

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Frank E. Rayl, Jr.,	:	
Appellant-Appellant,	:	
v.	:	No. 12AP-303
Ohio Department of Transportation,	:	(C.P.C. No. 11CVF-06-7339)
Appellee-Appellee.	:	(ACCELERATED CALENDAR)

D E C I S I O N

Rendered on September 25, 2012

James J. Leo Law Office, and James J. Leo, for appellant.

Michael DeWine, Attorney General, Drew C. Piersall and Joseph N. Rosenthal, for appellee.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶ 1} Appellant-appellant, Frank E. Rayl, Jr., appeals from a judgment of the Franklin County Court of Common Pleas affirming an order of the State Personnel Board of Review ("SPBR") that dismissed Mr. Rayl's administrative appeal for lack of jurisdiction.

{¶ 2} Mr. Rayl began work with appellee-appellee, Ohio Department of Transportation ("ODOT") in March 2007. His job title was Deputy Director 5, an unclassified civil service position. On November 5, 2010, Mr. Rayl accepted a demotion to become a Transportation Manager 2 with ODOT. This was a classified position.

{¶ 3} ODOT subsequently reviewed Mr. Rayl's employment status and determined that his new job represented his first classified service position with ODOT

and he would be subject to probationary status. On January 28, 2011, Mr. Rayl received a letter from ODOT stating that his employment was terminated by probationary removal due to unsatisfactory service. The termination became effective January 29, 2011.

{¶ 4} Mr. Rayl appealed his termination to SPBR. ODOT moved to dismiss the appeal, asserting that SPBR, pursuant to R.C. 124.27, had no jurisdiction over an appeal from a probationary dismissal. The hearing officer recommended dismissing the appeal, and on June 2, 2011, SPBR issued an order adopting the hearing officer's recommendation and dismissing the appeal.

{¶ 5} Mr. Rayl then appealed the SPBR's decision to the Franklin County Court of Common Pleas pursuant to R.C. 119.12. The court of common pleas entered judgment upholding the order of SPBR, agreeing that SPBR lacked jurisdiction over a probationary dismissal. In addition, the court of common pleas remanded the matter to ODOT to examine the circumstances of Mr. Rayl's probationary dismissal.

{¶ 6} Mr. Rayl has timely appealed and brings the following sole assignment of error for our review:

The Lower Court Incorrectly Ignores R.C. 124.27(C), Which Provides that Employees May be Put on Probationary Status Following Original Appointments and Promotions but Does Not Provide For Probationary Status Following Demotions, and Since Mr. Rayl Was Demoted, the Lower Court Wrongly Concluded that [Mr.] Rayl Was Subject to Probationary Status.

{¶ 7} When addressing an administrative appeal brought pursuant to R.C. 119.12, the standard of review for the common pleas court is that it will affirm an agency's order if it finds "upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law." R.C. 119.12.

The evidence required by R.C. 119.12 can be defined as follows: (1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) "Substantial" evidence is evidence with some weight; it must have importance and value.

Our Place, Inc. v. Ohio Liquor Control Comm., 63 Ohio St.3d 570, 571 (1992), footnotes omitted.

{¶ 8} An agency's findings of fact will be presumed to be correct and deferred to by the reviewing court unless the court determines that "the agency's findings are internally inconsistent, impeached by evidence of a prior inconsistent statement, rest upon improper inferences, or are otherwise unsupported." *Ohio Historical Society v. State Employment Relations Bd.*, 66 Ohio St.3d 466, 471 (1993). Upon further appeal from the common pleas court to this court, our review is limited to a determination of whether the common pleas court abused its discretion in determining whether the agency's order was supported by reliable, probative, and substantial evidence and was in accordance with law. *Hartzog v. Ohio State Univ.*, 27 Ohio App.3d 214 (10th Dist.1985). The term "abuse of discretion" connotes more than a mere error of judgment or law, it implies an attitude that is arbitrary, unconscionable, or unreasonable. *State v. Adams*, 62 Ohio St.2d 151, 157 (1980). However, on the question of whether the agency's order was in accordance with law, this court's review is plenary and without deference to the conclusions of law reached either by the administrative adjudication or the Court of Common Pleas on initial appeal. *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.*, 63 Ohio St.3d 339, 343 (1992).

{¶ 9} A single question of law presents itself in this appeal: whether SPBR had jurisdiction to entertain an appeal by Mr. Rayl contesting his dismissal while in probationary status. Pursuant to R.C. 124.27, SPBR has no jurisdiction over such a dismissal:

All original and promotional appointments, including appointments made pursuant to section 124.30 of the Revised Code, but not intermittent appointments, shall be for a probationary period, not less than sixty days nor more than one year * * *. No appointment or promotion is final until the appointee has satisfactorily served the probationary period. If the service of the probationary employee is unsatisfactory, the employee may be removed or reduced at any time during the probationary period. If the appointing authority decides to remove a probationary employee in the service of the state, the appointing authority shall communicate the removal to the director. A probationary employee duly removed or

reduced in position for unsatisfactory service does not have the right to appeal the removal or reduction under section 124.34 of the Revised Code.

Former R.C. 124.27(C).¹

{¶ 10} Mr. Rayl asserts that his voluntary demotion from Deputy Director 5 to Transportation Manager 2 does not constitute an "original appointment" under former R.C. 124.27(C), and that based on his prior service with ODOT he should not be subjected to a probationary period in his new job.

{¶ 11} Our recent decision in *Fletcher v. Ohio Dept. of Transp.*, 10th Dist. No. 12AP-46, 2012-Ohio-3920 is directly on point. The employee in that case was also voluntarily demoted from an unclassified to a classified position within ODOT. Construing the meaning of the term "original appointment," we held in *Fletcher* that voluntary demotions placing an employee in a classified position for the first time within a given agency constituted an original appointment as defined in R.C. 124.27. The case before us is indistinguishable from *Fletcher* and we follow the precedent set therein. We accordingly find that the trial court did not abuse its discretion in finding that SPBR's order dismissing Mr. Rayl's administrative appeal for lack of jurisdiction was supported by reliable, probative, and substantial evidence and was in accordance with law. The judgment of the Franklin County Court of Common Pleas is affirmed in that respect.

{¶ 12} We further note, however, that the court of common pleas attempted to remand this matter to ODOT to further examine the circumstances of Mr. Rayl's dismissal from his probationary position. The appeal from SPBR is limited in scope to a review of the question of whether SPBR had jurisdiction over Mr. Rayl's administrative appeal. The court of common pleas was therefore limited to making a determination as to whether SPBR had jurisdiction. The court did not have jurisdiction itself to exceed the scope of the administrative appeal and consider in any respect the circumstances of Mr. Rayl's dismissal while in a probationary period. Because of this, any proceedings before the court of common pleas addressing that issue are without effect. For that reason, the

¹ This language reflects the law as of the time the events in the present case took place. Recent amendments to the code place the text of former R.C. 124.27(C) at R.C. 124.27(B). See 2011 Am.Sub.H.B. No. 153 (effective June 30, 2011); 2012 Am.Sub.H.B. No. 487 (effective June 11, 2012). Apart from relocating the pertinent provisions, the amendments do not change the language in any material way.

judgment of the Franklin County Court of Common Pleas is affirmed in part and reversed in part. We remand the matter to the Franklin County Court of Common Pleas to enter judgment reflecting only that SPBR lacked jurisdiction in the first instance, and omitting any attempt to address any other aspect of Mr. Rayl's dismissal.

*Judgment affirmed in part,
reversed in part;
cause remanded.*

SADLER and TYACK, JJ., concur.
