


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARA O'KEEFE, AN INDIVIDUAL,  
Appellant,  
vs.  
THE STATE OF NEVADA  
DEPARTMENT OF MOTOR VEHICLES,  
Respondent.

No. 68460

FILED

JAN 30 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from an order granting a petition for judicial review and setting aside a hearing officer's decision. First Judicial District Court, Carson City; James E. Wilson, Judge.

Appellant Cara O'Keefe was dismissed by the Department of Motor Vehicles ("DMV") for violating several policies, including a policy prohibiting employees from accessing or using information outside their scope of responsibilities for non-business reasons.<sup>1</sup> Under the DMV's Prohibitions and Penalties, a violation of this policy requires dismissal. O'Keefe appealed her dismissal, and a hearing officer found that discretionary discipline was allowed. The hearing officer reversed O'Keefe's dismissal, finding a lesser disciplinary action was appropriate. The hearing officer also noted due process concerns with the timing of the DMV's investigation into O'Keefe's conduct. The DMV filed a petition for judicial review and the district court set aside the hearing

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<sup>1</sup>We do not recount the facts except as necessary to our disposition.

officer's decision, concluding dismissal was mandatory under the DMV's Prohibitions and Penalties, and therefore, the hearing officer's decision was arbitrary and capricious.

In this appeal, O'Keefe contends the hearing officer's decision was within the hearing officer's statutory authority and the DMV's dismissal of O'Keefe violated her due process rights.

A hearing officer's role is to "determine the reasonableness of a dismissal, demotion, or suspension." NRS 284.390(1); *Taylor v. Dep't of Health and Human Servs.*, 129 Nev. 928, 930, 314 P.3d 949, 950-51 (2013). A dismissal is "reasonable" if it would "serve the good of the public service." NRS 284.385(1)(a); *Knapp v. State ex rel. Dep't of Prisons*, 111 Nev. 420, 424, 892 P.2d 575, 577 (1995). "When reviewing a district court's [order regarding] a petition for judicial review of an agency decision, this court engages in the same analysis as the district court." *Rio All Suite Hotel & Casino v. Phillips*, 126 Nev. 346, 349, 240 P.3d 2, 4 (2010). Thus, we "review the evidence presented to the administrative body and ascertain whether that body acted arbitrarily or capriciously, thus abusing its discretion." *Gandy v. State ex rel. Div. Investigation*, 96 Nev. 281, 282, 607 P.2d 581, 582 (1980). See *Morgan v. State, Dep't of Bus. & Indus., Taxicab Auth.*, No. 67944, 2016 WL 2944701 (Ct. App. May 16, 2016). This court may set a hearing officer's decision aside if it rests on an error of law or constitutes an abuse of discretion. *State v. Tatalovich*, 129 Nev. 588, 590, 309 P.3d 43, 44 (2013). We review de novo the hearing officer's conclusions of law, insofar as they concern purely legal questions. *Knapp*, 111 Nev. at 423, 892 P.2d at 577.


In this case, the hearing officer abused her discretion by ruling that the DMV's Prohibitions and Penalties allowed for discretionary discipline for O'Keefe's actions. The DMV's disciplinary procedures were approved by the Personnel Commission pursuant to NRS 284.383(1), which requires that the Commission adopt measures for disciplining state employees. The inconsistency in the internal memorandum by the DMV did not change a disciplinary policy that had been adopted by the Personnel Commission.

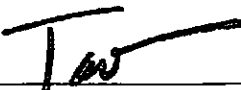
Because the DMV's Prohibitions and Penalties mandated dismissal for O'Keefe's actions, there is not substantial evidence in the record to support the hearing officer's determination that O'Keefe's dismissal would not serve the good of the public service. By adopting the DMV's Prohibitions and Penalties, the Personnel Commission effectively determined that O'Keefe's conduct is a "serious violation[] of law or regulation" justifying dismissal. See NRS 284.383(1). The hearing officer's ruling to the contrary was arbitrary and based on an error of law.

Additionally, the hearing officer's due process "concerns" are without legal significance as no findings of fact or conclusions of law were made. Additionally, the DMV followed the proper procedure in investigating O'Keefe' conduct. The delay was due to O'Keefe transfer-

ring to a different department, at which point the DMV lost the ability to discipline or investigate O'Keefe.<sup>2</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. James E. Wilson, District Judge  
Cara O'Keefe  
Attorney General/Carson City  
Brandon R. Price  
Attorney General/Reno  
Carson City Clerk

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<sup>2</sup>NAC 284.638(1) states a "supervisor" must promptly inform an employee about a violation. At the time that the DMV learned of O'Keefe's conduct, her supervisor would have been someone within the Division of Insurance. In addition, there is no support in statutes or caselaw for O'Keefe's assertion that an agency may use its policies to discipline an employee once the employee leaves the agency.