

Matter of Coa v Molina

2023 NY Slip Op 33246(U)

September 18, 2023

Supreme Court, New York County

Docket Number: Index No. 158724/2022

Judge: Nancy M. Bannon

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NANCY M. BANNON PART 42

Justice

-----X

INDEX NO. 158724/2022

In the Matter of the Application of

MOTION DATE 3-7-23

JARREL COA,

MOTION SEQ. NO. 001

Petitioner,

For a Judgment Pursuant to CPLR article 78

- v -

DECISION + ORDER ON MOTION

LOUIS MOLINA, Commissioner of the New York City Department of Corrections, THE NEW YORK CITY DEPARTMENT OF CORRECTION and THE CITY OF NEW YORK

Respondents.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

I. INTRODUCTION

In this proceeding pursuant to CPLR article 78, the petitioner, Jarrel Coa, seeks judicial review of a determination by respondents to terminate his employment as a probationary corrections officer assigned to Rikers Island. Respondents Louis Molina, Commissioner of the New York City Department of Correction (DOC), the DOC and the City of New York cross-move, in effect, to dismiss the petition pursuant to CPLR 3211(a)(7) and 7804(f).¹ In essence, the respondents assert that the petitioner was terminated due to his conduct in abandoning his assigned post, leaving it unsecured, which led to a brutal assault; the petitioner maintains that the respondents acted in bad faith by terminating him for being out on extended sick leave or on light duty as a result of a prior injury. The respondents' cross-motion is granted, the petition is denied and the proceeding is dismissed.

¹ Although the respondents' notice of motion does not specify the subsection of CPLR 3211(a) on which dismissal is sought, they argue in their supporting papers that the petition fails to state a cause of action, invoking CPLR 3211(a)(7). CPLR 7804(f) concerns motions to dismiss in Article 78 proceedings.

II. BACKGROUND

The following facts are drawn from the petition and taken to be true with any ambiguity resolved in favor of the petitioner. See Matter of Castro v Schriro, 140 AD3d 644 (1st Dept. 2016) *aff'd* 29 NY3d 1005 (2017). The facts are undisputed except where indicated.

The petitioner commenced a two-year probationary employment period with the DOC on September 30, 2021, and was assigned to Rikers Island. On February 28, 2022, the petitioner suffered an injury to his right hip and leg in the course of his employment when he slipped on a wet floor while responding to an inmate's assault on another corrections officer. The petitioner was out on sick leave for one week, during which time he was examined by Dr. Stephen Wilson of the DOC's Health Management Division (HMD) and found to be "totally disabled" per a report dated March 1, 2022. Nonetheless, the petitioner reported back to work on March 3, 2022.

He reported for his shift on March 8, 2022, and took his post at the "2 Central South" housing area. Two and one-half hours into his shift, he left his post and walked to "Central Station A" to obtain medical attention for leg and knee pain. The housing area to which he was assigned was not attended by any other officer and the petitioner failed to lock the cell doors before leaving. The petitioner thereafter left "Central Station A" with a Captain to seek medical attention at the facility's medical clinic. However, minutes after the petitioner left his post, DOC surveillance cameras captured a brutal assault by several inmates who were unsecured and unsupervised upon another inmate in the same housing area who suffered several puncture wounds to the forehead, back and arm.

Several days later, on March 11, 2022, the petitioner's commanding officer, Warden Sharlisa Walker, submitted a memorandum requesting a Personnel Determination Review (PDR) for the petitioner to address the March 8, 2022, incident. The accompanying "Memorandum of Complaint" set forth the timeline of events and identified four violations of the DOC Rules and Regulations (R&Rs). These R&Rs provide that members "shall cooperate in maintaining the security and good order of the facility" (R&R 4.35.080); "shall be held responsible for [the] safety, sanitation and security of their post" (R&R 2.30.010); "are responsible for the efficient performance of their duty and for the proper supervision of any inmates under their direction (R&R 2.05.120); "shall not leave their post or place of assignment without permission of a superior" (R&R 3.05.130). The Memorandum further cites to R&R 3.20.030 which provides, in pertinent part, that any member found guilty of "violation of the

[R&Rs] "may be dismissed from the [DOC] or suffer such other punishment as the Commissioner may direct."

On May 9, 2022, the petitioner again visited HMD after which DOC extended his sick leave. On May 19, 2022, he was again examined and a determination was made that he could return to work on a medically monitored return (MMR). Upon his return to work on May 22, 2022, he was assigned "light duty", a status given to those suffering from "serious physical/psychological limitations" as per the MMD Form reflecting that status. He was to return to HMD for re-evaluation on June 7, 2022.

However, on June 13, 2022, upon completing the petitioner's PDR, the DOC terminated the petitioner's probationary employment. That determination was made by Assistant Chief Sherriann Rembert. The PDR report reflects this decision and states, in the section marked "Reason for Referral", that the petitioner had been referred for review of his employment as a result of his actions on March 8, 2022. The PDR expressly states that "Officer Coa was negligent in performing his duties efficiently and failed to remain on post. A review of Genetec surveillance showed Officer Coa abandoning his post and retreating into the (A) section, leaving the area with unsecured doors for approximately one (1) hour and thirteen (13) minutes. At approximately 1113 hours, Captain Espino arrives for a medical emergency for Officer Coa. Officer Coa left several inmates unsupervised which led to inmate [] being assaulted in a cell by several other inmates, inmate [--] sustained several puncture wounds to the body area." The PDR then states that the petitioner violated DOC Rules and Regulations 4.35.080, R&R 2.30.010, R&R 2.05.120, R&R 3.05.130 and R&R 3.20.030.

The PDR is a standardized form containing a number of sections to be completed for all reviewed employees. In addition to "Reason for Referral", the form asks for the employee's name, shield number and title, "Probationary/Performance Ratings", "Attendance Record" and "Disciplinary Record". Here, the form reflects a "N/A" and "None" response to "Probationary/Performance Ratings" and "Disciplinary Record", respectively. In the "Attendance Record" section, the respondents listed the dates on which the petitioner was under MMR status and the dates he was absent or on leave, whether for injury, medical or other reasons. However, neither the MMR status nor the absences are referenced in the "Reason for Referral." In the "Comments" section on the bottom of the report, after the signature of the Assistant Chief, it is noted that the petitioner was "still out sick from 3-9-2022."

The petitioner was notified of his termination on June 16, 2022, by a “Termination Memo” from Deputy Commissioner Nadene M. Pinnock, which states that “Your services as a Probationary Correction Officer will no longer be required effective Thursday, June 16, 2022.” This petition and cross-motion ensued.

III. DISCUSSION

Generally, judicial review of an administrative determination pursuant to CPLR article 78 is limited to whether the determination was arbitrary and capricious or rationally based on the record. See Matter of Gilman v New York State Div. of Hous. & Comm. Renewal, 99 NY2d 144, 149 (2002); see CPLR § 7803(3). On any motion to dismiss for failing to state a cause of action under CPLR 3211(a)(7), including motions to dismiss a petition brought pursuant to CPLR article 78, the pleading is to be afforded a liberal construction and the court should accept as true the facts alleged in the complaint, accord the pleading the benefit of every reasonable inference, and only determine whether the facts, as alleged, fit within any cognizable legal theory. See Hurrell-Harring v State of New York, 15 NY3d 8 (2010); Leon v Martinez, 84 NY2d 83 (1994); Matter of Marlow v Tully, 79 AD2d 546 (1st Dept. 1980). However, additional rules apply when the petitioner is a probationary employee.

“It is well established that a probationary employee may be discharged for any or no reason at all in the absence of a showing that [the] dismissal was in bad faith, for a constitutionally impermissible purpose or in violations of law.” Matter of Francois v Walcott, 136 AD3d 434, 434 (1st Dept 2016) (internal quotation marks and citation omitted); see Matter of Duncan v Kelly, 9 NY3d 1024 (2008); Matter of Swinton v Safir, 93 NY2d 758 (1999); Matter of Castro v Schriro, 140 AD3d 644 (1st Dept. 2016) *aff’d* 29 NY3d 1005 (2017). “Judicial review of the determination to discharge [a] probationary employee is limited to an inquiry as to whether the termination was made in bad faith”. Matter of Johnson v Katz, 68 NY2d 649, 650 (1986). When the court finds that the termination was in bad faith, it may conclude that it was therefore arbitrary and capricious. See Id. However, speculation or conclusory allegations of bad faith are not sufficient to sustain that burden. See Matter of Brown v Bd. of Educ., 156 AD3d 451 (1st Dept. 2017); Witherspoon v Horn, 19 AD3d 250 (1st Dept 2005). “The burden falls on the petitioner to demonstrate by competent proof that bad faith exists, or that the termination was for an improper or impermissible reason.” Matter of Castro v Schriro, *supra* at 644; see Matter of Swinton v Safir, *supra*; Matter of Witherspoon v Horn, *supra*. Conversely, any “evidence in the record supporting the conclusion that performance was unsatisfactory establishes that the

discharge was made in good faith.” Matter of Castro v Schriro, *supra* at 644; see Matter of Talamo v Murphy, 38 NY2d 637 (1976); Matter of Brown v Bd. of Educ., *supra* at 451.

Here, the petitioner fails to meet his burden of establishing with competent proof that the respondents acted in bad faith. The gravamen of his argument is that the respondents discharged him based on disability-related absences in violation of the New York City Human Rights Law (NYCHRL) and that their contention that he was discharged due to the incident where he abandoned his post is merely a pretext. Specifically, the petitioner alleges that the respondents violated NYCHRL § 1-807(1)(a), which prohibits employers from “discharg[ing] from employment” any person “because of” a disability, NYCHRL § 1-807(15)(a), which requires employers to “make reasonable accommodations to enable a person with a disability to satisfy the essential requisites of a job”, and NYCHRL § 1-807(28)(a), which prohibits employers from “refus[ing] or otherwise fail[ing] to engage in a cooperative dialogue within a reasonable time with a person who has requested an accommodation ...”

The petitioner submits and relies upon his verified petition, in which he makes the above allegations, and 14 exhibits attached thereto, consisting mostly of medical reports and records by which he apparently attempts to document his course of medical treatment leading up to his termination. Included is a report documenting his visit to the clinic at the correctional facility at 11:43 a.m. on March 8, 2022 - corroborating that he abandoned his post – where he reported pain in his right knee and leg and was referred to an urgent care facility. Notably, he does not submit the PDR, which sets forth the reason for his termination. Remarkably, the sole reference made in the petition the PDR is in the form of a request that the court direct the respondents to produce the PDR and an argument that the PDR will show that his termination was based on “his attendance record consisting of his disability-related absences and light duty status stemming from the injuries he incurred on February 28, 2022.” The petitioner essentially ignores the violent assault that occurred when he abandoned his post on March 8, 2022, in violation of several established Rules and Regulations, and thus makes no attempt to show that this was not a good faith, proper and permissible basis for his termination.

The respondents do include the PDR in support of their motion, as well as the Memorandum of Complaint and Termination Memo, along with five FDNY HMD medical reports dated March 1, 2022, to May 19, 2022, also submitted by the petitioner.

In opposing the respondents' motion, the petitioner submits only a Memorandum of Law in which he addresses the PDR only by arguing that the discriminatory basis of his termination is demonstrated by the fact that the PDR lists his entire attendance record, including those dates that he was on leave because of his disability, and includes a handwritten comment referring to his continued absence from work as of that date. The petitioner's reliance on the PDR to establish his bad faith discrimination claim is misplaced.

The mere fact that the PDR includes the petitioner's attendance record is insufficient, without more, to give rise to an inference of discrimination. As previously stated, the PDR is a standard form containing a number of sections including the "Reason for Referral" and "Attendance Record". That the form reflects a "N/A" and "None" response to "Probationary/Performance Ratings" and "Disciplinary Record", respectively, indicates the standardized nature of the form. Contrary to the petitioner's contention, neither the mere completion by the respondents of the "Attendance Record" section or the added notation regarding his ongoing sick leave in the "Comments" section after the signature section, indicates that attendance played any part in his termination. Notably, the listed absences include several that were wholly unrelated to his injury, including "vaccine side effects" and "gastrointestinal." The petitioner's attendance is not part of the "Reason for Referral", which includes only the March 8, 2022, incident where he abandoned his post and left unsecured inmates to brutally assault a fellow inmate. That is, the very same PDR the petitioner puts forward as proof of discrimination, affirmatively establishes that the respondents had a good faith, nondiscriminatory reason for terminating him. The PDR explicitly states that the petitioner was referred for review because of his "negligent" actions in "abandoning his post," leaving the area he was supervising alone "with unsecured doors for approximately one (1) hour and thirteen (13) minutes," in violation of specifically listed DOC Rules & Regulations, which ultimately resulted in the brutal attack upon an inmate in his charge by other inmates, a fact that the petitioner never addresses.

Moreover, the PDR, along with the allegations of petition and attached medical reports and records submitted by the petitioner undermine the petitioner's claim of discrimination based on disability. They demonstrate that the respondents accommodated the petitioner's disability by providing him an extended leave of absence and light duty status upon his return. In that regard, the petitioner does not even allege, much less establish, that he requested any reasonable accommodation pursuant to NYCHRL § 1-807 and thus cannot argue that the respondents refused or failed to engage in a cooperative dialogue with him pursuant to that statute.

IV. CONCLUSION

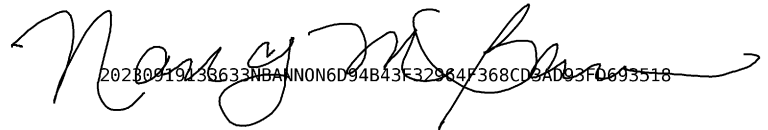
The petitioner, a probationary employee, has fallen short of his burden "to demonstrate by competent proof that bad faith exists, or that the termination was for an improper or impermissible reason." Matter of Castro v Schriro, supra at 644; see Matter of Swinton v Safir, supra; Matter of Witherspoon v Horn, supra. Rather, the petitioner's own submissions, along with those of the respondents, including the PDR, constitutes "ample evidence in this record to support the conclusion that the petitioner's performance was unsatisfactory such that the discharge was made in good faith." Matter of Castro v Schriro, supra at 644; see Matter of Talamo v Murphy, supra; Matter of Brown v Bd. of Educ., supra. Since the petitioner has not established any bad faith on the part of the respondents, he has not established that the termination of his employment was arbitrary and capricious. See CPLR 7803(3); Matter of Johnson v Katz, supra. Consequently, the respondents' cross-motion to dismiss the petition is granted and his petition and the proceeding are dismissed.

Accordingly, upon the foregoing papers, it is

ORDERED and ADJUDGED that the respondents' cross-motion to dismiss is granted, the petition is denied and the proceeding is dismissed; and it is further,

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the Decision and Order of the court.


20280919438633NBANNON6D94B43E32964F368CD8AD93FD693518

9/18/2023

DATE

NANCY M. BANNON, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE