IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA, ITS DEPARTMENT OF PUBLIC SAFETY, AND PAROLE AND PROBATION DIVISION,
Appellant,
vs.
KENNETH WHEATON,
Respondent.

No. 53274

FILED

DEC 2 0 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order granting a petition for judicial review in a state employment matter. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Respondent Kenneth Wheaton was terminated by appellant, the Parole and Probation Division of the Department of Public Safety of the State of Nevada (the Department), after using a state-owned vehicle for personal reasons when he stopped at a casino on his way home from work, and for obstructing police officers after an alleged domestic violence incident at the casino. An administrative hearing officer upheld the termination, and the district court reversed after determining that the hearing officer did not issue a decision that sufficiently complied with the requirements of Nevada's Administrative Procedure Act (NAPA) and was not supported by substantial evidence. The Department appealed.

The issues raised on appeal are: (1) whether the administrative hearing officer's decision is legally sufficient under NAPA and (2) whether the hearing officer's decision to uphold the Department's termination of Wheaton is supported by substantial evidence. For the reasons set forth below, we conclude that the district court clearly erred in

granting the petition for judicial review because the hearing officer's decision was legally sufficient under NAPA and supported by substantial evidence. Accordingly, we reverse the district court's order granting the petition for judicial review. As the parties are familiar with the facts, we do not recount them further except as necessary to our disposition.

DISCUSSION

The administrative hearing officer's decision is legally sufficient under NAPA

The Department argues that the district court erred in vacating the hearing officer's decision. Specifically, it asserts that the decision is legally sufficient because it complies with NAPA and adequately states the facts underlying its determinations. We agree.

Standard of review

We review questions of law de novo. City of Reno v. Reno Gazette-Journal, 119 Nev. 55, 58, 63 P.3d 1147, 1148 (2003).

Legal sufficiency of the decision

NAPA mandates that a final administrative decision be in writing and separately state findings of fact and conclusions of law. NRS 233B.125. The findings of fact "must be accompanied by a concise and explicit statement of the underlying facts supporting the findings," id., and must "be prepared in sufficient detail to permit judicial review." State, Dep't of Commerce v. Hyt, 96 Nev. 494, 496, 611 P.2d 1096, 1098 (1980).

The hearing officer in this case issued a written decision in which the Department's specificity of charges was quoted verbatim for the first 11 pages. Commencing on page 12, the hearing officer found that the evidence presented before him "generally substantiated the Specificity of Charges allegations" and demonstrated that Wheaton had "violated the rules as charged." The officer set forth, in two paragraphs, the underlying

facts supporting his findings, which were primarily based on Wheaton's personal use of a state-owned vehicle and his failure to obey the lawful command of the police officers. The hearing officer also separately stated his conclusions of law, in which he determined, based on the substantial evidence contained in the record, that there was just cause for Wheaton's termination and that the good of the public service would be served thereby. Thus, because the decision was written and separately stated findings of fact and conclusions of law, "accompanied by a concise and explicit statement of the underlying facts supporting the findings," the decision complied with the statutory requirements of NRS 233B.125.

Moreover, we have held that hearing officer decisions under NRS 233B.125 are inadequate only where they contain no factual findings whatsoever, which is not the case here. See Dickinson v. American Medical Response, 124 Nev. 460, 469, 186 P.3d 878, 884 (2008) (appeal officer's decision did not comply with NRS 233B.125 and could not be adequately reviewed because it summarily stated the officer's conclusion and made no other factual findings); PSC v. Continental Tel. Co., 94 Nev. 345, 350, 580 P.2d 467, 470 (1978) (presuming that an administrative agency's order was unreasonable because it offered "no explanation" with respect to a certain determination and thus did not comply with NRS 233B.125's requirement to make written findings of fact and conclusions of law to support particular findings (emphasis added)).

The hearing officer's decision was also prepared in sufficient detail to permit judicial review. Because the decision sets forth the hearing officer's findings of fact and conclusions of law and the facts underlying those determinations, a reviewing court can determine what the hearing officer's findings and conclusions were and examine whether they were supported by substantial evidence. A reviewing court could,

therefore, evaluate the decision in this case without intruding on the hearing officer's fact-finding function. See State, Bd. Psychological Exmr's. v. Norman, 100 Nev. 241, 244, 679 P.2d 1263, 1265 (1984) (where administrative agency made no findings of fact, this court had no basis for review and would be intruding on agency's fact-finding function). Accordingly, we conclude that the district court erred in vacating the hearing officer's decision as legally insufficient; the decision complies with the statutory mandates of NAPA and is sufficiently detailed to permit judicial review.

The hearing officer's decision to uphold the Department's termination of Wheaton is supported by substantial evidence

The Department contends that the hearing officer's decision to uphold the Department's termination of Wheaton is supported by substantial evidence. We agree.

Standard of review

NRS 233B.135, the statute governing judicial review of an administrative decision, states, in pertinent part:

> 3. The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. The court may remand or affirm the final decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced because the final decision of the agency is:
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> . . . .
>
> (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
>
> (f) Arbitrary or capricious or characterized by abuse of discretion.

This court's review is limited to the evidence contained in the record, and it may not substitute its judgment for that of the agency on factual

disputes. NRS 233B.135(1), (3); Secretary of State v. Tretiak, 117 Nev. 299, 305, 22 P.3d 1134, 1138 (2001).

On questions of fact, this court is limited to determining whether substantial evidence exists to support the agency's decision. Tretiak, 117 Nev. at 305, 22 P.3d at 1138. While a reviewing court may decide purely legal issues de novo without deference to the agency's interpretation of the law, the agency's conclusions of law, which are necessarily closely tied to its view of the facts, are entitled to deference on appeal and will not be overturned provided those conclusions are supported by substantial evidence. Clements v. Airport Authority, 111 Nev. 717, 722, 896 P.2d 458, 461 (1995). Substantial evidence is that evidence which a reasonable person would accept as adequate to support a conclusion. State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608 n.1, 729 P.2d 497, 498 n.1 (1986).

Personal use of state-owned vehicle

The Department argues that the hearing officer's finding that Wheaton violated NRS 204.080 (prohibiting the private use of a State vehicle) and section E(E)(1) of Division of Parole and Probation Directive 4.2.009D (proscribing the private use of the Division's equipment) was supported by substantial evidence.

The hearing officer found that Wheaton drove his state-owned vehicle to the casino and Wheaton testified to the same. He admitted that he was there for personal purposes and was not on duty or on any state business. The record also demonstrates that Wheaton was at the casino for approximately four to five hours. Further, Lieutenant Page testified that the Department's policy dictates that state-owned vehicles are to only be used for official purposes and not for private use. Although he explained that there is an accepted practice within the Department for

officers to deviate from that policy, such as picking up meals or coffee in a state-owned vehicle while on duty or on the way home from work, he testified that it is not an accepted practice to use a state-owned vehicle while off duty for four to five hours. Accordingly, Wheaton and Lieutenant Page's testimony provided substantial evidence to support the hearing officer's finding that Wheaton had made personal use of a state-owned vehicle, in violation of NRS 204.080 and section E(E)(1) of Division of Parole and Probation Directive 4.2.009D.

Disobeying lawful orders

The Department asserts that there was substantial evidence to support the hearing officer's finding that Wheaton violated NAC 284.650 (providing that a public employee may be disciplined for "[a]ctivity which is incompatible with an employee's conditions of employment" and disgraceful personal conduct that causes discredit to the agency); Department of Public Safety Policy 4.2.009 § B(1)(b) (requiring employees to be courteous to representatives of other agencies); Division of Parole and Probation Directive 4.2.009B § B(1) (stating that employees must act in a professional, businesslike manner); 4.2.009B § B(2) (requiring that employee must not bring discredit or embarrassment to the Department while off duty); and 4.2.009C § C (requiring employee to adopt code of ethics that includes provision to be exemplary in obeying the law).

The hearing officer determined that the evidence presented at the hearing substantiated the Department's specificity of charges and that Wheaton had violated the rules as charged therein. The record demonstrates that Officer Clayton, one of the police officers who responded to the alleged domestic violence incident, gave Wheaton three orders during their encounter. Specifically, Officer Clayton ordered Wheaton to

(1) stay inside his vehicle, (2) walk toward the front of the police vehicle and place his hands on it, and (3) remain facing the police vehicle while he was being handcuffed. Officer Clayton testified that Wheaton did not obey his first command and instead exited his vehicle and walked towards him. Officer Clayton testified that Wheaton did not obey his second order because he continued to walk around to the side of the police vehicle, where Officer Clayton was standing. Officer Clayton also testified that Wheaton was not compliant with his order to turn around and face the vehicle as he was attempting to handcuff Wheaton.

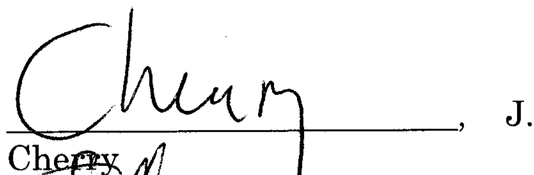
Officer Manteufel, the second police officer who responded to the incident, corroborated Officer Clayton's testimony. He testified that upon arriving, he observed Officer Clayton order Wheaton to place his hands on the front of the police car. Officer Manteufel testified that Officer Clayton issued this command more than once. He explained that because Wheaton did not comply, Officer Clayton confronted Wheaton, ordered him to place his hands on the front of the police vehicle, and attempted to handcuff him. Officer Manteufel testified that Wheaton was noncompliant and when he noticed that Wheaton was in possession of a firearm, he felt the need to unholster his gun to ensure his and Officer Clayton's safety.

Further, Officer Miller and Lieutenant Johnson, who investigated the incident between Wheaton and Officers Clayton and Manteufel, testified that they determined, by a preponderance of the evidence, that Wheaton did not obey Officers Clayton and Manteufel's lawful orders. Although Wheaton testified that he did not hear the first two orders issued by Officer Clayton, his testimony as to the third command corroborates Officers Clayton and Manteufel's testimony. Wheaton testified that as he was being handcuffed, he turned his body, on

more than one occasion, in an attempt to speak with the officers. Moreover, while Wheaton attempted to downplay the severity of the incident, his description of the events corresponds with the officers' testimony.

In reviewing an administrative decision, we, like the district court, may not substitute our judgment for that of the agency on factual disputes. Rather, we are limited to determining whether substantial evidence exists to support the administrative decision. In this case, the hearing officer clearly found the officers' testimony to be credible. In light of the above testimony, there was substantial evidence to support the hearing officer's finding that Wheaton did not follow the lawful directions of the officers. Therefore, a reasonable mind could conclude, based on the evidence, that Wheaton engaged in disgraceful personal conduct, was discourteous to the representatives of other agencies (North Las Vegas Police Department), failed to act in a professional businesslike manner, brought discredit or embarrassment to the Department, and was not exemplary in obeying the law. Accordingly, we conclude that the district court erred in determining that the hearing officer's decision was not supported by substantial evidence. For the foregoing reasons, we

ORDER the judgment of the district court REVERSED.



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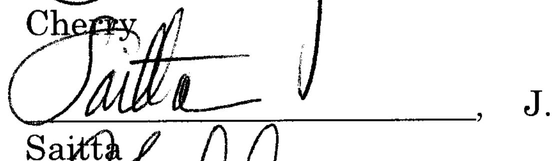

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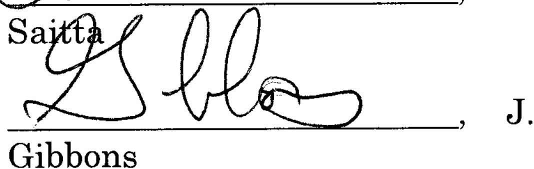

_______________, J.
Gibbons

cc: Hon. Timothy C. Williams, District Judge
Ara H. Shirinian, Settlement Judge
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Eighth District Court Clerk