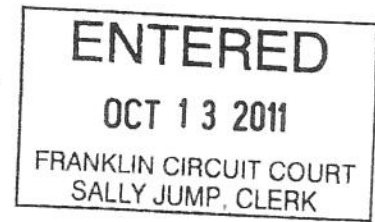


COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 10-CI-1146



COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY SERVICES,
JOHN P. HAMM AND JAY KLEIN,
APPOINTING AUTHORITIES

PETITIONER
RECEIVED

OCT 14 2011

V.

OPINION AND ORDER

Personnel Board

DEBORA PIGMAN; AND
KENTUCKY PERSONNEL BOARD,
HONORABLE MARK A. SIPEK, EXECUTIVE DIRECTOR

RESPONDENTS

This matter is before the Court on the Cabinet for Health and Family Services' Petition for Judicial Review of the Final Order of the Kentucky Personnel Board pursuant to KRS 18A.100. The Final Order of the Personnel Board concluded that Debora Pigman's dismissal was void because the person who signed the dismissal letter lacked legal authority to act as an appointing authority. The Personnel Board directed that Debora Pigman be reinstated to her previous position or a position of like pay and status without loss in pay and benefits for the period of penalization. The Court, having considered the arguments and being otherwise sufficiently advised, hereby AFFIRMS the Final Order of the Board.

Background

Respondent Debora Pigman, during the relevant period, was classified as employee with status. Ms. Pigman was the Family Services Office Supervisor in the Department for Community Based Services in the Northeast Service Region. (A.R. pp. 130-39). On September 11, 2009, Ms. Pigman was dismissed from her position by a letter dated September 10, 2009. (*Id.*). The nine (9)

page dismissal letter details the reasons for her dismissal including unsatisfactory performance of duties and lack of good behavior. (Id.). The signature line of the dismissal is typed “J.P. Hamm, Appointing Authority.” (Id.). Above the typed portion of the signature line is a signature appearing to be that of J.P. Hamm followed by what appears to be a forward slash and initials. (Id.).

Ms. Pigman filed an appeal with the Personnel Board on September 22, 2009. (A.R. pp. 128-29). In her Motion to Sustain Appeal as a Matter of Law filed on March 16, 2010, Ms. Pigman alleged that J. Klein and not J.P. Hamm signed the dismissal letter. (A.R. pp. 74-76). Ms. Pigman contended that Mr. Klein did not have authority to sign the dismissal letter because he had not been formally designated in writing by the Appointing Authority to act on behalf of the Agency. (Id.).

In its response, the Cabinet made several arguments. (A.R. pp. 34-48). First, the Cabinet argued that J.P. Hamm, as the Executive Director of the Office of Human Resource Management of the Cabinet for Health and Family Services, has the sole authority to execute all personnel functions for the Cabinet pursuant to KRS 194.030(10). (Id.). Second, the Cabinet argued that KRS 18A.095 does not require the dismissal process to be taken by the Appointing Authority, which presumably would include signing the dismissal letter. (Id.). Third, the Cabinet argued that interpreting the term ‘Appointing Authority,’ defined as an agency head at KRS 18A.005(1), to mean Secretary of the Cabinet for Health and Family Services, contravenes with what is specifically stated in KRS 194A.030 in which the Executive Director of the Office of Human Resource Management is given sole authority to execute personnel function for that Cabinet. Thus, the Cabinet contends, the more specific statute should take precedence over the more

general statute. Finally, the Cabinet argues that the sub-delegation by J.P. Hamm to J. Klein was proper and not restricted by statute. (Id.).

On April 27, 2010, the Personnel Board's Hearing Officer found that the Cabinet's dismissal of Ms. Pigman was void because it was not done by the appointing authority. (A.R. pp. 26-30). On June 17, 2010, the Personnel Board issued a Final Order upholding the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommended Order. (A.R. pg. 2). This appeal, filed by the Cabinet, asking for judicial review of the Personnel Board's Final Order, followed.

Standard of Review

When reviewing a decision from an agency, such as the Personnel Board, the court must apply the substantial evidence standard and show significant deference to the fact-finder in regards to the credibility and weight of the evidence. This standard of review is set forth in Whittaker v. Rowland, 998 S.W.2d 479, 481-82 (Ky. 1999):

[T]he fact-finder, rather than the reviewing court, has the sole discretion to determine the quality, character, and substance of evidence... an ALJ, as fact-finder, may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it came from the same witness or the same adversary party's total proof; and that where the party with the burden of proof was successful before the ALJ, the issue on appeal is whether substantial evidence supported the ALJ's conclusion. 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. Although a party may note evidence which would have supported a conclusion contrary to the ALJ's decision, such evidence is not an adequate basis for reversal on appeal.

Therefore, the court must inquire as to whether the conclusions of the Board are supported by substantial evidence, keeping in mind that "[t]he position of the Circuit Court in administrative matters is one of review, not of reinterpretation." Ky. Unemployment Ins. Comm'n v. King, 657 S.W.2d 250, 251 (Ky. App. 1983).

When an agency is interpreting a statute that it is charged with implementing, it is appropriate for courts to defer to the agency's interpretation, especially when it involves an area of law that is specialized. Deference is appropriate "[w]here the legislature has designated an administrative agency to carry out a legislative policy by the exercise of discretionary judgment in a specialized field." Aubrey v. Office of the Attorney Gen., 994 S.W.2d 516, 518 (Ky. App. 1998). Thus, deference is accorded to an agency decision that interprets its own regulations, but not statutes of general applicability or regulations which fall outside of its scope of the agency's authority. Here, the Personnel Board has issued a final decision interpreting the statutes and regulations that are within its special realm of expertise.

Statutory interpretation is a question of law that is always reviewable *de novo* by the courts. Liquor Outlet, LLC v. Alcoholic Beverage Control Bd., 141 S.W.3d 378 (Ky. App. 2004), and no deference is required to be given to the agency construction. Newberg v. Thomas Indus., 852 S.W.2d 339, 340 (Ky. App. 1993). In interpreting statutes, the court must only give an agency's decision deference to the extent that it is persuasive, giving added weight to the specialized experience of said agency. Skidmore v. Swift & Co., 323 U.S. 134 (1944). Finally, a reviewing court must always determine whether an agency correctly applied the relevant law to its findings of fact. Dep't of Educ. v. Commonwealth, 798 S.W.2d 464, 467 (Ky. App. 1990)

Discussion

Following a prehearing conference, Hearing Officer Boyce Crocker concluded as a matter of law that the dismissal of Ms. Pigman by J. Klein did not meet the requirements of KRS Chapter 18A. His conclusion was based on his finding that J. Klein was not properly authorized by Agency head and Appointing Authority, Cabinet Secretary Janie Miller, to take such action. More specifically, the Hearing Officer found and the Personnel Board agreed that

KRS 194A.030(10), the function set forth in that statute governing the Cabinet for Health and Family Services for its Office of Human Resource Management, cannot trump the requirements found at KRS 18A as to which persons are authorized to take position actions, i.e., firing, or other disciplinary action of person and presumably other personnel function as well envisioned by KRS Chapter 18A.

(A.R. pg. 29, Recommended Order, ¶¶ 6-7). Because the Board was interpreting its own statutes and regulations through a formal adjudication, judicial deference to the administrative agency is appropriate in this case. Thus, the task before the court is to determine whether the Board's interpretation of the relevant statutes is reasonable.

The words in a statute shall be construed according to their common and approved usage unless doing so would lead to an absurd or wholly unreasonable result. Ky. Unemployment Ins. Co. v. Jones, 809 S.W.2d 715 (Ky.App. 1991); Coy v. Metro. Prop. & Cas. Ins. Co., 920 S.W.2d 73 (Ky.App. 1995). Where the words used in a statute are clear and unambiguous and express the legislative intent, there is no room for construction and the statute must be accepted as it is written. Griffin v. City of Bowling Green, 458 S.W.2d 456 (Ky. 1970); Lynch v. Commonwealth, 902 S.W.2d 813 (Ky. 1995). A court determining "legislative intent" is to look at the letter and the spirit of the statute, viewing it as a whole. Combs v. Hubb Coal Co., 934 S.W.2d 250 (Ky. 1996).

The statutes contained in KRS Chapter 18A are very specific in their directives. The Legislature created KRS Chapter 18A to cover all Executive Branch employees, not just those in specific cabinets, unless a specific statute exempts. KRS 18A.005(1) states:

"Appointing authority" means the agency head or any person whom he has authorized by law to designate to act on behalf of the agency with respect to employee appointments, position establishments, payroll documents, register requests, waiver requests, requests for certification, or other position actions. Such designation shall be in writing and signed by both the agency head and his designee. Prior to the exercise of appointing authority, such designation shall be filed with the secretary.

This particular subsection of the chapter containing the definition of “appointing authority” is not limited to specific cabinets. Here, the Cabinet essentially argues that it should be allowed to circumvent the clear requirement of law that “*prior to* the exercise of appointing authority, such designation *shall* be filed with the secretary [of the Personnel Cabinet].” (Emphasis added). Here, the Cabinet concedes that no such designation of authority for J. Klein had been filed, and the Cabinet seeks to ratify an action that was taken without legal authority.

Petitioner argued that since the Legislature adopted KRS Chapter 194A, thereby creating the Cabinet for Health and Family Services’ (CHFS) Office of Human Resource Management, the provisions of KRS Chapter 18A no longer all apply to CHFS employees. Nowhere, however, in KRS Chapter 194A did the legislature exempt CHFS employees from the provisions of KRS Chapter 18A. Moreover, there is no conflict between these two statutes. KRS Chapter 194A, properly interpreted, is in perfect harmony with KRS 18A, and this Court cannot adopt an interpretation that would exempt the Cabinet from the requirements KRS 18A by implication.

The Personnel Board determined that KRS 194A cannot trump KRS 18A. The Court must give the Personnel Board the due deference afforded to it as an administrative agency with the experience and expertise to interpret personnel law governing state employees. As such, this Court determines that the agency was reasonable in its conclusion that KRS Chapter 18A is the applicable law and therefore J. Klein did not have authority to sign Ms. Pigman’s dismissal letter because he had not been formally designated in writing by the Appointing Authority to act on behalf of the Agency.

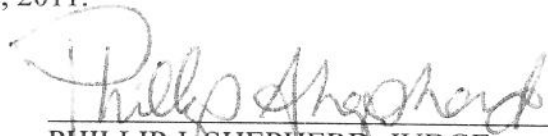
Finally, the Court notes that this interpretation of law is not novel, and it strains credulity to believe that the appropriate authorities within the Cabinet for Health and Family Services were oblivious to this basic requirement of state personnel law. When the state terminates an employee with status under KRS Chapter 18A, it is imposing the most drastic penalty available under state personnel law. The statute clearly requires that the public official who authorizes such a penalty must have legal authority officially designated by the head of the agency, that this authority be set forth in writing, and be properly filed with the Secretary of Personnel. This requirement serves an important public purpose in ensuring that personnel laws are administered within each Cabinet with proper review and accountability, rather than rubber stamped by any faceless bureaucrat who may be designated after the fact. Personnel administrators throughout state government are among the most highly paid employees in state government. It is not too much to ask that they be familiar with, and that they comply with, these clear and basic requirements of KRS Chapter 18A.

Conclusion

For the reasons stated above, this Court finds that the Personnel Board's interpretation of its statutes is reasonable, and is supported by substantial evidence, and thus the Board's decision is hereby **AFFIRMED**.

This is a final and appealable order, and there is no just cause for delay.

SO ORDERED, this 12th day of October, 2011.



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

DISTRIBUTION:

Alea Amber Arnett
Assistant Counsel
Cabinet for Health and Family Services
Office of Legal Services
275 East Main Street, 5 W-B
Frankfort, KY 40621

Boyce A. Crocker
General Counsel
Kentucky Personnel Board
28 Fountain Place
Frankfort, KY 40601

C. David Emerson
PO Box 23520
Lexington, KY 40523