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SUFFOLK, ss.
COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

Notice sent
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R. L. Q., JR.

S. E. B.

LAW OFFS. OF

S. B.

K. M. F.

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT
CIVIL ACTION
NO. 12-03498G

DENNIS PERKINS

vs.

CIVIL SERVICE COMMISSION & another¹

(sc)

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

Notice resent

11/25/2014

R. L. Q., JR.

S. E. B.

LAW OFFS. OF

S. B.

K. M. F.

INTRODUCTION

(sc)

This is an appeal from a decision of the Civil Service Commission (the "CSC") affirming a decision by the City of Attleboro (the "City") to discipline the plaintiff, Dennis Perkins ("Perkins"), an Attleboro firefighter. The discipline was based on an on-duty incident involving Perkins and a subordinate firefighter on July 4, 2009. Perkins argues that the City lacked just cause for imposing the discipline and therefore the CSC exceeded its authority in affirming the City's disciplinary action and rendered an arbitrary or capricious decision, unsupported by substantial evidence. Perkins asks this court to reverse the CSC's decision, restore him to his position prior to discipline including lost compensation and benefits, and assess the City all fees and costs associated with this action and the appeal to the CSC.

After a hearing and careful review of the parties' submissions, Plaintiff's Motion for Judgment on the Pleadings is **DENIED** and the decision to discipline Plaintiff is affirmed.

¹City of Attleboro

BACKGROUND²

Perkins was appointed as a full time firefighter/paramedic with the City in July of 2000, and was promoted to the position of Captain on December 1, 2002. On July 4, 2009, while on duty, Perkins was involved in a verbal altercation with a subordinate firefighter, Vincent Bailey (“Bailey”), at the South Attleboro Fire Station (the “Station”). The City then initiated an investigation of Perkins’ conduct on July 4, 2009, as well as past alleged incidents involving Perkins and Bailey.

On August 5, 2009, the City suspended Perkins for two tours of duty – the equivalent of one work-week – based on Perkins’ conduct on July 4, 2009, and past incidents with Bailey. Specifically, the City found that Perkins displayed poor judgment and a lapse of leadership in handling the July 4, 2009, altercation with Bailey, and that Perkins had made inappropriate comments in the workplace to Bailey in the past.

Perkins appealed the City’s disciplinary action to the CSC. Five days of hearings were held between March 12, 2010, and November 22, 2010. Fifty-seven exhibits were received and twenty-two witnesses were called to testify. On August 23, 2012, CSC Commissioner, Paul Stein (“Stein”), dismissed Perkins’ appeal and upheld the City’s disciplinary action. Specifically, Stein found that Perkins’ actions on July 4, 2009, showed poor judgment and that the degree of discipline imposed by the City was reasonable and appropriate.

Perkins now appeals the CSC’s decision affirming the City’s disciplinary action to this court pursuant to G. L. c. 30A, § 14(7).

²The facts are taken from CSC Commissioner Paul Stein’s findings of fact in his August 23, 2012, decision.

DISCUSSION

Massachusetts General Laws c. 30A, § 14(7) permits the court to “set aside or modify [an agency] decision.” G. L. c. 30A, § 14(7). The court is permitted to set aside an agency decision only under circumstances specifically enumerated by that statute. City of Brookline v. Commissioner of Env'tl. Quality Eng'g, 398 Mass. 404, 410 (1986). Those circumstances include, *inter alia*, where an agency exceeds its authority, renders a decision not supported by substantial evidence or is arbitrary or capricious. See G. L. c. 30A, § 14(7)(b) (exceeds authority); (e) (substantial evidence); and (g) (arbitrary and capricious).

The scope of the court's review is “highly deferential to the agency on questions of fact and reasonable inferences drawn therefrom.” Flint v. Commissioner of Pub. Welfare, 412 Mass. 416, 420 (1992). The court gives “due weight to the experience, technical competence and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it.” Id.

Perkins asserts that the CSC exceeded its authority by finding its own basis to justify Perkins' discipline and that the CSC's decision was not supported by substantial evidence and was arbitrary or capricious. Perkins' claims are without merit.

In an appeal before the CSC, the appointing authority must show by a preponderance of the evidence that there was just cause for the action taken. G. L. c. 31 § 43. The CSC's role is to determine whether “the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken.” City of Cambridge v. Civil Serv. Comm'n, 43 Mass. App. Ct. 300, 303 (1997). In making this determination, the CSC is not limited to reviewing only the evidence that was before the appointing authority. City of Leominster v.

Stratton, 58 Mass. App. Ct. 726, 727 (2003). The CSC is authorized to “hear[] evidence and find facts anew.” Id. The question for the CSC is “not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the [CSC], there was reasonable justification for the action taken by the appointing authority in the circumstances found by [CSC] to have existed when the appointing authority made its decision. Town of Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983).

Here, the City disciplined Perkins based on the altercation with Bailey on July 4, 2009, as well as alleged inappropriate comments Perkins made to Bailey in the past.³ Thus, on Perkins’ appeal from the City’s action, it was the City’s burden to show beyond a preponderance of evidence that it had just cause to discipline Perkins. The CSC acted well within its statutory authority in affirming the City’s disciplinary action.

After five days of hearings, fifty-seven exhibits and twenty-two witnesses, CSC Commissioner Stein upheld the City’s disciplinary action against Perkins. Stein determined that the City had not met its burden with respect to the alleged inappropriate statements made by Perkins to Bailey in the past as constituting just cause for discipline. However, Stein found that the City had met its burden as far as Perkins’ actions on July 4, 2009, constituting just cause for disciplining Perkins. The pertinent portion of Stein’s decision provides:

... Attleboro met its burden – by a preponderance of the evidence – to establish just cause for the discipline imposed on [Perkins] . . . [T]he evidence did establish that Capt. Perkins used poor judgment in handling Firefighter Bailey’s insubordination

³Specifically, the City stated in its letter to Perkins the two grounds for its disciplinary action: “(1) On July 4, 2009 you engaged in a verbal confrontation with Firefighter Vincent Bailey concerning his assignment for the day, which nearly escalated into physical altercation due to your poor judgment and lapse of leadership in handling the situation. (2) You have in the past made other remarks to Firefighter Bailey suggesting that people need to watch their wallets in his presence and asking him to shine your shoes. These comments are inappropriate in the workplace and show poor judgment and leadership on your part.”

(sc)

(sc)


on July 4, 2009. His two-tour suspension, accompanied by anger management training, was not out-of-line as appropriate remedial discipline for such behavior by a senior ranking fire officer . . .

. . . Attleboro rightly may expect that commanding officers demonstrate effective management of problem employees at all times and show particular sensitivity to personality quirks of individual firefighters. Good management skill is less critical with model employees than with those who are less than stellar and known as such. In this regard, Capt. Perkins [sic] handling of the July 4, 2009 altercation with his subordinate, which led Firefighter Bailey to walk off the job, fell short of what Attleboro was entitled to expect. Had another Captain not been present to intervene, the situation likely would have escalated even further than it did. Attleboro had just cause to impose some level of progressive discipline and anger management training for Capt. Perkins's lapse in judgment in crisis management during that July 1 [sic], 2009 incident.

Perkins' allegation that the CSC exceeded its authority by "finding its own basis" to justify discipline is unfounded. Indeed, the CSC affirmed the City's disciplinary action on the same basis for which it was issued: Perkins' poor judgment in handling the July 4, 2009, altercation with subordinate firefighter Bailey. The CSC's decision was based on consideration and review of an extensive record. The decision was well reasoned and sufficiently supported by the evidence considering the CSC's role in a case such as this. Thus, the CSC's decision was also supported by substantial evidence and not arbitrary or capricious.

ORDER

For the foregoing reasons, Plaintiff's Motion for Judgment on the Pleadings is **DENIED**.
Judgment shall enter for Defendants and the decision to discipline Plaintiff is affirmed.



Carol S. Ball
Justice of the Superior Court

Dated this 22nd-day of October, 2014