

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

08-P-1405

GREGORY J. RATTA

vs.

CIVIL SERVICE COMMISSION.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Gregory J. Ratta appeals from a Superior Court judgment upholding the Civil Service Commission's (commission) decision that the town of Watertown had just cause for his termination. We affirm.

I. Background. Watertown employed Ratta from August, 1987, until January, 2002. Ratta held the position of skilled maintenance craftsperson (SMC) during the time at issue. Ratta performed his duties satisfactorily until May, 2001, when a random drug test (conducted pursuant to Watertown's drug and alcohol testing policy) yielded a positive/abnormal result. Ratta was suspended for sixty days, and an arbitrator upheld the suspension.

On November 17, 2001, Ratta was arrested for operating under the influence of alcohol (OUI). He refused a breathalyzer test, which led to an automatic suspension of his driver's license. On November, 18, 2001, Ratta received a fifteen-day temporary license, effective through December 2, 2001. He did not inform his superiors about the arrest, claiming to be sick while making

court appearances. After his supervisors found out about his license suspension, Ratta was placed on administrative leave.

On January 22, 2002, after taking testimony, including Ratta's, a hearing officer designated by the town manager recommended the termination of Ratta's employment. The town manager adopted the recommendation and terminated Ratta. Pursuant to G. L. c. 31, § 43, Ratta challenged Watertown's decision to the commission. On September 28, 2004, a hearing was held before the commission, with Ratta testifying. Ratta claimed that a valid driver's license is not an essential requirement of his position, and he had not been untruthful to his supervisors. Further, he presented two town employees who had not been terminated despite similar conduct. The commission determined that Watertown demonstrated just cause for terminating Ratta by a preponderance of the evidence, as required by G. L. c. 31, § 43. Ratta next brought the case before a Superior Court judge, pursuant to G. L. c. 30A, § 14. The judge affirmed, concluding that the commission had substantial evidence for its findings and its decision was not arbitrary or capricious.

II. Discussion. A. In disputing the commission's just-cause termination, Ratta argues that there was not substantial evidence to support the commission's findings that (1) a valid driver's license is required; (2) that he was untruthful to his supervisors; and (3) that his recent disciplinary history

demonstrated just cause.¹ Just cause for termination is established by employee performance constituting "substantial misconduct which adversely affects the public interest." Police Dept. of Boston v. Collins, 48 Mass. App. Ct. 408, 411 (2000).

(1) The commission found that possessing a valid driver's license was an essential requirement. The evidence presented indicated that Ratta needed daily use of multiple trucks to perform his job duties, such as responding to sewer backups and plowing. We therefore conclude that substantial evidence justified the commission's conclusion that a valid driver's license was an essential requirement of a SMC.²

(2) The commission concluded that Ratta's statements to his supervisors were untruthful and provided just cause for his

¹ A commission's decision is reviewed by giving "due weight to the experience, technical competence, and specialized knowledge of the agency." G. L. c. 30A, § 14(7), as appearing in St. 1973, c. 1114, § 3. We must determine if the agency decision is supported by substantial evidence. Flint v. Commissioner of Pub. Welfare, 412 Mass. 416, 420 (1992). A commission's decision is arbitrary and capricious if it "lacks any rational explanation that reasonable persons might support." Cambridge v. Civil Serv. Commn., 43 Mass. App. Ct. 300, 303 (1997).

² Ratta's assertion that "[b]y the terms of the collective bargaining agreement, the driver's license requirement was not applicable to Ratta," mischaracterizes that agreement, as the provision he cites exempts employees who were hired before July 1, 1994, from the requirement of possessing a commercial driver's license. In any event, the agreement does not "exempt" employees such as Ratta from any possible disciplinary action for losing a commercial license.

termination.³ The commission heard evidence that Ratta concealed his OUI charge and made misleading statements regarding the status of his driver's license. Ratta contends that the commission erred in finding that he was untruthful because in a conversation with his supervisor on December 5, 2001, Ratta had said that he "may not have a license by the end of the week." Rather, Ratta claims that he had made a truthful statement that he "would not have a license by the end of the week." The statement was dishonest regardless because Ratta did not have a valid license on that day. The commission found that Ratta's contention that the temporary driver's license lasted fifteen business days "strains credulity." Accordingly, the substitution of "may" in place of "would" does not undermine the commission's finding that Ratta was untruthful. Moreover, the commission found additional evidence to support the conclusion that Ratta had been untruthful. Ratta took affirmative steps to conceal the truth after his arrest on the OUI charge, and was not candid with his supervisors about his driver's license suspensions. In sum, there was substantial evidence that Ratta had been untruthful.

(3) Ratta objects to the commission's determination that dismissal was justified because "in a relatively short time

³ An employee's untruthfulness during an internal investigation can satisfy just cause for termination. See Police Commr. of Boston v. Civil Serv. Commn., 39 Mass. App. Ct. 594 (1996).

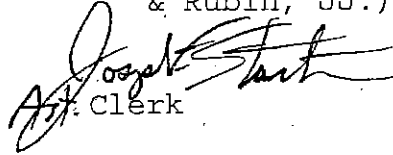
frame, [Ratta] had been involved in two . . . significant disciplinary incidents, both of which involved substance abuse and rendered him unable to perform many of the essential functions of job." Arguing that classifying an abnormal result to a drug test as substance abuse is "a substantial leap," Ratta contends that the prior disciplinary record does not justify termination. Whether the characterization of "substance abuse" was appropriate, it was reasonable for the commission to find that the two disciplinary actions for drug use and OUI, within six months of each other, provided just cause to terminate Ratta.

B. Ratta argues that the difference in treatment that Watertown accorded to him compared to two employees with similar records demonstrates that the commission's decision was arbitrary and capricious. See G. L. c. 30A, § 14(7). Ratta contends that "the Commission simply dismissed this evidence by concluding that [Ratta's] situation was distinguishable." We disagree because there are multiple reasons that his situation is distinguishable. First, both employees, whom we shall refer to as "B" and "C," were forthcoming to their supervisors about their OUI charges. Second, the time lapse between B's two incidents was more than ten years. Third, C did not have a prior disciplinary history, and his OUI offense did not occur on the heels of a positive drug

test.

Judgment affirmed.

By the Court (Kafker, Katzmann
& Rubin, JJ.),


Ast. Clerk

Entered: October 29, 2009.