

STATE OF MICHIGAN
COURT OF APPEALS

DARRYL SMITH,

Plaintiff-Appellant,

v

DETROIT BOARD OF EDUCATION,

Defendant-Appellee.

UNPUBLISHED

December 29, 1998

No. 203887

State Tenure Commission

LC No. 96-000027

Before: Holbrook, Jr., P.J., and O’Connell and Whitbeck, JJ.

MEMORANDUM.

Plaintiff appeals as of right an order of the State Tenure Commission (Commission) discharging plaintiff from his employment as a teacher with defendant. We affirm.

On appeal, plaintiff argues that defendant failed to provide sufficient evidentiary support to persuade the Commission that plaintiff could not control his class and failed to maintain adequate records of students’ grades. This Court’s review of the Commission’s findings is limited to a determination of whether there is competent, material, and substantial evidence in the record to support the Commission’s findings. Const 1963, art 6, § 28; MCL 24.306(1)(d); MSA 2.560(206)(1)(d); *Birmingham School Dist v Buck*, 204 Mich App 286, 293; 514 NW2d 528 (1994). “Substantial evidence” is evidence that a reasonable person would accept as sufficient to support a conclusion. While this requires more than a scintilla of evidence, it may be substantially less than a preponderance. *Tomczik v State Tenure Comm*, 175 Mich App 495, 499; 438 NW2d 642 (1989). Appellate review “requires an independent assessment of whether the Commission’s determination of the credibility of the parties is supported by the evidence.” *Birmingham School Dist, supra* at 294.

Review of the proceedings before the Commission reveals abundant evidence in support of the Commission’s findings. Five witnesses testified on defendant’s behalf, and their testimony described a noisy and loud classroom in which students freely socialized and walked about during class. According to the witnesses, plaintiff could not control his class, and school administrators were frequently called upon to bring order. One witness attributed the “chaos” in plaintiff’s room to plaintiff’s lack of planning. Witnesses further testified to plaintiff’s difficulties maintaining records of students’ grades, one stating

that an investigation revealed that plaintiff had no formal record-keeping system for grades at all. There was also testimony that plaintiff was late turning in grades for report cards and that the information he did tender was often inaccurate.

In support of his position, plaintiff relies heavily on his own testimony. However, “[t]he Commission’s findings of fact are conclusive, and an appellate court cannot decide questions of fact which were before the Commission.” *Id.* Here, the Commission had an adequate evidentiary basis to support its resolution of the credibility contest between defendant’s witnesses and plaintiff against the latter. For these reasons, we conclude that the Commission’s decision is supported by competent, material, and substantial evidence.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Peter D. O’Connell

/s/ William C. Whitbeck