agency's experience, technical competence, specialized knowledge, and statutorily conferred discretion. *Flint v. Comm'r of Pub. Welfare*, 412 Mass. 416, 420 (1992). Conclusions of law to be drawn from an agency's findings of fact are subject to independent judicial review. *Capezzuto v. State Ballot Law Comm'n*, 407 Mass. 949, 952 (1990). This court may set aside an agency decision "if it determines that the substantial rights of any party may have been prejudiced because the agency decision is made upon unlawful procedure," or "arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law." G.L. c. 30A, §§ 14(7)(d), 14(7)(g); *Bagley v. Contributory Ret. Appeal Bd.*, 397 Mass. 255, 258 (1986). Under G.L. c. 30A, "[a]n agency's interpretation of its own regulation and statutory mandate will be disturbed only 'if the interpretation is patently wrong, unreasonable, arbitrary, whimsical, or capricious.'" *Brookline v. Commissionerr of the Department of Environmental Quality Engineering*, 398 Mass. 404, 410 (1986). Applying the above standards to the present case, the Court may not disturb the defendants' decision.

Substantial evidence exists in the Decision of the commissioner that the DOC's bypass was reasonably justified. He found that the plaintiff was part of a move team at Souza-Baranowski who was investigated and found responsible for an inmate who became injured. (Plaintiff was not found responsible for injuring the inmate. However, DOC had evidence Budka was unable to account for the injury and falsified a report.) This occurred at a time of unrest and

turmoil at that institution following the violent death of another inmate. Initially, Budka was demoted to Correctional Officer I; this was reduced after arbitration to suspension for a thirty day period.

Plaintiff's presentation of evidence did not establish by a preponderance the invalidity of DOC's bypass. He testified that he filled the COIII position on some shifts when the institution was shorthanded. The commissioner was entitled to give little weight to this assertion of being pressed into service on occasions. It was within the DOC and commissioner's purview to decide that plaintiff's good evaluations were not enough to overcome the concerns engendered by the October 2003 incident. The decision to promote an employee into a position of leadership and trust deserves a studied look at the employee's history, which was unfortunately exposed in that incident.

He also described the experience of four other employees who were promoted despite discipline, but without details as to their behavior or degree of discipline. The commissioner was unable to discern any disparate treatment of plaintiff without those specifics. Moreover, no one disciplined as a result of the October 2003 incident has been promoted, and so the commissioner was likely reassured that Budka was not being treated disparately.

The Commission was well supported in finding that the plaintiff had not proven that the bypass was invalid, and that the bypass was done upon adequate reasons established upon credible evidence. *Commissioners of Civil Service v. Municipal Court of City of Boston*, 359 Mass 211 (1971). The Commission relied on and applied correct principles of law.

Satisfied as I am that the decision of the commissioner was not based upon an error of law, and that it was supported by substantial evidence, I am persuaded that the bypass decision was not arbitrary, or capricious, or an abuse of discretion, and the Commissioner was right to so find.

For the foregoing reasons, plaintiff's Motion for Judgment on the Pleadings is **DENIED**.

So ordered:

A handwritten signature in dark ink, appearing to read "Frances A. McIntyre", written in a cursive style.

Frances A. McIntyre

Justice, Superior Court

June 26, 2009