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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

FRED BOROUMAND, Appellant, v. CIVIL SERVICE COMMISSION OF VENTURA COUNTY, Respondent. RONALD C. COONS, Real Party in Interest.	2d Civil No. B174985 (Super. Ct. No. CIV 220650) (Ventura County)

Fred Boroumand appeals from an order denying his writ petition to overturn a Ventura County Civil Service Commission (Commission) decision terminating his employment. (Code Civ. Proc., § 1094.5.) He contends that the decision is not supported by the evidence and that the trial court abused its discretion. We affirm.

Facts And Procedural History

Appellant, a senior engineer for the Ventura County Watershed Protection District, was terminated November 6, 2002 based on three incidents in which he was insubordinate, shouted at supervisors, and disregarded prior reprimands to control his temper.

Two years before the termination, appellant suffered a cardiovascular injury and received a workers' compensation award. Appellant returned to work and was given limited duties and reduced hours to accommodate his medical condition. As a senior engineer, he managed the flood plain program and supervised employees.

The First Incident

On the afternoon of October 9, 2002, appellant interrupted a meeting between Watershed Protection District Director Jeff Pratt and a developer, Phil Culler. Appellant shouted "I need to go to the doctor" and asked permission to leave work. Pratt said "why are you talking to me? Talk to your supervisor." Appellant's supervisor, Sergio Vargas, was in the next cubicle office.

Appellant stared at Pratt. In a loud and angry voice, he repeatedly asked if he could leave work. Pratt told him to "tone down" and "this is inappropriate. . . . You need to, uh, leave right now, and if you don't there will be consequences."

The Second Incident

Half an hour later, Pratt saw appellant in the hallway. Pratt said that they would meet later to discuss the first incident. Appellant was angry and defensive and accused Pratt and Vargas of conspiring against him.

The Third Incident

On October 10, 2002, Pratt and Vargas met with appellant to give him a notice of proposed disciplinary action in an unrelated matter. Appellant was angry and said "you're out to get me." Although the conference room door was closed, other employees heard appellant scream. Appellant yelled that Pratt and Vargas did not know what they were doing, swung his hands, and violently slapped himself in the face twice. Appellant grabbed his chest and fell to the floor, screaming that Pratt was trying to kill him.

On October, 25, 2002, appellant received a notice of proposed disciplinary action. Ronald Coons, Director of the Ventura County Public Works Agency, met with appellant, interviewed witnesses, and terminated appellant effective November 6, 2002.[1]

Appellant filed an administrative appeal. After a lengthy hearing, the Commission upheld the termination based on findings that appellant was insubordinate, discourteous, failed to exhibit good behavior, was willfully disobedient, and engaged in acts that were inimical and incompatible with public service.

Appellant filed a petition for administrative mandamus challenging the Commission's decision. (Code Civ. Proc., § 1094.5.) The trial court, in a statement of decision, found that appellant had a history of abusive conduct towards a coworker, that appellant had been disciplined on prior occasions for insubordinate conduct, and that the October 9 and 10, 2002 incidents supported the decision to terminate appellant.

Standard of Review

Where an administrative decision affects a fundamental vested right such as continued employment, the trial court must exercise its independent judgment in determining whether the administrative findings are supported by the weight of the evidence. (*Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 32, 44-45.) "[T]he party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence." (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817.) On review, our task is to determine whether the trial court's findings are supported by substantial evidence. (*Id*., at p. 824.)

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[1] In the November 4, 2002 notice of disciplinary action, Coons stated that appellant "repeatedly chose to ignore common courtesy, common sense, established procedures and repeated warnings . . . . During our October 31, 2002, meeting, you attempted to cloud the issue by claiming discrimination and retaliation for . . . having previously filed a Workers' Compensation case. . . . The fact that you have over sixteen (16) years seniority with this Agency does not escape my notice. In this instance, it works against you . . . you have been here long enough to know that this was not acceptable behavior."

Appellant argues that the evidence does not support the Commission's decision and that the superior court erred in not crediting evidence favorable to appellant. The Commission's findings, however, are entitled to substantial weight and presumed correct. (*Id*., at p. 817.) Because this is a substantial evidence appeal, we do not reweigh the evidence. (*Id*., at p. 824; e.g., *Kazensky v. City of Merced* (1998) 65 Cal.App.4th 44, 52.)

Pratt's account of the first incident was corroborated by Phil Culler and others. Culler testified that appellant interrupted the meeting, repeatedly asking if he could leave work. Pratt told appellant to talk to his supervisor but appellant refused to leave. Culler stated that appellant was insubordinate and made him feel uneasy. He opined that the employee matter should "have been taken up outside of a client meeting."

Appellant's supervisor, Vargas, was in his office next to Pratt's cubicle. Vargas heard appellant shout at Pratt and said that "it sounded loud and angry."

Karen Mendoza, a survey engineer, also heard the ruckus. She stated that appellant was "clearly agitated," "forceful," and that "it was not a polite request."

The trial court found that Culler, Vargas, and Mendoza were credible witnesses and corroborated Pratt's testimony that appellant was " 'loud,' 'angry,' 'demanding.' " The evidence also impeached appellant on major points.

Appellant claimed that he entered Pratt's office before the meeting started. Pratt and Culler, however, testified that the meeting was already in progress.

Although appellant claimed it was a medical emergency, appellant scheduled the doctor's appointment the night before. Rather then speak to Vargas, appellant interrupted the meeting and insisted that Pratt let him leave work.

An hour before the incident, appellant e-mailed Pratt. Appellant accused Pratt of trying to get him and "scrutinizing all my work[] and actions . . . for every little

thing and petty deficiency." The trial court found that the email was "brash, provocative, angry, and threatening."[2] We agree.

Appellant claimed that Vargas was not around to approve the medical appointment, yet Vargas was in his office only "6 steps" away from the Pratt-Culler conference. On cross-examination, appellant admitted that he could have used other procedures to advise staff and supervisors that he was leaving. Instead, he interrupted Pratt's meeting and insisted that Pratt approve the medical appointment.

The evidence further showed that appellant was insubordinate later that day when Pratt saw him in the hallway. Referring to appellant's interruption of the meeting, Pratt said, "Fred, we're gonna need to talk about this." Appellant was hostile, angry, and raised his voice at Vargas and Pratt. Appellant insisted that he had done nothing wrong and that they trying to get rid of him.

Appellant's behavior did not change the next morning. On October 10, 2002, Pratt and Vargas met with appellant to give him a notice of disciplinary action in an unrelated matter. Appellant was angry, aggressive, threatening, and violent. He screamed that Pratt and Vargas did not know anything, slapped himself twice in the face, and banged the table. A coworker testified that the screaming "was really, really, really, really loud" and that work stopped "everywhere."

Appellant grabbed his chest and fell to the floor. After an ambulance was called, appellant screamed "Jeff Pratt is trying to kill me." Appellant repeated the accusation to a coworker at the hospital.

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[2] The email was titled: "Subject: Notice of Proposed Disciplinary Action (NOPDA) time extension." It stated in pertinent part: "[I]f my cardio vascular disease that I am suffering now is caused by the county job stress, then your letter of reprimand dated July 3, 2002 . . . has caused unnecessary stress resulting [in] worsening my health condition. According to my doctor if this trend of behavior continue[s] he will put me in total disability. Obviously, someone needs to be responsible for causing to my health problem and to my family future financial burdens and punitive damage. . . . [Y]ou have knowledge about my health conditions, but knowing this caus[ed] unnecessary and avoidable stress. . . . By now I have come to the painful conclusion that the issues are not my job performance, it is a personal matter on your part . . . ."

Appellant claims that Pratt and Vargas scheduled the October 10, 2002 meeting in retaliation of appellant's request for a medical disability leave. The evidence, however, shows that the meeting was to give appellant a notice of disciplinary action letter. Pratt and Vargas were not aware of a pending request for medical disability leave. His attorney acknowledged there was no medical evidence of a heart attack. Appellant's behavior was consistent with prior incidents in which he avoided competence-of-work problems and disciplinary action by claiming that it would endanger his health.

Substantial evidence supports the finding of intentional and willful insubordination. (*Coomes v. State Personnel Board, supra,* 215 Cal.App.3d at p. 775.) "Discourtesy to a supervisor generally injures the supervisor-employee relationship and is thus harmful to the public service. Cooperation among public employees is essential to the smooth functioning of public service. Such egregious conduct as publicly insulting a fellow employee not only destroys cooperation among employees, but also destroys public confidence in governmental service. [¶] Moreover, the closeness in time of these incidents reveals a continuing course of conduct which is likely to recur. Repeated occurrence of similar incidents would increase the level of harm to public service." (*Caveness v. State Personnel Bd.* (1980) 113 Cal.App.3d 617, 631-632.)

Prior Disciplinary Problems

The trial court, in denying the writ petition, found the three incidents were not isolated and that appellant had a history of anger management problems. On July 3, 2002, appellant received a written reprimand for verbally abusing his secretary, Rose Paredes. The reprimand letter stated that appellant had been counseled for "several incidents of yelling and disrespectful behavior toward your manager, other employees, and the public." The letter warned that "this pattern is again becoming prevalent in your behavior" and that "[t]he severity of your behavior . . . is extremely significant in its impact to coworkers, supervisors, and is damaging to the image and reputation of the Flood Control District. . . . [T]his behavior is unacceptable, especially for a management employee." Appellant was warned that "[f]ailure to immediately improve and sustain the

required performance will subject you to additional corrective action, up to and including demotion or termination."[3]

Appellant's outbursts on October 9 and 10, 2002 violated the terms of the July 3, 2002 reprimand letter. The superior court concluded that the "angry outbursts, some of which were overheard by customers at the public counter and in the office, were inimical to public service. [¶] Further, warned about such conduct, Mr. Boroumand failed to take seriously the need to corral his anger. Instead, he never acknowledged any awareness of the unacceptability and egregiousness of his anger, discourtesy, rud[e]ness and insubordination directed at both his superiors and a subordinate co-employee. His inability to accept criticism and the closeness in time of those 2002 incidents revealed a continuing course of conduct that appeared likely to recur."

Due Process

Appellant claims that prior misconduct and reprimands should not have been considered. The evidence, however was received at the civil service hearing without objection and is part of the administrative record. (Code Civ. Proc., § 1094.6, subd. (c).) Nor did appellant object at the hearing on the writ petition. Having waived the issue, he is precluded from objecting to the evidence at this late a date. (*Savelli v. Board of Medical Examiners* (1964) 229 Cal.App.2d 124, Cont.Ed.Bar (3rd ed. 2004) Cal. Administrative Mandamus § 6.86, p. 212.)

Appellant's due process argument that he was not given notice of the scope of the disciplinary charges is equally without merit. The November 4, 2002 notice of disciplinary action referred to the July 3, 2002 written reprimand "for discourteous treatment toward Mr. Pratt, other employees, and individuals outside the Department." The notice stated that "your continued misbehavior clearly demonstrates that you have

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[3] Rose Paredes testified that appellant screamed at her in front of other employees on June 5, 2002, and threw a file at her. Appellant was "extremely rude and very, very, very loud, and I was very embarrassed because he was yelling at me in front of the whole staff . . . I just felt . . . belittled." After the outburst, appellant returned two more times and berated her. Paredes broke down in tears and had to leave work.

paid little or no attention to those past attempts by management and supervision to get you to stop. You refuse to accept responsibility for your misconduct and instead, now allege that a conspiracy and/or plot exists to terminate you."

Attached to the November 4, 2002 notice of disciplinary action were prior disciplinary notices and the July 3, 2002 written reprimand describing how appellant verbally abused Rose Paredes, engaged in loud and angry confrontations with supervisors, and shouted on the office phone about how no one could tell him how to do his job.

The July 3, 2002 written reprimand also describes a June 5, 2002 counseling session in which appellant raised his voice in an aggressive manner, scowled, shouted, waived his arms, and yelled "You can't touch me. . . I'm a fighter." Appellant disparaged his supervisors and yelled that "I was an engineer when you were shoving dirt up ants' asses!"

Appellant's outbursts and insubordinate behavior clearly supported the decision to terminate his employment. "[I]n reviewing public employee discipline cases, the court considers the extent to which the employee's conduct resulted in, or if repeated is likely to result in, harm to the public service. Other relevant factors are the circumstances surrounding the misconduct and the likelihood of its recurrence. [Citation.] 'The public is entitled to protection from unprofessional employees whose conduct places people at risk of injury and the government at risk of incurring liability.' [Citation.]" (*Deegan v. City of Mountain View* (1999) 72 Cal.App.4th 37, 51-52.)

Despite repeated warnings, appellant was rude, discourteous, and insubordinate to superiors, coworkers, and members of the public. The trial court did not err in finding that appellant's conduct was willful, insubordinate, and undermined the operation of the department. (E.g., *Hosford v. State Personnel Bd.* (1977) 74 Cal.App.3d 302, 312 [termination based on insubordination and verbal sparring matches with supervisor].) "The misconduct here resulted in harm to the public service and, if

repeated, would be likely to result in harm to the public service and harm to the public pocketbook." (*Deegan v. City of Mountain View, supra,* 72 Cal.App.4th at p. 52.)

The judgment (order denying petition for administrative mandamus) is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED.

YEGAN, Acting P.J.

We concur:

COFFEE, J.

PERREN, J.

Barbara A. Lane, Judge

Superior Court County of Ventura

James Farley, for Appellant.

Noel A. Klebaum, County Counsel, County of Ventura and John E. Polich, Assistant County Counsel, for Respondent and Real Party in Interest.