

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

COUNTY OF SUMMIT

C.A. No. 24681

Appellant

v.

BARBARA STOLL, et al.

Appellees

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV 2008-01-0509

DECISION AND JOURNAL ENTRY

Dated: December 16, 2009

DICKINSON, Judge.

INTRODUCTION

{¶1} Summit County fired Barbara Stoll from her position with the Department of Job and Family Services for helping her ex-husband obtain Medicaid benefits. She appealed to the Human Resource Commission, which reduced her penalty to a one-year suspension. The County appealed to the common pleas court, which affirmed the Commission’s decision. This Court reversed because the Commission had not followed its internal rules. On remand, the Commission, again, determined that Ms. Stoll’s penalty should be reduced to a one-year suspension. The common pleas court affirmed its decision. This Court affirms the common pleas court’s decision because the Commission followed its internal rules on remand and the reduction in Ms. Stoll’s penalty is supported by a preponderance of the evidence.

FACTS

{¶2} Ms. Stoll began working for the Department of Job and Family Services in 1972. In 2004, she learned that her ex-husband was having difficulty obtaining Medicaid benefits. Although not part of her duties, Ms. Stoll worked with her ex-husband's caseworker to facilitate his receipt of benefits. She did not help him obtain any benefits for which he was not eligible. Even so, her actions were in violation of a department policy prohibiting employees from being involved in the authorization of benefits to a friend or relative. When the department learned of Ms. Stoll's involvement in her ex-husband's case, it terminated her for engaging in a transaction that was in conflict with the proper discharge of official duties, engaging in a matter that undermined the integrity of the County, acting dishonestly or fraudulently, misusing or abusing her supervisory authority, interfering with the work of others, performing a transaction while acting as an agency representative so that a personal acquaintance benefited, rendering services for private interest when such services were in conflict with the proper discharge of official duties, and failing to notify management that a personal conflict existed.

{¶3} Ms. Stoll appealed the County's decision to the Human Resources Commission. Following a hearing, the hearing officer determined that Ms. Stoll had not engaged in dishonest or fraudulent conduct, interfered with the work of others, or misused or abused her supervisory authority. Nevertheless, because she had committed several of the infractions set forth in the County's notice of removal, the hearing officer denied her appeal.

{¶4} Ms. Stoll did not file written objections to the hearing officer's decision. The Commission, however, received oral objections from her at its next meeting and voted to reduce her penalty to a one-year suspension. The County appealed to the common pleas court, which affirmed the Commission's decision. The County then appealed to this Court, which reversed

because the Commission had not followed its own rules. This Court remanded to the common pleas court with instructions for it to remand the matter to the Commission “ordering the [Commission] to follow its internal rules and thereby create a complete record for review.” *Summit County v. Stoll*, 9th Dist. No. 23465, 2007-Ohio-2887, at ¶22

{¶5} On remand, the hearing officer mailed a copy of her decision to Ms. Stoll. Ms. Stoll filed written objections ten days later. At the Commission’s next meeting, it considered Ms. Stoll’s objections. At a subsequent meeting, it voted to modify her termination to a one-year suspension. The County appealed to the common pleas court, which affirmed because the Commission had followed its internal rules and its decision was supported by a preponderance of the evidence. The County has appealed, assigning two errors.

STANDARD OF REVIEW

{¶6} Section 2506.04 of the Ohio Revised Code provides that a party may appeal the final decision of a county commission to the common pleas court. That court considers “the whole record” and determines whether the administrative decision “is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence” *Id.* The common pleas court’s judgment “may be appealed by any party on questions of law” *Id.* An abuse of discretion by the common pleas court is “[w]ithin the ambit of ‘questions of law’ for appellate court review.” *Kisil v. City of Sandusky*, 12 Ohio St. 3d 30, 34 n.4 (1984) (quoting R.C. 2506.04). This Court must “affirm the common pleas court,” unless it concludes, “as a matter of law, that the decision of the common pleas court is not supported by a preponderance of reliable, probative and substantial evidence.” *Id.* at 34.

TIMELINESS OF OBJECTIONS

{¶7} The County’s first assignment of error is that the Commission’s decision was invalid because it did not follow its own rules. It has argued that, because Ms. Stoll did not file timely written objections to the hearing officer’s decision, the Commission did not have authority to review that decision.

{¶8} Human Resource Commission Rule 7.10(B) provides that “[t]he decision of the hearing officer of the Commission shall be final unless, within fourteen (14) calendar days after the date on which the decision was mailed to the last known post office address of all interested parties, objections are received by the Commission.” Rule 7.11 provides that the objections “must be in writing and must be supported by a memorandum in support” Under Rule 7.12, the non-objecting party has seven days to respond to any objections.

{¶9} In this Court’s previous decision, it rejected Ms. Stoll’s argument that she was never served with a copy of the hearing officer’s decision because there was no evidence in the record to support that argument. *Summit County v. Stoll*, 9th Dist. No. 23465, 2007-Ohio-2887, at ¶12. This Court noted that it was undisputed that Ms. Stoll did not file written objections to the hearing officer’s decision or a memorandum in support of her objections. *Id.* at ¶17. It also noted that the record did not indicate when she orally objected to the hearing officer’s decision or whether the County had an opportunity to respond to her objections before the Commission made its decision. It further noted that the Commission had not created a stenographic record, as required under Rule 7.07. *Id.* at ¶21. Because the Commission considered Ms. Stoll’s objections, in apparent violation of its own rules, this Court “remand[ed] the matter to the trial court with instructions to remand the matter to the [Commission], ordering [it] to follow its internal rules and thereby create a complete record for review.” *Id.* at ¶22.

{¶10} On remand, the hearing officer told the Commission that a copy of her decision had not been mailed to Ms. Stoll's last known address in 2005. She said that it was only after the trial court remanded the matter to the Commission that a copy was sent to Ms. Stoll. Ten days after the day on which the hearing officer mailed her decision to Ms. Stoll, Ms. Stoll filed written objections to the decision and a memorandum in support. At a subsequent meeting, the Commission voted to reduce Ms. Stoll's penalty.

{¶11} The County has argued that Ms. Stoll's objections were untimely because she did not file them after the hearing officer issued her decision in 2005. It has also argued that the Commission violated its own rules when it let Ms. Stoll file objections two years later. Rule 7.10(B), however, provides that the fourteen day period for written objections does not begin until the hearing officer's decision is "mailed to the last known post office address of all interested parties" According to the hearing officer, a copy of her decision was not mailed to Ms. Stoll until 2007. The record establishes that Ms. Stoll filed written objections to the decision within fourteen days of the date on which the hearing officer said a copy was mailed to her. The common pleas court, therefore, correctly concluded that the Commission followed its internal rules when it accepted Ms. Stoll's written objections. The County's first assignment of error is overruled.

SUBSTANTIAL EVIDENCE

{¶12} The County's second assignment of error is that the Commission's decision is invalid because it is not supported by a preponderance of reliable, probative, and substantial evidence. It has argued that the severity of Ms. Stoll's penalty was not before the Commission. It has also argued that the Commission's decision to reduce Ms. Stoll's penalty was arbitrary and not supported by the record.

{¶13} The County wrote that it was permanently removing Ms. Stoll from her position for “failure to follow policy and procedure, unethical behavior, and conflict of interest.” Her failure to follow policy and procedure violations included engaging in a transaction that was in conflict with the proper discharge of official duties, engaging in a matter that represented a conflict of interest with the County or undermined the integrity of the County, engaging in dishonest or fraudulent actions, misusing or abusing her supervisory authority, and interfering with the work of others. Her unethical behavior violations included performing a transaction while acting as an agency representative so that a personal acquaintance benefited and rendering services for private interest when such services were in conflict with the discharge of official duties. Her conflict of interest violation was failing to notify management that a personal conflict existed so that the case or matter could be assigned elsewhere when authorizing benefits to an applicant who was also a relative or friend.

{¶14} Human Resource Commission Rule 7.06 provides that “[m]atters coming before the Commission will be sustained if they are supported by a preponderance of the evidence.” While a hearing officer conducts an evidentiary hearing and prepares a recommendation, her decision is not final unless the parties do not object. Under Rule 7.13, if a party objects to the hearing officer’s decision, the Commission must determine whether the hearing officer’s decision should “be affirmed, denied, or modified[.]”

{¶15} The hearing officer reviewed each of the County’s allegations against Ms. Stoll. She found that Ms. Stoll had engaged in a transaction that was in conflict of interest with the proper discharge of official duties by assisting her ex-husband with his Medicaid benefits and inserting herself in a verification process in which she had no authority. She also found that Ms. Stoll had engaged in a matter that represented a conflict of interest with the County or

undermined the integrity of the County, noting that, even though her ex-husband “did not receive benefits he was not entitled to, the appearance was that he was given preferential treatment.” She further found that Ms. Stoll had engaged in unethical behavior and had not told management about her conflict of interest.

{¶16} The hearing officer found that three of the County’s allegations were not supported by the evidence. She found that there was no evidence that Ms. Stoll interfered with the work of another, noting that Ms. Stoll’s actions actually reduced the workload of another employee. She found that there was no evidence that Ms. Stoll engaged in dishonest or fraudulent actions in that she did not attempt to conceal her involvement in her ex-husband’s case or help him obtain benefits to which he was not entitled. She also found that there was no evidence that Ms. Stoll misused or abused her supervisory authority.

{¶17} After Ms. Stoll objected to the hearing officer’s recommendation, the Commission modified the decision by reducing the penalty to a one-year suspension. According to one of the commissioners who voted to modify the hearing officer’s decision: “It’s clear to me that Mrs. Stoll violated various policies of the County. It’s also clear to me that the question is whether these violations rise to a level to affirm termination. I am convinced after review of the file that there is nothing in any of the documents which alludes to anything that she has personally received or benefited from. While her actions I think are highly inappropriate, given the policies and procedures of the County and their Department, I do not believe that they’re either dishonest or fraudulent. So based on that, . . . I am inclined to support a suspension of one year.” The other commissioner who voted to modify the termination said he thought “that the ruling as we have decided is fair.” In its decision, the Commission wrote that “[a]fter a thorough examination of the record and review of the Report and Recommendation of the Hearing Officer,

along with a review of all the objections and filings to date, the . . . Commission modified the Findings and Conclusions of the Hearing Officer; reducing the penalty from termination to a one (1) year suspension”

{¶18} The common pleas court determined that the Commission’s decision was not “unconstitutional, illegal, arbitrary, capricious, [or] unreasonable,” and that it was “supported by the preponderance of substantial, reliable, and probative evidence on the whole record.” It noted that the “discrepancies between the infractions alleged in the notice of removal and those found by the Hearing Officer were substantial in both number and nature.” It also noted that the hearing officer’s findings refuted three of the alleged infractions that “were not supported by a preponderance of the evidence.” “Importantly, the Hearing Officer disagreed that Ms. Stoll had engaged in any fraudulent or dishonest activity. The . . . Commission emphasized this factor directly before voting to modify the penalty.” The court further noted that, “[a]lthough the Hearing Officer’s recommendation failed to modify the penalty to reflect this change in circumstances, the . . . Commission chose to adjust the penalty accordingly.” The court concluded that “[t]he Commission’s decision to modify the recommendation was well within its discretion.”

{¶19} The Commission determined that, since there was insufficient evidence to support all of the County’s allegations against Ms. Stoll, termination was too severe a penalty. Although the hearing officer did not recommend reducing Ms. Stoll’s penalty, the Commission had authority to modify her decision under Rule 7.13. As the Commission and common pleas court explained, there was no evidence that Ms. Stoll engaged in fraudulent conduct, that she personally benefitted from her improper conduct, or that her ex-husband received any Medicaid benefits to which he was not entitled. This Court has reviewed the record and concludes that the

common pleas court's decision to affirm the Commission's decision is supported by a preponderance of reliable, probative and substantial evidence. The County's second assignment of error is overruled.

CONCLUSION

{¶20} The Human Resource Commission did not violate its internal rules when it considered Ms. Stoll's written objections to the hearing officer's decision. The common pleas court correctly concluded that the Commission's decision was supported by a preponderance of the evidence. The judgment of the Summit County Common Pleas Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.

CLAIR E. DICKINSON
FOR THE COURT

MOORE, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

SHERRI BEVAN WALSH, prosecuting attorney, and ANITA L. DAVIS, assistant prosecuting attorney, for appellant.

EDMUND M. SAWAN, attorney at law, for appellee.