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SUPERIOR COURT  
CIVIL ACTION  
NO. 2012-2857-C

COMMONWEALTH OF MASS  
CIVIL SERVICE COMMISSION  
ROBIN L. DAWSON AS ADMINISTRATRIX  
of the ESTATE of JAMES DAWSON

v.

CIVIL SERVICE COMMISSION and THE  
MASSACHUSETTS DEPARTMENT OF CORRECTION

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

The plaintiff, Robin Dawson ("Dawson"), as Administratrix of the Estate of James Dawson ("Mr. Dawson"), filed this action against the defendant, the Civil Service Commission (the "Commission"), claiming that its decision denying her motion to vacate the dismissal of her case before the Commission was arbitrary, an abuse of discretion, and violated her right to a full and fair hearing on the merits. Dawson has moved for judgment on the pleadings in her favor. For the reasons set forth below, Dawson's motion is allowed. The Commission's decision denying Dawson's motion to vacate the dismissal is reversed, and the matter is remanded to the Commission for further proceedings consistent with this Memorandum of Decision and Order.

BACKGROUND

Mr. Dawson was employed by the defendant, the Massachusetts Department of Correction ("DOC"). He was demoted after an incident where he allegedly

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slapped a civilly committed individual. He appealed his demotion to the Commission. On April 9, 2001, the Commission held an evidentiary hearing. Two witnesses testified. The matter was continued to May 16, 2001. The Commission did not hold the second hearing as scheduled, and did not set a new date to continue the hearing. On December 26, 2001, Mr. Dawson died in a motor vehicle accident.

The Estate of Mr. Dawson moved to be substituted as a party. The record does not reflect that this motion was ever acted upon, but the Commission and parties proceeded as if it had been allowed. On January 4, 2002, the DOC filed a motion for summary decision, and on January 31, 2002, the DOC filed a motion to dismiss claiming that the action terminated with Mr. Dawson's passing. The Commission denied the DOC's motion to dismiss on February 1, 2002 and denied the DOC's separate motion for summary decision on February 27, 2002. Both denials were margin endorsements. The Commission scheduled a further hearing on March 7, 2002, which it later postponed to November 7, 2002.

On November 7, 2002, the DOC and Dawson reached a settlement and, based on that settlement, agreed to a voluntary dismissal of the case. The parties agreed that the DOC would posthumously reinstate Mr. Dawson to his former position of Sergeant. The agreement provided that this reinstatement should cause the State Retirement Board to recalculate the death benefit. The agreement also stated that if the State Retirement Board did not agree to recalculate, the settlement would be

considered void, and the parties would proceed with the case before the Commission. The State Retirement Board refused to recalculate Mr. Dawson's benefits, and on August 26, 2003, Dawson moved to vacate the dismissal. The DOC agreed that the essential terms of the settlement had not been satisfied and that the dismissal should be vacated. For unexplained reasons, the Commission did not act on this motion until 2012.

On September 5, 2003, the DOC filed a motion for reconsideration of its motion to dismiss that the Commission had denied on February 1, 2002. The Commission took no further action on the underlying matter until October 2011, when it scheduled a status conference. Both parties attended. There is no official record of the conference, and there is no indication that the Commission heard argument on any of the pending motions. The parties were advised that if they could not reach a settlement, the Commission would schedule a hearing to decide the case on the merits.

In 2012, without providing either party notice or an opportunity to be heard, the Commission issued a "Decision on Pending Motions." The Commission denied Dawson's motion to vacate the dismissal, and then denied all other motions as moot. In denying Dawson's motion, Commissioner Stein indicated that "it is clear that reopening this case would be a futility. There is no 'reasonable expectation' that the Estate could produce any percipient witness to a 1999 incident . . . to rebut the

DOC's extensive documentary record[.]” A.R. at 253. Dawson has now appealed the Commission's decision to this court.

## DISCUSSION

### I.

Under Massachusetts law, “any person or appointing authority aggrieved by a final decision of any agency in an adjudicatory proceeding, whether such decision is affirmative or negative in form, shall be entitled to a judicial review” of the agency's final determination. G.L. c. 30A, § 14. The court may set aside, vacate, remand, modify or reverse an agency's decision “if it determines that the substantial rights of any party may have been prejudiced because the agency decision is (a) in violation of constitutional provisions; or . . . (c) based upon an error of law; or (d) made upon unlawful procedure; or (e) unsupported by substantial evidence; . . . or (g) arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law.” G.L. c. 30A, § 14(7).

In reviewing an agency decision pursuant to G.L. c. 30A, § 14, a court must give “due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it.” *Id.*; *Doe No. 10216 v. Sex Offender Registry Bd.*, 447 Mass. 779, 787 (2006). In most instances, an agency decision will be upheld if it is supported by substantial evidence. See *Raytheon Co. v. Director of the Div. of Employment Sec.*, 364 Mass. 593, 595 (1974).

Substantial evidence is “such evidence as a reasonable mind might accept as adequate to support a conclusion.” G.L. c. 30A, § 1(6).

In assessing whether the underlying evidence is substantial, the court cannot displace an agency’s decision between two fairly conflicting views, even though the court could have justifiably made a different choice. *Embers of Salisbury v. Alcoholic Beverages Control Comm’n*, 401 Mass. 526, 529 (1988); *Hotchkiss v. State Racing Comm’n*, 45 Mass. App. Ct. 684, 695-696 (1998). The court must consider the record as a whole, but as long as the agency’s findings are properly supported, it should not disturb the agency’s decision. *Tri-County Youth Programs, Inc. v. Acting Deputy Dir. of the Div. of Emp’t & Training*, 54 Mass. App. Ct. 405, 408 (2002).

When pure questions of law are at issue, the court will review an agency’s conclusions of law *de novo*. *Buchanan v. Contributory Ret. Appeal Bd.*, 65 Mass. App. Ct. 244, 246 (2005).

Here, the Commission’s decision rested largely on its supposition, unsupported by any evidence, that “[t]here is no ‘reasonable expectation’ that the Estate could produce any percipient witness to a 1999 incident . . . to rebut the DOC’s extensive documentary record[.]” Essentially, the Commission determined, *sua sponte* and without inquiry, that Dawson could not possibly produce any credible evidence. The Commission had no evidence before it that there were no witnesses available. The Commission did not ask for a witness list, an offer of proof, or any other showing

from Dawson as to her ability to proceed with the case. There was no evidence to support the Commission's "finding" that there could be no credible evidence. The Commission's decision was *not* supported by substantial evidence, and must be reversed. G.L. c. 30A, § 14(7)(e).

## II.

The Commission next argues that it lies within its discretion whether to reopen cases. "Discretion is not whim, and limiting discretion according to legal standards helps promote the basic principle of justice that like cases should be decided alike." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 139 (2005). A discretionary decision will not be upheld if it is "arbitrary or capricious, that is, lacking a rational basis." *Sierra Club v. Comm'n of the Dep't of Env'tl. Mgmt.*, 439 Mass. 738, 748 (2003).

Administrative "agencies have inherent power to reopen their concluded proceedings in compelling situations as justice may require." *Covell v. Dep't of Social Serve.*, 42 Mass. App. Ct. 427, 433 (1997). The "power to reopen should be exercised by an agency with due circumspection," but it should not decline to do so without a rational basis. See *id.*

In the present case, the Commission's prior rules of procedure permitted it to vacate a dismissal if the case "had been decided without being heard on the merits, such as a case withdrawn or dismissed by agreement." *Gun v. Lowell Police Dep't*, No.

D1-08-150, at p. 6 (Mass. Civ. Serv. Comm'n, August 20, 2009) (Stein, C.). The Commission's rule now states that "at any time after the close of a hearing and prior to a decision being rendered, a Party may move to reopen the record if there is new evidence to be introduced." 801 Code Mass. Reg. § 1.01(7)(k).

Here, the parties entered into an agreement to settle the case pending before the Commission. The Commission acknowledged that it was dismissing the case by mutual agreement of the parties, as they had reached a settlement. One of the essential elements of the settlement agreement was that the State Retirement Board would recalculate Mr. Dawson's benefits. The State Retirement Board refused to do so, and this refusal made the settlement agreement void. Both parties had agreed, under those circumstances, that the dismissal would be vacated and the appeal reinstated, yet the Commission refused, without input from either party, to do so. The evidentiary hearing was never officially closed. The court could consider the dismissal as closing the hearing. If that were the case, then under the current rules of the Commission, it can reopen the hearing if there is new evidence. The Commission never gave Dawson the opportunity to offer new evidence. The Commission also still possesses the inherent power to reopen a case to serve the interests of justice. See *Corell*, 42 Mass. App. Ct. at. 433. The Commission's refusal to allow Dawson an opportunity to present her case clearly frustrated the interests of justice.

Moreover, the Commission's decision was purely speculative, and a speculative decision is, by its very nature, arbitrary. While it may be rational to opine that memories fade over time, it is irrational to state that no one could possibly remember an event twelve years ago, without any evidence to support such a finding. The Commission's decision denying the unopposed motion to vacate the dismissal was arbitrary and capricious, and must be reversed. See *Sierra Club*, 439 Mass. at 748.

### III.

Fundamental due process rights require that a person with a property interest at stake be given notice and an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). Employees of the DOC, as employees of the Commonwealth, are entitled to retirement benefits by statute. See, G.L. c. 32, § 1 et seq. A person cannot be deprived of statutory rights without some process. *Allen v. Board of Assessors*, 387 Mass. 117, 120 (Mass. 1982). Where there is an interference with a protected property interest, the court must consider "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.




In this case, Dawson was not given an opportunity to engage in the process that the Commission normally provides. The issue is whether the Commission's denial of that opportunity to Dawson was lawful.

The Commission's decision to deny the motion to vacate was based on its assumption that "[t]here is no 'reasonable expectation' that the Estate could produce any percipient witness to a 1999 incident[.]" This determination was made without any evidence to support it. The Commission did not provide Dawson with notice, or an opportunity to be heard before making this decision. The risk that Dawson was erroneously deprived of her rights is high, and the cost to the government in providing adequate process to her is minimal, given that the process is already established. The Commission simply denied Dawson the opportunity to engage in the process it usually provides, and did so without any basis in law or evidence. The Commission's decision denied Dawson's right to due process, and must be reversed. G.L. c. 30A, § 14(7)(e).

### ORDER

For the foregoing reasons, the Plaintiff's Motion for Judgment on the Pleadings (Paper # 5) is ALLOWED. The decision of the Civil Service Commission denying Dawson's motion to vacate the dismissal of her appeal is REVERSED, her appeal is ordered reinstated, and the case is REMANDED to the Commission for further proceedings consistent with this Order.

  
Peter M. Lauriat  
Justice of the Superior Court

Date: May 14, 2014

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