

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 18, 2013 Session

MARTY NIX v. TENNESSEE CIVIL SERVICE COMMISSION

**Appeal from the Chancery Court for Davidson County
No. 11934I Claudia Bonnyman, Chancellor**

No. M2013-00505-COA-R3-CV - Filed January 30, 2014

This administrative appeal arises from the termination of a state trooper from his employment with the Tennessee Department of Safety for filing a meritless sexual harassment claim against a fellow employee. Finding substantial and material evidence in support of the decision to terminate the trooper, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and RICHARD H. DINKINS, JJ., joined.

P. Brocklin Parks, Nashville, Tennessee, for the appellant, Marty Nix.

Robert E. Cooper, Jr., Attorney General and Reporter; William E. Young, Solicitor General; and Michael Markham, Senior Counsel; for the appellee, Tennessee Civil Service Commission.

OPINION

FACTS AND PROCEDURAL HISTORY

Marty Nix began working as a trooper for the Tennessee Department of Safety (“TDOS”) in 1998. In 2007, Mr. Nix was suspended from duty without pay on four separate occasions for incidents of misconduct. In 2009, Mr. Nix was terminated for filing a meritless sexual harassment complaint against a fellow trooper.

Sexual Harassment Complaint

On February 29, 2008, Deborah Martin, an attorney for TDOS, received an anonymous phone call reporting an incident of sexual harassment. The anonymous caller, who was later determined to be Mr. Nix,¹ alleged that Lieutenant Michael Wamack (“Lt. Wamack”) made “advances and sexual gestures” toward Paula Taylor, an administrative secretary. Mr. Nix further reported that Ms. Taylor was scared of Lt. Wamack and that she was upset about a performance evaluation she received from Lt. Wamack. In response to the call, Ms. Martin, along with a team of individuals from the Human Resources Department and the Office of Professional Responsibility (“OPR”), investigated the complaint.

On March 6, 2008, Ms. Taylor was interviewed and denied being sexually harassed. Following the discussion with Ms. Taylor, Ms. Martin concluded there was no evidence of sexual harassment and there was no need for further investigation. On March 13, 2008, Mr. Nix was questioned regarding the allegation of harassment and admitted that he was the caller. Mr. Nix stated that he received the information about the alleged sexual harassment from Trooper Randy Deaderick (“Trooper Deaderick”).

Termination from TDOS and Administrative Appeals

By letter dated May 5, 2008, Colonel Mike Walker informed Mr. Nix that he was being recommended for termination for filing the false allegation of sexual harassment. Colonel Walker stated, in relevant part:

Trooper Nix, you alleged serious allegations against Lieutenant Wamack. You attacked his credibility and reputation in the workplace without merit. Your vicious and malicious allegations were serious in nature and, if accurate, would damage or even end Lieutenant Wamack’s career. Your intentional untruthful allegations against Lieutenant Wamack, your false statement concerning who you received the information from (co-worker Trooper Randy Deaderick) and the fact that you alleged another co-worker, Ms. Taylor, was the victim, creates a poisoned work environment that seriously disrupts the normal operation of the District and interferes with management’s ability to manage. . . .

Mr. Nix requested a due process hearing and a Level IV Grievance Hearing regarding the recommendation for termination. On May 12, 2009, Commissioner Dave Mitchell rendered

¹ Ms. Martin was able to determine the phone number of the caller by looking at her caller ID. The phone number was later identified as Mr. Nix’s number.

the Level IV Grievance Hearing Decision and terminated Mr. Nix for the following violations:

- 1) **Department of Human Resources Rule 1120-10.06(04)**^[2]: Failure to maintain satisfactory and harmonious relationships with the public and fellow employees.
- 2) **Department of Human Resources Rule 1120-10.06(08)**: Gross misconduct or conduct unbecoming an employee in the State service.
- 3) **Department of Human Resources Rule 1120-10.06(12)**: Participation in any action which would in any way seriously disrupt or disturb the normal operation of the agency, or interfere with the ability of management to manage.
- 4) **Department of Human Resources Rule 1120-10.06(24)**: For the good of the service as outlined in T.C.A. 8-30-326.
- 5) **Department of Safety, General Order 216-2, IV, 14e**: No member shall falsify or intentionally and willfully withhold any material from a statement, or report, written or oral, made to Headquarters or any superior.
- 6) **Department of Safety, General Order 216-2, IV, 17**: Any employee may be dismissed when the department considers that the good of the service will be served thereby, (T.C.A. 8-30-326).

Mr. Nix appealed the termination decision and the suspensions through the TDOS internal grievance procedure and sought a Level V hearing before the Tennessee Civil Service Commission (“the Commission”). The Level V hearing was conducted before an Administrative Law Judge (“ALJ”) on September 7 and 8, 2010; fifteen witnesses testified. The ALJ issued his Initial Order on March 11, 2011 upholding the suspensions³ but reversing the termination. The ALJ opined that Mr. Nix did not “act in bad faith” when he made the anonymous call to Ms. Martin. TDOS appealed the ALJ’s order. On May 19, 2011, the Commission issued a Final Order deciding not to adopt the ALJ’s initial order and reinstating the TDOS decision to terminate Mr. Nix. The Commission reasoned that, “[r]egardless of [Mr. Nix’s] motives, such a false, potentially career ending, charge made against a fellow employee under the veil of the Department’s sexual harassment policy more than justifies his termination.”

² Tennessee Rule and Regulation 1120-10.06 was repealed effective May 31, 2011; however, the repeal has no effect on this case.

³ Mr. Nix does not appeal the ALJ’s decision regarding his suspensions. The only issues on appeal relate to Mr. Nix’s termination.

Judicial Review

On July 15, 2011, Mr. Nix filed a Petition for Judicial Review with the chancery court, pursuant to Tenn. Code Ann. § 4-5-322. A hearing on the petition was held on October 29, 2012. On January 10, 2013, the court announced its decision from the bench. In its oral ruling, the court affirmed the decision of the Commission upholding the TDOS's decision to terminate Mr. Nix. On January 29, 2013, the court entered an order incorporating the bench ruling. Mr. Nix appeals.

STANDARD OF REVIEW

Judicial review of the final decision of an administrative agency is governed by the Tennessee Uniform Administrative Procedures Act ("UAPA"), Tenn. Code Ann. § 4-5-101 *et seq.* See *Story v. Civil Serv. Comm'n*, No. M2010-01214-COA-R3-CV, 2011 WL 2623904, at *2-3 (Tenn. Ct. App. 2011). The UAPA limits our scope of review as follows:

The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (5)(A) Unsupported by evidence that is both substantial and material in the light of the entire record.

(B) In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

Tenn. Code Ann. § 4-5-322(h).

Under the UAPA, this court, like the trial court, must apply the substantial and material evidence standard to the agency's factual findings. *City of Memphis v. Civil Serv. Comm'n*, 239 S.W.3d 202, 207 (Tenn. Ct. App. 2007). Substantial and material evidence is “such relevant evidence as a reasonable mind might accept to support a rational conclusion and such as to furnish a reasonably sound basis for the action under consideration.” *Macon v. Shelby Cnty. Gov't Civil Serv. Merit Bd.*, 309 S.W.3d 504, 508 (Tenn. Ct. App. 2009) (quoting *Pruitt v. City of Memphis*, No. W2004-01771-COA-R3-CV, 2005 WL 2043542, at *7 (Tenn. Ct. App. Aug. 24, 2005)). It is “something less than a preponderance of the evidence, but more than a scintilla or glimmer.” *Id.* at 508 (quoting *Wayne Cnty. v. Tenn. Solid Waste Disposal Control Bd.*, 756 S.W.2d 274, 280 (Tenn. Ct. App. 1988)).

The UAPA's narrow standard of review for an administrative body's factual determinations “suggests that, unlike other civil appeals, the courts should be less confident that their judgment is preferable to that of the agency.” *Wayne Cnty.*, 756 S.W.2d at 279. This Court cannot displace the agency's judgment as to the weight of the evidence even where there is evidence that could support a different result. *Id.*

ANALYSIS

Mr. Nix contends the trial court failed to properly consider Department of Safety General Order 217 in its analysis of his termination, and he further asserts that his termination was “in violation of the standards set forth in Tenn. Code Ann. § 4-5-322(h).” We have reviewed Mr. Nix's arguments and have determined that the dispositive issue for our consideration is whether the chancery's court's decision to uphold the TDOS's termination of Mr. Nix is supported by substantial and material evidence. *See* Tenn. Code Ann. § 4-5-322(h)(5).

In the May 19, 2011 Final Order, the Commission specifically cited testimony from Trooper Deaderick, Paula Taylor, Deborah Martin, and Lt. Colonel Trott and concluded that:

. . . it is clear that [Mr. Nix] has not been truthful, his testimony is not credible and his version of events is not believable. [Mr. Nix's] testimony grossly conflicted with the testimonies of the State's witnesses

It is clear from the evidence that [Mr. Nix] did not have sufficient knowledge, information or factual basis to justify his accusing Lt. Wamack of sexually harassing Paula Taylor. The accusations he made in his anonymous phone call to Ms. Martin were clearly false and without merit. [Mr. Nix] certainly had motive for purposely making such a malicious and false accusation against a superior. He admitted that he was upset and angry because he believed he had

been cheated out of a promotion to sergeant by the Knoxville THP captain. . . . Regardless of [Mr. Nix's] motives, such a false, potentially career ending, charge made against a fellow employee under the veil of the Department's sexual harassment policy more than justifies his termination.

Trooper Deaderick gave the following relevant testimony:

A. Up until – up until, you know, what happened as far as the allegation of harassment and everything, you know, I kept tabs on [Mr. Nix], me and [Mr. Nix] were friends, and we talked. He asked what was going on with the Highway Patrol, and we'd sit there and talk and I'd tell him pretty much everything.

And, you know, I just – he asked what was going on.

I said, “well, Paula Taylor,” I said, “you know she got a bad evaluation after 30-something years of being on - - working for the Department of Safety,” and I said “she's pretty upset about it.” And I said, “Wamack is the one who did it to her,” and I said, “you know, he said she wasn't conducive to a good work environment.”

And I said, “now, I've heard off-colored jokes and things he said, you know, while working in the office that wasn't, in my opinion, conducive to a good work environment.”

Q. And when had you heard those?

A. Between '01 and '03. You know, I've heard --

Q. So you --

A. --jokes in the office, you know --

Q. So you didn't hear them anytime around the interim review process?

A. No, unh-unh.

...

Q. Did you tell Marty that Lt. Wamack was sexually harassing Paula back in '01 and '03?

A. No.

Q. Did you tell him he was sexually harassing her around the interim review time?

A. No, I said he made some jokes, off-color remarks.

Q. Around the interim review time --

A. No.

Ms. Taylor testified emphatically that she had never been sexually harassed. Ms. Taylor also denied that Lt. Wamack had ever made “any sexual advancements” or “off-colored remarks” to her.

Ms. Martin testified regarding the phone call she received from Mr. Nix as follows:

I received a phone call on February 29th, 2008, and it was from an anonymous person. I – the person wanted to report an incident of sexual harassment.

. . . The person said that the person who was being harassed, her name was Paula Taylor, who was a secretary at the Knoxville THP. He said that Lt. Wamack was making advances towards her, sexual gestures towards her, also that Lt. Wamack had given her, like, two's and three's on her evaluation, said that Paula Taylor was scared to death, and - - of Lt. Wamack, and also that because she was scared to death, that she would not speak to us if we came here to talk to her at the THP station.

Regarding his decision to terminate Mr. Nix, Lt. Colonel Trott testified, in relevant part:

Q. Concluding that this was a false complaint against Michael Wamack, why did you feel that this warranted termination?

A. Well, I thought about two things: I first thought about [Mr. Nix]'s extensive past history where he has been involved in, I think, 14 OPR investigations, had so many days off in the last 12 months suspension time, really is one of the most extensive OPR records that I have seen in that position.

The other thing that I considered was, in my opinion, I felt like this type of claim; a sexual harassment claim against a superior officer, is one of the most serious and damaging things you can say about a police officer in this time and day. And I thought that the magnitude of that complaint being totally false was just a measure of how far Marty would go to retaliate against supervisors who had anything to do with disciplining him in the past.

And I thought with that type of vicious contact, and comment, and attack on Lt. Wamack, that I felt like we didn't have any choice but to fire [Mr. Nix].

Based upon our careful review of the evidence and the relevant disciplinary authority, we find substantial and material evidence to support the chancery court's ruling that the Commission's decision to terminate Mr. Nix should be upheld. In particular, we give great deference to the ALJ's determination that Mr. Nix was "not credible" or "believable." *See Mitchell v. Madison Cnty. Sheriff's Dep't*, 325 S.W.3d 603, 618 (Tenn. Ct. App. 2010). The testimony of Trooper Deaderick, Ms. Taylor, and Ms. Martin, quoted above, establishes that Lt. Wamack never sexually harassed Ms. Taylor and that Trooper Deaderick never told Mr. Nix that Ms. Taylor was being sexually harassed. Thus, there is substantial and material evidence to support the conclusion that Mr. Nix intentionally made a false report to Ms.

Martin in violation of Department of Safety, General Order 216-2, IV, 14e. The false report seriously disrupted the normal operation of the agency in violation of Department of Human Resources Rule 1120-10.06(12). Moreover, the act of making this false report constituted a failure to maintain harmonious relationships with fellow employees in violation of Department of Human Resources Rule 1120-10.06(04).⁴ In sum, there is substantial and material evidence providing a sound basis to uphold Mr. Nix's termination for his violation of these disciplinary policies. *See Lien v. Metro. Gov't of Nashville*, 117 S.W.3d 753, 761 (Tenn. Ct. App. 2003) (noting that this Court should not second guess the choice of sanctions for the violation of an employment rule absent a finding that the decision was arbitrary). Therefore, we affirm the trial court in all respects.

CONCLUSION

For the forgoing reasons, the chancery court's decision upholding the termination of Mr. Nix is affirmed. Costs of appeal are assessed against the appellant.

ANDY D. BENNETT, JUDGE

⁴ Mr. Nix devotes much of his argument to his contention that "the trial court failed to properly consider Department of Safety General Order 217 in its analysis of his termination." Department of Safety General Order 217 is the TDOS's workplace harassment and illegal discrimination policy which, Mr. Nix contends, required him to report the conduct of Lt. Wamack to the TDOS. We have determined that there is substantial and material evidence to support a finding that Mr. Nix falsified the report to Ms. Martin. Mr. Nix was certainly not obligated to report a falsehood under this policy, therefore his arguments regarding Department of Safety General Order 217 are of no consequence.