

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000348-MR

CECIL WADE NEACE

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 06-CI-00864

KENTUCKY CABINET FOR HEALTH
AND FAMILY SERVICES AND KENTUCKY
PERSONNEL BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KELLER AND LAMBERT, JUDGES; SHAKE,¹ SENIOR JUDGE.

LAMBERT, JUDGE: Cecil Neace appeals, *pro se*, from the Franklin Circuit Court's order dismissing his appeal of the Kentucky Personnel Board's order upholding the Kentucky Cabinet for Health and Family Services' demotion of his

¹ Senior Judge Ann O'Malley Shake sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

position from Social Service Clinician 1 to Family Support Worker. After careful review, we affirm.

As stated above, Mr. Neace was formerly employed by the Cabinet for Health and Family Services (the Cabinet) as a Social Service Clinician 1. He is currently employed as a Family Support Specialist 1. Mr. Neace was demoted from his former position by letter dated March 30, 2005. In this letter, he was informed that he was being demoted for two specific instances of lacking good behavior pursuant to 101 Kentucky Administrative Regulations (KAR) 1:345.

The first instance of alleged bad behavior was reported via referral to the Cabinet on March 12, 2004. After investigating the referral, the Cabinet found that while arguing with his wife in front of his children, Mr. Neace threatened to burn down the family's home. Mr. Neace was also found to be uncooperative during the investigation following this referral. Specifically, he was not available for appointments with social workers and refused to undergo domestic violence and parenting assessments until threatened with court action.

The second incident occurred after a referral on August 17, 2004. An investigation by the Cabinet substantiated a finding of spouse abuse on behalf of both Mr. Neace and his wife. The Cabinet determined that Mr. Neace and his wife had gotten into an argument that culminated in Mr. Neace breaking the glass out of the front storm door of their home. The letter also referenced an initial substantiation of child neglect for continued exposure to an environment of domestic violence by Mr. Neace and his wife.

Lorraine Martin investigated the March 12, 2004, incident. She interviewed the parties' children, and each of them told her they had heard Mr. Neace threaten to burn down the house while their parents were arguing. Ms. Martin also determined that the children were afraid of their father and were afraid he would burn down the house. Mrs. Neace also told Ms. Martin that it scared her and the children when Mr. Neace threatened to burn down the house. Ms. Martin also noted that she had trouble getting and keeping appointments with Mr. Neace during the investigation.

Angela Murphy investigated the August 17, 2004, incident. A third party reported that Mr. Neace and his wife had been arguing the weekend of August 14th and 15th. Mrs. Neace told this person that she was afraid of Mr. Neace and would have to "get away from him." During interviews with the children about the incident, one child stated that Mr. Neace had started the fight and broken out the storm door glass during the altercation. The other child told Ms. Murphy that when Mrs. Neace attempted to call the police, Mr. Neace chased her around the family couch. During the course of this investigation, several witnesses stated that Mrs. Neace was violent with Mr. Neace and had hit and scratched him in the past. Following this investigation, domestic abuse was substantiated against both parties.

After receiving his demotion letter, Mr. Neace filed two separate appeals to the Personnel Board. The first, appeal No. 2005-132, challenged his demotion and alleged that he was involuntarily transferred to a Family Support

Specialist 1. The second appeal, Appeal No. 2005-081, was filed on July 18, 2005. Mr. Neace claimed he was penalized when he was placed on leave to attend a mediation and was denied travel reimbursement for travel to that mediation.

Pursuant to statute, an administrative hearing was held on October 17, 18, and November 1, 2005. The parties filed written closing arguments with the Personnel Board on December 1, 2005. Those arguments were received and reviewed by a Hearing Officer on December 8, 2005. The Hearing Officer reviewed the evidence admitted to the record and reviewed the testimony of each witness, including the testimony of Ms. Murphy and Ms. Martin, as described above.

Steve Fisher and Lisa Durbin, policy experts for the Department for Community Based Services (DCBS), both testified at the administrative hearing that after reviewing Ms. Martin's and Ms. Murphy's investigative reports for accuracy and thoroughness, they had serious concerns about Mr. Neace's ability to help families overcome problems with domestic violence or child neglect since the Cabinet had received no less than six reports of domestic violence or child neglect occurring in the Neace household that warranted investigation. Mr. Fisher, an expert on domestic violence issues, noted particular concern with what he described as Mr. Neace's use of fear to control his family and his use of heated verbal exchanges and threats. Mr. Fisher and Ms. Durbin reported these concerns to Mark Cornett, who had also heard similar concerns voiced by Debra Wilcox-Lemaster, Ms. Martin and Ms. Murphy's supervisor, throughout the investigative

process. Even Mr. Neace admitted while testifying that multiple calls of domestic violence on the same family is cause for concern.

Mr. Fisher also testified that victims of domestic violence frequently recant their statements and blame themselves for the aggression directed towards them, especially when they are economically dependent upon their partners. Mrs. Neace's testimony at the hearing recanting her husband's tendency toward violence was a classic textbook example of this behavior, according to Mr. Fisher. She stated that everything she told Ms. Martin and Ms. Murphy was a lie and that *she* was the source of marital strife and problems with the children. Mr. Neace then testified that his wife's mental, emotional, and physical ailments caused him to argue with her and threaten her in front of the children. He also blamed his children's behavioral and mental disorders for his behavior. In sum, Mr. Neace testified that he was not responsible for his family situation.

Mark Cornett testified that DCBS had numerous meetings with the Office of Human Resource Management and the Cabinet's attorneys to address their concerns about Mr. Neace's integrity as a social services worker and the Cabinet's obligation to deliver quality services to families and victims of domestic violence. All parties involved recognized a serious problem with, and the Cabinet's potential liability for, holding Mr. Neace out as a social services worker qualified to help families overcome issues of domestic violence or child neglect. These concerns really hit home when the Cabinet learned that 72% of DCBS cases in Breathitt County, where Mr. Neace worked, involved domestic violence.

As Mr. Cornett testified, the Cabinet's solution to this problem was to remove Mr. Neace from a position where he was responsible for providing ongoing services to families in order to achieve a healthy home environment. However, the Cabinet did not want to terminate Mr. Neace, as that option would throw away Mr. Neace's years of experience with the Cabinet. Therefore, the Cabinet decided that Mr. Neace's skills could be best utilized if he were demoted to a family support worker where he could assist families in obtaining welfare benefits. In fact, the Cabinet initially offered Mr. Neace a voluntary demotion so he would not have to take a cut in pay. However, he refused this offer.

On February 9, 2006, the Hearing Officer issued his findings of fact, conclusions of law, and his recommended order to the Personnel Board dismissing Mr. Neace's appeal. In support thereof, the Hearing Officer found that in regard to Mr. Neace's demotion, there was at least an initial lack of cooperation from Mr. Neace, and the record indicated that there were more missed appointments and delays than should be expected when investigating a case of this nature. The Hearing Officer found that in regard to the substantiation of spouse abuse, there was no dispute that abuse from Mr. Neace directed toward Mrs. Neace occurred on more than one occasion. The finding of child neglect based on the children's exposure to this domestic violence was therefore supported by the testimony at the hearing.

The Hearing Officer found that the findings of spousal abuse against Mr. Neace were supported by the testimony and documentary evidence presented

at the hearing. The Officer noted that Mrs. Neace testified that Mr. Neace was in fact not abusive, but the Officer did not find Mrs. Neace's testimony in this regard to be credible. The Hearing Officer found that the two most recent incidents of spousal abuse were the seventh, eighth, and ninth reported incidents involving Mr. Neace. Finally, the Hearing Officer found that in regard to Appeal No. 2005-081, there was no evidence presented that there was any retaliation against Mr. Neace by not allowing him travel reimbursement or time for mediation in Frankfort.

The Hearing Officer found that Social Service Clinicians are responsible for investigating cases involving domestic violence and child neglect. Because Mr. Neace had the important job of investigating such instances, the allegation and substantiation of spousal abuse against him was a very serious matter. Accordingly, Mr. Neace's demotion to a Family Support Specialist 1 was neither inappropriate nor unreasonable and was supported by the evidence presented.

The Personnel Board issued its final order sustaining the Hearing Officer's findings of fact, conclusions of law, and recommended order on May 23, 2006. Mr. Neace then appealed the Board's decision to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100. On January 19, 2010, the Franklin Circuit Court issued an order upholding the final order of the Personnel Board and dismissing Mr. Neace's appeal. This appeal now follows.

Mr. Neace's main argument in this case focuses on the Hearing Officer's findings of fact and credibility determinations of the witnesses. When

the decision of the fact-finder is in favor of the party with the burden of proof or persuasion, the issue on appeal is whether the agency's decision is supported by substantial evidence, which is defined as evidence of substance and consequence when taken alone or in light of all the evidence that is sufficient to induce conviction in the minds of reasonable people. *See Bourbon County Bd. of Adjustment v. Currans*, 873 S.W.2d 836, 838 (Ky. App. 1994). *See also Transportation Cabinet v. Poe*, 69 S.W.3d 60, 62 (Ky. 2001). “In its role as a finder of fact, an administrative agency is afforded great latitude in its evaluation of the evidence heard and the credibility of witnesses, including its findings and conclusions of fact.” *Aubrey v. Office of Attorney General*, 994 S.W.2d 516, 519 (Ky. App. 1998) (citing *Kentucky State Racing Commission v. Fuller*, 481 S.W.2d 298, 309 (Ky. 1972)). A reviewing court is not free to substitute its judgment for that of an agency on a factual issue unless the agency's decision is arbitrary and capricious. *See Johnson v. Galen Health Care, Inc.*, 39 S.W.3d 828, 832 (Ky. App. 2001).

Thus, in the instant case, so long as the Hearing Officer’s opinion is supported by substantial evidence, the Personnel Board’s decision cannot be arbitrary or capricious and must be affirmed. A review of the record indicates that both Ms. Murphy and Ms. Martin testified that they substantiated two instances of domestic violence and the children’s exposure to violence on behalf of both Ms. Neace and Mr. Neace. Further, the record indicated that Mr. Neace was not cooperative during the investigation and that the Cabinet had legitimate policy

reasons for removing Neace from a position where he was working with families and victims of domestic violence and child neglect.

Because the administrative agency, and not this Court or the Franklin Circuit Court, was in the best position to determine the credibility of witnesses and make findings of fact, it is not this Court's place to re-examine the testimony of those witnesses or make findings of fact on appeal. Given the findings of domestic violence and the finding that the children were exposed to it on at least two occasions, the Personnel Board and the Hearing Officer's findings were supported by substantial evidence and we will not disturb them on appeal.

Accordingly, we hereby affirm the Franklin Circuit Court's January 19, 2010, order affirming the Personnel Board's dismissal of Mr. Neace's appeal.

ALL CONCUR.

BRIEF FOR APPELLANT:

Cecil Wade Neace, *Pro Se*
Lost Creek, Kentucky

BRIEF FOR APPELLEE:

Alea Amber Arnett
Frankfort, Kentucky