IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA, DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF CHILD AND FAMILY SERVICES,
Appellant,
vs.
LAURIE COLE,
Respondent.

No. 58264

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review of a state employment action. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

After respondent Laurie Cole administratively challenged the termination of her state employment with appellant State of Nevada, Department of Health and Human Services, Division of Child and Family Services (DHHS), a hearing officer rendered a decision reinstating Cole's state employment. In his decision, the hearing officer concluded that progressive discipline should instead have been imposed and that termination was too harsh a sanction. DHHS petitioned the district court for judicial review and the district court entered an order denying the petition. DHHS has now appealed to this court.

On appeal, DHHS argues that the hearing officer's decision was arbitrary and capricious by failing to enforce the policies set forth in a DHHS policy manual and was not supported by substantial evidence, as

Cole did not establish that her actions were justified by self-defense. Additionally, DHHS argues that its decision to fire Cole was based on security concerns, and that the hearing officer was therefore required to give deference to DHHS under Dredge v. State ex rel. Department Prisons, 105 Nev. 39, 769 P.2d 56 (1989).

Cole disagrees, arguing that the district court's denial of the petition for judicial review should be affirmed, as the hearing officer's decision was not clearly erroneous and was supported by substantial evidence since her actions plainly did not warrant dismissal. Cole also asserts that the hearing officer was not required to defer to DHHS under Dredge, 105 Nev. 39, 769 P.2d 56, since she was not charged with security violations.

In reviewing an administrative decision, this court, like the district court, may not substitute its judgment for that of the administrative tribunal on the weight of evidence on any question of fact. NRS 233B.135(3); Law Offices of Barry Levinson v. Milko, 124 Nev. 355, 362, 184 P.3d 378, 383-84 (2008) (explaining that this court's standard of review mirrors that of the district court). Nevertheless, an administrative decision may be set aside if it is "affected by error of law [or] clear error in view of the reliable, probative, and substantial evidence of record," Dredge, 105 Nev. at 43, 769 P.2d at 58-59, or if the decision is arbitrary or capricious or constitutes an abuse of discretion. NRS 233B.135(3)(f). Substantial evidence is "that which 'a reasonable mind might accept as adequate to support a conclusion.'" State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986) (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971)).

This court has recognized that "NRS 284.383 provides for adoption of a system of progressive discipline of state employees in which severe discipline is imposed only for 'serious violations of law or regulations,' or if less severe measures have failed." Knapp v. State, Dep't of Prisons, 111 Nev. 420, 424, 892 P.2d 575, 578 (1995) (quoting NRS 284.383). Additionally, in most instances, the hearing officer must not defer to the appointing authority's decision, but instead must take a new and impartial view of the evidence and assess, among other things, the reasonableness of a dismissal. Knapp, 111 Nev. at 424, 892 P.2d at 577-78. The severity of employment discipline imposed by the administrative tribunal is reviewed by this court for clear error or abuse of discretion. Id. at 424, 892 P.2d at 578.

Having reviewed the parties' arguments and the record on appeal, we conclude that the hearing officer's decision to impose a lesser form of discipline than termination was not arbitrary or capricious or unsupported by substantial evidence. NRS 233B.135(3)(f); Dredge, 105 Nev. at 43, 769 P.2d at 58-59. Discipline short of termination was a reasonable response to the facts of this case. See Knapp, 111 Nev. at 424, 892 P.2d at 578 (reviewing the severity of employment discipline for clear error or an abuse of discretion). Further, Dredge deference does not apply to the decision to terminate Cole's employment, as she was not charged with security violations.[1] Knapp, 111 Nev. at 424, 892 P.2d at 578; see

[1]In light of this conclusion, we do not reach the issue of whether the deference discussed in Dredge, 105 Nev. 39, 769 P.2d 56, applies to juvenile corrections facilities.

also State, Dep't of Prisons v. Jackson, 111 Nev. 770, 773, 895 P.2d 1296, 1298 (1995) (approving the application of Dredge deference when the case "clearly falls within the ambit of a security breach"). Accordingly, we affirm the district court's order denying the petition for judicial review.

It is so ORDERED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Susan Johnson, District Judge
Janet Trost, Settlement Judge
Attorney General/Las Vegas
Law Office of Daniel Marks
Eighth District Court Clerk