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SUPERIOR COURT
CIVIL ACTION
NO. 09-0290

Notice sent
02.08.10

MASSACHUSETTS DEPARTMENT OF CORRECTIONS

CAC
mcd

vs.

GDT LESLIE ANDERSON and the MASSACHUSETTS CIVIL SERVICE COMMISSION
Lx+B

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S MOTION FOR
JUDGMENT ON THE PLEADINGS

RLayn
AAG
(md)

This is an action for judicial review whereby the plaintiff, the Massachusetts Department of Corrections ("The Department" or "DOC") pursuant to G.L. c. 30A, § 14 and G.L. c. 31, § 44 appeals from a decision issued by the defendant, the Civil Service Commission (the "Commission"), granting the appeal of the defendant, Leslie Anderson ("Anderson"), who was bypassed from employment as a Correction Officer on February 26, 2008 because she failed to meet the eligibility criteria for the position of Correction Officer 1 due to a prior unsatisfactory criminal record. The plaintiff now moves for Judgment on the Pleadings. For the following reasons, the plaintiff's Motion for Judgment on the Pleadings is ALLOWED.

BACKGROUND

The pleadings and record establish the follow facts.

On September 29, 2007, Anderson took an examination for the position of Correction Officer 1 and received a passing score of 95. On January 23, 2008, as part of the employment application process, Anderson completed forms authorizing the Department to conduct a full background investigation, which included obtaining a criminal history record. The Department

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MASSACHUSETTS DEPARTMENT OF CORRECTIONS

obtained a copy of Anderson's Criminal Offender Records Information ("CORI") through the Criminal Justice Information System (CJIS), which listed various criminal charges as well as her motor vehicle operator history. This report revealed that Anderson had been charged with assault with a dangerous weapon (knife), operating under the influence of alcohol, operating negligently, vandalism of property, malicious destruction of property for which she was ordered to pay restitution, assault and battery of which she was found guilty after a trial, and disturbing the peace. The Department bypassed Anderson because of her unsatisfactory criminal history.

PROCEDURAL HISTORY

On August 6, 2008, the Civil Service Commission held a full hearing. Anderson testified that the facts in the CORI report were accurate, but offered testimony in mitigation or explanation of the underlying offenses. On November 24, 2008, the Commission issued its decision ordering Anderson to be placed at the top of the eligibility list for the Correction Officer I position. The Department filed its Motion for Reconsideration on December 4, 2008, which was denied on December 23, 2008 by a 2-2 vote. The Department also filed a Motion to Stay on or about August 12, 2009. On or about August 31, 2009, the Department filed the present Motion for Judgment on the Pleadings pursuant to Mass. R. Civ. P. 12(c).

DISCUSSION

I. Standard of Review

A party aggrieved by a final decision of the Commission may seek judicial review of that decision in the Superior Court pursuant to G.L. c. 31, § 44. The provisions of the Administrative Procedures Act c. 30A govern review of the Commission's decision. Review of conclusions of law is de novo. Raytheon Co v. Dir. of Div. of Employment Sec., 364 Mass. 593, 595 (1974).

The Commission's factual determinations must be supported by substantial evidence, see G.L. c. 30A § 14(7). Substantial evidence is defined as "such evidence as a reasonable mind might accept as adequate to support a conclusion." G.L. c. 30A, § 1; see also Lycurgus v. Director of the Div. of Employment Sec., 391 Mass. 623, 627-628 (1984). The duty of the Commission is to apply the facts found to determine whether "there was reasonable justification for the action taken by the appointing authority in the circumstances found by the Commission to have existed when the appointing authority made its decision." School Committee of Brockton v. Civil Service Commission, 43 Mass. App. Ct. 486, 489 (1997), quoting Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). The Commission, however, does not have the authority to "substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997).

Judicial review is limited to the administrative record. G.L. c. 30A § 14(5). Where the Commission's decision is based on substantial evidence, the Court will not substitute its views as to the facts. Cherubino v. Board of Registration of Chiropractors, 403 Mass. 350, 354 (1988). A party challenging the commission's ruling bears the burden to demonstrating its invalidity. Faith Assembly of God v. State Bldg. Code Comm'n, 11 Mass. App. Ct. 333, 334 (1981).

The standard of review for the commission when reviewing an appointing authority's decision under G.L. c. 31 § 2 (b) is "whether, on the basis of the evidence before it, the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge, 43 Mass. App. Ct. 300, 303 (1997). In the context of review "justified" means "done upon adequate reasons sufficiently supported by

credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law.” Id. at 304.

ii. Evidence Supporting the Department’s Determination

The Commission’s decision placing Anderson on the top of the eligibility list for the Corrections Officer 1 position is erroneous as a matter of law and constitutes an abuse of its statutory authority. The role of the Commission when reviewing a decision made by an appointing authority is to “focus on the fundamental purposes of the civil service system - to guard against political considerations, favoritism, and bias in governmental employment decisions, including of course, promotions, and to protect public employees from political control... However it is not within the Commission’s authority to substitute its judgment about a valid exercise of discretion by an appointing authority.” City of Cambridge, 43 Mass. App Ct. 300, 304. (1997). The Commission’s role is to ensure that political favoritism or bias does not taint the appointing authority’s employment decisions. Id. at 305. The Department’s decision to bypass Anderson does not meet any of the concerns of political favoritism or bias that the Commission was created to limit.

The Department must hire applicants who demonstrate good judgment, controlled behavior, and respect for others and the law. Anderson’s criminal history and admitted conduct at the Commission Hearing failed to establish that she possessed these traits. The Department is charged with ensuring the safety of its institutions and the care of the inmates in its custody. The Department therefore has the discretion to bypass potential employees with a criminal record, especially when the offenses on that record involved behavior that was assaultive, destructive and reckless, exhibiting a lack of self control. The Department could correctly conclude that behavior such as Anderson’s demonstrates a significant risk that if put in a similar situation

again, the applicant may act aggressively towards others, including an inmate.

It is permissible for the Department to review a CORI and make a determination based on the record as to whether the applicant should be denied. The Department need not investigate the underlying circumstances of individual offenses in deciding whether the applicant is suitable. To require otherwise would place on the Department the unreasonable burden of examining every single criminal charge on an applicant's record by ordering docket entries, accessing police reports, and even ordering transcripts of proceedings. The time and cost expended in such an exercise would be prohibitive.

The Department sustained its burden of showing that there was reasonable justification for the action taken. In 1994, Anderson was charged with disturbing the peace. In 2000, she was found guilty of assault and battery after a trial and was placed on 6 months of supervised probation. In 2000, Anderson was also charged with malicious destruction of property and required to pay restitution. In 2004, she was charged with operating under the influence of alcohol, and admitted to sufficient facts. The matter was continued without a finding for one year and she was also placed on supervised probation and ordered to attend a program. In 2005, while on probation, Anderson was charged with assault with a dangerous weapon and placed on supervised probation for 6 months, after which time the case was dismissed.

Anderson admits to most of the criminal conduct except to the 200r Assault with a Dangerous Weapon, which she stated was "made up." However, even putting that charge aside, Anderson's own testimony regarding the 2000 Assault and Battery and Malicious Destruction of Property validates the Department's determination. She admitted that, a full two weeks after a woman allegedly abused her son, she went to the woman's home and broke a window after the woman refused to come out of the house. When the woman did come out of

her home, Anderson assaulted her, Anderson's testimony as to her OUI charge, even while attempting to downplay the offense, is equally damning. She admitted to her reckless decision to drink while on medication, and then to drive. Indeed, all of Anderson's testimony lends support to the Department's decision to bypass her based on her criminal record.

III. The Civil Service Decision Ignored Precedent

In ruling for Anderson, the Civil Service Commission held that the Department had not sustained its burden of proof since the decision to bypass was made solely on the entries in the CORI report. The Commission held in Preece v. Department of Corrections, 20 MSCR 152 (2007), that the Department could rely on information obtained through a CORI report to bypass a candidate. In Preece, the applicant had been exonerated on all charges for second-degree murder, assault and battery, and a variety of firearms violating arising out of a single incident.

While the defendant in Preece was bypassed for a police officer position, many cases support treating applications for correction officer position in similar fashion. Police officers and correction officers are both held to a higher standard because of their official responsibilities. Puopolo v. Civil Service Commission, et al., Mass. App. Ct., 16 MSCR 60 (2003). Correctional officers are also entitled to the same deference as police officers. Gunter v. Superintendent, 72 Mass. App. Ct. 1101 (2008).

The Commission upheld the bypass of an applicant for the position of police officer on the basis of his criminal history despite the fact that all charges against him had been dismissed. Lavaud v. Boston Police Department, 17 MSCR 125 (2004) (Commission upheld bypass due to Appellant's long records of arrests although the charges were later dismissed); Brooks v. Boston Police Department, 12 MSCR 19 (1999) (Commission upheld original bypass despite age of criminal record); Soares v. Brockton Police Department, 14 MSCR 109 (2001) (Commission

upheld original bypass because Appellant's "past conduct and criminal records demonstrate lack of sound judgment and character unbecoming of a police officer."). The Department's decision to bypass Anderson on the basis of her CORI report is consistent with Commission precedent.

The Hearing Officer violated the Commission's statutory authority in overturning the Department's decision to bypass Anderson. "Where an appeal from an action by the appointing authority is brought before it, the commission does not have the authority "to substitute its judgment about a valid exercise of discretion based on merit and policy considerations by an appointing authority... In the task of selecting public employees of skill and integrity, appointing authorities are invested with broad discretion.'" Town of Burlington v. McCarthy, 60 Mass. App. Ct. 914 (2004) quoting City of Cambridge, 43 Mass. App. Ct. 300, 304-305 (1997). "It is not for the Commission to assume the role of super-appointing agency, and to revise those employment determinations with which the Commission may disagree." Town of Burlington, 60 Mass. App. Ct. 914 (2004).

The Department presented sufficient evidence that Anderson does not possess the qualities expected and required of a Corrections Officer. A Corrections Officer is responsible for the safety and security of the prisons. The Department properly concluded that placing an applicant with a violent criminal record in a prison setting would put the safety and security of the prison and inmates at risk.

ORDER

For the foregoing reasons, the plaintiff's Motion for Judgment on the Pleadings pursuant to Mass. R. Civ. P. 12 (c) is ALLOWED. Judgment shall enter reversing the decision of the Commission.

Bonnie H. MacLeod-Mancuso
Bonnie H. MacLeod-Mancuso
Justice of the Superior Court

Date: February 5, 2010

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