

STATE OF MICHIGAN
COURT OF APPEALS

RONALD H. LONG,

Plaintiff-Appellant,

v

DETROIT CIVIL SERVICE COMMISSION,

Defendant-Appellee.

UNPUBLISHED

June 23, 2011

No. 296698

Wayne Circuit Court

LC No. 05-524009-AV

Before: BORRELLO, P.J., and JANSEN and SAAD, JJ.

PER CURIAM.

Plaintiff appeals by right the circuit court's order denying his motion to adopt the hearing officer's findings and recommendations, and affirming the decision of the Detroit Civil Service Commission to reject the hearing officer's report and recommendations. We affirm.

Plaintiff argues on appeal that the circuit court erred by affirming the Detroit Civil Service Commission's interpretation of Dischargeable Offense #13 of the disciplinary policy. We disagree. We review the circuit court's review of agency action to determine whether the circuit court applied the correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings. *Boyd v Civil Service Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996).

During plaintiff's hearing, the city of Detroit argued that driving a city-owned vehicle constituted being "on [city] property," and that plaintiff's conduct therefore fell within the scope of Dischargeable Offense #13 of the disciplinary policy. The hearing officer found that plaintiff was *in* department property—i.e., driving in a city-owned vehicle—and not *on* department property as required by the language of Dischargeable Offense #13. The hearing officer concluded that, since plaintiff was *in* department property, as opposed to *on* department property, there was no violation of Dischargeable Offense #13, and accordingly no just cause to discharge plaintiff from employment.

The matter was subsequently reviewed by the Detroit Civil Service Commission, which found:

[T]he Hearing Officer failed to use the appropriate standards . . . [and] resorted to an unnecessarily restrictive view of the disciplinary guidelines as well as committing error in finding that there was no violation "on department

property” in construing the nature and gravity of [plaintiff’s] misuse of a city-owned vehicle which became the instrumentality of grievous injury.

The Commission agreed with the city of Detroit’s argument that the phrase “on department property” includes being *in* a city-owned vehicle.

Plaintiff appealed the Commission’s decision to the circuit court. He requested that the circuit court adopt the hearing officer’s findings and overturn the Commission’s decision that he had been *on* city property at the time of the incident. The circuit court rejected plaintiff’s arguments and entered an order affirming the Commission’s decision.

An agency’s interpretation of a rule is entitled to respectful consideration and, if persuasive, should not be overruled without cogent reasons. *In re Complaint of Rovas Against SBC Michigan*, 482 Mich 90, 103; 754 NW2d 259 (2008). However, an agency’s interpretation of a rule cannot overcome the rule’s plain meaning. See *In re Complaint of Consumers Energy Co*, 255 Mich App 496, 504; 660 NW2d 785 (2002).

Pursuant to Dischargeable Offense #13, an employee may be terminated for any of the following conduct:

Possession, consumption or use of or under the influence of alcoholic beverages, narcotics, habit-forming drugs, or any other potentially intoxicating or potentially impairing substance during working hours or *on department property*.

The phrase “on department property” is not defined within the disciplinary policy. When considering a word or phrase that has not been given a particular meaning, resort to a dictionary is appropriate. *Citizens Ins Co v Pro-Seal Service Group, Inc*, 477 Mich 75, 84; 730 NW2d 682 (2007). Among the definitions of the word “on” is “having as a place, location, situation, etc.” *Random House Webster’s College Dictionary* (1997). It necessarily follows that plaintiff violated Dischargeable Offense #13 if he was under the influence of alcohol while “locat[ed]” or “situat[ed]” in department property—i.e., the city-owned vehicle that he was driving. The Detroit Civil Service Commission’s interpretation of the disciplinary rule fully comports with the plain meaning of Dischargeable Offense #13. The phrase “on department property” plainly includes driving in a city-owned vehicle. Plaintiff’s argument that the phrase “on department property” encompasses only real property and not personal property such as the vehicle at issue in this case is illogical and unpersuasive. The circuit court did not err by affirming the Detroit Civil Service Commission’s decision and interpretation of the language of Dischargeable Offense #13.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Henry William Saad