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Personnel Board

COMMONWEALTH OF KENTUCKY
 48TH JUDICIAL CIRCUIT
 FRANKLIN CIRCUIT COURT
 DIVISION I
 CIVIL ACTION NO. 19-CI-00266

JEFFERY DUERSON

PETITIONER

v.

OPINION and ORDER

COMMONWEALTH OF KENTUCKY
 PERSONNEL BOARD and
 JUSTICE AND PUBLIC SAFETY CABINET,
 DEPARTMENT OF CRIMINAL JUSTICE TRAINING

RESPONDENTS

This matter is before the Court pursuant to KRS 18A.100 on Petitioner Jeffery Duerson's Petition for Judicial Review of a final action of the Kentucky Personnel Board upholding his termination from employment with the Department of Criminal Justice Training. The Petitioner argues that he was terminated because he was a drug addict. In contrast, the Respondents argue that he was terminated because he stole from another employee. Having heard the arguments of the parties, reviewed the record, and being sufficiently advised, the Court hereby **AFFIRMS** the Personnel Board's Final Order for the reasons more fully stated below.

I. BACKGROUND

Jeffery Duerson was employed by the Kentucky Justice and Public Safety Cabinet, Department of Criminal Justice Training in Richmond, Kentucky, as an Administrative Specialist III. *Findings of Fact, Conclusions of Law, and Recommended Order*, at 11. His coworker, Carl Lovings, kept prescription Hydrocodone pills locked in his office desk. *Id.* On July 10, 2017, Mr. Lovings noticed a pill on the floor near his desk that matched his prescription, placed eight (8) pills in his prescription bottle, and locked the bottle in his desk cabinet. *Id.* On

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July 16, 2017, Mr. Lovings checked his prescription bottle again and noticed that six (6) pills were missing. *Id.* In an effort to catch the perpetrator, Mr. Lovings set up his cell phone as a surveillance camera, which, on July 30, 2017, alerted him to Petitioner using gloves to reach into the cabinet to take Mr. Lovings pills. *Id.* at 12. On July 31, 2017, Mr. Lovings met with the Commissioner, Deputy Commissioner, Kerry Dehorty, James Greer, Assistant Director Rader, and General Counsel. *Id.* Commissioner Mark Filburn notified the Kentucky State Police. *Id.* A State Police detective spoke with Petitioner who admitted to the allegations. *Id.* Duerson was placed on leave with pay and Commissioner Filburn initiated an administrative investigation. *Id.* Joey Barnes, an investigator with the Compliance Section, investigated the incidents and determined that Petitioner had stolen pills from Mr. Lovings on several occasions and had done so with keys to the cabinet. *Id.* Commissioner Filburn examined the report of the incident, spoke with his staff, and determined that termination was proper. *Id.* at 13.

On October 2, 2017, the Commissioner notified Petitioner that he was to be terminated and Petitioner requested a pre-termination hearing. *Id.* On October 23, 2017, a pre-termination hearing was held, and Petitioner was fired. *Id.* As a result, Petitioner appealed his dismissal with the Kentucky Personnel Board. *Id.* at 14. The Kentucky Personnel Board issued its Findings of Fact, Conclusions of Law, and Recommended Order, which affirmed Commissioner Filburn's decision and dismissed the case. *Id.* at 20. The Petitioner now seeks judicial review of the decision of the Personnel Board under KRS 18A.100. Petitioner argues that he suffers from a disability, was terminated due to his disability, and was discriminated against. *See Petitioner's Argument in Support of Reversal of the Personnel Board's Decision.*

II. STANDARD OF REVIEW

Any party aggrieved by a Final Order of the Personnel Board may seek judicial review by filing a petition in this Court under KRS 18A.100. Pursuant to KRS 13B.150 (2), a reviewing court:

Shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the final order or it may reverse the final order, in whole or in part, and remand the case for further proceedings if it finds the agency's final order is:

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of the statutory authority of the agency;
- (c) Without support of substantial evidence on the whole record;
- (d) Arbitrary, capricious, or characterized by abuse of discretion;
- (e) Based on an *ex parte* communication which substantially prejudiced the rights of any party and likely affected the outcome of the hearing;
- (f) Prejudiced by a failure of the person conducting a proceeding to be disqualified pursuant to KRS 13B.040(2); or
- (g) Deficient as otherwise provided by law.

When reviewing a decision of an administrative agency, the court must determine whether the agency in question acted arbitrarily or made conclusions that were not supported by substantial evidence, and in so doing must give significant deference to the fact-finder in regards to the credibility and weight of the evidence. *Kentucky State Racing Commission v. Fuller*, 481 S.W.2d 298 (Ky. 1972). Specifically, Kentucky courts have held that, "a court may only overturn that decision if the agency acted arbitrarily or outside the scope of its authority, if the agency applied an incorrect rule of law, or if the decision itself is not supported by substantial evidence in the record." *Lindell v. Kentucky Retirement Systems*, 112 S.W.3d 391 (Ky. App. 2003). Substantial evidence has been defined as "some evidence of substance and relevant consequence, having the fitness to induce conviction in the minds of reasonable men." *McManus v. Kentucky Retirement Systems*, 124 S.W.3d 454 (Ky. App. 2004).

However, questions of law arising out of administrative proceedings are subject to *de novo* review. *American Beauty Homes Corp. v. Louisville & Jefferson County Planning & Zoning Comm'n*, 379 S.W.2d 450, 456-57 (Ky. 1964); *Cabe v. Toler*, 411 S.W.2d 41, 43 (Ky. 1964). These include the application of legal principles to undisputed facts and the and the determination of whether agency action is arbitrary and capricious. *Kendall v. Beiling*, 175 S.W.2d 489, 491 (Ky. App. 1943).

III. ANALYSIS

1. The Decision by the Personnel Board is Supported by Substantial Evidence

First, Petitioner argues that he was fired due to his disability. Petitioner suffers from two failed knee suppressors, RSD, and complete regional pain syndrome. *Petitioner's Argument in Support of Reversal of the Personnel Board's Decision*, at 3. Due to his chronic pain, Petitioner became addicted to pain killers and alleged that his addiction to pain killers is a disability within § 504 of the Rehabilitation Act. *Id.* Next, Petitioner alleges that due to his disability he was discriminated against through his termination and cites numerous case law on the prohibition of discrimination against those with this same disability. *Id.* at 4-5. While the case law does protect employees from discrimination due to a disability, the Petitioner was not terminated because he was a drug addict. The Petitioner was terminated because he stole from another employee.

Petitioner attempts to argue that he was fired because he was a drug addict. However, there is no evidence that Petitioner was fired because he was addicted to drugs and could not perform his tasks. Rather, Commissioner Filburn investigated the theft of Mr. Lovings prescription medications and determined that termination was proper due to the theft. The Board considered Petitioner's violation of numerous policies including DOCJT policy 2002-007, DOCJT policy 2002-002, provisions of the Commonwealth of Kentucky Employee Handbook,

and provisions of Personnel memo 14-21. Respondents Exhibit 4; Respondents Exhibit 9; Respondents Exhibit 10; Respondents Exhibit 11. In sum, these policies relay typical workplace conduct guidelines to not “engage in illegal, dangerous, offensive, or inappropriate activities” and refrain from engaging in illegal drugs that the employee does not have a prescription for. *See generally* Respondents Exhibits 4,9, 10, and 11. Certainly, these policies were violated here because the Petitioner engaged in the illegal activity of theft of drugs that he did not have a prescription for.

The Personnel Board properly explained that Petitioner was not fired because he was a drug addict but, instead, was fired due to his theft. Yet, Petitioner continues to argue that he was fired due to his disability. The Personnel Board correctly recognized that the addiction Petitioner suffers from does not excuse or explain the dishonest conduct that resulted in his termination. The fact that an employee suffers from a health problem, including addiction, does not insulate them from their responsibility for the basic workplace requirements of honesty. The theft from a fellow employee, which took place in the workplace, undermined the work of the agency and destroyed the trust necessary for any workplace to function. Petitioner admitted to stealing the prescription drugs and the Personnel Board based its decision to affirm the termination, on substantial evidence because it is certainly reasonable to terminate an employee for theft. *See McManus*, 124 S.W.3d 454 (Ky. App. 2004).

IV. CONCLUSION

For the reasons discussed above, this Court **AFFIRMS** the decision of the Kentucky Personnel Board because the Petitioner was terminated due to his theft, not because he was a drug addict. The Board’s decision was based upon substantial evidence. This decision is final, appealable, and there is no just cause for delay.

SO ORDERED, this 3rd day of January , 2022.



PHILLIP J. SHEPHERD, JUDGE
Franklin Circuit Court, Division I

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