

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-1385

MEDFORD HOUSING AUTHORITY

vs.

BONNIE CURRAN & another.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The Medford Housing Authority (MHA) appeals from a Superior Court judgment on the pleadings in favor of the defendants, Bonnie Curran and the Civil Service Commission (commission), affirming the commission's order reinstating Curran's employment with the MHA. On appeal, the MHA claims that the commission improperly substituted its judgment for that of the MHA and drew inferences that were not supported by substantial evidence. The MHA further claims that the Superior Court judge applied the wrong standard of review. We affirm.

Background. We summarize the commission's relevant factual findings. The MHA is a municipal corporation that provides low-income housing in the city of Medford. Curran worked for the

¹ Civil Service Commission.

MHA as a leased housing specialist from 2003 until her discharge in 2017. Her duties included qualifying applicants for "Section 8" vouchers, calculating the rent that could be charged, and determining the subsidies landlords could receive under Federal and State law.

Curran "sometimes [came] off as 'rough around the edges.'" She frequently criticized her coworkers and supervisors. Between 2009 and 2012, Curran complained that MHA executive director Robert Covelle tampered with her personnel file and showed favoritism in hiring. Ultimately, Curran's complaints led to a Federal investigation and Covelle's involuntary resignation.

Between 2011 and 2014, Curran received several written warnings and suspensions from Covelle based on input from Covelle's management team. The commission found that Covelle, and other managers allied with him, "formed an animus" against Curran.

Curran continued to complain to management regarding the conduct of her coworkers and supervisors after Covelle's departure. The commission found, however, that Curran's complaints were "motivated by her honest belief that she was pointing out irregularities and possible unlawful behavior that deserved to be rectified."

Coworkers and tenants also raised complaints about Curran, prompting Covelle's successor, John Coddington, to issue several "final warnings" and suspensions to Curran between 2013 and 2016. Coddington took these actions based on Curran's history of progressive discipline. In particular, Coddington placed Curran on administrative leave in December 2016, after two employees stated that they could no longer work with Curran and resigned. Coddington subsequently recommended to the MHA board (board) that Curran be discharged because of (1) conduct resulting in the departure of two Section 8 employees, and (2) Curran's disciplinary history. The board adopted Coddington's recommendation and Curran was discharged from employment with the MHA on March 9, 2017.

Curran appealed her discharge to the commission, which held a de novo evidentiary hearing. In a twenty-four-page written decision, the commission concluded that the MHA "failed to meet its burden to establish just cause for the decision to discharge Ms. Curran from employment by a preponderance of the evidence," and ordered the MHA to reinstate her. The MHA sought judicial review of the reinstatement order pursuant to G. L. c. 30A, § 14. A Superior Court judge affirmed the commission's decision, concluding that it was supported by substantial evidence.

Discussion. A person discharged by an appointing authority (in this case the MHA) may appeal to the commission for a de novo determination whether there was "just cause" for the action taken. G. L. c. 31, § 43. See Leominster v. Stratton, 58 Mass. App. Ct. 726, 727 (2003). "Just cause" is "substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service" (citation omitted). Boston Police Dep't v. Collins, 48 Mass. App. Ct. 408, 411 (2000).² "It is not within the authority of the commission, however, to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority." Cambridge v. Civil Serv. Comm'n, 43 Mass. App. Ct. 300, 304 (1997).

The commission found that the MHA failed to establish just cause to terminate Curran because there was no "credible evidence" that her behavior "impaired the efficiency of the public service." Like the Superior Court judge, we review the commission's decision to determine whether it was supported by

² Curran claims that there is confusion between the "just cause" and "reasonable justification" standards and argues that the reasonable justification standard "should be eliminated." We need not reach the issue. Even assuming that use of the term "reasonable justification" in dicta in other cases (and even in the commissioner's decision here) has caused confusion, we conclude that, in this case, the commission properly applied the "just cause" standard as required by the plain language of the statute. See G. L. c. 31, § 43.

substantial evidence, arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with the law, giving "due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it." G. L. c. 30A, § 14(7). See Boston Police Dep't v. Civil Serv. Comm'n, 483 Mass. 461, 469 (2019). The MHA "bears a 'heavy burden' of establishing that the commission's decision was incorrect." Id., quoting Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 263-264 (2001).

The MHA's principal argument before the commission was that there was just cause to terminate Curran because her misconduct caused MHA employees Delores Ross and Kathy Rolli to resign. However, there was a conflict in the evidence regarding the reasons for those resignations. Ross testified that Curran told her, "[y]ou know I wouldn't hurt you intentionally," which Ross considered to be a threat. Ross further stated that she decided to look for a different position because she did not like the "stress" of working with Curran. Curran admitted that she made the statement, but denied that it was intended as a threat.³ And notes from Ross's exit interview show that Ross had other

³ Curran testified that she made the statement while explaining to Ross why she had revealed confidential information about Ross to her supervisor.

complaints about her job at the MHA: the applicants were difficult; the closing process was complicated; lack of clerical support; low morale among staff; she was unfamiliar with the computer system; her supervisor was not available; and she worked in close quarters in the basement.

Rolli testified that she was afraid of Curran, who was confrontational.⁴ Curran acknowledged confrontations with Rolli but testified that the disagreements related to Rolli's work. According to Curran, Rolli was the one who reacted in anger. Former MHA employee Lorraine McGrath testified that Rolli told her she was leaving because of the work conditions and that she no longer wished to work in public housing. According to McGrath, Rolli never mentioned her relationship with Curran as a reason for her departure.

After considering all the evidence, the commission did not credit Ross's and Rolli's "conclusory" testimony that Curran was the reason for their resignations. Rather, the commission credited Curran's and McGrath's testimony and concluded that Ross and Rolli resigned for other reasons. We do not view this as the commission substituting its judgment for that of the MHA.

⁴ In an exit interview, Rolli also stated that she was returning to a previous job with better pay and benefits, disliked the "dirty" work environment at the MHA, and did not want to work in public housing anymore because of "demanding participants" and disrespectful applicants.

The commission made credibility assessments and weighed the evidence as it was entitled to do. See McGovern v. State Ethics Comm'n, 96 Mass. App. Ct. 221, 231 (2019). It is well settled that, "in such circumstances of contradictory testimony, it is for the presiding officer and the commission, not the court, to make determinations of witness credibility and to give whatever weight certain evidence is due."⁵ Id. at 232.

Nor do we discern error in the commission's finding that Curran's disciplinary history was not just cause for her discharge. While it was appropriate for the MHA to consider Curran's disciplinary record, the commission found that Covelle and other managers aligned with him had "formed an animus" against Curran, which influenced many of the disciplinary decisions. It was "the commission's right as the trier of fact, in performing its adjudicatory function, to draw inferences from testimonial accounts and the documentary evidence before it." McGovern, 96 Mass. App. Ct. at 231. The inference that Covelle and his supporters felt animosity toward Curran was not unreasonable in light of the evidence that Covelle was forced to

⁵ We note that the commission considered live testimony from witnesses who were subject to cross-examination. That was not the case at the disciplinary hearing conducted by the MHA.

resign as a result of an investigation initiated by Curran's complaints.⁶

Finally, we agree with the MHA that the Superior Court judge erred in referring to the standard of review for arbitration awards in her written decision. The proceeding before the commission was a request for judicial review pursuant to G. L. c. 30A, § 14, not an arbitration. However, we see no prejudice from the judge's incorrect references to the proceeding as an arbitration. In the end, the judge applied the correct standard for judicial review of an agency decision under G. L. c. 30A, § 14 (7) by concluding that there was substantial evidence supporting the commission's decision. But even if the judge had applied the more deferential standard of review for an arbitration award,⁷ our review of the commission's decision is de novo. See Boston Police Dep't, 483 Mass. at 469. After review of the entire administrative record, including those parts of the record that may detract from the weight of the supporting

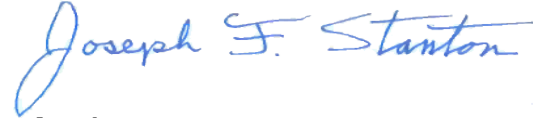
⁶ Deciding the case as we do, we need not address Curran's argument that the prior discipline could not be considered because she never received notice of her right to appeal.

⁷ Courts review an arbitration award only to determine if the arbitrator exceeded the scope of her authority or rendered a decision based on fraud, arbitrary conduct, or procedural irregularity. See Massachusetts Highway Dep't v. American Fed'n of State, County & Mun. Employees, Council 93, 420 Mass. 13, 15 (1995).

evidence, we are satisfied that the commission's decision was grounded in substantial evidence.

Judgment affirmed.

By the Court (Massing,
Kinder & Neyman, JJ.⁸),



Clerk

Entered: October 1, 2021.

⁸ The panelists are listed in order of seniority.