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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. MICV 20cv934-B

FRAMINGHAM HOUSING AUTHORITY,
Plaintiff,

vs.

IMRE SERFOZO and CIVIL SERVICE COMMISSION,
Defendants.

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

The Framingham Housing Authority ("FHA") terminated the employment of Imre Serfozo ("Mr. Serfozo") on the ground that he abandoned his job. FHA has filed this appeal under G. L. c. 30A, § 14 from a final decision, dated March 12, 2020 ("Decision") of the Civil Service Commission ("Commission") reversing the HA's termination. Pursuant to Standing Order 1-96, FHA has filed "Plaintiff's Motion for Judgment on the Pleadings" ("Motion"), which Mr. Serfozo has opposed orally and in writing. The Commission has opposed the Motion orally. The Court held a zoom hearing on the Motion on July 1, 2021. After review of the administrative record, motion and memorandum and upon consideration of oral arguments, the Motion is **DENIED**.

BACKGROUND

The Commission's Decision sets forth 44 paragraphs of factual findings, comprising 9 full pages. A brief summary suffices for purposes of the Motion.

Mr. Serfozo was hired by the FHA on May 16, 2011 as a Maintenance Aide. Because of a medical restriction throughout his employment, he was accommodated with

light duty assignments. He had no disciplinary issues, although he had been counseled for quality of work issues.

Because of a non-work-related automobile accident, Mr. Serfozo went out on sick leave on November 26, 2018. He was cleared for duty on December10, 2018 and returned to work on December 11, 2018. As he was punching out on December 11, one of the FHA mechanics confronted him and made offensive and threatening comments. Mr. Serfozo tried to ignore this outburst, but the mechanic approached and appeared about to strike him when co-workers intervened. Mr. Serfozo reported the matter to the Police and submitted a written complaint to the FHA, which imposed a two-day suspension on the mechanic.

Mr. Serfozo visited a doctor on December 12, and received a prescription to relieve anxiety, as well as a doctor's note which stated: "Please excuse Imre Serfozo from work 12/12/18 through 12/16/18 due to medical reasons." He sent text messages regarding further absences for sick leave for December 17 to 21 and December 17 to December 31, 2018. In each case, Mr. Serfozo provided a doctor's note to a colleague who placed it in the mailbox he believed was assigned to Mr. Serfozo's supervisor, Mr. Camerato. Mr. Camerato denied ever receiving the notes. On December 24, 2018, Mr. Serfozo sent a text message to Mr. Camerato stating that he was "out for sick for further notice" and said he would prove a doctor's note.

For the period December 13, 2018 through December 31, 2018, Mr. Serfozo's personnel time records reflected 12 days of absence for "Sick – no doc."

On December 28, 2018, FHA Director Landers contacted Mr. Serfozo and told him that the complaint about the mechanic "was all taken care of." Mr. Serfozo stated that he was not satisfied.

On January 3, 2019, Mr. Serfozo saw his doctor who provided him with a doctor's note stating:

> My understanding is that Imre Serfozo was attacked at work, his coworker attempted to strike him but was kept off by other coworkers.
>
> This is not a reasonable work situation. Imre Serfozo has a heart condition and no one should have to work alongside [a person] who has attempted to attack him.
>
> It is medically necessary for Imre Serfozo not to work with his attempted attacker.

As before, Mr. Serfozo provided the note to his co-worker who placed it in the mailbox that he understood was assigned to Mr. Camerato, who later denied receiving it.

On January 8, 2019, FHA counsel wrote to Mr. Serfozo's attorney, stating that FHA had not received the promised medical documentation and that FHA would consider disciplinary action based on Mr. Serfozo's apparent decision to abandon his job unless Mr. Serfozo returned to work or "appropriate supporting medical documentation" was submitted by Friday, January 11, 2019. FHA followed up with an e-mail on January 17, 2019 reporting the absence of any reply to the January 8 letter and stating that Mr. Serfozo "apparently abandoned his job" and, if not "immediate communication and an explanation of events is essential." Mr. Serfozo's attorney never responded to either letter.

By letter dated January 22, 2019, the FHA Deputy Executive Director informed Mr. Serfozo that the FHA "effective immediately has terminated your employment, as evidenced by your job abandonment." On January 23, 2019, Mr. Serfozo, through his

union filed a grievance protesting his termination. Ultimately, Mr. Landers rescinded the January 22, 2019 so that a civil service disciplinary proceeding could commence immediately. The FHA board convened that hearing on February 21, 2019. After meeting in executive session is concluded that Mr. Serfozo "abandoned [his] job by failing to appear for work for a roughly six-week period, without explanation or excuse, despite the Authority's repeated requests for supporting medical information." It therefore terminated Mr. Serfozo's employment.

Mr. Serfozo appealed the City's decision to the Commission on January 28, 2019, which scheduled a hearing for May 7, 2019 and June 21, 2019. After an evidentiary hearing, the Hearing Officer issued the Decision, reversing the termination. The Commission found:

> The FHA failed to prove that it had just cause to terminate Mr. Serfozo from his employment as a Maintenance Aide. The preponderance of the evidence proved that he did not abandon his job. His absence from work after the December 11, 2018 incident in which he was threatened by a coworker was due to his fear of returning to duty without assurance that the offensive behavior to which he was subjected would not be repeated in the future. He put the FHA on notice of his concerns and procured two letters from is doctor that supported his absence for medical reasons. He keep his supervisor personally informed of his absences through the end of December and, upon learning that the FHA had "taken care of" the incident (by a two-day suspension) without interviewing him or other witnesses, he engaged an attorney to advocate for his "safe" return to work and obtained a third doctor's note to excuse his continued absence until further notice. I find his concerns were reasonable and made in good faith.

The hearing officer specifically found credible the testimony of Mr. Serfozo and his co-worker. He found Mr. Camerato's testimony "less credible" in claiming that he never received the doctors' notes. He found "that Mr. Serfozo remained out of work on his doctor's orders and that he did not abandon his job but wanted to return to duty only after he was assured that the FHA took appropriate measures to protect him from further

verbal and physical threats from the co-worker . . .." The Hearing officer also pointed out that, no later than January 22, 2019, FHA knew that Mr. Serfozo disputed Mr. Landers' contention that he abandoned his job. By February 8, 2019, the FHA was fully aware that Mr. Serfozo had procured contemporaneous medical documentation supporting his absence from December 12, 2018 to that date. By February 8, 2019, any uncertainty about Mr. Serfozo's intentions not to abandon his job "was fully clarified."

FHA timely appealed to this Court.

DISCUSSION

A. Standard of Review

Under G. L. c. 30A, § 14(7), this Court has limited power to set aside or modify the Decision. It may do so if his substantial rights may have been prejudiced because the agency decision is based on an error of law or on unlawful procedure, is arbitrary and capricious or unwarranted by facts found by the agency, or is unsupported by substantial evidence. G. L. c. 30A, § 14(7)(c)-(g).

The appealing party bears the burden of demonstrating the invalidity of the agency decision. See Bagley v. Contributory Ret. Appeal Bd., 397 Mass. 255, 258 (1986). The Supreme Judicial Court has noted that the appellant's "'burden is heavy.'" Springfield v. Dep't of Telecomms. & Cable, 457 Mass. 562, 568 (2010) (citation omitted). The Commission must uphold the City's decision to impose discipline if 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.'" Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006), quoting Cambridge v. Civil Service Comm'n, 43 Mass. App. Ct. 300, 303 (1997).

The FHA first claims (Motion at 1) that the Commission "applied the wrong legal standard and usurped the FHA's exclusive authority to make judgments in the agency's best interests." This argument requires consideration of the relative authority of the FHA and the Commission. FHA argues that its decisions whether there was just cause to terminate Mr. Serfozo – and the subsidiary finding that he abandoned his position – are matters of local discretion. But "the statute requires that suspension rest on "just cause" and charges the commission with the duty of deciding whether such cause existed." Board of Selectmen of Framingham v. Civil Service Commission, 366 Mass. 547, 552-553 (1974). See also Boston Police Department v. Civil Service Commission, 48 Mass. App. Ct. 408, 412-413 (2000) ("The role of the commission was to determine whether the department proved, by a preponderance of evidence, just cause for the action taken."). Compare City of Gloucester v. Civil Service Commission, 408 Mass. 292, 300 (in the absence of a pretext designed to circumvent merit principles, "the judgment of municipal officials in setting the municipality's priorities and in identifying the goods and services that are affordable and those that are not cannot be subject to the commission's veto.").

The question before the Commission was factual: did Mr. Serfozo abandon his job or not? In finding that, as a matter of fact, Mr. Serfozo did not abandon his position, the Commission was determining whether just cause existed, which is fully within its statutory authority. This is not a case like the ones on which the FHA relies, where the Commission found just cause, but made judgments going beyond that question. In one such case, the Commission could not reduce a penalty that had "reasonable justification," since the duration of a suspension is a local discretionary matter in the absence of violation of merit principles. Town of Falmouth v. Civil Service Commission, 447 Mass.

814, 826 (2006) ("The commission is not free to modify the penalty imposed by the town on the basis of essentially similar fact finding without an adequate explanation."). In another case, the Commission could not rely on mitigating factors to set aside discipline that the Police Department imposed on a police officer who had acted to provide just case for discipline because he "violated departmental rules of conduct." Boston Police Department, 48 Mass. App. Ct. at 412-413 ("Police rules of conduct and their enforcement are policy matters that, absent 'overtones of political control or objectives unrelated to merit standards or neutrally applied public policy,' . . . are beyond the commission's reach" where). It is true that these cases acknowledged and preserved the Commission's authority to act where otherwise prohibited if the local decision reflected violation of basic merit principles. See G.L. c. 31, § 1. But that does not limit the Commission's duty and authority to determine whether the local authority had "just cause" in the first place under G.L. c. 31, §§ 41, 43. Nothing in the statutes or case law suggests that a civil service employee's right to be free of termination without just cause applies only if employee can make the relatively difficult showing of favoritism, political considerations and bias. The protection against adverse action without "just cause" is a separate and free-standing right. Because the question in this case concerned only the existence of just cause founded upon specific facts of one employee's alleged job abandonment, the Commission did not intrude into any area reserved for local judgment.

It is also worth noting that the Commission questioned the credibility of one of the FHA's supervisors on a pure question of fact (receipt of doctors' notes) and found that the FHA had all the facts before it on February 21, 2018, making reliance on alleged prior non-communication moot. That the FHA had previously already issued a

termination notice – which it had to rescind once alerted to its Civil Service obligations – cast further question on the employee's ability to obtain fair consideration. The Commission's role in deciding just cause provides a more objective and dispassionate way to ensure that the statutory rights of civil service employees are respected.

It follows that "on the facts found by the commission" there was no job abandonment, and therefore no "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." See City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-8 (2003).

The FHA also asserts that the Decision "is not supported by substantial evidence and is arbitrary and capricious." Motion at 2. Substantial evidence is "such evidence as a reasonable mind might accept as adequate to support a conclusion." G. L. c. 30A, § 1(6). The court must consider the entire record, including whatever "fairly detracts" from the agency's finding, but the Court has no power to substitute its judgment for that of the agency if the record contains substantial evidence to support conflicting propositions; nor may it second guess the agency's judgment regarding credibility of witnesses and the weight to be given to particular evidence. See Doherty v. Retirement Commission of Medford, 425 Mass. 130, 135 (1997). When 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." G. L. c. 30A, § 14(7).

FHA argues that its decision should be evaluated as of the rescinded termination notice of January 22, 2018, but has to concede that the only termination for Civil Service

purposes did not occur until the FHA Board meeting in February, 2019. Otherwise, FHA would have to concede that it pre-judged the matter.

The Commission's reference to the doctor's note as excusing Mr. Serfozo's absence "until further notice" is at worst an unfortunate choice of words. The note indisputably had no end date – that it, no date for return to work. Such minor discrepancies do not rise to the level of reversible error, if they are error at all. Moreover, the note said that "[i]t is medically necessary for Imre Serfozo not to work with his attempted attacker." FHA replies that Mr. Serfozo did not work with the attacker; they were only together at the time of punching in and out for work – but that is exactly the time when the prior attack occurred. The basic principle at play is the medical necessity for Mr. Serfozo not to work in circumstances that led to the prior attack.

Finally, FHA argues that the Commission "erred by ordering" that Mr. Serfozo be restored to "all compensation and benefits to which he is entitled." It points out that there is no evidence that Mr. Serfozo was able to work. However, the Commission merely followed its statutory obligations: "once the commission concluded that the town lacked just cause to terminate [the employee], the commission was statutorily required to order [the employee's] reinstatement." Town of Brookline v. Alston, 487 Mass. 278, 396 (2021), citing G.L. c. 31, § 43 (if the Commission finds a lack of just cause, "it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights . . .").

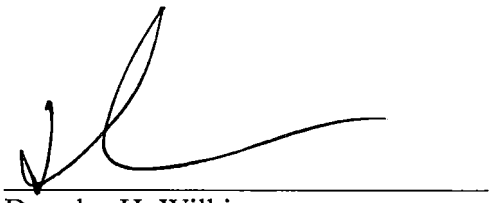
CONCLUSION

For the above reasons:

1. The plaintiff's Motion for Judgment on the Pleadings is DENIED.

2. The defendants' Cross-Motion for Judgment on the Pleadings is GRANTED.

3. FINAL JUDGMENT SHALL ENTER AFFIRMING the Final Decision of the Civil Service Commission, dated March 12, 2020.



Douglas H. Wilkins
Justice of the Superior Court

Dated: July 8, 2021