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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-673

Filed 15 August 2023

Office of Administrative Hearings, No. 20 OSP 01641

THURMAN CROFTON SAVAGE, Petitioner,

v.

N.C. DEPARTMENT OF TRANSPORTATION, Respondent.

Appeal by respondent-appellant from order entered 20 April 2022 by Administrative Law Judge J. Randolph Ward in the Office of Administrative Hearings. Heard in the Court of Appeals 8 March 2023.

*Irons & Irons, P.A., by Ben G. Irons II, for petitioner-appellee.*

*Attorney General Joshua H. Stein, by Assistant Attorney General Jonathan J. Evans and Special Deputy Attorney General Kathryne E. Hathcock, for respondent-appellant.*

DILLON, Judge.

The North Carolina Department of Transportation (the “DOT”) appeals from a final decision of the North Carolina Office of Administrative Hearings concluding as a matter of law that the DOT lacked just cause to terminate Thurman Crofton Savage from his position as a Driver’s Education Program Specialist (“DEPS”). We reverse.

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I. Background

In April 2018, Mr. Savage began working as a DEPS with the DOT's School Bus and Traffic Safety Unit. As a DEPS, he was responsible for instructing and testing school bus drivers as part of their initial certification and recertification. Once a driver completed their certification or recertification, Mr. Savage was responsible for entering the information into North Carolina's State Automated Driver's License System ("SADLS").

Between August and October 2019, Mr. Savage recertified at least five school bus drivers without completing all the procedures required in the School Bus & Traffic Safety Procedures Manual for DEPS, including the requirement that he observe the driver conduct a pre-trip inspection and demonstrate proper school bus operations.

Mr. Savage subsequently entered each of the improperly issued recertifications into SADLS.

The DOT became aware of Mr. Savage's conduct and launched an investigation. Mr. Savage admitted to entering information regarding the five school bus drivers he had improperly recertified into SADLS.

On 20 November 2019, following disciplinary proceedings, the DOT notified Mr. Savage his employment was being terminated for unacceptable personal conduct, grossly inefficient job performance, and violations of N.C. Gen. Stat. § 20-34.1.

In April 2020, Mr. Savage filed a petition for a contested case hearing. Over

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three days in late 2020, the case was heard remotely before an Administrative Law Judge (the “ALJ”).

On 20 April 2022, the ALJ issued its final decision which reversed the DOT’s decision to terminate Mr. Savage’s employment, holding the DOT only had just cause to suspend Mr. Savage without pay and ordering his reinstatement with front pay, backpay, and reasonable attorney’s fees. The DOT timely appealed to this Court.

II. Analysis

Once a final agency decision has been issued, a former State employee may appeal an adverse employment action as a contested case. N.C. Gen. Stat. § 126-34.02(b)(3) (2021). An aggrieved party in a contested case is entitled to judicial review by our Court. N.C. Gen. Stat. § 126-34.02(a) (2021); N.C. Gen. Stat. § 7A-29(a) (2021).

“While Chapter 126 is silent on the issue, Chapter 150B, the Administrative Procedure Act, specifically governs the scope and standard of this Court’s review of an administrative agency’s final decision.” *Harris v. N.C. Dep’t of Pub. Safety*, 252 N.C. App. 94, 98, 798 S.E.2d 127, 132 (2017).

On appeal, the DOT makes several arguments, including that the ALJ erred by concluding that N.C. Gen. Stat. § 20-34.1 did not apply to Mr. Savage’s misconduct. We address the DOT’s statutory argument only, as our resolution is dispositive.

Since the DOT’s statutory argument involves a question of law, we conduct a *de novo* review in which we “consider[] the matter anew [] and freely substitute[] [our] own judgment for the agency’s.” *N.C. Dep’t of Env’t & Nat. Res. v. Carroll*, 358 N.C.

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649, 660, 599 S.E.2d 888, 895 (2004).

In its 20 November 2019 dismissal letter, the DOT stated that Mr. Savage was subject to mandatory dismissal for violating N.C. Gen. Stat. § 20-34.1(a)(3), titled, “[v]iolations for wrongful issuance of a drivers license or a special identification card.”

This statute makes it a felony for an employee or agent of the DOT to:

(3) Knowing it is false, enter[] false information concerning a drivers license or a special identification card in the records of the Division.

N.C. Gen. Stat. § 20-34.1(a)(3) (2021).

Mr. Savage argues the statute is inapplicable because improper re-certifications of school bus drivers do not involve the issuance of a license, but rather, merely allow the possessor of a driver’s license to have an endorsement on his license allowing him to operate a school bus. Thus, Mr. Savage contends, as the ALJ determined, recertification “has no impact on a driver’s license.”

However, Section 20-34.1(a)(3) does not merely cover information regarding the issuance of a driver’s license to someone not entitled to drive, but also to knowingly “enter[ing] false information concerning [an otherwise valid] driver’s license . . . in the records of the Division.” *Id.* As conceded by the parties, to operate a school bus in North Carolina, a driver must possess a commercial driver’s license *and* be certified/recertified as a school bus driver by meeting other criteria, including certain matters Mr. Savage was required to confirm. Here, though, Mr. Savage entered information into SADLS that certain drivers had been properly

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certified/recertified to operate a school bus when they had not yet met all the criteria due to Mr. Savage's misconduct. And the SADLS is part of the "records of the Division [of Motor Vehicles]." We, therefore, conclude Mr. Savage violated Section 20-34.1 by entering the false information "concerning" at least five driver's licenses. Accordingly, the DOT was required to terminate him. N.C. Gen. Stat. § 20-34.1(c) ("An employee of the Division who violates this section shall be dismissed from employment[.]")

III. Conclusion

We conclude that Mr. Savage's entry of improper re-certifications into SADLS falls within the plain language of N.C. Gen. Stat. § 20-34.1(a)(3), and thus the ALJ erred when it determined that Mr. Savage was not subject to mandatory termination for violation of the statute. We, therefore, reverse the ALJ's final decision ordering Mr. Savage's reinstatement with front pay, backpay, and attorney's fees.

REVERSED.

Judges COLLINS and GORE concur.

Report per Rule 30(e).