

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2010-000568-001 DT

03/14/2011

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
T. Melius
Deputy

JAMES MCANDRIES

DANIEL L BONNETT

v.

STATE OF ARIZONA DEPARTMENT OF
TRANSPORTATION (001)
ARIZONA STATE PERSONNEL BOARD (001)

ROBERT J SOKOL
SCOTT S WAKEFIELD

OFFICE OF ADMINISTRATIVE
HEARINGS
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Plaintiff-Appellant James McAndries (Plaintiff) asks this Court to review the decision of Defendant-Appellee Arizona Department of Transportation (ADOT) terminating Plaintiff's employment, and the Order of Defendant-Appellee Arizona State Personnel Board (ASPB), dated June 15, 2010, denying Plaintiff's appeal and upholding ADOT's action of dismissal. For the following reasons, this Court affirms the decision of the Administrative Hearing Officer and vacates the order of dismissal.

I. FACTUAL BACKGROUND.

Plaintiff was employed by ADOT for nearly 5 years. On January 14, 2010, ADOT issued to Plaintiff a Notice of Dismissal letter terminating his employment. Plaintiff timely appealed to ASPB, which assigned the matter to Administrative Hearing Officer Thomas W. McLellan (AHO), who held a hearing on May 12 and 14, 2010. On May 24, 2010, the AHO made Findings of Fact and Conclusions of Law, and recommended that the sanction of dismissal be reduced to a suspension of 120 hours, and that Plaintiff be reinstated to his position with all back pay except for the period of suspension. On June 15, 2010, ASPB considered the AHO's May 24, 2010, decision. It adopted the AHO's Findings of Fact and Conclusions of Law except for Findings of Fact numbers 10, 14, 26, and 28, amended Findings of Fact numbers 8 and 23, and then concluded dismissal was not disproportionate to the offense. It then denied Plaintiff's appeal and upheld ADOT's action of dismissal. (Order, dated June 15, 2010.) On July 20, 2010, Plaintiff filed a timely Complaint for Judicial Review of Administrative Decision. This Court has jurisdiction pursuant to A.R.S. § 12-124(A) and A.R.S. § 12-905(A).

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II. GENERAL STANDARDS FOR REVIEW:

The Arizona statutory authority and case law define the scope of administrative review as follows:

The court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

A.R.S. § 12-910(E).

In reviewing an administrative agency's decision, the superior court examines whether the agency's action was arbitrary, capricious, or an abuse of discretion. The court must defer to the agency's factual findings and affirm them if supported by substantial evidence. If an agency's decision is supported by the record, substantial evidence exists to support the decision even if the record also supports a different conclusion.

Gaveck v. Arizona St. Bd. of Podiatry Exam., 222 Ariz. 433, 215 P.3d 1114, ¶ 11 (Ct. App. 2009) (citations omitted).

[I]n ruling on the sufficiency of the evidence in administrative proceedings, courts should show a certain degree of deference to the judgment of the agency based upon the accumulated experience and expertise of its members.

Croft v. Arizona St. Bd. of Dental Exam., 157 Ariz. 203, 208, 755 P.2d 1191, 1196 (Ct. App. 1988).

A trial court may not function as a "super agency" and substitute its own judgment for that of the agency where factual questions and agency expertise are involved.

DeGroot v. Arizona Racing Comm'n, 141 Ariz. 331, 336, 686 P.2d 1301, 1306 (Ct. App. 1984). The reviewing court must view the evidence in a light most favorable to upholding the agency's decision and affirm that decision if it is supported by any reasonable interpretation of the record. *Baca v. Arizona D.E.S.*, 191 Ariz. 43, 46, 951 P.2d 1235, 1238 (Ct. App. 1998). While the reviewing court is not bound by the agency's conclusions of law or statutory interpretations, an agency's interpretation of statutes or regulations that it implements is entitled to great weight. *Siegel v. Arizona State Liquor Board*, 167 Ariz. 400, 401, 807 P.2d 1136, 1137 (Ct. App. 1991); *Baca v. Arizona D.E.S.*, 191 Ariz. 43, 46, 951 P.2d 1235, 1238 (Ct. App. 1998).

However, the agency's interpretation is not infallible, and courts must remain final authority on critical questions of statutory construction.

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U.S. Parking Systems v. City of Phoenix, 160 Ariz. 210, 211, 772 P.2d 33, 34 (Ct. App. 1989).

III. ISSUE: WERE THE ACTIONS OF ADOT AND ASPB ARBITRARY AND CAPRICIOUS OR AN ABUSE OF DISCRETION.

Plaintiff asks this Court to reverse the June 15, 2010, Order of the ASPB and find ADOT's decision to terminate Plaintiff was arbitrary, capricious, and an abuse of discretion. In reviewing the record in this matter, this Court concludes the record fully supports the decision reached by the AHO. This Court thus affirms the May 24, 2010, decision of the AHO. This Court therefore concludes ADOT's decision to terminate Plaintiff's employment was arbitrary, capricious, and an abuse of discretion, and further finds there is no support for the actions taken by the ASPB in modifying the May 24, 2010, decision of the AHO, thus those actions were arbitrary, capricious, and an abuse of discretion.

IV. CONCLUSION.

Based on the foregoing, this Court concludes the record fully supports the decision reached by the AHO, and that the actions taken by ADOT and ASPB were arbitrary, capricious, and an abuse of discretion.

IT IS THEREFORE ORDERED vacating the order of ADOT dismissing Plaintiff.

IT IS FURTHER ORDERED vacating the June 15, 2010, Order of ASPB.

IT IS FURTHER ORDERED affirming the May 24, 2010, decision of the AHO and the sanction recommended by the AHO.

IT IS FURTHER ORDERED remanding this matter to ADOT.

IT IS FURTHER ORDERED that, by **April 4, 2010**, Daniel L. Bonnett, attorney for Plaintiff, shall lodge with this Court for this Court's signature a proposed form of order resolving this matter.

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