

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
CIVIL ACTION
NO. JJ-01472A

RYAN MUTH

vs.

MASSACHUSETTS CIVIL SERVICE COMMISSION and
CITY OF LEOMINSTER

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

This is a petition for judicial review, pursuant to G. L. c. 30A, § 14, of a decision by the Massachusetts Civil Service Commission ("Commission") to uphold the termination, by the City of Leominster ("City"), of Ryan Muth's ("Muth") employment as a firefighter. The plaintiff, Muth, now moves for judgment on the pleadings with regard to his complaint. He asserts that the Commission's decision to uphold his termination was unsupported by substantial evidence and was arbitrary and capricious. He requests that the court reverse the Decision and schedule a hearing to assess damages as necessary. The City of Leominster opposes the plaintiff's motion and filed a cross-motion for judgment on the pleadings.

After consideration and for the reasons set forth below, Muth's motion for judgment on the pleadings is DENIED and the City of Leominster's cross-motion for judgment on the pleadings is ALLOWED.

BACKGROUND

The court's review of an agency decision is confined to the administrative record. G. L. c. 30A, § 14(5). Here, as required under Superior Court Standing Order No. 1-96, ¶ 2 if alleging that an agency's decision is not supported by substantial evidence or is arbitrary or capricious,

the transcript of the Commission's hearing is incorporated in the administrative record.

Muth was a firefighter, employed by the City from November 2004 until his termination by letter dated August 9, 2010. Prior to his termination, he was involved in several incidents, on and off duty, in which his conduct was affected by the abuse of alcohol and prescription drugs. One such incident was an off duty car accident, in July of 2009, after which, and at the urging of the President of the Leominster Firefighter's Union, Muth voluntarily entered a treatment program. However, he left the program, over the facility's objection, after just twenty-four hours. Later, in December of 2009, while on duty, he was observed laboring to perform general work assignments, failing to perform properly, driving erratically and failing to follow proper procedure with respect to patient care. He was observed attempting to back up his ambulance by closing one eye, experiencing difficulty putting food in his mouth, and having difficulty answering simple questions and recognizing his co-workers. He was sent home because he was impaired to a point that he could not perform his duties as a firefighter. While the investigation for this behavior was ongoing, in January of 2010, the Leominster Police responded to a call from Muth's girlfriend who reported that Muth had consumed seven Vicodin pills along with six beers and was "out of control" and "throwing things."

At a disciplinary hearing in March¹ of 2010, presided over by the Mayor of the City ("Mayor"), Muth contended that his behavior was not caused by alcoholism. When given the opportunity to support this assertion, he provided a doctor's letter explaining that Muth's conduct might have been caused by hypoglycemia. However, the City did not credit Muth's testimony or the doctor's letter. Nevertheless, instead of formal discipline, the City offered Muth a Last Chance Agreement ("LCA"), which Muth signed on April 16, 2010. It required compliance with

¹ The hearing was noticed by a letter from the Mayor, dated January 6, 2010, but delayed until March 16 to accommodate Muth.

certain conditions prior to his reinstatement to active duty, such as comprehensive physical and psychological evaluations to determine Muth's fitness for duty. The LCA also required compliance with conditions following Muth's return to active duty, such as submitting to the guidance and recommendations of a substance abuse counselor. Failure to adhere to these pre and post-reinstatement conditions would result in Muth's immediate termination. In addition, Muth could not, at any time, engage in the same or substantially similar conduct that resulted in his hearing before the Mayor. Doing so would invite termination, at the option of the Mayor, which Muth could not contest unless the action was arbitrary or capricious.

Less than three weeks after Muth signed the LCA, on May 2, 2010, and before he was returned to active duty, he was arrested for negligent operation of a motor vehicle and operating under the influence of drugs. The responding police officer testified he was advised that Muth had struck a traffic sign, almost hit three people in the parking lot, and struck three cars causing minor damage. Muth failed two onsite sobriety tests conducted by the officer.

After some procedural delays, on August 9, 2010, the City held another disciplinary hearing, at which the City determined that there was just cause to terminate Muth's employment based on his May 2, 2010 incident. Muth timely appealed the decision to the Commission. In a detailed decision dated June 30, 2011, the Commission upheld the City's termination of Muth.

DISCUSSION

I. Standard of Review

The court may modify or set aside an administrative agency's decision where the decision exceeded the agency's authority, was based upon an error of law, was unsupported by substantial evidence, or was arbitrary and capricious or otherwise not in accordance with law. Connolly v. Suffolk Cnty. Sheriff's Dept., 62 Mass. App. Ct. 187, 192 (2004), citing G. L. c.

30A, § 14(7). Substantial evidence is evidence “that a reasonable mind might accept as adequate to support a conclusion.” Bournewood Hosp., Inc. v. Mass. Comm’n Against Discrimination, 371 Mass. 303, 317 (1976), citing G.L. c. 30A, § 1(6). “The reviewing court ‘shall [however] give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it.’” Connolly, 62 Mass. App. Ct. at 192. Pursuant to G.L. c. 30A, § 14, it is the function of the agency rather than the court to make findings of fact, and it is the duty of the agency rather than the court to weigh the credibility of the witnesses. Catrone v. State Racing Comm’n, 17 Mass. App. Ct. 484, 486 (1984). The agency has the benefit of observing the witnesses, and thus is better able to make assessments as to the credibility of the testimony. Cherubino v. Bd. of Registration of Chiropractors, 403 Mass. 350, 356 (1988).

In reviewing an agency’s decision, the Court is not permitted to substitute its choice for the agency’s choice between two fairly conflicting views even if the Court would have decided an issue differently if the matter was before it *de novo*. Connolly, 62 Mass. App. Ct. at 192-93, citing Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 529 (1988). “When determining whether an agency decision is supported by substantial evidence, the standard of review is ‘highly deferential’ to the agency.” Id. at 193, citing Hotchkiss v. State Racing Comm’n, 45 Mass. App. Ct. 684, 695 (1988). However, in evaluating the substantiality of the evidence, the court must consider the entire record and take into account anything in the record that fairly detracts from the weight of the evidence supporting the agency’s determination. City of Salem v. Mass. Comm’n Against Discrimination, 44 Mass. App. Ct. 627, 640-41 (1998); Cohen v. Bd. of Registration in Pharmacy, 350 Mass. 246, 253 (1966). The burden of proof is on the appealing party to show that the decision, order or ruling

of the commission appealed from is invalid. Merisme v. Bd. of Appeal on Motor Vehicle Liab. Policies and Bonds, 27 Mass. App. Ct. 470, 474 (1989).

II. Analysis

Muth argues that the Commission's decision ("Decision") was arbitrary and capricious, and unsupported by substantial evidence, under G.L. c. 30A, § 14(7)(e) and (g). "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). Under G.L. c. 31, § 43 (1981 ed.), the Commission's task was to determine, by a preponderance of the evidence, whether there was just cause for the City to terminate Muth's employment. Review of the Decision means, therefore, determining whether there is such evidence in the record "that a reasonable mind might accept as adequate to support [the] conclusion" that Muth's termination was, more likely than not, justified. G.L. c. 30A, §§ 14(5), 1(6); G.L. c. 31, § 43.

In its Decision, the Commission concluded from the evidence before it, and as discussed above, that Muth had a history of dependence on alcohol and prescription drugs which affected his work as a firefighter, justifying his termination in the interest of public safety. Muth's alcohol and prescription drug related off-duty car accident in July of 2009, his impaired state and erratic behavior while on-duty in December of 2009, and the prescription drug and alcohol induced off-duty conduct reported by his girlfriend in January of 2010, all demonstrated "concerning behavior" that was escalating in severity.

Muth counters that the validity of his termination hinges on whether he violated the LCA, specifically, paragraph twelve, which states:

"Mr. Muth and the Union acknowledge that if *at any time* Mr. Muth violates the provisions of the Rules and Regulations of the Fire Department and/or engages or [sic] the same or substantially similar conduct that resulted in his hearing before the Mayor, he may, at the option of the Mayor, be terminated. Muth and the Union each waive any

right to contest such termination; provided, however, that the action not be arbitrary or capricious.”
(Emphasis added).

Muth does not dispute that the circumstances of his May 2, 2010 arrest for negligent operation of a motor vehicle and operating under the influence of drugs constituted “the same or substantially similar conduct that resulted in his hearing before the Mayor.” However, he contends that paragraph twelve governs only his post-reinstatement conduct, and that since he was never reinstated after signing the LCA, he could not have violated paragraph twelve. Furthermore, he asserts that any ambiguity in the LCA must be construed against the drafter, the City.

This court finds no ambiguity in paragraph twelve of the LCA. Notwithstanding the City’s interest in terminating Muth upon the findings of the March 16, 2010 disciplinary hearing, the City offered Muth one last avenue to demonstrate his fitness for duty. To that end, the LCA contains clear pre-reinstatement requirements, clear post-reinstatement requirements, and plainly states in paragraph twelve that the “same or substantially similar” conduct must not occur at any time. Paragraph twelve’s positioning after all the other condition clauses, its dissimilarity to the other clauses with before or after reinstatement delineations, and its plain language, indicate that the “same or substantially similar” prohibition pertained to Muth’s conduct from the moment he signed the LCA. Furthermore, there is no doubt that the City had a public safety interest in monitoring Muth’s conduct prior to reinstatement.

Finally, Muth adds a claim, for the first time, that his due process rights were violated by deficient notice because he thought he was being “called on” by the Commission to defend himself solely on a claim that he violated the LCA. But instead, the Commission ruled on other factors such as suspected alcohol abuse behavior occurring before Muth signed the LCA. “A party is not entitled to raise arguments on appeal that he could have raised, but did not raise,

before the administrative agency[.]” Albert v. Municipal Court of Boston, 388 Mass. 491, 493 (1983). Though Muth did not raise any objection regarding due process notice at the Commission hearing, the court will address it briefly.


As a preliminary matter, the Commission did not initiate any action against Muth. Muth chose to appeal his termination before the Commission. Thus, the cases Muth cites for support are inapposite. See, e.g., LaPointe v. License Bd. of Worcester, 389 Mass. 454 (1983) (considering whether licensing board gave plaintiff sufficient notice of grounds to revoke license where plaintiff received a letter from the board stating that a hearing would be held pertaining to his license without indicating the reason for the hearing). In hearing Muth’s appeal, it was incumbent upon the Commission to determine, by a preponderance of the evidence, whether the City had just cause to terminate Muth’s employment, G.L. c. 31, § 43, and therefore, necessary that it consider all the evidence presented at Muth’s disciplinary hearing. Muth’s assertion also ignores that it was appropriate for the Commission to evaluate the behavior which led to the LCA in order to determine if the May 2, 2010 incident was the same or substantially similar conduct. The Commission did not violate Muth’s due process rights.

This court finds that the Decision was supported by substantial evidence and was not arbitrary or capricious.

ORDER

For the foregoing reasons, it is hereby ORDERED that Muth’s motion for judgment on the pleadings is DENIED, the City of Leominster’s cross-motion is ALLOWED and that the Commission’s decision is AFFIRMED.

Dated: May 2, 2012


James R. Lemire
Justice of the Superior Court