

COMMONWEALTH OF MASSACHUSETTS

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SUFFOLK, ss.



SUPERIOR COURT
CIVIL ACTION
NO. 2012-167-H

PAUL MENDONCA

vs.

CIVIL SERVICE COMMISSION & another ^{1/}

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COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

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

INTRODUCTION

The plaintiff, Paul Mendonca ("Mendonca"), a disabled veteran, seeks judicial review of a decision by the Civil Service Commission ("Commission") dismissing the appeal of his layoff as an Administrator III at the Department of Labor and Workforce Development ("Office of Labor"). Mendonca moves for judgment on the pleadings on his claim for reinstatement. As grounds for his motion, Mendonca asserts that his job is protected under the Veteran's Tenure Act, G. L. c. 30, § 9A, and pursuant to civil service laws, G. L. c. 31, §§ 36, 39. For the following reasons, the plaintiff's Motion for Judgment on the Pleadings is DENIED.

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BACKGROUND

The following facts are derived from the administrative record. Mendonca is a disabled veteran as defined by G. L. c. 31, § 1. On May 3, 1999, he was hired as a provisional employee by the Department of Labor and Workforce Development as an Administrator III, a position

^{1/} Executive Office of Labor and Workforce Development

within the Job Group M-III of the Management Salary Schedule. A “job group” is a classification promulgated by the State’s Human Resources Division (“HRD”). HRD classifies positions as management or non-management, and evaluates the position’s responsibilities and duties in order to ensure that job groups are similar within a state agency. Mendonca held the “functional title” of Manager of Special Program Oversight. In that role, he was responsible for administering the Job Search/Job Readiness Program (“JS/JR”), a federally funded program. Mendonca’s position entailed preparing invoices to the Department of Transitional Assistance, validating financial reimbursements, and coordinating JS/JR field management units.

On March 29, 2007, pursuant to a reclassification appeal filed by Mendonca, the HRD determined that the title Administrator III was not an accurate reflection of Mendonca’s duties. Instead, HRD concluded that Mendonca should have been classified as a Program Coordinator II, but because that was a lower classification, HRD allowed Mendonca to retain the official title of Administrator III. The reclassification of Mendonca’s position would only apply to prospective appointments.

On April 10, 2008, Mendonca was laid off after the Office of Labor lost all federal funding for the JS/JR program. The entire JS/JR program was eliminated, and no program positions remained. HRD reviewed Mendonca’s personnel record and qualifications, but ultimately determined that Mendonca was not qualified for retention in any of the agency’s remaining Administrator III positions. Mendonca appealed his layoff to the Commission. On August 3, 2009, the Commission held an evidentiary hearing. Four months later, the Commission issued its decision dismissing Mendonca’s appeal for lack of jurisdiction. The Commission determined that his status as a disabled veteran did not grant him any additional rights to challenge his layoff under either the Veteran’s Tenure Act or civil service laws. The

Commission also concluded that, even if he was entitled to preference under civil service laws, the preference given to disabled veterans is not absolute and, in Mendonca's case, he was not qualified for any of the other positions with the same job title. Mendonca has exercised his right to judicial review of the Commission's decision under G. L. c. 31, § 44.

DISCUSSION

I. Standard of Review

A party aggrieved by a final decision of the Commission may seek judicial review under G. L. c. 31, § 44. This Court reviews "the commission's decision to determine if it violates any of the standards set forth in G. L. c. 30A, § 14(7), and cases construing those standards."

Brackett v. Civil Serv. Comm'n, 447 Mass. 233, 242 (2006), quoting Plymouth v. Civil Serv. Comm'n, 426 Mass. 1, 5 (1997). G. L. c. 30A, § 14(7) provides that "[t]he court may affirm the decision of the agency; or the court may set aside or modify the decision, or compel any action unlawfully withheld or unreasonably delayed, if it determines that the substantial rights of any party may have been prejudiced because the agency decision is . . . (c) Based on upon error of law; or . . . (g) Arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law." The burden is on the plaintiff to demonstrate the invalidity of the agency's determination. Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002).

II. The Veteran's Tenure Act

Mendonca maintains that, as a disabled veteran, he is entitled to protection under the Veteran's Tenure Act, G. L. c. 30, § 9A, which provides that a veteran who has held an appointive office not classified under G. L. c. 31 for at least three years shall not be involuntarily separated from such office except in accordance with the protections set forth in the civil service

laws.¹ However, coverage under the Veteran's Tenure Act turns on whether the position at issue is "classified" under G. L. c. 31. The Commission concluded that, as Administrator III in the Job Group M-III, Mendonca held a classified position under the civil service laws that did not qualify him for protection under the Veteran's Tenure Act. The Court agrees.

G. L. c. 30, § 46C provides that, "[e]xcept as otherwise provided by law all management positions shall be classified according to the provisions of section forty-five and allocated to a job group in the above schedule," a schedule which includes Job Group M-III. Moreover, while G. L. c. 30, § 46E exempts positions allocated to job groups M-V through M-XII from classification under civil service laws, this exemption does not extend to Job Group M-III. While Mendonca at one point argues that a position's status as classified or unclassified hinges on whether the position is filled through civil service examinations or labor registers, he later contradicts this, stating the Administrator III position is the "official job title used for hiring, promotions and retirement, and it is the category of classification Section 9A contemplates." Accordingly, Mendonca fails to demonstrate that the Commission erred in deciding that he was not covered by the Veteran's Tenure Act because Administrator III is a classified position within Job Group M-III.

II. Civil Service Laws

Mendonca also asserts that his discharge violated his rights as a disabled veteran under G. L. c. 31, § 39 ("Section 39"), which provides that, when a state agency lays off permanent employees, it must do so in reverse order of seniority. Further, G. L. c. 31, § 26 ("Section 26") provides that "[a] disabled veteran shall be retained in employment in preference to all other persons, including veterans." Read together, these sections of the civil service laws make clear that government agencies must adhere to retention preferences either by seniority or by status as

¹ The parties do not dispute Mendonca's status as a disabled veteran as defined by G. L. c. 31, § 1.

a disabled veteran. Mendonca avers that his discharge violated this statutory preference. As the Commission noted in its decision, however, Mendonca was not protected under Section 39, because the express language of the statute makes clear that Section 39 applies only to the layoff of “permanent” civil service employees, and Mendonca’s appointment was provisional.²

Alternatively, Mendonca argues that, even if Section 39 does not apply because of his status as a provisional employee, Section 26, standing alone, protects him from discharge from his position with the Officer of Labor. He contends that Section 26 required that he be retained until the four other Administrator III employees were discharged. The Court disagrees.

It is well settled that the statutory preference for disabled veterans is not absolute. See Hutcheson v. Director of Civil Serv., 361 Mass. 480, 487-488 (1992) and cases cited (noting that “the appointing power may in some circumstances refrain from appointing [an eligible disabled veteran] on the ground that he is unfit or unsuitable”). In the case at bar, Mendonca was discharged when the JS/JR program he was administering was eliminated entirely. Mendonca’s duties and responsibilities pertained to the service of community members benefitting from the now extinct JS/JR program. Importantly, the Commission determined that, even if Mendonca was covered by Section 39, he lacked the qualification and skills required to fill any of the other Administrator III positions: Manager of Web Services, Manager of Hurley Building Operations, Deputy Director of Contracts and Procurement, and Manager of the Office of Multilingual Services. The Manager of Web Services position requires training in web design and programming. The Commission found that Mendonca lacked the requisite experience in website construction and computer networking required for that position. The Deputy Director of

² Under civil service laws, a provisional employee is an employee appointed to a position when no civil service list of persons eligible for appointment to the position has been created through normal civil service processes or when a list created through the normal processes contains less than three names and other criteria are met. See G. L. c. 31, § 12.

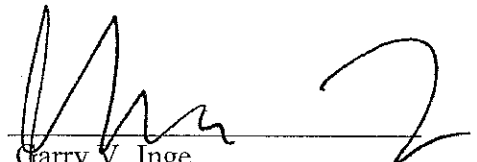
Contracts and Procurement position requires knowledge and experience regarding trade and procurement, including the laws and regulations of the North American Free Trade Agreement and the Trade Adjustment Act, areas in which Mendonca also lacked experience. The Hurley Building Superintendent position requires experience in building maintenance, security and Heating Ventilation Air Conditioning Systems, and knowledge related to building codes and regulations. Again, the Commission found that Mendonca did not possess the required experience to fulfill the functions of this position. Finally, the Manager of Offices of Multilingual Services requires knowledge of Spanish or another language and experience in training and management of interpretation services. Mendonca does not speak Spanish and does not have experience training or managing translation services, and was therefore also deemed unqualified for this position.

This case is closely analogous to Andrews v. Civil Serv. Comm'n, 446 Mass. 611, 612 (2006), in which the plaintiff, a disabled veteran, challenged his dismissal from a state agency on grounds that his discharge and the abolition of his position violated his right to statutory preference under civil service laws, and that the agency's retention of five other employees who were provisionally promoted to positions that were functionally the same as his own violated the preference afforded to him as a disabled veteran. Id. The Supreme Judicial Court concluded that the positions the plaintiff challenged had "either more complex duties or a higher degree of responsibility" than the plaintiff's position, and consequently the plaintiff had no right to "bump" the incumbent employees from the positions. Id. at 615. Here, as in Andrews, the Commission determined that, even if Mendonca was a permanent employee with Section 39 rights, which he was not, he nonetheless lacked the necessary qualifications to assume any of the other Administrator III positions remaining in the Office of Labor. Consequently, this Court finds that

the Commission's decision that Mendonca's discharge did not violate the veteran's preference in civil service laws was not arbitrary or capricious or based on an error of law.

ORDER

For the foregoing reasons, it is hereby **ORDERED** that the plaintiff's Motion for Judgment on the Pleadings be **DENIED**.


Garry V. Inge
Justice of the Superior Court

DATED: October 11, 2013

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