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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0407**

In re the Matter of St. Paul Area Electrical JATC
Registered Apprenticeship Program and Damon Doss.

**Filed December 16, 2019
Affirmed
Kirk, Judge***

Department of Labor and Industry

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Considered and decided by Johnson, Presiding Judge; Florey, Judge; and Kirk,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KIRK, Judge

In this certiorari appeal under Minn. Stat. § 178.09 (2018), relator Damon Doss challenges the commissioner of labor and industry's determination that relator's termination from an apprenticeship program did not violate an apprenticeship agreement. Relator asserts that (1) the failure to allow discovery and follow other procedural rules violated relator's due-process rights; (2) the commissioner's decision is unsupported by substantial evidence; and (3) the commissioner failed to consider discriminatory treatment of relator and the "failure of respondents to fulfill their broader legal responsibilities." Because we conclude that the relator's termination did not violate the apprenticeship agreement, we affirm.

FACTS

The Apprenticeship Program

Respondent St. Paul Area Electrical JATC Registered Apprenticeship Program (JATC) is a registered apprenticeship program that operates under Minn. Stat. §§ 178.01-.11(2018), and is approved by the Minnesota Department of Labor and Industry (DOLI). DOLI registers approved apprenticeship programs, provides a process to review complaints, and provides a process for appeal under Minn. Stat. §§ 14.63-.69 (2018). Each registered apprenticeship program is responsible for its own day-to-day operations.

JATC provides electrical training and education for apprentices in their apprenticeship program. Additionally, JATC coordinates and sends apprentice electricians to independent jobsites where companies are responsible for overseeing the apprentices

who work with them. JATC has an apprentice policy manual that provides the rules, regulations, and responsibilities of the apprentices involved in the program. Upon being accepted into the program, all apprentices receive this manual. The manual may be updated at any time, as it was in 2016.

Through the five-year apprenticeship program, each apprentice is sent out to an average of five or six jobsites. The actual number of jobsites can vary due to the job market and whether the jobs are long-term or short-term projects. Each apprentice receives periodic reviews from their supervisors on each of the jobsites. These reviews are completed on a standard form for JATC apprentices, regardless of the company or jobsite at which the apprentice is working. JATC provides the review forms, but is not involved in filling out, analyzing, or instructing employers how to fill out the forms. JATC requires that on a scale of 0-130, an apprentice must score at least 50 to be considered to have had a satisfactory review. An apprentice who receives a score below 50 is considered to have received an unsatisfactory review and is subject to progressive discipline. In relevant part, the progressive discipline policy outlines what happens when an apprentice receives unsatisfactory reviews, is late in turning in their timesheets, or appears multiple times before the JATC apprenticeship review committee (the committee).

Doss's Involvement in the Apprenticeship Program

In April 2015, JATC accepted relator Damon Doss into its apprenticeship program. Between April 2015 and February 2018, Doss worked at 13 jobsites. He was terminated from most of them due to reductions in the force. In April 2015, JATC sent Doss to his first jobsite prior to sending him to any training. In July 2015, Doss received his first

unsatisfactory review after being let go from this jobsite. As a result, he had an oral conversation with the program training director (the director) regarding his performance.

In November 2015, Doss received his second unsatisfactory review. In December 2015, Doss emailed the director regarding his unsatisfactory evaluations and asked for additional training. In January 2016, Doss received his third unsatisfactory review. Per JATC's progressive discipline policy, Doss appeared at a regular meeting of the committee regarding his unsatisfactory work evaluations. As a result of his unsatisfactory reviews, he was required to attend three extra tutoring sessions.

In August 2016, Doss received his fourth unsatisfactory review. He appeared at the September 12, 2016 committee meeting, received a one-week suspension and was required to have monthly employer evaluations. In January 2018, Doss received his fifth unsatisfactory review. He appeared before the committee in February 2018 regarding this review and possible termination from the program.

In addition to the five unsatisfactory job reviews, Doss received four notices for late timesheet submission. Per the progressive discipline policy, he appeared at committee meetings two times due to the late timesheets. After the fourth late timesheet, Doss was notified that if he submitted one more late timesheet, he would be terminated.

Doss indicates that he contacted JATC and the director multiple times throughout his apprenticeship in order to address concerns he had with jobsites and with the program. On August 9, 2015, Doss sent an email complaint to the director claiming that his co-workers were rude to him, he felt isolated, and he had trouble working at his current jobsite.

The next day, the director visited Doss on his jobsite. Doss said that the jobsite was much better, everything was going well, and he did not require anything further on this complaint.

Doss did not contact the director regarding concerns again until July 20, 2016. That day he met with the director to discuss problems he had on the jobsite and he was encouraged to ask questions of his journey worker.¹

At his request, Doss appeared at the May 8, 2017 JATC committee meeting and gave a presentation on his qualifications. He stated that a racial slur was directed toward him at his last jobsite, but did not provide any further details when asked. He was also told to report any further racial incidents to his shop steward and JATC. At the February 12, 2018 committee meeting, the committee inquired whether Doss felt that his race had anything to do with his unsatisfactory evaluations. Doss told the committee that he did not believe any of his evaluations had to do with his race.

In February 2018, JATC voted to remove Doss due to unsatisfactory employment evaluations and violations of JATC policies and procedures.

On April 9, 2018, Doss filed a complaint with DOLI's Division of Labor Standards and Apprenticeship (the division) alleging, among other things, that JATC violated his apprenticeship agreement and that they violated the Equal Employment Opportunity (EEO) standards when he was terminated from the program. On July 9, 2018, the division determined that JATC did not violate the apprenticeship agreement.

¹ A journey worker is an electrician who has obtained mastery in the field and can serve as a mentor to apprentices.

Doss appealed the division's determination to the Apprenticeship Advisory Hearing Board (the board). Doss requested that the board permit discovery prior to the hearing. The board denied his request, stating they did not have the authority to permit discovery. At the hearing on December 19, 2018, Doss was represented by counsel, called witnesses, and conducted direct- and cross-examination of witnesses. The board recommended that the acting commissioner of DOLI uphold the division's determination. The commissioner adopted the recommendation, made minor factual corrections, and upheld the division's determination. This certiorari appeal follows.

D E C I S I O N

I. The commission did not violate Doss's due-process rights.

When reviewing agency decisions, this court follows "the fundamental concept that decisions of administrative agencies enjoy a presumption of correctness, and deference should be shown by courts to the agencies' expertise and their special knowledge in the field of their technical training, education, and experience." *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 824 (Minn. 1977). Upon judicial review, this court will uphold an administrative agency's decision unless its findings, inferences, conclusion, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

Minn. Stat. § 14.69 (2018).

Whether an agency has violated a person's procedural due-process rights is a question of law that this court reviews de novo. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012). Procedural due process requires that a party receive "adequate notice and an opportunity to be heard before being deprived of life, liberty, or property." *Christopher v. Windom Area Sch. Bd.*, 781 N.W.2d 904, 911 (Minn. App. 2010), *review denied* (Minn. June 29, 2010). This court conducts a two-step analysis to determine whether the government has violated an individual's procedural due-process rights: first, we identify whether the government has deprived the individual of a protected life, liberty, or property interest; second we determine whether the procedures followed by the government were constitutionally sufficient. *Sawh*, 823 N.W.2d at 632.

As an initial matter, the parties do not dispute that Doss has a property interest in his employment through the apprenticeship agreement. Doss argues, however, that he did not receive due process and the board did not follow a lawful procedure when it denied him a contested hearing, denied his discovery request of JATC's records, and did not accept his supplemental briefs.

A. Contested-Case Hearing

A contested case is an administrative proceeding in which the "legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing." Minn. Stat. § 14.02, subd. 3 (2018). The Minnesota Administrative Procedure Act (MAPA), Minn. Stat. §§ 14.001-14.69 (2018), does not create a right to a contested-case hearing, but sets forth the procedure for one.

In re N. States Power Co., 676 N.W.2d 326, 332 (Minn. App. 2004). There is no right to a contested-case hearing unless another statute grants that right. *Id.* If the legislature does not require a contested-case hearing, the court can assume that one is not required under a particular statute. *Id.* at 334.

Investigation and enforcement of apprenticeship agreements are controlled by Minn. Stat. § 178.09. The statute provides that an individual may file a complaint with the division. The decision of the division may be appealed to the commissioner and the commissioner will “convene a hearing board . . . appointed under section 178.02. . . . The board shall hold a hearing on the appeal after due notice to the interested parties and shall submit to the commissioner findings of fact and a recommended decision accompanied by a memorandum of the reasons for it.” Minn. Stat. § 178.09, subd. 2. The commissioner may adopt or disregard the recommendation of the hearing board. A party may appeal the commissioner’s determination “under sections 14.63 to 14.68 in the same manner that a person aggrieved by a final decision in a contested case is entitled to judicial review.” *Id.*

Minn. Stat. § 178.09 provides for an appeal of a decision by the DOLI commissioner in the same manner as from a contested-case hearing. But the plain language of Minn. Stat. § 178.09 does not provide for the right to a contested-case hearing before the agency. “Had the legislature intended to require a contested-case hearing, it could have provided for one.” *N. States Power Co.*, 676 N.W.2d at 332. Doss did not have a statutory right to a contested-case hearing, nor has he demonstrated a violation of his due-process right to be heard.

B. Discovery

Doss also argues that his rights were violated when his discovery request was denied. It is a fundamental tenet of administrative law that the powers of an administrative agency can only be exercised in the manner prescribed by its legislative authorization. *Souden v. Hopkins Motor Sales, Inc.*, 182 N.W.2d 668, 673 (Minn. 1971). “Neither agencies nor courts may, under the guise of statutory interpretation, enlarge the agency’s powers beyond that which was contemplated by the legislative body.” *Waller v. Powers Dep’t Store*, 343 N.W.2d 655, 657 (Minn. 1984). “[E]xplicit statutory or rulemaking authorization is necessary before any system of discovery may be incorporated into the administrative proceedings.” *Id.*

Minn. Stat. § 178.09 does not implicitly or explicitly contemplate any type of discovery mechanism. Because there is no statutory authority to compel discovery, the board was correct in denying this request. The board’s actions did not violate Doss’s due-process rights.

C. Supplemental Briefs

Doss also argues that he was denied due process because the record was closed immediately after his hearing on December 19, 2018, and he was not allowed to submit supplemental briefs.²

At his hearing, Doss was able to call witnesses, conduct direct- and cross-examination of witnesses, and submit exhibits. The board closed the record immediately

² Both Doss and JATC submitted supplemental post-hearing briefs. However, because the record was closed, the board did not accept them and did not read them.

at the conclusion of the hearing, and did not consider either party's post-hearing briefs. Doss cites Minn. Stat. § 14.61 to support his argument that it was improper to deny his post-hearing briefs. Minn. Stat. § 14.61 pertains to contested-case hearings, and as discussed previously, the rules covering contested cases do not apply to Minn. Stat. § 178.09. Therefore, Minn. Stat. § 14.61 does not provide any legal authority for this claim. Doss does not cite any additional authority to support his contention that his post-hearing submissions should have been received, nor does he indicate how his post-hearing submissions would have provided additional information that was not heard at the hearing. It was not legal error to deny Doss's post-hearing briefs, and it was not a denial of Doss's due-process rights. Doss was afforded a reasonable opportunity to be heard and was not denied due process at the hearing.

II. The commissioner's decision is supported by substantial evidence.

Doss argues that his termination from the apprenticeship program was not supported by substantial evidence and that the decision was arbitrary and capricious. "An appellate court may reverse or modify an administrative decision if substantial rights of the petitioners have been prejudiced by administrative findings, inferences, conclusions or decisions that are unsupported by substantial evidence in view of the entire record, or [are] arbitrary and capricious." *In re Express Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001). An agency's decision is not arbitrary or capricious as long as there is a rational connection between the facts found and the choice made. *Id.*

JATC followed its progressive discipline policy for each of Doss's unsatisfactory reviews and late timesheets. Doss did not provide any evidence to the contrary. Per JATC's manual, five unsatisfactory reviews and appearing before the disciplinary board three times are both grounds for termination from the apprenticeship program. Doss had five unsatisfactory reviews, four late timesheets, and appeared before the disciplinary board five times before he was terminated from the apprenticeship program. The division, the board, and the commissioner all cited Doss's five unsatisfactory reviews, and multiple appearances in front of the committee as reasons for his dismissal from the program.

While Doss claims that he was terminated from the program for discriminatory reasons, there is nothing in the record to indicate that this is the case. Additionally, when appearing before the committee, Doss was asked whether he felt that any of his unsatisfactory reviews were due to discrimination, and he said that he did not believe so.

Therefore Doss's dismissal from the program was supported by substantial evidence and was neither arbitrary nor capricious.

III. The commissioner did not “fail to consider their broader legal responsibilities” or fail to consider the discriminatory treatment of Doss.

Doss asks this court to determine whether the commissioner “fail[ed] to consider their broader legal responsibilities” and “failed to comply with mandatory laws governing apprenticeship programs.” Doss argues that JATC did not enforce its EEO responsibilities, critiques the format of his performance reviews and how the reviews were conducted, and attempts to have this court determine whether JATC discriminated against him based on his race.

We do think that it is concerning that Doss was sent to 13 different jobsites in less than three years, when the average apprentice has only five or six during their five-year term as an apprentice. We additionally think it is concerning that Doss received at least one of his negative reviews before he had received any training as an electrician. And that one of these reviews was filled out by an employer that Doss complained about to the director. However, Minn. Stat. § 14.69 limits our authority to modify or reverse an administrative agency decision. If a “ruling by the agency decision-maker is supported by substantial evidence, it must be affirmed.” *Blue Cross*, 624 N.W.2d at 279. The burden is on the relator to establish that the “findings of the agency are not supported by the evidence in the record, considered in its entirety.” *Id.* (quotation omitted). Additionally, “[i]t is not within the province of [appellate courts] to determine issues of fact on appeal.” *Kucera v. Kucera*, 146 N.W.2d 181, 183 (Minn. 1966).

Doss is asking this court to determine issues of fact that are outside this court’s scope of review. He has not shown that the agency’s decision was not supported by substantial evidence.

Because Doss received due process when he was terminated from the apprenticeship program, and because the reasons for his termination were supported by substantial evidence and were not arbitrary or capricious, we affirm the commissioner’s decision.

Affirmed.