

IN THE SUPREME COURT OF THE STATE OF NEVADA

ART RADER,
Appellant,

vs.

THE STATE OF NEVADA
DEPARTMENT OF MOTOR VEHICLES
AND PUBLIC SAFETY, PAROLE AND
PROBATION DIVISION, AN AGENCY
OF THE STATE OF NEVADA; AND
NEVADA STATE PERSONNEL
COMMISSION, AN AGENCY OF THE
STATE OF NEVADA,
Respondents.

No. 39053

FILED

SEP 02 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. Rinaldi*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This appeal is taken from a district court order denying a petition for judicial review and upholding appellant's employment termination. Eighth Judicial District Court, Clark County; Jeffrey D. Sobel, Judge.

Appellant Art Rader's employment as a probation officer with the Department Motor Vehicle's Parole and Probation Division was terminated on July 17, 1997. The Division cited, as primary reasons for Rader's termination: (1) misuse of his firearm, (2) outside employment without written permission from his supervisors, (3) dishonesty in stating during the internal investigation that he had requested permission to obtain outside employment, and (4) dishonesty in stating during the investigation that he did not point his firearm at a civilian.

While employed with Parole and Probation, Rader also worked as a part-time security officer for Pinkerton Security without permission from Parole and Probation. On January 4, 1997, while on his way home

from a shift with Pinkerton, Rader observed a man being beaten by two other men in a gas station parking lot. Rader intervened in the incident and yelled for the gas station clerk, Irfan Chaudhry, to call 911. Chaudhry, upon exiting the store, thinking that Rader was a security officer and not a police officer, did not see anything to warrant a call to 911 and inquired of Rader the need for the call. Rader did not explain. In the meantime, the alleged victim and assailants left the scene. Chaudhry reentered the store.

Rader followed Chaudhry into the store with his firearm in hand. He identified himself as a peace officer, showed his badge, and demanded use of the telephone. Rader then pointed his firearm at Chaudhry for approximately three seconds, repeated his demand for use of the telephone, and called 911 to report the incident he observed outside. When the 911 operator informed Rader that she would not be able to help since the victim and assailants had left the scene, Rader hung up on her.

Chaudhry then called 911 to report Rader's behavior. Although, Rader did not report the incident to Parole and Probation, Parole and Probation learned of the incident through the police investigation instigated by Chaudhry's call to the police. Rader's employment was subsequently terminated for committing seventeen prohibited acts. Rader appealed the termination to a hearing officer, who affirmed thirteen of the charges, including the four mentioned above, and upheld his termination. After an unsuccessful petition for judicial review to the district court, Rader appeals.

When an administrative decision is challenged, this court's function is identical to that of the district court; both courts review the evidence presented to the administrative hearing officer to determine

whether he acted arbitrarily or capriciously, thus abusing his discretion.¹ The decision of an administrative agency will be affirmed if it is legally sound and it is based on substantial evidence.² Substantial evidence is “that which ‘a reasonable mind might accept as adequate to support a conclusion.’”³ The hearing officer’s credibility determinations are not open to judicial review.⁴ Questions of law are reviewed de novo.⁵

On appeal, Rader raises several alleged errors. First, Rader argues that he is immune from administrative punishment for his actions pursuant to NRS 202.320. Second, Rader maintains that the hearing officer failed to conduct an impartial or unbiased review of the evidence, thus denying him due process. Third, Rader contends that he was denied equal protection because the hearing officer did not rely on the law in making his decision, but on some unknown or nonexistent criteria. Fourth, Rader asserts that the hearing officer abused his discretion by refusing to reopen the record to include new evidence. Finally, Rader alleges that the sanction of termination is far in excess of the discipline

¹See Knapp v. State, Dep’t of Prisons, 111 Nev. 420, 423, 892 P.2d 575, 577 (1995).

²Reno v. Reno Police Protective Ass’n, 118 Nev. 889, 893-94, 59 P.3d 1212, 1216 (2002); SIIS v. Swinney, 103 Nev. 17, 20, 731 P.2d 359, 361 (1987).

³State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986) (quoting Richardson v. Perales, 402 U.S. 389 (1971)).

⁴See Brocas v. Mirage Hotel & Casino, 109 Nev. 579, 585, 854 P.2d 862, 867 (1993).

⁵Associated Bldrs. v. So. Nev. Water Auth., 115 Nev. 151, 156, 979 P.2d 224, 227 (1999) (citing SIIS v. United Exposition Services Co., 109 Nev. 28, 30, 846 P.2d 294, 295 (1993)).

mandated by statute. We disagree and conclude that substantial evidence and sound legal reasoning support the hearing officer's decision and the district court's order. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Eighth Judicial District Court Dept. 5, District Judge
Markoff & Boyers
Attorney General Brian Sandoval/Carson City
Clark County Clerk