Cantres v New York City Health and Hospitals Corp.
2005 NY Slip Op 30350(U)
March 29, 2005
Supreme Court, New York County
Docket Number: 110432/04
Judge: Marilyn Shafer
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[* 1] SCANNED ON 4/1/2005

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. MARILYN SHAFER, JSC
Justice

PART 36

0110432/2004

CANTRES, ERIC
VS
NYC HEALTH & HOSPITALS CORP.

SEQ 1

ARTICLE 78

INDEX NO. ______

MOTION DATE ______

MOTION SEQ. NO. ______

MOTION CAL. NO. ______

The following papers, numbered 1 to ______ were read on this motion to/for ______

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion is denied per attached Mem

FILED
APR 01 2005
NEW YORK COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE ______ FOR THE FOLLOWING REASON(S):

Dated: 3/29/05

HON. MARILYN SHAFER J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: HON. MARILYN SHAFER PART 36
Justice

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ERIC CANTRES,

Petitioner,

INDEX NO. 110432/04
MOTION DATE
MOTION SEQ. NO. 01

-against-

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION and PERSONNEL REVIEW BOARD, THOMAS MATTEO, COO, SEAVIEW HOSPITAL REHABILITATION CENTER AND HOME,

Respondents.

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The following papers, numbered 1 to 4 were read on this petition under Article 78 of the New York Civil Practice Law and Rules:

	Papers Numbered
Notice of Petition	1
Notice of Cross-Motion to Dismiss	2
Respondent's Memo of Law	3
Affirmation in Further Support of Petition	4

Upon the foregoing papers, it is ordered that this petition is denied .

Petitioner Eric Cantres (Cantres) brings this motion pursuant to CPLR Article 78 to vacate the final decision of the Personnel Review Board (PRB) of the New York City Health and Hospitals Corporation ((HHC) and Thomas Matteo, Chief Operating Officer of Seaview Hospital Rehabilitation Center and Home (Seaview; collectively, Respondents), terminating Cantres from employment as an institutional aide at Seaview, where he has worked since 1994. Seaview is a long-term care facility for disabled and elderly residents on Staten Island.

In the instant matter, Cantres was initially charged with four acts of misconduct

stemming from "threatening and other inappropriate statements" Cantres made to his supervisor and Seaview employees respectively, in January, 2002 (Report and Recommendation of ALJ, p. 1, Notice of Petition, Exhibit B). The first charge was sustained at an administrative hearing on March 24, 2003, with a recommendation by the Administrative Law Judge that Cantres be suspended for 45 days without pay. Cantres then requested that Seaview reconsider and reject the ALJ's finding of guilt on charge one. By letter to Cantres dated July 1, 2003, Seaview accepted the factual findings of the ALJ but also found Cantres guilty on the fourth charge, and terminated Cantres' employment. Cantres appealed to the PRB. On or about March 19, 2004, the PRB made a final determination that the hearing record contained substantial evidence to support a finding of guilt on charges one and four. The PRB also determined that Cantres' misconduct warranted his termination from Seaview.

Having exhausted his administrative remedies, Cantres brings this petition on grounds that the final determination was not based on substantial evidence, that the penalty was disproportionate to the alleged conduct, affected by errors of law, and was arbitrary, capricious, and an abuse of discretion. Respondents cross-move, pursuant to 7804 (f) and 3211 (a) (7), to dismiss the petition on grounds that Cantres has failed to state a cause of action.

Discussion

It is well settled that judicial review in an Article 78 proceeding is limited to a determination of whether the administrative action complained of is arbitrary and capricious or lacks a rational basis (*In re Application of Chelrae Estates, Inc. v State Division of Housing and Community Renewal, Office of Rent Administration*, 225 AD2d 387, 389 [1st Dept. 1996] *citing Matter of Pell v Board of Education*, 34 NY2d 222, 230-231 [1974]). An Article 78 proceeding

is limited to consideration of the evidence and arguments raised before the agency when the administrative determination was rendered and "[t]he function of the court . . . is to determine . . . whether the determination had a rational basis in the record" *(In re Application of HLV Associates v Aponte*, 223 AD2d 362, 363 [1st Dept. 1996] citing *Matter of Fanelli v New York City Conciliation & Appeals Bd.*, 90 AD2d 756, 757 [1st Dept. 1982]). "Courts are not permitted to substitute their judgment for that of the administrative agency where said decision is rationally based on the record" (*In re Application of Royal Realty Co. v New York State Division of Housing and Community Renewal*, 161 AD2d 404, 405 [1st Dept. 1990] citing *Fresh Meadows Associates v New York City Conciliation and Appeals Board*, 88 Misc. 2d 2003 [Sup Ct, New York County, 1976]).

CPLR 7803(4) provides that a judicial proceeding brought under Article 78 may question "whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence." Judicial review tests ". . . the adequacy of the agency's fact findings by the substantial evidence test of subdivision 4 and the measure of the punishment by the abuse of discretion standard of subdivision 3." (Siegel, New York Practice Third Ed., §562.) The standard for abuse of discretion in imposing punishment has been defined as ". . . so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness" (*Stolz v Board of Regents*, 4 AD2d 361, 364 [3d Dept 1957], cited in Siegel, *id*). "While the quantum of evidence that rises to the level of 'substantial' cannot be precisely defined, the inquiry is whether `in the end the finding is supported by the kind of evidence on which responsible persons are accustomed to rely in serious affairs'" *(People ex rel. Vega v Smith*, 66 NY2d 130, 139, quoting

National Labor Relations Bd. V Remington Rand, 94 F2d 862,873, cited in *Lahey v Kelly*, 71 NY 2d 135, 140)

Respondents state that Cantres has foregone substantial evidence review by appealing to the PRB pursuant to Rule 7.5.7 of the Health and Hospitals Corporation, which provides that an employee appealing a penalty may either petition the court pursuant to Article 78 or by application to the PRB, but not both (Memo of Law, p. 9). Respondent's rely on *NY City Dept. of Envtl. Prot v NYC Civil Service Comm'n* for the proposition that Civil Service Law § 76 is clear and unambiguous in its intent to preclude judicial review of Civil Service Commission decisions (*NY City Dept of Envtl. Prot v NYC Civil Service Comm'n* 78 NY 2d 318, 322). However, Respondents concede that Civil Service Law § 76 does not apply to HHC Rule 7.5.7, and do no more than conclude that the rules are similar. Respondents have failed to show that *New York City Dept. Of Envtl. Protection* is controlling in the matter at bar. Accordingly, this Court finds that Cantres is entitled to review under §7803 (3) and (4).

In sustaining the first charge against Cantres, the ALJ found that Cantres' statement to a supervisor that, were he fired, ". . .all the people that lying about me [sic], they will pay. I know people and they will take care of it" was "intimidating" but did not constitute a threat (ALJ Report and Recommendation, Exhibit B, p. 7). In its July 1, 2003 letter, Seaview does not challenge the ALJ's findings of fact and credibility. Rather, Seaview states that the common definition of intimidation is to "subdue or influence by frightening with threats of force." Accordingly, Seaview found that Cantres' intimidating statements were a threat to his supervisor and coworker respectively. Seaview also notes that Cantres received two warnings in 1995 for insubordination and a further warning in 1999 for intimidating coworkers. On appeal,

the PRB upheld charge 4, finding Cantres' statement to a coworker that " I know what you did," and "some people are going to pay big time" to constitute a threat.

Cantres states that neither his supervisor nor his coworker comprehended what was meant by his statements and that the statements could not, therefore, have constituted a threat (Petition, § 16). Cantres argues that the PRB wrongfully substituted its own judgment of credibility for that of the ALJ, and that issues of credibility are exclusively within the province of the hearing officer. Cantres additionally bases his argument for reinstatement on the ALJ's recommendation that his misconduct did not rise to the level of physical violence (Petition, § 26).

In applying the applicable standard, this Court finds ample support in the record for the PRB recommendation that Cantres be charged with the first and fourth disciplinary counts. The ALJ recommendation was based on a full hearing at which Cantre's and his attorney were present and Cantres testified and presented witnesses on his behalf. The PRB final determination is based on the transcript of the ALJ hearing, the Report and Recommendation of the ALJ, the determination of Seaview, and argument before the PRB, at which Cantres was represented by counsel. The PRB's conclusion that "threatening and abusive language in the work place cannot be tolerated" is supported by substantial evidence and should not be disturbed.

Given the gravity of the misconduct, the penalty of termination does not shock the sense of fairness. The mere fact that the ALJ recommended a 45 day suspension and did not find grounds for termination is not a basis for reversal. "That others would require stronger evidence to reach the ultimate conclusion . . . is irrelevant" (*Reingold v Koch,* 111 AD2d 688, 691 [1st

Dept. 1985]).

Cantres' claim that the final determination was affected by errors of law is similarly without merit. As neither Seaview nor the PRB substituted its judgment of the credibility of the witnesses for that of the ALJ, the PRB's decision was proper.

It is established law that "...judicial examination of an administrative decision should be limited to a review of the record for substantial evidence that supports a rational and lawful basis for that determination" (*Reingold v Koch*, 111 AD2d, at 691). Here, a review of the record establishes a rational and lawful basis for the PRB's determination.

For the foregoing reasons, it is

ORDERED that Cantres' petition under Article 78 of the CPLR is denied, and respondents cross-motion is accordingly granted.

This reflects the decision and order of this Court.

Dated: 3/29/05

MARILYN SHAFER J.S.C.

J.S.C.

Check one [X] FINAL DISPOSITION **[ ] NON-FINAL DISPOSITION**

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