

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS E. PURKEY,
Appellant,
vs.
STATE OF NEVADA EX REL.
DEPARTMENT OF HUMAN
RESOURCES, HEALTH DIVISION,
BUREAU OF HEALTH PROTECTION
SERVICES,
Respondent.

No. 42655

FILED

DEC 20 2005

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in an employment termination matter. First Judicial District Court, Carson City; William A. Maddox, Judge.

Thomas E. Purkey appeals from a district court order denying a petition for judicial review after a hearing officer affirmed Purkey's termination from a state classified service position. The parties are familiar with the facts, and we do not recount them in this order except as is necessary for our disposition.

First, we disagree with Purkey's contention that the district court erred because substantial evidence did not support the hearing officer's decision. Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion.¹ The core contention against Purkey is that, while a major deadline loomed, he took annual leave with the knowledge that his budgets were incomplete and without

¹State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986).

the approval of his supervisors. This is virtually undisputed. Purkey admitted that he left with work unfinished, and was evasive when asked whether his supervisors had approved of his leave, answering that Health Division Deputy Administrator Alex Haartz never approved the leave in writing, while Administrative Services Officer III Phil Weyrick did not specifically say that Purkey could or could not leave. However, both Haartz and Weyrick clearly testified that they had not approved Purkey's leave.² Accordingly, we conclude that there is substantial evidence to sustain the hearing officer's decision to affirm Purkey's termination; the hearing officer did not act arbitrarily or capriciously, or abuse his discretion.

In an attempt to mitigate the severity of his unauthorized leave, Purkey aims several sub-arguments at the hearing officer's findings and conclusions. For example, Purkey argues that substantial evidence does not support the hearing officer's conclusion that he ran out of time; rather, Purkey contends that a server crash hampered his ability to complete his budgets on time. We conclude that this argument lacks merit because it is tangential to the fact that Purkey left with his budgets incomplete and without leave authorization. Further, the Health Division's information systems manager testified that the server did not crash and, if Purkey was experiencing technical difficulties, the manager or his staff was available at all times, including the early morning hours, to address any problems. Purkey's other arguments relate to the hearing officer's characterizations of the deadline; of Purkey's conduct, planning,

²Haartz testified that Health Division Administrator Yvonne Sylva also had not approved Purkey's leave.

and judgment; of Purkey's intent in waiting to contact his supervisors after he had left; and of the event Purkey was attending. We have considered these arguments and conclude that all of them lack merit.

Purkey's final contention is that his termination is not warranted under progressive discipline. NRS 284.383(1) provides that there are exceptions to progressive discipline for serious violations of law or regulations. NRS 284.385(1)(a) provides that a public employee may be dismissed when the good of the public will be served. NAC 284.646(1) states that an appointing authority may dismiss an employee for any cause listed in NAC 284.650 if the seriousness of the offense warrants it. Here, Purkey was charged by NPD-41 with five causes of discipline under NAC 284.650 and six violations of Department of Human Resources' prohibitions. Of the six departmental prohibitions, two authorize dismissal for a first offense. While Purkey faced a difficult decision, he failed to complete his assignments in the face of a major impending deadline and took leave without the authorization or approval of his supervisors. Substantial evidence supports the hearing officer's determination that Purkey's actions were serious enough to warrant dismissal under both the applicable statutes and departmental prohibitions. We conclude that the hearing officer did not abuse his discretion in affirming Purkey's termination. Accordingly we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Parraguirre, J.
Parraguirre


cc: Hon. William A. Maddox, District Judge
Kenneth J. McKenna
Attorney General George Chanos/Las Vegas
Carson City Clerk

ROSE, J., concurring:

I concur in the result because a technical review of the evidence shows that substantial evidence supports the hearing officer's decision. However, a penalty less than termination would have been much more appropriate.

Purkey was given the responsibility to produce four final budgets by August 30th. It is clear that he struggled with this project in August and put in 109.75 hours of overtime in addition to his regular working hours for that month. Purkey's supervisors knew that he was struggling with this project, but did nothing to help him. Although disputed, Purkey also testified that the computer system crashed, and this required additional hours of work.

Purkey had earlier indicated that he intended to attend his daughter's graduation, and when he left two of the four budgets were complete. His supervisors were able to put the last two budgets into final form without a great deal of effort and meet the extended September 3rd deadline. While he left the project just short of completion, he had worked diligently to complete it, he received no additional assistance from his supervisors, and he had informed them that he was going to take a few days off to attend his daughter's graduation. When all the circumstances are considered, some penalty less than termination seems warranted.


_____, J.
Rose