

Matter of Burns v New York State Div. of Human Rights

2012 NY Slip Op 32608(U)

October 12, 2012

Sup Ct, New York County

Docket Number: 102208/12

Judge: Doris Ling-Cohan

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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY
PRESENT: Hon. Doris Ling-Cohan, Justice Part 36

In the Matter of the Application of

FILED

VIRDREE BURNS,

OCT 16 2012 INDEX NO. 102208/12

Petitioner,

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

NEW YORK COUNTY CLERK'S OFFICE
MOTION SEQ. NO. 001

Respondent.

The following papers, numbered 1-4 were considered on this Article 78:

<u>PAPERS</u>	<u>NUMBERED</u>
Notice of Motion/Order to Show Cause, — Affidavits — Exhibits _____	<u>1, 2</u>
Answering Affidavits — Exhibits _____	<u>3</u>
Replying Affidavits _____	<u>4</u>

Cross-Motion: [] Yes [X] No _____

Upon the foregoing papers, it is ordered that this motion is decided as indicated below.

Petitioner Virdree Burns commenced this Article 78 proceeding, *pro se*, to reverse the Determination and Order of Dismissal for Untimeliness of respondent New York State Division of Human Rights (Division), dated January 18, 2012, which dismissed petitioner's complaint as untimely.

BACKGROUND

Petitioner was employed as a nurse by the City of New York, Department of Sanitation (DSNY), until October 30, 2010, whereupon his employment was terminated. In September 2006, petitioner requested to speak with the Director of DSNY, Martin Chestnut, regarding incidents petitioner alleged occurred in the workplace. Thereafter, a meeting took place to address petitioner's concerns. In December 2006, after an investigation, the Director of Health and Safety at DSNY, Brenda P. Smith, responded, by letter, to petitioner with regards to his allegations. In such letter, Director Smith concluded that "none of [petitioner's] allegations can be substantiated." Letter from Director Smith, p. 3.

DSNY received several written complaints about petitioner in 2007, and in 2008, DSNY referred petitioner for a psychiatric evaluation, which took place on January 18, 2008. Dr. Jochanan M. Weisenfreund's diagnostic impression of petitioner was paranoid personality disorder, and psychological treatment was recommended to, but not accepted by, petitioner. In 2009, petitioner was again referred for a psychiatric evaluation by DSNY to Dr. Weisenfreund. After such 2009 evaluation, Dr. Weisenfreund's diagnostic impression of petitioner was delusional disorder - persecutory type, and psychiatric treatment was highly recommended. Petitioner was placed on a leave of absence without pay, by DSNY, on April 16, 2009.

Thereafter, the DSNY Medical Review Board reviewed petitioner's medical records, which indicated that he was unable to perform his duties due to his failure to seek medical attention. His case was forwarded to the Legal Bureau to begin the medical separation process, wherein petitioner was provided time and opportunity to find a psychiatrist he could work with. On September 14, 2010, petitioner was sent a Notice of Termination, by DSNY, notifying him that his employment would be terminated as of October 30, 2010. On such date, petitioner was terminated from his position with DSNY for failure to participate in therapy, as required by DSNY, in order for petitioner to be cleared to return to work.

On October 11, 2011, petitioner filed a complaint with the Division (Administrative Complaint) alleging unlawful discrimination in his termination based on disability, sex, race/color, creed, and age. The Administrative Complaint was dismissed as untimely by the Division in a decision dated January 18, 2012 (Decision). Petitioner thereafter commenced this Article 78 proceeding seeking to overturn the Decision on the ground that the Division "has jurisdiction over future discrimination done by the City on the petitioner." Notice of Petition, p. 3.

DISCUSSION

In deciding whether an agency's determination was arbitrary, capricious or an abuse of discretion, courts are limited to an assessment of whether a rational basis exists for the administrative determination and their review ends when a rational basis has been found. *See Heintz v Brown*, 80 NY2d 998, 1001 (1992); *Sullivan County Harness Racing Assoc., Inc. v Glasser*, 30 NY2d 269, 277-278 (1972). Judicial review of an administrative determination is limited to whether the determination was made "in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion..." CPLR 7803 (3). The Court of Appeals explained the "arbitrary and capricious" standard in *Matter of Pell v Board of Educ.*, 34 NY2d 222, 231 (1974), as follows:

"The arbitrary or capricious test chiefly 'relates to whether a particular action should have been taken or is justified ... and whether the administrative action is without foundation in fact' (1 N.Y. Jur., Administrative Law, § 184, p. 609). Arbitrary action is without sound basis in reason and is generally taken without regard to the facts."

Thus, a court may not substitute its judgment for that of an administrative agency if there is a rational basis for the agency's determination. *See Matter of Nehorayoff v Mills*, 95 NY2d 671, 675 (2001). The court may not overturn the determination of an administrative agency merely because it would have reached a contrary result. *See Matter of Sullivan County Harness Racing Assoc., Inc. v Glasser*, 30 NY2d 269, 278 (1972); *Matter of Kaplan v Bratton*, 249 AD2d 199, 201 (1st Dep't 1998). Moreover, it is well settled that the interpretation given a statute by the agency charged with its enforcement will be respected by the courts if such interpretation is not irrational or unreasonable. *See Matter of Fineway Supermarkets, Inc. v State Liq. Auth.*, 48 NY2d 464, 468 (1979); *Matter of Howard v Wyman*, 28 NY2d 434, 438 (1971); *Matter of Lower Manhattan Loft Tenants v New York City Loft Bd.*, 104 AD2d 223, 224 (1st Dep't 1984), *aff'd* 66 NY2d 298 (1985).

Here, petitioner challenges the Division's Decision arguing that: (1) the Division has jurisdiction; (2) termination of his employment is a discriminatory action; and (3) that DSNY's Office of

Employment & Disciplinary Matters Medical Separation Unit should have contacted the NYC City Council to correct DSNY Medical Board's decision not to return petitioner to duty. In support, petitioner proffers, *inter alia*, a copy of the Division's Decision, a Federation Employment and Guidance Services (FEGS) report, a medical history and physical by Bellevue Hospital Center, and email correspondence between petitioner and various employees of DSNY. However, such documentation is irrelevant to the Division's Decision of untimeliness. Aside from petitioner's conclusory statements that the Division has jurisdiction, and that the termination of his employment on October 30, 2010 was a discriminatory act, petitioner provides no valid arguments or evidence in support of the within petition.

Respondent Division submits an answer alleging that DSNY is a necessary party to this proceeding, and that the evidence gathered during the course of the investigation was sufficient to support its determination that petitioner's Administrative Complaint was untimely. The Division proffers the written transcript of the record, and submits on such record.

Here, the Division is charged with evaluating discrimination and retaliation claims. The Division found that it lacked jurisdiction as the "case was not filed with the Division within one year after the alleged unlawful discriminatory practice, as required by Section 297.5 of the Human Rights Law." Determination and Order of Dismissal for Untimeliness, p. 1. According to the Division's interpretation of the Human Rights Law, the one year statute of limitations began to run from September 14, 2010, when petitioner was notified, in writing, of his termination. The Court of Appeals of New York has held that "[t]he act of giving [a] complainant notice that she would not be reappointed gave rise immediately to a 'cause of action', ... and therefore started the running of the limitation period." *Matter of Queensborough Community College of the City University of NY v State Human Rights Appeal Board*, 41 NY2d 926, 926 (1977). Where, as here, the Division's determination is based on the review and evaluation of a substantial amount of documentary evidence submitted by both sides, and is supported by

law, deference to the administrative agency charged with interpreting and enforcing the Human Rights Law is appropriate. *See Kurcsics v Merchants Mut. Ins. Co.*, 49 NY2d 451, 459 (1980). Here, the Division's Decision was not arbitrary and capricious, and was rationally based.

Accordingly, it is

ORDERED that the petition is denied and the proceeding is dismissed; and it is further

ORDERED that within 30 days of entry of this order, respondent New York State Division of Human Rights shall serve a copy upon petitioner with notice of entry.

Dated: 10/12/12


DORIS LING-COHAN, J.S.C.

Check one: FINAL DISPOSITION
Check if Appropriate: DO NOT POST

NON-FINAL DISPOSITION

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