

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DONALD DINE,

Plaintiff-Appellee,

v

CIVIL SERVICE COMMISSION,

Defendant-Appellant.

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UNPUBLISHED

August 14, 2014

No. 315773

Grand Traverse Circuit Court

LC No. 12-029440-AA

Before: SAAD, P.J., and OWENS and K.F. KELLY, JJ.

PER CURIAM.

Defendant appeals by leave granted an order of the circuit court reversing defendant's administrative denial of plaintiff's technical appointment complaint. For the reasons outlined below, we reverse.

**I. FACTS AND PROCEDURAL HISTORY**

Plaintiff filed a technical appointment complaint alleging that he had been denied a position at a state correctional facility, despite the fact that he was the most qualified candidate for the position. He alleged that he had been told by the facility's business manager that the hiring decision had been made prior to the interview process, and that the appointee had been selected because he was already employed at the facility in a different capacity. Plaintiff requested an "immediate freeze" of the appointment, and that he be transferred immediately into the position.

The technical review officer dismissed the complaint on the basis that it failed to demonstrate that the appointment decision violated the Michigan Constitution or Michigan Civil Service rules or regulations, or that it was arbitrary or capricious. The technical review officer ruled that plaintiff's claim that the hiring decision was made prior to the interview process was hearsay and not evidence of wrongdoing, and that the technical review process was not authorized to require the Department of Corrections to appoint plaintiff to the position.

Thereafter, plaintiff filed for leave to appeal the technical review officer's decision to the Employment Relations Board, and a motion to accept new evidence in the form of recently obtained e-mails that plaintiff alleged corroborated his allegations that the hiring decision had been made prior to the interview process. The board recommended that plaintiff be denied leave

to appeal because he had not established the requisite grounds. The board further recommended that plaintiff's motion to accept new evidence be denied due to lack of a legally sufficient reason to admit the evidence. Defendant issued a final decision accepting the board's recommendations.

Plaintiff appealed to the circuit court, which reversed defendant's decision. The circuit court concluded that defendant's administrative denial of plaintiff's technical appointment complaint was not authorized by law because the denial evidenced "an arbitrary excess with regard to pleading requirements." On appeal, defendant argues that the circuit court erred by reversing defendant's decision to administratively deny plaintiff's technical appointment complaint.

## II. STANDARD OF REVIEW

When reviewing the circuit court's ruling regarding agency action, we must determine whether the circuit court "applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings." *Boyd v Civil Serv Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996). However, because a hearing was not required in this case, both the circuit court and this Court are charged with reviewing defendant's decision to determine whether it was authorized by law. Const 1963, art 6, § 28; *Westcott v Civil Serv Comm*, 298 Mich App 158, 162; 825 NW2d 674 (2012).

## III. ANALYSIS

The circuit court's authority to review defendant's administrative denial of plaintiff's technical appointment complaint comes from Article 6 of the Michigan Constitution:

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. . . . [Const 1963, art 6, § 28.]

As noted, we must determine whether defendant's decision is authorized by law. "Decisions not 'authorized by law' include those that violate a statute or the Constitution, those that are in excess of statutory authority or an agency's jurisdiction, those made upon unlawful procedures that result in material prejudice, and those that are arbitrary and capricious." *Westcott*, 298 Mich App at 162.

Under the Michigan Constitution, defendant has the plenary authority to regulate all conditions of employment in the State Classified Service and to make rules and regulations covering all personnel transactions. Const 1963, art 11, § 5. In this case, pursuant to its authority, defendant adopted rules regarding the standards and procedures for filing and processing of technical appointment complaints, as well as regulations to implement those rules.

Relevant to this case, Civ Serv R 3-7.2 and 8-3 allow an unsuccessful candidate, such as plaintiff, to file a technical appointment complaint. Civ Serv R 8-4 provides that a technical appointment complaint may be administratively dismissed for a number of reasons. To help implement these rules, defendant issued regulations, two of which are at issue in this case: Civ Serv Reg 8.04(4)(A)(2) and (4)(b). They read as follows:

**A. Filing Complaints.**

1. In accordance with rule 3-7.2, an employee whose appointment is revoked as the result of a Civil Service audit or an unsuccessful candidate directly by a technical appointment decision may file a technical complaint with Civil Service, Technical Complaints. The complaint must be submitted using the Technical Appointment Complaint Form (CS-212d). The complainant must simultaneously file a copy of the complaint with the appointing authority that made the disputed appointment and file a proof of such service with Technical Complaints.

2. **Complaint.** The complaint must include the following:

a. All information required in part A of the Technical Appointment Complaint form (CS-212d) for each complainant and any representative.

b. A clear and concise description of the technical appointment decision being questioned.

c. A complete statement of why the technical appointment decision (1) violated article 11, section 5 of the Michigan Constitution; (2) violated a Civil Service rule or regulation; or (3) was arbitrary and capricious.

d. Any documentary evidence that the complainant believes supports the technical complaint.

e. A clear and concise statement of the desired outcome of the complaint. The outcome must be within the authority of Civil Service staff to grant.

f. The signature and email address of each complainant.

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**B. Administrative Denial of Complaint.** In addition to and in accordance with rule 8-4, a technical appointment complaint may be administratively dismissed without prior notice for any of the following reasons:

1. The complaint fails to set forth allegations with sufficient particularity to permit review.

2. The complaint fails to allege a violation of a Civil Service rule or regulation or article 11, section 5 of the Michigan Constitution.

3. The complainant was not a qualified candidate considered by the appointing authority.

4. The complaint fails for other good and sufficient reason to warrant further review.

Defendant maintains that plaintiff's technical complaint is deficient under Civ Serv Reg 8.04(4)(A)(2), in that plaintiff failed to make a clear and concise description of the appointment being questioned, failed to allege facts sufficient to support a finding that the appointment violated the Michigan Constitution, the Michigan Civil Service rules, or was arbitrary and capricious, failed to support the complaint with any documentary evidence, and that the requested relief that was not within defendant's authority to grant. As such, defendant argues that it was authorized to administratively deny the complaint under Civ Serv Reg 8.04(4)(B)(2) and (4).

The circuit court, however, failed to consider whether plaintiff's technical appointment complaint and defendant's decision complied with the Michigan Civil Service rules and regulations, which govern this matter. Rather, the circuit court suggested that the complaint would not have been deemed defective under the Michigan Court Rules to merit a dismissal, and concluded that defendant had not acted as the court would have in a similar situation. This was not a sufficient reason to overturn defendant's decision. In essence, the circuit court reversed defendant's decision because it concluded that it would have handled the matter differently, i.e., substituted its judgment for defendant's. This, the circuit court is not authorized to do. Accordingly, we reverse the circuit court's order and reinstate defendant's decision.

Reversed.

/s/ Henry William Saad  
/s/ Donald S. Owens  
/s/ Kirsten Frank Kelly