

Logan v Brann

2020 NY Slip Op 30378(U)

February 8, 2020

Supreme Court, New York County

Docket Number: 160135/2019

Judge: Carol R. Edmead

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL R. EDMEAD PART IAS MOTION 35EFM

Justice

-----X

JAY LOGAN,

Petitioner,

- v -

CYNTHIA BRANN, THE NEW YORK CITY DEPARTMENT OF CORRECTION, THE CITY OF NEW YORK,

Respondents.

-----X

INDEX NO. 160135/2019
MOTION DATE 01/17/2020
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Upon the foregoing documents, it is

In this Article 78 proceeding, petitioner Jay Logan (Logan) 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, this petition is denied.

FACTS

Logan was appointed as a corrections officer by DOC on June 19, 2017 subject to a two-year probationary period. See verified petition, ¶ 7. That period would normally have ended on June 18, 2019. However, pursuant to the terms of the "conditions of probation" that Logan signed and acknowledged upon the commencement of his employment, the probationary period would be "extended by the number of days the employee does not perform the duties of the position, which includes, but is not limited to, sick leave, annual leave, compensatory time off, medically monitored duty, absence without leave or suspension from duty without pay, etc." See respondents' mem of law, exhibit 2. The parties agree that Logan used sick leave to miss work

on 18 days during his probationary period, and that he also took 13 days of annual leave. *See* verified petition, ¶ 43; respondents' mem of law at 2-5. This had the effect of extending Logan's probationary period through August 1, 2019. However, DOC terminated Logan's employment on July 2, 2019 while his probation was still in effect. *See* verified petition, ¶ 27; respondents' mem of law at 2-3. The termination letter, which Logan himself initialed on that date, simply states as follows:

“Your service as a Probationary Correction Officer will no longer be required, effective Tuesday, July 2, 2019.”

Id.; exhibit 1.

Logan argues that the 18 days of sick time that he took over a two-year period was not excessive, and has presented copies of medical records to document the legitimacy of each of his absences. *See* verified petition, ¶¶ 15-27; exhibits A-F. Logan also presents an excerpt of his union's collective bargaining agreement and of various DOC employee directives which, he asserts, show that a decision to dismiss a corrections officer for having incurred a relatively small number of sick-leave absences runs counter to DOC's normal employment and termination policies. *Id.*, ¶¶ 28-38; exhibits G-J.

DOC responds that Logan had significant issues with attendance, for which he was counseled by supervisors on February 2, 2018, February 12, 2018 and September 6, 2018. *See* respondents' mem of law at 4. DOC presents copies of Logan's termination letter and the notice of conditions of probation (both mentioned above), of its internal rules to assess the permissibility of requests for leaves of absence, and of certain other records regarding Logan's own leave requests. *Id.*; exhibits 1-4. Respondents assert that the latter show that Logan actually only presented doctors letters to justify four of his 18 absences, and that the medical records show that only two of his absences were due to a work-related injury. *Id.* Respondents also

assert that Logan's employment record shows that, in addition to his 18 sick leave and 13 annual leave absences, Logan was late on five occasions, used comp time to work a partial shift on 17 occasions and used leave without pay once. *Id.*, respondents mem of law at 3-5. They note that Logan's frequent absences caused his supervisor to request a "personnel determination review" which led to the decision to terminate Logan's employment. *Id.*; exhibit 1.

In any case, Logan commenced this proceeding on October 18, 2019. *See* verified petition. Rather than file an answer, respondents submitted a cross motion to dismiss Logan's petition on December 20, 2020. *See* notice of cross motion. The matter is now fully briefed and 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. Inc. v New York State Div. of Hous. & Community Renewal*, 232 AD2d 302 (1st Dept 1996). An agency determination is only arbitrary and capricious if it is "without sound basis in reason, and in disregard of the facts." *See Century Operating Corp. v Popolizio*, 60 NY2d 483, 488 (1983), *citing 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. However, 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.

In the case of a probationary correction officer, the above standard is particularly difficult to meet. The Appellate Division, First Department, holds that:

“It is well settled that a probationary employee may be discharged without a hearing or statement of reasons, for any reason or no reason at all, in the absence of a showing that his or her dismissal was in bad faith, for a constitutionally impermissible purpose or in violation of the law. Moreover, ‘[t]he burden of raising and proving such ‘bad faith’ is on the employee and the mere assertion of ‘bad faith’ without the presentation of evidence demonstrating it does not satisfy the employee's burden.’”

Matter of Witherspoon v Horn, 19 AD3d 250, 251 (1st Dept 2005) (internal citations omitted).

Here, Logan does not raise the issue of bad faith in his petition.¹ Instead, he argues that DOC’s failure to afford him the protection of the so-called “unlimited sick leave policy” that is set forth in DOC Directive #2258 R-A was an arbitrary and capricious act. *See* verified petition, ¶¶ 38-51; exhibit I. As a general principle, it is true that an agency’s determination is presumed to be arbitrary and capricious “when it [i.e., the administrative agency] ‘neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts.’” *Matter of 20 Fifth Ave., LLC v New York State Div. Of Hous. & Community Renewal*, 109 AD3d 159, 163 (1st Dept 2013), quoting *Matter of Lantry v State of New York*, 6 NY3d 49, 58 (2005). However, Logan has not presented any authority to show that the “unlimited sick leave policy” vitiates the rule that DOC may discharge a probationary employee “without a hearing or statement of reasons, for any reason or no reason at all.” *Matter of Witherspoon v Horn*, 19 AD3d at 251. His failure to do so deprives him of the right to claim the benefit of that policy, and limits his ability to challenge his termination to demonstrating that DOC acted in bad faith. However, DOC specifically denies having acted in bad faith, and notes that its

¹ Although he does mention it in his reply papers. *See* petitioner’s mem of law in opposition at 2-9.

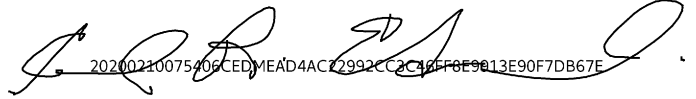
investigation of Logan's attendance record disclosed evidence of his frequent absences and lateness, which constitutes an acceptable reason for terminating a probationary employee (even though the law does not require DOC to provide a reason). *See* respondents' mem of law at 5-11; exhibit 1. DOC is correct that evidence of a probationary employee's absence or lateness is sufficient to overcome an allegation of bad faith and to justify a termination decision. *See e.g., Matter of Santiago v Horn*, 37 AD3d 307 (1st Dept 2007). In his reply papers, Logan argues that proof of DOC's bad faith was demonstrated by the fact that he has shown valid medical justification for all of his absences. *See* petitioner's mem of law in opposition at 2-9. However, this argument is belied by DOC's evidence that Logan did not submit medical documentation for all of his absences. *See* respondents' mem of law, exhibit 4. The court also notes that Logan has failed to account for any of his latenesses or other uses of leave time. The court therefore finds that DOC's decision to terminate Logan's employment during his probationary period was justified based on the evidence in the record, and denies Logan's first argument.

Logan also argues that he "has a right to a hearing on disputed issues of fact." *See* verified petition, ¶¶ 52-55. He does not. There is no "substantial evidence" issue presented herein, as defined in CPLR 7804, since DOC did not conduct an evidentiary hearing before his employment termination. Indeed, DOC was not required to do so in view of Logan's probationary status. *Matter of Witherspoon v Horn*, 19 AD3d at 251. Therefore, the court rejects Logan's second argument, and finds that he has failed to demonstrate that DOC's decision to terminate his was "arbitrary and capricious." Accordingly, the court finds that Logan's Article 78 petition should be denied, and that respondents' cross motion to dismiss that petition should be granted.

DECISION

ACCORDINGLY, for the foregoing reasons it is hereby

ADJUDGED that the petition for relief, pursuant to CPLR Article 78, of petitioner Jay Logan (motion sequence number 001) is denied and the petition is dismissed.



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2/8/2020

DATE

CAROL R. EDMED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE