Matter of John v Brann
2019 NY Slip Op 30753(U)
March 22, 2019
Supreme Court, New York County
Docket Number: 158888/18
Judge: Carol R. Edmead

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 35

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In the Matter of the Application of

SIJU JOHN,

Petitioner,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules

Index No.: 158888/18
DECISION/ORDER

-against-

CYNTHIA BRANN, Correction Commissioner of the New York City Department of Correction; THE NEW YORK CITY DEPARTMENT OF CORRECTION; and THE CITY OF NEW YORK,

Respondents.

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HON. CAROL R. EDMEAD, JSC:

In this Article 78 proceeding, petitioner Siju John (John) seeks a judgment to overturn an order of the respondent New York City Department of Correction (DOC) as arbitrary and capricious (motion sequence number 001). For the following reasons, his petition is denied and this proceeding is dismissed.

FACTS

John was employed by DOC as a correction officer between January 14, 2016 and May 30, 2018. *See* verified petition, ¶¶ 1, 3. On April 1, 2017, John sustained injuries to his left foot when he fell down a flight of stairs in his home. *Id.*, ¶ 6. John alleges that his injuries rendered him temporarily unable to work, and that he took sick leave between April 2, 2017 and July 7, 2017. *Id.*, ¶ 14. John also alleges that, during that time period, he regularly visited both his own doctors and the evaluating doctors of DOC's Health Management Division (HMD), and that he

returned to work on July 8, 2017, after the HMD personnel cleared him to do so. *Id.*, ¶¶ 7-16. John finally alleges that DOC improperly terminated his employment on May 30, 2018 for excessive absences, even thought he had worked continuously for ten months following his return. *Id.*, ¶ 17.

For its part, DOC states that, when John was hired on January 14, 2016, his employment was subject to a 24-month probationary period. *See* verified answer, ¶¶ 47-48. DOC further states that, although the probationary period was due to expire on January 14, 2018, it was automatically extended by 101 days until June 4, 2018 as a result of John's combined absences for sick leave (SL), jury duty, leave without pay (LWOP), annual leave (AL), and absence without leave (AWOL) days during his first 24 months as a correction officer. *Id.*, ¶¶ 49-50. DOC presents a copy of a "personnel determination review" letter from John's supervisor, Warden Tanisha Mills (Warden Mills), to DOC Deputy Commissioner Angel Villalona (DC Villalona), that contained a "request to terminate [John] . . . due to his attendance and punctuality record" (the PDR letter). *Id.*; exhibit 2. The PDR letter recited as follows: "automatic day for day count derived from SL (74 days), jury duty (1 day), AWOL (1 day), LWOP (10 days) & AL (15 days) for a total of 101 days." *Id.* The PDR letter also noted that John had "8 occasions sick" (one, extended) with the reasons recorded as "trauma" or "gastrointestinal," and "11 occasions late" with the reason recorded as "unknown." *Id.* DC Villalona indicated his acceptance of Warden Mills' termination recommendation by signing the PDR letter on May 29, 2018. *Id.*; verified answer, ¶ 62, fn 4. DOC delivered John a termination letter on May 30, 2018, which John refused to acknowledge (the termination letter). *Id.*; exhibit 8.

John thereafter commenced this special proceeding by filing a petition and notice of

petition on September 25, 2018. *See* verified petition; notice of petition. Respondents filed a joint answer on December 6, 2018. *See* verified answer. John's Article 78 petition is now before the court (motion sequence number 001).

DISCUSSION

The court's role in an Article 78 proceeding is to determine, upon the facts before the administrative agency, whether the determination had a rational basis in the record or was arbitrary and capricious. *See Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222 (1974); *Matter of E.G.A. Assoc. v New York State Div. of Hous. & Community Renewal*, 232 AD2d 302 (1st Dept 1996). Thus, if there is a rational basis for the administrative determination, there can be no judicial interference. *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231-232. It is also well settled that "[t]he interpretations of respondent agency of statutes which it administers are entitled to deference if not unreasonable or irrational." *Matter of Metropolitan Assoc. Ltd. Partnership v New York State Div. of Hous. & Community Renewal*, 206 AD2d 251, 252 (1st Dept 1994), citing *Matter of Salvati v Eimicke*, 72 NY2d 784, 791 (1988).

John argues that he "had a disability under the . . . HRL [i.e., New York City Human Rights Law]," and that "DOC violated [the HRL] by relying on [his] disability-related absences as a substantial motivating factor for his termination." *See* verified petition, ¶¶ 22-55. DOC responds that John's "non-medical absences and tardiness was the basis for his termination while on probation." *See* respondents' memorandum of law, at 8-12. In reply, John submits an affidavit that disputes DOC's factual allegations, but is devoid of any legal argument. *See* John

reply aff., ¶¶ 1-37. After due consideration, the court finds for DOC.

The Appellate Division, First Department, unequivocally holds that a probationary correction officer "may be discharged without a hearing or a statement of reasons, in the absence of a demonstration that her termination was made in bad faith, for a constitutionally impermissible purpose, or in violation of statutory or decisional law." *Matter of Turner v Horn*, 69 AD3d 522, 522 (1st Dept 2010), citing *Matter of York v McGuire*, 63 NY2d 760, 761 (1984). As DOC correctly notes, John's papers "do not contend that his probationary period was scheduled to end any earlier that June 4, 2018." *See* verified answer, ¶ 50. Thus, there is no question that DOC had the authority to terminate John's employment when it did.

As noted, John's petition alleges that DOC terminated him in violation of the HRL because his "disability" the "motivating factor" in the Department's decision. *See* verified petition, ¶¶ 22-55. John cites case law that interpreted these terms of art. *Id.* However, even presuming that John's injury qualified as a "disability," New York law also requires him to demonstrate "that the disability caused the behavior for which the individual was terminated." *Vig v New York Hairspray Co., L.P.*, 67 AD3d 140, 146 (1st Dept 2009). Here, the PDR letter only indicates that John's injury was the cause of some, but not all, of his absences and latenesses. Thus, John has failed to demonstrate that the injury was the sole "cause" of his termination. The court also notes that none of the decisions John cited involved probationary employees such as himself. Therefore, the court finds that John's factual argument is unsupported and that his legal authority is inapposite.

New York law does permit John to challenge DOC's termination decision on the ground that the Department made that decision in bad faith; however, it places the burden of proof on

John to raise "a substantial issue of fact" as to the existence of such bad faith. *Matter of Turner v Horn*, 69 AD3d at 523; *see also*, *Matter of Bradford v New York City Dept. of Correction*, 56 AD3d 290 (1st Dept 2008); *Matter of Santiago v Horn*, 37 AD3d 307 (1st Dept 2007). However, John's reply papers do not include any evidence of DOC's alleged bad faith. Instead, they admit the contents of the PDR letter, yet assert that "there is not a shred of evidence supporting DOC's manufactured claim that my disability-related absences were not considered in the decision to terminate me." *See* John reply aff., ¶ 7. This conclusory, self-serving argument plainly misconceives which party bears the burden of proof regarding "bad faith."

John's reply papers purport to raise factual disputes about whether his other absences were approved or not. John asserts that some of them were authorized ahead of time, but he only presents copies of his own handwritten requests, and *no* DOC approval paperwork. Thus, John has failed to substantiate his allegations.

Finally, it is noted that " lateness and absenteeism . . . admitted in [a] petition, provide[] a proper basis for dismissal." *Matter of Santiago v Horn*, 37 AD3d at 307; citing *Matter of Nelson v Abate*, 205 AD2d 454 (1st Dept 1994). Here, as noted above, John's reply papers admit the contents of the PDR letter, which includes his history of unexplained absences and lateness. *See* John reply aff., ¶ 3; exhibit A (PDR letter). Thus, it is clear that the DOC's administrative record contained legally sufficient evidence to support the Department's decision to terminate John's employment as a probationary correction officer. Accordingly, the court finds that this Article 78 petition should be denied as meritless.

DECISION

ACCORDINGLY, for the foregoing reasons it is hereby

ADJUDGED that the petition for relief, pursuant to CPLR Article 78, of petitioner Siju John (motion sequence number 001) is denied, and this proceeding is dismissed. And it is further

ORDERED that counsel for Petitioner shall serve a copy of this Order with Notice of Entry within twenty (20) days of entry on counsel for Respondent.

Dated: New York, New York
March 22, 2019

ENTER:

Hon. Carol R. Edmead, J.S.C.

HON. CAROL R. EDMEAD
J.S.C.