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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2214**

In the Matter of the Dismissal of Kenvie West-Shumpert.

**Filed September 17, 2012
Affirmed
Willis, Judge***

Office of Administrative Hearings
File No. 11-6220-21367-3

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Considered and decided by Rodenberg, Presiding Judge; Cleary, Judge; and
Willis, Judge.

UNPUBLISHED OPINION

WILLIS, Judge

On certiorari appeal from a decision by an administrative-law judge (ALJ) upholding respondent county's decision to terminate relator's employment, relator argues that the evidence does not support the ALJ's finding that there was good cause for the termination. Because the record supports the ALJ's determination, we affirm.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

In November 2000, relator Kenvie West-Shumpert began her employment with respondent Hennepin County as an Office Specialist III in the Adult Field Services Division in the Department of Corrections. This division provides a variety of probation-related correctional services for defendants, offenders, probation officers, and the community. West-Shumpert's job responsibilities included answering general inquiries both in person and by telephone, scanning and imaging documents, creating and updating files, and distributing mail. West-Shumpert was also responsible for preparing files for imaging and indexing documents.

Over the course of her employment with the county, West-Shumpert's job performance progressively declined. Eventually, after several reprimands and two suspensions, West-Shumpert was placed on administrative leave. While she was on administrative leave, the county notified West-Shumpert of its intent to dismiss her from employment. The dismissal was based on West-Shumpert's continued "pattern of poor performance and misconduct," including: (a) "[c]onducting personal business during work hours and abuse of County equipment and resources"; (b) "[i]nappropriately accessing probation client information for non-business reasons"; (c) "[a]djusting work schedules without supervisory approval"; (d) "[i]nability to perform basic tasks such as preparation of parole files"; (e) "[n]on-compliance in following procedures and time frames when performing basic tasks such as processing mail and scanning priority documents"; (f) "[r]efusal to participate in team activities; disrespectful attitude toward co-workers such as muttering negative opinions under [her] breath"; (g) "[b]laming

others for mistakes inappropriately; refusing to take responsibility for actions”; and (h) “[i]nsubordinate behavior to supervisor and others in positions of authority by not complying with directives.” The notice of intent to dismiss also states that despite ongoing training, coaching, and progressive discipline, West-Shumpert failed to improve her performance or behavior.

West-Shumpert challenged the county’s intent to dismiss. A department director upheld the dismissal, concluding that just cause existed for the termination. West-Shumpert appealed the dismissal to the Office of Administrative Hearings and, following a hearing, the ALJ issued a lengthy decision finding just cause for the dismissal and finding no extenuating circumstances. Thus, the ALJ upheld the dismissal. This certiorari appeal follows.

D E C I S I O N

We will affirm the decision of an ALJ unless the relator’s substantial rights have been prejudiced because the decision was affected by an error of law, or the findings are arbitrary, capricious, or unsupported by substantial evidence. Minn. Stat. § 14.69 (2010). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Fine v. Bernstein*, 726 N.W.2d 137, 142 (Minn. App. 2007), *review denied* (Minn. Apr. 17, 2007). A decision is arbitrary and capricious if there is no rational connection between the facts found and the decision made. *Id.* We will affirm an agency decision, even though we might have reached a different conclusion, if the agency engages in reasoned decision-making. *Indep. Sch. Dist. No.*

192 v. Dep't of Educ., 742 N.W.2d 713, 719 (Minn. App. 2007), *review denied* (Minn. Mar. 18, 2008).

Under Minn. Stat. § 383B.38, subd. 1 (2010), no permanent Hennepin County employee in the classified service shall be discharged “except for just cause.” The earliest cases defining “just cause” required that “[t]he cause must be one which specially relates to and affects the administration of the office.” *State ex rel. Hart v. Common Council of Duluth*, 53 Minn. 238, 244, 55 N.W. 118, 120 (1893). Subsequent cases have emphasized that the cause or reason for dismissal must relate to the manner in which the employee performs his duties and must show that the employee is not a fit and proper person to hold the job. *Hagen v. State Civil Serv. Bd.*, 282 Minn. 296, 299, 164 N.W.2d 629, 632 (1969); *see also Ekstedt v. Village of New Hope*, 292 Minn. 152, 162–63, 193 N.W.2d 821, 827–28 (1972) (stating that misconduct must be based on inadequate performance of duties); *In re Discharge of Kelvie*, 384 N.W.2d 901, 904 (Minn. App. 1986) (stating that discharge requires a relationship between the alleged misconduct and job performance). The just-cause definition contemplates that employers treat employees uniformly when applying job standards. *Deli v. Univ. of Minn.*, 511 N.W.2d 46, 52 (Minn. App. 1994), *review denied* (Minn. Mar. 23, 1994).

West-Shumpert argues that the ALJ ignored the requirement of a just-cause termination that all employees be treated uniformly because, she claims, the record reflects that she was treated differently from other employees and her dismissal was actually retaliation for a complaint that she filed against her supervisor. West-Shumpert also contends that her performance issues were minor and that she corrected most of

these issues when they were brought to her attention. West-Shumpert argues that under the just-cause standard, the “punishment must fit the crime” and that based on the record evidence, her performance issues did not warrant the extreme sanction of dismissal. We disagree.

The ALJ specifically found that “in light of the consistent record of performance deficiencies,” West-Shumpert’s claim that her termination was the result of her supervisor’s personal vendetta against her and done in retaliation for the grievance she filed is “unsupported and unpersuasive.” This finding is supported by the record. The record reflects that after her first two performance reviews, in January 2001 and May 2001, West-Shumpert began to exhibit performance deficiencies such as failing to complete work in a timely manner and failing to maintain acceptable working relationships with co-workers. The record also shows that over the next few years, West-Shumpert continued to exhibit performance deficiencies, particularly with respect to professionalism in the workplace. By 2006, West-Shumpert’s deficient work performance prompted her supervisor to issue a coaching memo¹ stating that West-Shumpert needed to be respectful and courteous to co-workers and supervisors, and to conduct herself in a professional manner. Two subsequent coaching memos were issued to West-Shumpert addressing her work performance.

The record shows that despite the coaching memos, West-Shumpert failed to correct her workplace performance. In July 2009, West-Shumpert was investigated for

¹ The county presented testimony that before disciplining an employee for poor performance or misconduct, the county typically provides coaching to ensure that the employee fully understands and is properly trained on the policy issue.

accessing the county correctional database to access a client's information on behalf of an acquaintance of West-Shumpert's. During the investigative process, West-Shumpert was involved in a heated discussion with her supervisor that stemmed from West-Shumpert's refusal to disclose the names of the people with whom she had discussed the investigation. West-Shumpert received a written reprimand for her conduct and was subsequently placed on a performance improvement plan (PIP) in order to help her meet performance expectations. The PIP set out performance expectations in five specific job-related areas: (1) work schedule and assignments; (2) use of county resources for conducting personal business; (3) compliance with standards for records-center-document imaging; (4) data-practices policies; and (5) maintaining a respectful workplace, professionalism, and teamwork.

The record shows that while she was on the PIP, West-Shumpert was suspended for failing to meet unit expectations regarding the amount of time spent on non-work-related activities. The suspension was prompted, in part, by the preliminary results of the monitoring of West-Shumpert's computer; the monitoring showed excessive numbers of personal e-mails and West-Shumpert's failure to timely read work-related e-mails. A few months later, West-Shumpert received a three-day suspension for failing to meet the expectations for each of the five sections of her PIP. The record also shows that after returning from her suspension, West-Shumpert made a threatening gesture toward a co-worker, resulting in West-Shumpert being placed on administrative leave. This evidence supports the ALJ's findings that West-Shumpert engaged in a pattern of insubordination, poor performance, and behavioral deficiencies that began shortly after she started her

employment with the county. Although West-Shumpert claims that she was treated differently from other employees and that her dismissal was retaliatory, the ALJ did not find this argument to be persuasive, and this court gives due deference to an ALJ's credibility determinations and ability to evaluate the evidence. *See Hengemuhle v. Long Prairie Jaycees*, 358 N.W.2d 54, 59–60 (Minn. 1984) (stating that deference is given to the ALJ to make credibility determinations and evaluate the evidence in the record).

We also reject West-Shumpert's claim that her performance deficiencies were minor and that she corrected them when they were brought to her attention. The record shows that West-Shumpert's performance deficiencies included a pattern of insubordination, poor work performance, and negative behavior that adversely affected the workplace environment. These performance issues are not "minor" deficiencies and are directly related to the manner in which West-Shumpert performed her employment duties. Moreover, West-Shumpert's claim that she corrected her performance deficiencies is not supported by the record. The record shows that West-Shumpert failed to correct deficiencies, such as maintaining proper co-worker relationships, after repeatedly being told that she needed to change this behavior. Many of the warnings specifically told West-Shumpert that failure to correct these problems might lead to her dismissal. West-Shumpert's failure to correct her performance deficiencies, in conjunction with the serious nature of these deficiencies, supports the ALJ's conclusion that the county had just cause to dismiss West-Shumpert.

West-Shumpert further argues that her employment deficiencies did not warrant the serious consequence of dismissal and that the deficiencies were documented by the

county simply to create a “paper trail” that the county could use to support a dismissal. A paper trail was necessary to support the county’s action; West-Shumpert failed to establish that the paper trail was created as a pretext to dismiss her. Rather, the record shows a consistent pattern of insubordination and poor work performance. Moreover, the county’s practice of documenting employees’ work performance is consistently applied to all county employees. We therefore conclude that there is substantial evidence in the record to support the ALJ’s decision that the county had just cause to terminate West-Shumpert’s employment.

Affirmed.