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COMMONWEALTH OF MASSACHUSETTS

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SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 06-2864-C

NOTICE SENT
06.30.08
J.J.C.

T.M.R., J.C.

MRS. A.G.
R.L.Q. J.C.

SARA CHIN

v.

CIVIL SERVICE COMMISSION AND CITY OF BOSTON

(LAT)

MEMORANDUM OF DECISION AND ORDER
ON (1) PLAINTIFF'S MOTION FOR JUDGMENT ON THE
PLEADINGS, AND (2) THE CITY'S CROSS-MOTION FOR
JUDGMENT ON THE PLEADINGS

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COMMUNICATIONS SECTION
CIVIL SERVICE COMMISSION

The Plaintiff, Sara Chin ("Chin"), appeals from a decision by the Civil Service Commission ("the Commission") upholding the termination of her employment with the City of Boston ("the City"). For the following reasons, Chin's Motion for Judgment on the Pleadings is denied, and the City's Cross-Motion for Judgment on the Pleadings is allowed.

BACKGROUND

The administrative record is briefly summarized as follows:

Chin was a permanent, full-time personnel officer with the City's Assessing Department from October 16, 1985 to November 1, 2002. She was responsible for maintaining accurate payroll records, including her own payroll records. Some time before 2001, James Murphy, Chin's prior supervisor, verbally approved Chin to work

from home approximately fifteen hours of her thirty-five hour work week. This accommodation was inconsistent with the Assessing Department's policy, which prohibits employees from working at home unless they receive special permission from the Assessing Department in writing.

In 2001, Charles Clabaugh ("Clabaugh") replaced James Murphy as Chin's immediate supervisor. On July 19, 2001 and August 16, 2001, Chin submitted notes from her physician to Clabaugh, advising Clabaugh that Chin should be allowed to work part-time from home. The July 19, 2001 letter stated that she must work from home "because of her medical condition." The August 16, 2001 letter stated that she must work from home because her "work environment stress aggravates her medical condition for which she is being treated."

On October 17, 2001, after checking with the City's Commissioner of Disabilities, Clabaugh wrote Chin a letter denying her request to work at home part-time but offering Chin a reduced schedule at twenty hours per week. Clabaugh rejected Chin's request to work from home because he did not want confidential information to leave the office and because Chin's position required that she stay at the office to handle any daily personnel matters. On May 9, 2002, Clabaugh submitted another written warning to Chin, explicitly stating that she could not work at home. Despite these notices, Chin continued to work part-time from her home while submitting payroll records that indicated she was working thirty-five hours per

week. After reviewing the payroll records, Clabaugh confronted Chin in the Fall of 2002 regarding her conduct. In response to Clabaugh's inquiry, Chin stated, "Do you want to dock me or can I pay it back?"

The City held a disciplinary hearing on October 28, 2002, where Chin introduced work records that, according to her, indicated that she worked a full thirty-five hour week, including fifteen hours each week from home. On November 1, 2002, the City terminated Chin's employment "based on her falsification of earned time records and subsequent taking of compensation which was not earned."

Chin appealed to the Commission and on June 5, 2006, the Commission issued a decision, concluding that:

"The City has proven, by a preponderance of the evidence, that Sara Chin falsified her payroll records and was paid for time she allegedly worked at home, although she was not authorized to do so. On two separate occasions, Chin was notified in writing that she was prohibited from doing so. After notifications, she continued to credit herself for time allegedly worked at home. She was able to do this without detection through her position as a personnel officer, because she was entrusted with submitting accurate payroll records for the Assessing Department.

The Commission need not determine whether Chin actually performed work at home as the evidence shows that Chin had notice that working at home was not permitted. Nevertheless, the work product that Chin presented to the City at the department hearing provides little, if any, proof that she was working at home for the amount of hours for which she credited herself. The only reasonable conclusion is that Chin did not work all the hours in question at home, but continued to submit payroll records indicating otherwise."

DISCUSSION

Pursuant to G.L. c. 30A, § 14(7), this court may reverse, remand, or modify an agency decision if that decision is based on an error of law or on unlawful procedure, is arbitrary and capricious, or if there is a lack of substantial evidence to support the decision. Chin's principal defense before the Commission, as well as before this court, is that she reasonably believed that she was allowed to work from home notwithstanding written warnings from her supervisor that she was prohibited from doing so. Thus, she contends, the Commission's decision was not based on substantial evidence.¹ Although Chin makes other arguments, as discussed below, the central issue before this Court is whether the Commission's decision was based on substantial evidence.

"Substantial evidence" is statutorily defined as "such evidence as a reasonable mind might accept as adequate to support a conclusion." G.L. c. 30A, § 1(6). A court may not substitute its judgment for that of the agency, "even though the court would justifiably have made a different choice had the matter been before it *de novo*."

S: Worcester County Reg'l Vocational Sch. Dist. v. Labor Relations Comm'n, 386 Mass.

¹ In her memorandum in support of her motion, Chin fails to make any argument that addresses the grounds for reversal of an agency's decision under G.L. c. 30A, § 14A. Instead, Chin focuses on factual issues, including her belief that her conduct was permitted as well as her theory that her termination was based on discrimination. At oral argument, Chin's counsel argued that the Commission's decision was not based on substantial evidence.

414, 420 (1982). The approach should be one of “judicial deference and restraint, not abdication.” *Arnone v. Comm’r of Dept. of Soc. Servs.*, 43 Mass. App. Ct. 33, 34 (1997).

The Commission is responsible for determining “whether, on the basis of the evidence before it, the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” *Cambridge v. Civil Serv. Comm’n*, 43 Mass. App. Ct. 300, 303 (1997). At the Commission hearing, the City had the burden of proving, by a preponderance of the evidence, that it had just cause for terminating Chin. *Falmouth v. Civil Serv. Comm’n*, 61 Mass. App. Ct. 796, 800 (2004). An action is justified when it is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and the correct rules of law.” *Cambridge*, 43 Mass. App. Ct. at 304 (internal quotations omitted).

I.

Chin has argued, *inter alia*, that the Commission’s decision was not supported by substantial evidence. She alleges that she did not engage in any wrongdoing because she reasonably believed that she was allowed to work from home. This assumption was in direct contravention of both the official rules of her employer as well as two letters from her supervisor warning that her conduct was prohibited. In addition to flouting her supervisor’s warnings, the Commissioner noted that it was

likely that Chin was not actually working all the hours that she submitted. These facts, as found by the Commissioner, provide substantial evidence that Chin was “guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service.” See *Sch. Comm. of Brockton v. Civil Serv. Comm’n*, 43 Mass. App. Ct. 486, 488 (1997).

II.

Chin attempts to broaden the scope of this court’s review by making two additional arguments. First, she makes a technical argument that her former supervisor, James Murphy, actually modified Chin’s contract with the City by allowing her to work from home. Thus, Chin argues, the City was bound to maintain this schedule when Chin’s new supervisor returned.

This argument was, or should have been, made before the Commission and is outside the scope of this court’s review under G.L. c. 30A, § 14. In any event, this argument lacks any substantive merit because, in addition to being against her employer’s policy, there was no consideration exchanged on behalf of the City nor was there any sufficient “meeting of the minds.” There is nothing in the record to suggest that Murphy’s verbal approval of Chin’s flexible work schedule reflected an intent to modify Chin’s contract. Instead, Murphy’s approval was given as a courtesy to Chin.

Second, Chin argues that she was discriminated against based on her race and

disability.² These arguments are also not within the scope of this Court's review under G.L. c. 30, § 14. Chin made these allegations in her discrimination complaint to the Massachusetts Commission Against Discrimination ("MCAD"), which was dismissed. Chin declined to appeal the MCAD decision. Because the present case is not an appeal of Chin's MCAD decision, any arguments challenging that decision are not properly before this Court.


Further, Chin may not challenge her termination based on a novel theory that is supported by evidence that is outside the administrative record, i.e. examples of other employees that were allowed to work from home. See *Fanion v. Dir. of the Div. of Employment Sec.*, 391 Mass. 848, 852 (1984). In her Commission hearing, Chin's challenge to her termination was based solely on her contention that her conduct was not improper. This is reflected in Chin's responses to the Commission's inquiry as to the scope of the Commission's hearing where Chin's counsel stated: "The only issue is: Did Ms. Chin falsify her earned time records."

Accordingly, the Court concludes that the Commission's decision was supported by substantial evidence and must be affirmed.

² There is evidence in the record indicating that Chin was treated for anxiety, depression, and chronic fatigue syndrome.

ORDER

For the foregoing reasons, Plaintiff's Motion for Judgment on the Pleadings is DENIED, and the City's Cross-Motion for Judgment on the Pleadings is ALLOWED.


Peter M. Lauriat
Justice of the Superior Court

Dated: June **26**, 2008