

**Matter of Williams v New York State Off. of
Temporary & Disability Assistance**

2018 NY Slip Op 32960(U)

November 13, 2018

Supreme Court, New York County

Docket Number: 651343/2018

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 6

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In the Matter of the Application of, Theresa Williams, <p style="text-align: center;">Petitioner,</p>	<p style="text-align: right;">Index No. 651343/2018</p>
For a Judgment Pursuant to Article 75 Of the Civil Practice Law and Rules,	<p style="text-align: right;">Decision and Order</p>
<p style="text-align: center;">- against -</p>	<p style="text-align: right;">Mot. Seq. 1</p>
New York State Office of Temporary and Disability Assistance, <p style="text-align: center;">Respondent.</p>	

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Petitioner, Theresa Williams (“Petitioner”), bring this Verified Petition dated March 18, 2018 for the Court to vacate the Opinion and Award (the “Award”) of Arbitrator Ira B. Lobel, Esq. (“Lobel”), dated December 19, 2017. Petitioner contends that the Award is “arbitrary, capricious, irrational, excessive, and so disproportionate to the offense that it is shocking to the sense of fairness.” On May 22, 2018, Respondent filed an Answer. On July 25, 2018, Petitioner submitted a Reply. On August 1, 2018, Respondent filed a cross motion to strike the new arguments raised for the first time in Petitioner’s Reply. On August 10, 2018, Respondent submitted an affirmation in opposition to the cross motion. Oral argument was scheduled on October 30, 2018. Respondent appeared for oral argument. Petitioner did not appear. The Court proceeded to render the instant decision based on the parties’ submissions.

Background/Factual Allegations

This action arises from statements Petitioner gave concerning an incident that occurred on May 28, 2015. On May 28, 2015, Petitioner, then employed as a Hearing Officer for the Office of Temporary and Disability Insurance (“OTDA”), stepped into the elevator on the fifteenth floor of OTDA’s Brooklyn office. Petitioner claimed that upon entering the elevator, the doors closed on her and

caused her to sustain injuries. She detailed the alleged incident and injuries in an (1) Incident Report she filed with OTDA on May 28, 2015; (2) email she sent to Jean Bermas, Senior Personnel Administrator, on May 29, 2015; (3) C-3 Employee Claim she filed with the WCB on July 23, 2015; and (4) her testimony under oath before the Workers' Compensation Board ("WCB") on September 10, 2015. After an investigation by OTDA of the alleged incident including video footage of the incident, OTDA suspended Petitioner without pay on March 1, 2016. On April 12, 2016, OTDA issued Petitioner a Notice of Discipline charging Petitioner with eleven counts of misconduct with a proposed penalty of termination. As is relevant to the pending proceeding, Petitioner was charged with four counts of making false statements to the WCB and/or The New York State Insurance Fund ("NYSIF") in connection with the May 28, 2015 elevator incident in the following: (1) the Incident Report; (2) the May 29, 2015 Email; (3) the July 23, 2015 C-3 Claim; and (4) her September 10, 2015 testimony before the WCB.

On April 27, 2016, OTDA issued an Amended Notice of Suspension, suspending Petitioner without pay effective April 25, 2016. Petitioner was put back on the payroll for the period from the March 1, 2016 Notice of Suspension to the effective date of suspension, April 25, 2016.

Petitioner's union, the New York State Public Employees Federation ("PEF"), filed a demand for arbitration on April 29, 2016, and an amended demand for arbitration on May 11, 2016.

An arbitration was held before the American Arbitration Association ("AAA") between PEF and OTDA. A hearing was conducted on nine days from September 2016 to September 2017. At the hearing, the parties introduced evidence and called witnesses. The parties stipulated that the arbitration would address the following issues: (1) whether OTDA had just cause to issue the April 13, 2016 Notice of Discipline against Petitioner; (2) whether the proposed penalty of termination was appropriate; (3) if not, what penalty is appropriate, if any; and (4) whether OTDA had probable cause to suspend Petitioner on April 25, 2016.

On December 22, 2017, Arbitrator Lobel issued the Award finding Petitioner guilty of the charges of misconduct for making false statements with intent to defraud the WCB and/or the NYSIF (Charges 1-4).

Instant Proceeding

Petitioner contends that Arbitrator Lobel's Award is "irrational, arbitrary, capricious and without evidentiary support and against Public policy." Petitioner further contends that "even if guilt on these charges were appropriate, the punishment of termination is so disproportionate to the offense, especially in light of Williams ten (10) year tenure with Respondent as an exemplary ALJ, that the Court should reverse such a determination and refer the matter back to arbitration (with a new arbitrator) for the imposition of a lesser discipline."

Specifically, Petitioner takes issue with Arbitrator Lobel's reliance on the video footage from the day of the incident, rather than the "medical testimony and objective medical data [that] confirms that Williams did indeed have injuries to her neck, lower back, and shoulders, and hip."

In Petitioner's reply papers, Petitioner added additional grounds to challenge to Arbitrator Lobel's decision that are not contained in the Petition. These challenges are based upon Arbitrator Lobel's findings concerning whether the individual who issued the Notice of Discipline had the requisite authority and whether the OTDA was retaliating against Petitioner for filing a Workers' Compensation claim. "The function of reply papers is to address arguments made in opposition to the position taken by the movant and not to permit the movant to introduce new arguments in support of, or new grounds [or evidence] for the motion." *Kennelly v. Mobius Realty Holdings LLC*, 33 A.D.3d 380, 381 (1st Dept 2006). Petitioner's attempt to add new arguments in the reply papers unfairly prejudices OTDA's ability to answer the Petition. Accordingly, Respondent's cross motion is granted and the new arguments raised in the reply papers will not be considered.

Legal Standard

CPLR §7511(b) provides four grounds on which an application to confirm an arbitration award may be denied: fraud; partiality by the arbitrator; the arbitrator exceeding his or her authority; and a failure to follow the procedures of CPLR Article 75.

Judicial disturbance of an arbitration award on the grounds that an arbitrator exceeded his powers is appropriate "only if the award violated a strong public

policy, was totally irrational, or the arbitrator in making the award clearly exceeded a limitation on [his] power specifically enumerated under CPLR 7511(b)(1).” *Rice v. Jamaica Energy Partners, L.P.*, 13 A.D.3d 255 [1st Dept. 2004]) (citing *New York State Correctional Officers & Police Benevolent Assn. v. State of New York*, 94 N.Y.2d 321, 326 [1999]). “Where arbitration is compulsory, our decisional law imposes closer judicial scrutiny of the arbitrator’s determination under CPLR 7511(b).” *Motor Vehicle Acc. Indemnification Corp. v. Aetna Cas. & Sur. Co.*, 89 N.Y.2d 214, 223-24 [1996]) “To be upheld, an award in a compulsory arbitration proceeding must have evidentiary support and cannot be arbitrary and capricious.” *Id.* at 224.

“Assessment of the evidence presented at an arbitration proceeding is the arbitrator’s function rather than that of the court.” *Fitzgerald v. Fahnestock & Co., Inc.*, 48 A.D.3d 246, 247 [1st Dep’t 2008] (quoting *Peckerman v. D & D Assoc.*, 165 A.D.2d 289, 296 [1st Dep’t 1991]). “An arbitral award cannot be attacked on the ground that an arbitrator refused to consider, or failed to appreciate, particular evidence or arguments.” *Genger v. Genger*, 87 A.D.3d 871, 874 n. 2 [1st Dep’t 2011]. Furthermore, “Absent provision to the contrary in the arbitration agreement, arbitrators are not bound by principles of substantive law or rules of evidence.” *Lentine v. Fundaro*, 29 N.Y.2d 382, 385 [1972]. Nor can an arbitration award “be overturned merely because the arbitrator committed an error of fact or law.” *Matter of Motor Veh. Accident Indem. Corp.*, 89 N.Y.2d at 223.

Moreover, “[t]hat reasonable minds might disagree over what the proper penalty should have been does not provide a basis for vacating the arbitral award or refashioning the penalty.” *Matter of Bolt v. New York City Dept. of Educ.*, 30 N.Y.3d 1065, 1068 (internal quotation omitted). “Unless an irrationality appears or the punishment shocks one’s conscience, sanctions imposed by an administrative agency should be upheld.” *Matter of Pell v. Bd. of Educ.*, 34 N.Y.2d 222, 240 [1974]. “[T]he test is whether such punishment is ‘so disproportionate to the offense, in light of all the circumstances, as to be shocking to one’s sense of fairness.’” *Pell*, 34 N.Y.2d at 233 (citations omitted).

Discussion

Here, Petitioner fails to meet her heavy burden of demonstrating that the Award violated a strong public policy, was totally irrational or in violation of any of the grounds enumerated under CPLR 7511(b). Petitioner has also failed to demonstrate that the Award did have evidentiary support and was arbitrary and

capricious. A review of Arbitrator Lobel's Award demonstrates no indication that the decision rendered was arbitrary, capricious or subject to any of the defects set forth in CPLR 7511. The record shows that Arbitrator Lobel weighed all relevant evidence, including the medical evidence presented by Petitioner, and determined that video was "the only real piece of evidence" of the incident in the elevator on May 28, 2015. On the other hand, Arbitrator Lobel found that the medical information submitted was not probative because "no treating physician was called to testify" and "[n]one of it really examines the extent to which Ms. Williams' medical situation was caused by contact she had in the elevator on May 28, 2015."

Additionally, under the circumstances and in light of Petitioner's former position as an administrative law judge, the court does not find that the penalty of termination shocks the conscience. As Arbitrator Lobel states, "Fraudulent claims and filings are extremely serious accusations for any employee, particularly for a lawyer performing the duties of an administrative law judge."

Wherefore it is hereby

ORDERED that Respondent's cross motion is granted and the new arguments raised by Petitioner in Petitioner's reply papers are stricken and not considered by the Court; and it is further

ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED and ADJUDGED that Arbitrator Lobel's findings that Petitioner is guilty of the charges of misconduct for making false statements with intent to defraud the WCB and/or the NYSIF (Charges 1-4) and that termination of Petitioner's employment is warranted under the circumstances is CONFIRMED.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: November 13 2018


EILEEN A. RAKOWER, J.S.C.