

NOTING
COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2013-2485A

RECEIVED

2014 MAR 27 P 1:29

JEAN QUINTIN

COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

vs.

CITY OF NEW BEDFORD and
CIVIL SERVICE COMMISSION

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S MOTION
FOR JUDGMENT ON THE PLEADINGS AND DEFENDANT CITY OF NEW
BEDFORD'S CROSS-MOTION FOR JUDGMENT ON THE PLEADINGS

INTRODUCTION

Notice sent 03.26.14
RLQ
AAG
ET
JLS
LOOL
(md)
This action is for judicial review of a decision of the Civil Service Commission upholding the City of New Bedford's discharge of the plaintiff from her position as an emergency medical technician. Before the Court are cross-motions for judgment on the pleadings, pursuant to G. L. c. 30A, § 14(7), and Superior Court Standing Order 1-96. For the reasons that will be explained, the Court will deny the plaintiff's motion, allow the City's cross-motion (although not on the grounds the City argues), and order entry of judgment affirming the decision of the Civil Service Commission.

BACKGROUND

The plaintiff, Jean Quinton, worked as an emergency medical technician for the City of New Bedford Emergency Medical Services Department from 1991 until her discharge on May 9, 2011. She received a "Letter of Clinical Deficiency" on one occasion during that period, in 2008 or 2009.¹ On various dates beginning in June of 2010, she was assigned to work with paramedic Debra Norcross. As a paramedic, Norcross was higher in the chain of command than Quintin.

¹The record provides conflicting dates on this point.

Quinton v. New Bedford

Quintin and Norcross experienced various conflicts, with a level of intensity such that the City's Department of Labor Relations intervened, directing both to "immediately conduct themselves with the highest degree of professionalism," and warning them that further "inappropriate work behaviors" would be brought to the attention of their supervisors.

Quintin and Norcross responded to an emergency call together on April 12, 2011. During a training session two days later, conflict erupted between the two such as to disrupt the session. Immediately thereafter, Quinton reported to her supervisors that during the emergency transport on April 12, 2011, at Norcross's insistence, she had administered epinephrine to the patient through an endotracheal tube, although such administration was outside the scope of Quintin's training as an EMT, and was prohibited by EMS protocols.

The deputy director of the department conducted an internal investigation, including interviews with the two firefighters who were present during the incident, and interviews with both Quintin and Norcross in the presence of a union steward. Quintin reiterated her allegation both orally and in a written report, but Norcross denied it. Quintin also, on her own initiative, reported the matter to the state licensing body. The deputy director was unable to reach a "definitive conclusion," but decided that he would accept Quintin "at her word" that she had performed the procedure. On that basis, he recommended that the City terminate both Quintin and Norcross.

By letter dated April 29, 2011, the department director notified Quintin that she was suspended immediately, and that he was contemplating discharging her for the "specific reason" that: "You advised me that you administered a medication via endotracheal tube on April 12, 2011. You acted beyond the scope of training" as outline in cited regulations. "This comes after

the Letter of Clinical Deficiency you received in 2008.” After a hearing held on May 5, 2011, the director decided to discharge Quintin. He notified her of that decision by letter dated May 9, 2011, stating the following as grounds:

Based on the testimony and evidence presented at that hearing, I find there is just cause for your suspension and termination. Following a training class on April 14, 2011, you reported that on April 12, 2011, you gave Epinephrine 1:10000 via Endotracheal Tube to a patient in Cardiac Arrest. You stated that you were aware this practice was prohibited at your level of training as referenced by the CMR’s mentioned above, yet, despite knowing it was prohibited, you gave the medication to a patient. This incident occurred after a Letter of Clinical Deficiency was issued you in 2008. It is my understanding that you have self-reported your actions of April 12, 2011 to the Massachusetts Department of Public Health Emergency Medical Services. As a result of your actions on April 12, 2011, I find just cause for your suspension and termination for knowingly violating 105 CMR 170.810 and 105 CMR 170.820 and the Statewide Treatment Protocols.

Quintin appealed her discharge to the Civil Service Commission, which held a hearing on November 11, 2011, and issued its decision on June 18, 2013. The Commission found that Quintin’s testimony that she had administered the medication was not credible, and that no other evidence indicated that she did so. On that basis, the Commission found, by a preponderance of the evidence, that Quintin did not do so. The majority of the Commission concluded, nevertheless, that the City had good cause to discharge Quintin because “by making statements that showed she could not be trusted to act within the scope of her training, Ms. Quinton caused her superiors to lose faith in her as a provider, as they did not believe this behavior could be corrected through remedial training.” The Commission further concluded that “The fact that Ms. Quintin’s allegations against Ms. Norcross were false . . . only serves to exacerbate Ms. Quintin’s

serious lack of judgment. She breached the City's trust in her."²

Quintin, in her appeal to this Court, accepts the Commission's finding that she gave false statements to her superiors and to the state licensing body, as well as false testimony to the Commission. She also does not dispute that such conduct would be legitimate ground for termination. She argues, however, that the Commission erred in upholding her termination on that ground because that was not the ground cited by the City in its notice to her. The City argues that the Commission's factual finding that Quintin did not administer the medication as she claimed was not supported by substantial evidence. On that basis, the City contends that the Court should affirm the Commission's decision to uphold the discharge, not on the ground cited by the Commission, but on the City's original ground. The Commission, through the Attorney General, urges the Court to uphold the Commission's decision on the ground stated by the Commission.

DISCUSSION

Pursuant to G. L. c. 30A, § 14(7), this Court may reverse, remand, or modify an agency decision if "the substantial rights of any party may have been prejudiced" because the agency decision is based on an error of law or on unlawful procedure, arbitrary and capricious, or unwarranted by facts found by the agency based on substantial evidence. Substantial evidence is evidence that "a reasonable mind might accept as adequate to support a conclusion, . . . taking

²One member dissented from the result, although not from the factual findings; the dissenter expressed the view that, "since [Quintin] was not found guilty of the misconduct for which she was terminated – i.e. giving medication to patient in violation of her duty of care – the City of New Bedford has not proved just cause for her termination. I would uphold the discipline but modify it to a short term suspension"

into account whatever in the record fairly detracts from the weight of the evidence.” *Cepulonis v. Commissioner of Correction*, 15 Mass. App. Ct. 292, 296 (1983), internal citations omitted. The plaintiff bears the burden of demonstrating the invalidity of the agency’s decision. *Merisme v. Board of Appeal on Motor Vehicle Liab. Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989).

In reviewing an agency decision, the Court is required to “give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it” by statute. G. L. 30A, § 14(7) (1997); *Flint v. Commissioner of Pub. Welfare*, 412 Mass. 416, 420 (1992); *Seagram Distillers Co. v. Alcoholic Beverages Control Comm’n*, 401 Mass. 713, 721 (1988). The Court’s review “is highly deferential to the agency on questions of fact and reasonable inferences drawn therefrom.” *Police Department of Boston v. Kavaleski*, 463 Mass. 680, 689 (2012), quoting *Brackett v. Civil Service Comm’n*, 447 Mass. 233, 241 (2006). Determinations of credibility are for the agency, not the reviewing court. *Cepulonis v. Commissioner of Correction*, 15 Mass. App. Ct. at 295. The reviewing court may not substitute its judgment for that of the agency. *Southern Worcester County Regional Vocational Sch. v. Labor Relations Comm’n*, 386 Mass. 414, 420-21 (1982), citing *Olde Towne Liquor Store, Inc. v. Alcoholic Beverages Control Comm’n*, 372 Mass. 152, 154 (1977). Nor may a court reject an administrative agency’s choice between two conflicting views, even though the court justifiably would have made a different choice had the matter been presented *de novo*. *Zoning Bd. of Appeals v. Housing Appeals Comm’n*, 385 Mass. 651, 657 (1982) (citations omitted).

Here, the Commission’s finding that Quintin did not administer the medication as she claimed rested on its judgment of her credibility, along with the absence of evidence to

corroborate her assertions. This Court has no power to second-guess the Commission's credibility determination. Without Quintin's statements and testimony, nothing in the record indicated that she had done what she claimed. The Commission's finding that she did not is therefore fully consistent with the evidence it credited. The validity of its decision thus turns on whether it could properly uphold the discharge based on her fabrication, rather than based on the conduct she claimed to have committed.

As Quintin points out, appellate decisions have recognized that an employee is entitled to notice of the ground for the employer's action. Thus, in a proceeding before the Civil Service Commission, "the appointing authority can rely only on those reasons for [its action] that it gave to the employee in writing." *Gloucester v. Civil Serv. Comm'n*, 408 Mass. 292, 297 (1990). Similarly, "a decision of the commission is not justified if it is not based on the reasons specified in the charges brought by the appointment authority." *Murray v. Second District Court of Eastern Middlesex*, 389 Mass. 508, 516 (1983).

The courts have also recognized, however, that the Commission's role is not merely to conduct a record review of the proceeding before the appointing authority; the Commission conducts a full evidentiary hearing, and finds facts *de novo*. *Falmouth v. Civil Serv. Comm'n*, 447 Mass. 814, 823 (2006); *City of Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727 (2003). The question the Commissioner is called upon to decide is whether, "on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision." *Id.* at 728. Thus, the Commission may consider evidence the appointing authority did not hear, and facts the appointing authority did not identify, as long as the appointing

authority's notice is sufficient to alert the employee to the event in issue. See *Sullivan v. Municipal Court of Roxbury Dist.*, 322 Mass. 566, 572 (1948) (hearing officer could properly consider all of employee's conduct on occasion of event cited in employer's notice).

Here, the department director's April 29, 2011, letter to Quintin notified her that he would conduct a hearing to determine whether to discharge her because she had "advised [him] that you administered a medication via endotracheal tube on April 12, 2011. You acted beyond the scope of training." That notice should have left her with no uncertainty that her conduct during the emergency call on that date, and her statements about that event, were in issue. See *Sullivan, supra*. After the hearing, the director notified Quintin, by letter dated May 9, 2011, that he was discharging her because of her actions on April 12, 2011, "[b]ased on the testimony and evidence presented at that hearing," including her report of having given the medication despite her knowledge that "this practice was prohibited." This letter, in combination with the earlier one, should have fully informed Quintin that her own statements regarding her conduct established the grounds for her discharge. Thus, when she appeared before the Civil Service Commission, Quintin should have fully understood that the veracity of her statements regarding the event of April 12, 2011, was central to the issues the Commission would decide.

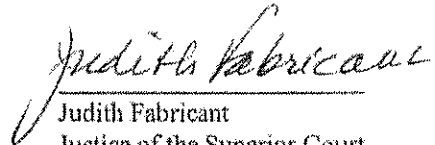
It is true that the City never explicitly advised Quintin that if what she said was false, it would discharge her for the falsehood. The City had no occasion to do so, because it accepted her statements as true. But she can hardly claim to have been prejudiced by the difference between the City's articulation of the ground for the discharge and that of the Commission; the facts on which both turned, and the evidence to prove those facts, were the same. Quintin does not argue that had she known the Commission might uphold her discharge on the ground that it

did, she would have offered some different evidence, or pursued some different strategy. Indeed, that would be quite a difficult argument to make in light of her testimony under oath before the Commission. The Court concludes that the notice Quintin received was fully adequate to encompass the ground on which the Commission based its decision.

Nor is the Court persuaded by Quintin's contention that the Commission's decision was arbitrary and capricious. The Commission found, with substantial evidentiary support, that Quintin fabricated her own misconduct and that of her co-worker, apparently out of malice toward the co-worker; that she reported the fabricated claim both to her superiors and to the state licensing body; and that she persisted in the falsehood in sworn testimony to the Commission. Based on those findings, the Commission's conclusion that Quintin demonstrated "a serious lack of judgment," and "breached the City's trust in her, caus[ing] her superiors to lose faith in her as a provider" was well founded. The Court can hardly disagree with the Commission's determination that such conduct constituted good cause for discharge of an employee holding a position as a licensed provider of critical health care services to members of the public in situations of life-threatening emergency.

CONCLUSION AND ORDER

For the reasons stated, the Plaintiff's Motion for Judgment on the Pleadings is DENIED,
and the City of New Bedford's Cross-Motion for Judgment on the Pleadings is ALLOWED.
The Court orders entry of JUDGMENT affirming the decision of the Civil Service Commission.


Judith Fabricant
Justice of the Superior Court

March 24, 2014