

IN THE UTAH COURT OF APPEALS

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Salt Lake City Corporation,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner,)	
)	Case No. 20040280-CA
v.)	
)	
Salt Lake City Civil Service)	F I L E D
Commission and Terry Morgan)	(February 16, 2006)
Begay,)	
)	2006 UT App 47
Respondents.)	

Original Proceeding in this Court

Attorneys: Martha S. Stonebrook, Salt Lake City, for Petitioner
Edward K. Brass, Salt Lake City, for Respondent Begay

Before Judges Billings, Davis, and Thorne.

BILLINGS, Judge:

Petitioner Salt Lake City Corporation (SLC) appeals the Salt Lake City Civil Service Commission's (the Commission) order setting aside the Salt Lake Police Department's (SLPD) termination of police officer Terry Begay (Begay) and reinstating Begay's employment with SLPD. We affirm the Commission's order.

In March 2003, SLPD's chief of police (the Chief) terminated Begay for allegedly violating SLPD Policy D020-02-00.00 (the Policy), which obliges all police officers to obey the law. SLPD maintains that Begay disobeyed the Policy by allegedly growing and distributing peyote in violation of 21 U.S.C § 841(a). See 21 U.S.C. § 841(a) (2000).¹

While peyote is considered a schedule I controlled substance, see 21 U.S.C. § 812(c)(c)(12) (2000), the American Indian Religious Freedom Act (AIRFA) permits "the use,

¹21 U.S.C. § 802 defines the terms used in § 841. See 21 U.S.C. § 802 (2000). It defines "'manufacture'" to include "production," id. § 802(15), and production to include the "growing . . . of a controlled substance," id. § 802(22).

possession, or transportation of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion," 42 U.S.C. § 1996a(b)(1) (2000). Consistent with AIRFA, federal regulations promulgated under 21 U.S.C. § 841 also permit the use of "peyote in bona fide religious ceremonies of the Native American Church [(NAC)]." 21 C.F.R. § 1307.31 (2005). Under federal regulations, "members of the [NAC] so using peyote are exempt from [the] registration" required of those "who manufacture[] . . . or distribute[] peyote to the [NAC]." Id.

The Commission reviewed Begay's conduct in light of AIRFA, federal regulations, and 21 U.S.C. § 841, and determined that AIRFA and 21 C.F.R. § 1307.31 were "significant and controlling." Under these authorities, the Commission found that "Begay did not grow, cultivate, or manufacture peyote"; Begay used peyote "as a Native American Member of the [NAC] only in the context of legitimate religious ceremonies"; and "a lesser sanction such as counseling or a warning [rather than termination] should have been imposed" due to confusion as to how and if the law regulated Begay's conduct. Accordingly, the Commission found SLPD had not met its burden in demonstrating Begay had violated the law and, thus, reversed SLPD's termination of Begay.

We review the Commission's decision to reinstate Begay's employment only "for the purpose of determining if the [C]ommission has abused its discretion or exceeded its authority." Utah Code Ann. § 10-3-1012.5 (2003). Under this standard, we "will not disturb [the Commission's] interpretation or application of the law unless its determination exceeds the bounds of reasonableness and rationality." King v. Industrial Comm'n, 850 P.2d 1281, 1286 (Utah Ct. App. 1993).

With regard to the Commission's factual findings supporting its decision to reinstate Begay, we apply the substantial evidence standard. See Lucas v. Murray City Civil Serv. Comm'n, 949 P.2d 746, 758 (Utah Ct. App. 1997) (adopting "substantial evidence" as the proper standard of review for factual findings of civil service commission). In applying the substantial evidence standard, "[w]e do not review the Commission's findings de novo or reweigh the evidence." Huemiller v. Ogden Civil Serv. Comm'n, 2004 UT App 375, ¶2, 101 P.3d 394 (quoting Lucas, 949 P.2d at 758). In the present case, the burden of proof is on SLC "to prove the [Commission's] factual findings are not supported by substantial evidence." WWC Holding Co. v. Public Serv. Comm'n, 2002 UT 23, ¶2, 44 P.3d 714. Because of SLC's burden of proof, we examine the "facts and all legitimate inferences to be drawn from them in the light most favorable to the [Commission's] findings." Id.

We first conclude the Commission did not abuse its discretion in finding that Begay's activities did not constitute the growing, cultivating, or manufacturing of peyote. In finding Begay did not grow, cultivate, or manufacture peyote, the Commission relied on the following evidence: (1) "Begay received a bag of peyote plants or buttons as a gift at a [NAC] religious ceremony to be used in future religious ceremonies"; (2) Begay placed these plants or buttons in soil to "preserve" them for future use; (3) Begay's preservation of the peyote plants or buttons was akin to the use of "refrigerators . . . to preserve fruits or vegetables"; (4) preservation is the proper term to describe Begay's possession of the peyote plants or buttons since, according to a DEA expert witness, "there was no potential peyote would grow (i.e. be cultivated[] or manufactured) if a person merely kept it" as peyote "grows only in certain areas of Texas and Mexico."

Although the Commission acknowledged "some conflicting evidence" as to whether Begay's treatment of the peyote plants or buttons constituted growing, cultivating, or manufacturing, the Commission ultimately determined that the evidence supporting Begay's engagement in these activities was not "persuasive." Because "it is the province of the [Commission], not appellate courts, to resolve conflicting evidence," Allen v. Department of Workforce Servs., 2005 UT App 186, ¶20, 112 P.3d 1238 (quotations and citation omitted) (noting as well that "where inconsistent inferences can be drawn from the same evidence, it is for the [Commission] to draw the inferences" (quotations and citation omitted)), we defer to the Commission's determination and find substantial evidence existed to support the Commission's conclusion. Thus, we affirm the Commission's conclusion that Begay did not violate the law--the justification SLPD gave for her termination.

In its appeal, SLC also contends the Commission erred in failing to render factual findings and conclusions of law as to whether Begay illegally "processed" or "distributed" peyote. In Ogden City Corp. v. Harmon, 2005 UT App 274, 116 P.3d 973, we held that "the Commission is under an obligation to address each of the grounds for termination stated by the [d]epartment." Id. at ¶14. In that case, we ruled the Commission was required in its findings of fact and conclusions of law to address an incident leading to an employee's termination, where the department chief had referenced the incident twice--in "his memorandum summarizing [the employee's] violations and later in his testimony before the Commission." Id.

Here, in its termination letter to Begay, SLPD does assert Begay was "not registered with the federal [DEA] to manufacture or distribute peyote" and thus violated federal law and SLPD

policy. In its letter, SLPD also mentions that Begay provided peyote to family members "for use in a religious sacrament." However, albeit this assumed reference to "distribution," SLPD does not emphasize any purported prohibited distribution activities. In fact, at Begay's termination hearing before the Commission, the Chief, under cross-examination, was asked to specify what the "issue [was] in this case." Unlike the consistent response of the department chief in Harmon, see id., the Chief responded, "the issue is [Begay's] obligation as a police officer in planting and growing peyote." (Emphasis added.) Furthermore, at the hearing to consider SLC's Motion for Relief, SLC reiterated to the Commission the Chief's earlier articulation that the concern was Begay's growing of peyote. Specifically, SLC stated that it would "simply point out [to the Commission] that [it] believe[d it] ha[d] met [its] burden of showing that facts support[ed] the charges that [were] made. Not that [Begay] was using, because she wasn't disciplined on that. She was disciplined for violating the law that prohibits manufacturing [and] growing" peyote. (Emphasis added.) Thus, given SLC's express statements to the Commission as to what specific conduct resulted in Begay's termination and the Commission's conclusion that "Begay did not grow, cultivate, or manufacture peyote," we conclude the Commission did not improperly neglect to "address each of the grounds for [Begay's] termination stated by [SLPD]." Id.

With regard to SLC's contention that the Commission failed to consider whether Begay illegally processed peyote, we also disagree. In Begay's letter of termination, the Chief did not charge Begay with illegally processing peyote. And, as noted above, in his testimony before the Commission, the Chief did not articulate the "processing" of peyote to have been an issue in Begay's termination. Furthermore, at the hearing on its Motion for Relief, SLC told the Commission that it defined the manufacturing and growing of peyote to mean "processing." In its conclusions of law, the Commission explicitly stated "Begay did not grow, cultivate[,] or manufacture peyote." Finally, even if we were to conclude that SLC properly raised the issue of whether processing peyote was tantamount to distribution, we conclude that Begay's grinding of the peyote was part of her protected "use" of the substance under AIRFA, see 42 U.S.C. § 1996a(b)(1).

In conclusion, we hold that the Commission did not abuse its discretion in deciding to reinstate Begay's employment with SLPD, as such a decision did not "exceed[] the bounds of

reasonableness and rationality." King v. Industrial Comm'n, 850 P.2d 1281, 1286 (Utah Ct. App. 1993). Thus, we affirm.

Judith M. Billings, Judge

WE CONCUR:

James Z. Davis, Judge

William A. Thorne Jr., Judge