

IN THE UTAH COURT OF APPEALS

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Garrie Taft,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner,)	
)	Case No. 20040751-CA
v.)	
)	
Draper City, a municipal)	F I L E D
corporation,)	(July 28, 2006)
)	
Respondent.)	2006 UT App 315

Original Proceeding in this Court

Attorneys: Franklin L. Slauch, Sandy, for Petitioner
Michael Z. Hayes and Todd J. Godfrey, Salt Lake City,
for Respondent

Before Judges Bench, McHugh, and Thorne.

THORNE, Judge:

Garrie Taft appeals the decision of the Draper City Appeals Board (the Board) upholding Draper City's (the City) termination of his employment. See Utah Code Ann. § 10-3-1106(2)(a) (Supp. 2005) (granting municipal employees the right to appeal termination decisions to an appeals board). We affirm.

Taft was terminated from his employment with the City for tampering with a co-worker's coffee mug. The City considered Taft's actions to be serious misconduct and terminated him. See id. § 10-3-1105(3) (Supp. 2005) (allowing municipalities to define grounds for employee termination). Taft appealed his termination to the Board, which affirmed the City's decision.

Taft challenges the Board's factual findings, arguing that the findings were not supported by substantial evidence. Under the Utah Administrative Procedures Act, see id. §§ 63-46b-0.5 to -23 (2004 & Supp. 2005), an appellate court may only grant relief if the agency action is based upon a determination of fact that is not supported by substantial evidence. See id. § 63-46b-16(4)(g) (2004). "This standard does not require or specify a quantity of evidence but requires only such relevant evidence as a reasonable mind might accept as adequate to support a

conclusion." Harken Southwest Corp. v. Board of Oil, Gas & Mining, 920 P.2d 1176, 1180 (Utah 1996) (quotations and citations omitted).

The evidence presented by the City is adequate to convince a reasonable mind that Taft tampered with the coffee mug as alleged. The City presented security camera footage showing Taft and another employee entering a City maintenance facility and loitering for several minutes, then leaving the camera's field of vision with the victim's mug. After a brief period of time, they reappeared holding the mug and its lid with paper towels. This footage alone supports a reasonable inference that the mug was now contaminated with some substance that neither Taft nor his accomplice wanted to touch.

The City also presented a number of witnesses to support Taft's termination. The owner of the mug testified that Taft was antagonistic toward him; another co-worker testified that there was no indication that Taft appeared to be in the shop for the purpose of obtaining tools as he claimed; the City Manager testified that Taft's testimony at his first disciplinary hearing was inconsistent with his testimony before the Board; and a law enforcement officer testified that a State Crime Laboratory investigation confirmed that a foreign substance had been found in the mug. The Board found this testimony to be more credible than Taft's testimony, and "[i]t is not our role to judge the relative credibility of witnesses." Albertsons, Inc. v. Department of Employment Sec., 854 P.2d 570, 575 (Utah Ct. App. 1993).

Although Taft presents alternate characterizations of the evidence, "[i]t is the province of the Board, not appellate courts, to resolve conflicting evidence, and where inconsistent inferences can be drawn from the same evidence, it is for the Board to draw the inferences." Id. (quoting Grace Drilling Co. v. Board of Review, 776 P.2d 63, 68 (Utah Ct. App. 1989)). Accordingly, we determine that the witness testimony, in conjunction with the videofootage, constitutes substantial evidence that Taft tampered with the coffee mug as alleged. See Harken, 920 P.2d at 1180 (requiring only such relevant evidence as a reasonable mind might accept as adequate to support a conclusion).

Taft's second argument is that the Board abused its discretion in relying upon the hearsay testimony of a law enforcement officer regarding a State Crime Laboratory report. Utah law has long recognized that technical rules of evidence need not be applied to proceedings before administrative agencies. See Yacht Club v. Utah Liquor Control Comm'n, 681 P.2d 1224, 1226 (Utah 1984). "Hearsay evidence is admissible in

proceedings before administrative agencies. However, findings of fact cannot be based exclusively on hearsay evidence. They must be supported by a residuum of legal evidence competent in a court of law." Id. (footnote omitted).

The Board's findings were not based exclusively on the hearsay testimony. As previously noted, the videofootage shows that Taft and his accomplice took the coffee mug and returned holding it with paper towels, leading to the reasonable inference that the men did not wish to touch the mug because some foreign substance was on it. Although the hearsay testimony may have been the only evidence of the exact nature of the foreign substance Taft used to contaminate the mug, there is substantial non-hearsay evidence to support a finding that Taft tampered with the mug by placing some foreign substance in it. Thus, even if we entirely disregard the hearsay testimony, there is still substantial competent evidence to support the Board's findings upholding Taft's discharge. See id.

We therefore affirm the Board's decision.

William A. Thorne Jr., Judge

WE CONCUR:

Russell W. Bench,
Presiding Judge

Carolyn B. McHugh, Judge