

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL SULLIVAN,
Appellant,
vs.
THE STATE OF NEVADA,
DEPARTMENT OF CORRECTIONS,
Respondent.

No. 53418

FILED

JUL 20 2010

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in an employment matter. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

Appellant Paul Sullivan was terminated from his position as a correctional officer by respondent Nevada Department of Corrections (NDOC). The hearing officer upheld the termination and the district court denied Sullivan's petition for judicial review. This appeal followed.

The record shows that the hearing officer found that Sullivan had admittedly failed to follow proper security procedures and committed several Class 3 to Class 5 violations. Notably, the hearing officer found, among other things, that Sullivan engaged in undue familiarity with an inmate, jeopardized the security of the institution, failed to perform security functions resulting in a security breach, and willfully failed to intervene or report when necessary. Substantial evidence exists in the record to support the hearing officer's findings. See Dredge v. State ex rel. Dep't Prisons, 105 Nev. 39, 43, 769 P.2d 56, 58-59 (1989).

This court has recognized that the hearing officer and courts should defer to the prison authority's decision to terminate an employee whenever security concerns are implicated. Id. at 42, 769 P.2d at 58. Here, termination without progressive discipline was within NDOC's range of reasonable discipline, and deference was properly accorded to NDOC's decision to terminate Sullivan for the good of the public service. Nev. Dep't of Corr., A.R. § 343.03-1.3 (April 5, 2004); see NRS 284.385(1)(a) (allowing the appointing authority to dismiss a permanent classified employee when it considers that the good of the public service will be served thereby); Dredge, 105 Nev. at 42, 769 P.2d at 58 (noting that the hearing officer's task is to determine whether the prison department's decision to terminate a correctional officer was based upon evidence that would enable the department to conclude that the good of the public service would be served by his dismissal).

Accordingly, having reviewed the record on appeal and the parties' arguments, we conclude that the hearing officer's decision to uphold Sullivan's termination is supported by substantial evidence and not affected by error or abuse of discretion, see Dredge, 105 Nev. at 43, 769 P.2d at 58-59, and thus, the district court properly denied Sullivan's petition for judicial review. As a result, we affirm the district court's decision.

It is so ORDERED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. James M. Bixler, District Judge
Lansford W. Levitt, Settlement Judge
James Andre Boles
Attorney General/Las Vegas
Eighth District Court Clerk