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IDAHO PERSONNEL
COMMISSION

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IDAHO PERSONNEL COMMISSION

STATE OF IDAHO

SHANA GONZALES (WALKER),)

Appellant,)

vs.)

IDAHO STATE POLICE,)

Respondent.)

IPC NO. 19-3

**DECISION AND ORDER ON
PETITION FOR REVIEW**

I. INTRODUCTION

This matter is on petition for review from the June 28, 2019 decision of Hearing Officer John C. Lynn (“Hearing Officer”) denying Appellant Shana Walker’s (formerly Gonzales) (“Appellant”) appeal and affirming the Idaho State Police’s (“Respondent” or “ISP”) decision to terminate Appellant’s employment.

The Hearing Officer found that Respondent had shown good cause for discipline of Appellant based on Appellant’s certification and submission of a misrepresentation of fact to a court of law. The Hearing Officer specifically determined there was sufficient evidence showing that Appellant violated ISP Policy Procedure § 1.02, parts 2, 4, 5, and 10, and IDAPA Rule 15.04.01.190.01(e) (“Rule 190”).

Appellant timely appealed the Hearing Officer's Order Granting Respondent's Motion for Summary Judgment ("Order") by filing a Petition for Review on July 26, 2019. The Idaho Personnel Commission ("Commission") heard oral argument in this matter at on September 25, 2020. Appellant is represented by Shawnee Perdue. Respondent is represented by Deputy Attorney General Merritt Dublin.

II. FACTUAL BACKGROUND

The facts in this matter are undisputed, and are summarized as follows. Appellant was employed by Respondent as a state trooper in January of 2017. Appellant's responsibilities as a state trooper included testifying under oath before a court of law and signing affidavits under penalty of perjury to be submitted to a court of law.

Appellant and her husband at the time decided to file for divorce. The decision was mutual, and there were no disputes regarding the custody of their two children or any related child support. In May of 2018, they jointly filled out and signed a Stipulation for Entry for Decree of Divorce ("Divorce Decree"). Within the Divorce Decree, one section required the parties to indicate either that the custody and visitation provisions in the Divorce Decree were in the best interests of the parties' minor children, or that no minor children were born of the marriage. Appellant checked the box stating there were no minor children born of the marriage, when there were indeed two minor children born from the marriage, and thereafter signed the document. By signing the Divorce Decree, Appellant certified under penalty of perjury that everything contained in the document was true and correct.

In October of 2018, Respondent, by way of ISP Lieutenant Robert Rausch, received information alleging Appellant certified and submitted the Divorce Decree

misrepresenting that she had no minor children born from the marriage. Shortly thereafter, Appellant was notified of the allegations and placed on administrative leave while an internal investigation was conducted.

After the three-level review process of the internal investigation concluded, all three reviewers found that Appellant violated multiple subsections within Section 01.02 of ISP Policy Procedure Conduct Expectations. Specifically, Appellant was found to have failed to comply with the law, failed to comply with the public employee regulations, failed to tell the truth, failed to maintain a high standard of personal and professional responsibility, and failed to recognize that every action, both on- and off-duty, reflects on the reputation of ISP. The reviewers further found that Appellant violated Rule 190, conduct unbecoming a state employee or detrimental to the good order and discipline of the agency.

In December of 2018, a Notice of Contemplated Action was (“NOCA”) was issued to Appellant by Lieutenant Colonel Sheldon Kelley, with the contemplated discipline being termination from employment for the above-mentioned violations. In January of 2019, after consideration of Appellant’s response to the allegations against her, ISP Director Colonel Kedrick Wills issued a Letter of Discipline to Appellant, effectively terminating her employment with ISP.

Appellant timely appealed Director Wills’ decision, and the matter was brought before the Hearing Officer. Thereafter, Respondent filed a motion for summary judgment. As stated above, the Hearing Officer found in favor of Respondent and upheld Appellant’s termination of employment.

III. ISSUE

The issue before the Commission is whether the Respondent showed by a preponderance of the evidence that Appellant violated ISP Procedure and engaged in conduct unbecoming a state employee or detrimental to the good order and discipline, under Rule 190.

IV. STANDARD OF REVIEW

“Idaho Code § 67–5316 establishes that a classified employee of a state agency may appeal disciplinary actions to the Personnel Commission.” Idaho Dep’t of Correction v. Anderson, 134 Idaho 680, 685, 8 P.3d 675, 680 (Ct. App. 2000). When a matter is appealed to the Commission, it is initially assigned to a hearing officer. I.C. § 67-5316(3). In an evidentiary hearing before the hearing officer, “the agency bears the burden to prove, by a preponderance of the evidence, the justification for the disciplinary action.” Anderson at 685 (citing Starr v. Idaho Transportation Dep’t, 118 Idaho 127, 129, 795 P.2d 21, 23 (Ct.App.1990); see also IDAPA 15.04.01.201.07. “When a matter has been initially assigned to a Personnel Commission hearing officer and is subsequently appealed from the hearing officer’s decision to the Commission, the Commission conducts a *de novo* review of the record and renders an independent decision that effectively displaces the proposed decision of the hearing officer.” Anderson at 685 (emphasis in original). When reviewing the record, the Commission reviews the record, transcript, and briefs submitted by the parties. Findings of fact must be supported by substantial, competent evidence.

V. DISCUSSION

Appellant filed an appeal of her termination to the Commission, and the Hearing Officer assigned to the matter granted summary judgment in favor of Respondent on June

28, 2019. The Hearing Officer found no genuine issue of material fact regarding Appellant's conduct of deliberately certifying, under penalty of perjury, the Divorce Decree containing a misrepresentation to the court. Appellant represented that there were no minor children born of the marriage, when in fact there were two minor children born of the marriage. The Hearing Officer found Appellant's conduct violated ISP Procedure § 1.02, Conduct Expectations, parts 2, 4, 5, and 10, and violated Rule 190 by engaging in conduct unbecoming a state employee. Accordingly, the Hearing Officer found Respondent had shown good cause for discipline under the standards set forth by Rule 190, and sustained Respondent's determination to terminate Appellant's employment.

Appellant now appeals the Hearing Officer's decision, arguing he erred in three ways: (1) failing to construe the record in the light most favorable to Appellant, and drawing all reasonable inferences in favor of Appellant; (2) failing to find that the three-level internal review process was flawed; and (3) declining to consider ISP personnel records of other employees for a comparative analysis of Appellant's discipline.

A. The Hearing Officer applied the correct summary judgment standard and correctly concluded there were no genuine issues of material fact in dispute.

Appellant first argues the Hearing Officer erred by failing to construe facts in the record in the light most favorable to Appellant, and drawing all reasonable inferences in favor of Appellant. Appellant makes multiple arguments to support her assertion.

In the Order, the Hearing Officer found that Appellant's certification of the misrepresentation was not a mere mistake, but rather it was deliberate. On the issue of intent, the Hearing Officer concluded, "[a]lthough Appellant's intent mitigates the seriousness of the misrepresentation in issue, the Hearing Officer does not find this intent

to be relevant to the required ISO Policy Procedure Conduct Expectations in issue.” The Hearing Officer further stated, “Appellant’s duties as an ISP employee transcend any intent behind the deliberate misrepresentation.”

Appellant argues that her intent regarding the filing of the divorce decree is directly relevant to the justification of her termination. Appellant argues the Hearing Officer ignored evidence submitted by Appellant that shows she made a mistake in her divorce filings, and shows she did not understand how to properly file for divorce. In response to Appellant’s argument, Respondent asserts, “Appellant did not...mistakenly check the wrong box – she intentionally checked the box indicating falsely that she had no children; she intended to do so to avoid having an order of child custody and support.” This is supported by substantial facts in the record.

In her affidavit, on page two, paragraph six, Appellant stated:

I selected this box on Paragraph #5 [“No minor children were born of this marriage”] because my divorce and planned custody arrangements with Matt Gonzales were completely amicable, and we had no difference in future child support or custody because we were already in agreement for what was in the best interest of our children. We had similar income, similar shifts at work, and we split our retirements. Therefore, we felt that we could work together as co-parents in taking care of the children, and we would not need to address the children’s custody and support arrangements in the divorce decree.

Based on Appellant’s own words, Appellant made the deliberate decision to check the box in the Divorce Decree indicating that no children were born of the marriage, with the purpose and overall goal of keeping her children out of the divorce proceedings. In other words, Appellant did not simply make a mistake by checking the wrong box, but rather she checked that box after putting purposeful thought into her decision. Appellant then chose to certify, under penalty of perjury, that the information contained in the

Divorce Decree was accurate and truthful. Thereafter, Appellant chose to submit the certified misrepresentation to a court of law.

The intent behind those decisions, no matter how noble, is not relevant to her conduct expectations as a state trooper. The intent behind those decisions does not change or alter the undisputed facts present in this case, detailed above. In sum, the Hearing Officer correctly concluded Appellant's reason for, and intent behind, certifying and submitting the misrepresentation to a court of law to be irrelevant in this matter.

Next, Appellant argues the Hearing Officer erred by failing to apply the standard required for a claim of fraud, since he determined that Appellant deliberately misrepresented that she had no minor children born of the marriage.

Respondent's argument on this particular issue is reiterated herein and is supported by the record:

Appellant lists the elements of fraud, and argues that she did not commit a "misrepresentation" because she did not "intend to deceive" the court, citing Black's Law Dictionary. First, the elements of a legal fraud (aka intentional misrepresentation) claim are not relevant to this action. This is not a claim for damages. The question is whether or not [Appellant] failed to tell the truth. As discussed above, there is no dispute that she did fail to tell the truth about having children, and that she did so intentionally to avoid an order of child support and custody. As such, the Hearing Officer found that she did in fact make an intentional misrepresentation.

Moreover, there is no dispute that [Appellant] did intend to "deceive" the court, as it is defined as "to persuade someone that something false is the truth, or to keep the truth hidden from someone for your own advantage." This is precisely what Ms. Walker admits that she did.

Appellant asks this tribunal to read into this definition the requirement that she did so maliciously, with a bad intention. She argues that because she only meant to keep her kids out of the divorce, that her intentional misrepresentation should be viewed as something different. She cites no authority for this proposition, and as an Idaho State Police Trooper, manipulating the legal process by falsifying a declaration is simply not an option. Appellant's arguments about the definition of a "misrepresentation" are neither factually nor legally viable as the Hearing Officer correctly found.

Appellant also makes multiple arguments asserting the Hearing Officer erred by failing to construe the following evidence in the light most favorable to Appellant: Detective Vicki Gooch's report following her interview of Appellant, which does not contain a specific indication that Appellant was aware she was certifying a falsehood or that she knew she was making a misrepresentation to a court of law; text messages, phone records, the affidavit of Mr. Gonzales, and polygraph test results all indicating that Appellant communicated with Ms. Agee on the same day Appellant was filling out the Divorce Decree; and lastly, the fact that Appellant retained legal counsel to correct the Divorce Decree.

Each one of these pieces of evidence attempts to support Appellant's argument that the intent behind her certifying and submitting a falsehood to a court of law matters in this particular case. However, as established above, Appellant's intent is irrelevant. Further, none of the evidence cited above alters, in any way, the undisputed facts present in this matter: within the Divorce Decree, Appellant checked the box indicating no minor children were born from the marriage, which is false since two minor children were born of the marriage; Appellant certified, under penalty of perjury, that everything contained in the Divorce Decree was true and accurate; and Appellant submitted the Divorce Decree containing the falsehood to a court of law. Additionally, Appellant, as an Idaho State Police Trooper, understood what it meant to tell the truth, and understood the consequences of not telling the truth under penalty of perjury.

With respect to Appellant's conversation with attorney Ms. Agee, Director Wills did not base any part of his decision on Ms. Agee's denial of having given Appellant legal advice, or on any of Ms. Agee's actions. As noted by Respondent: "[H]er intentions were

irrelevant, other than that her stronghold position justifying her misrepresentation buttressed the concern about her judgment and ability to appreciate that an Idaho State Trooper must have a higher standard of personal conduct to maintain the integrity of the profession and her personally as a witness in court.”

In sum, the Hearing Officer correctly found that the evidence listed above was irrelevant to this matter because Respondent’s decision to terminate Appellant was based on Appellant’s own admitted conduct. The Hearing Officer applied the correct summary judgment standard and correctly concluded that the record established there were no genuine issues of material fact. Specifically, the record established there were no genuine issues of material fact with respect to Appellant’s purposeful misrepresentation in the Divorce Decree, her certification of the misrepresentation under penalty of perjury, and her submission of the Divorce Decree to a court of law.

B. The Hearing Officer correctly found that Appellant failed to show how the three-level review process was tainted.

Appellant next argues the Hearing Officer erred by determining that the three-level review process was not tainted. Appellant asserts the process was tainted because Captain Neth, who was part of the three-level review process, was also the one who passed along the information he received about Appellant regarding her certification and submission of a falsehood within the Divorce Decree. In his Order, the Hearing Officer concluded that “Appellant has not shown how the process was tainted; moreover, Director Wills based his decision to impose discipline upon Appellant’s admitted deliberate misrepresentation which is not in dispute.”

Respondent similarly put forth that Appellant has failed “to explain how her alleged procedural deficit impacted the findings of the investigation, or more importantly, the

Colonel's decision to terminate her employment." As noted by Respondent, "Appellant's argument fails because the Colonel's decision regarding her termination was based upon Appellant's *admitted conduct* – that she intentionally and falsely declared that she had no children in her divorce proceeding to avoid an order of child support and custody in her divorce proceeding."

In the Letter of Discipline, Director Wills detailed the factual basis and evidence relied upon for the termination of Appellant; Captain Neth's third-level review memorandum is not mentioned. Both the Letter of Discipline and the NOCA, incorporated into Section One of the Letter of Discipline, are devoid of any mention of Captain Neth's review memorandum and further devoid of any indication that Director Wills relied on the memorandum when he chose to terminate Appellant. Simply stating that Captain Neth received information about Appellant's Divorce Decree from Judge Robinson and passed that information along, coupled with the fact that Captain Neth participated in the three-level review process, does not mean the review process was tainted. Appellant did not provide any factual or evidentiary support for her assertion that the review process was tainted.

In sum, the Hearing Officer properly found that Appellant did not point to any prejudice in either the reviewers' or Director Will's factual findings, and therefore Appellant failed to show how the process was tainted. Additionally, Director Wills based his decision to terminate Appellant on Appellant's own admitted misrepresentation, as made clear in the Letter of Discipline.

C. The Hearing Officer correctly declined to allow discovery for or to consider ISP personnel records of other employees.

Finally, Appellant argues the Hearing Officer erred by declining to allow discovery for, and for not considering ISP personnel records of other employees for a comparative analysis of Appellant's discipline. This is without merit. Appellant appears to want to go on a "fishing expedition" into other employees' personnel records because she suspected she had been treated more harshly than others. Never mind that personnel records are generally exempt under Idaho Code § 74-106 (in the Public Records Act), but the Personnel Commission law is well settled on this question of comparative discipline.

Allowing a delving into other disciplinary actions by IPC appellants alleging selective enforcement would be allowing the review and second-guessing of otherwise confidential disciplinary decisions made by a state agency like ISP. This is precisely the reason the Personnel Commission only looks into whether there was cause for the disciplinary action and does not question the type of discipline issued once just cause has been proven. *Peterson v. Dept. of Correction*, IPC No. 04-20 (Decision and Order on Petition For Review, May 26, 2005).

As a classified employee, Appellant could not be disciplined without proper cause, but once that proper cause is established, as here, the Commission's inquiry ends, and Appellant may be disciplined. Discipline is a discretionary function by the agency. *Cheney v. Dep't. of Correction*, IPC No. 97-15 (Decision and Order on Petition for Review, July 8, 1999). In that case, the Commission dutifully recognized its function was "to ensure that proper cause is duly proven. It is not this commission's function to impose its views regarding appropriate type of discipline upon agencies that may have management concerns and exigencies that are beyond our expertise or understanding." *Id.* at p. 10.

In addition to Cheney, the Commission has also specifically addressed and rejected Appellant's argument in this matter in *May v. Idaho Department of Health and Welfare*, IPC No. 96-01 (Decision and Order on Petition for Review, January 7, 1997). In *May*, the Commission recognized that "[w]e pass no judgment on whether other employees should have been disciplined, were disciplined, or should have received any certain level of discipline – those issues are not within our power." *May*, p. 11 n.4. In sum, disciplinary actions or lack of action with respect to other employees is simply not relevant to whether Appellant's submission of a false affidavit to a court in her divorce proceeding is sufficient grounds for discipline. The OPS files of other employees contain no evidence or information relevant to Appellant's incident of misconduct.

D. Attorney Fees on Petition for Review

Respondent has requested award of attorney fees on petition for review as allowed by IDAPA Rule 15.04.01.202.08 and pursuant to Idaho Code § 12-117. The standard for an award of attorney fees is high. To collect attorney's fees under Idaho Code § 12-117, it must be shown that a non-prevailing party's claims are frivolous, unreasonable, groundless, or in bad faith. *Idaho Dep't of Environmental Quality v. Goehring*, IPC No. 08-07 (Decision and Order on Respondent's Motion to Reopen on Issue of Attorney Fees and Costs, July 1, 2010); *Surline v. Idaho State Police*, IPC No. 09-25 (Decision and Order on Petition for Review, May 21, 2010).

"Without a reasonable basis in fact or law" is dominantly thought of as equal to frivolousness; that it is a high, difficult standard to meet before justifying an award of attorney fees and costs. Idaho Code § 12-117 exists as a deterrence of groundless, unreasonable, bad faith, frivolous actions by parties to administrative proceedings,

including both governmental action and, in the context of IPC proceedings, state employee actions in defense. On the same note, the 'reasonable basis in fact or law' standard exists in § 12-117 so that parties to administrative actions can take action and otherwise exercise duties and rights without the fear of suffering automatic awards of attorney fees and costs, should they not prevail, as long as there is a reasonable basis in fact or law for such action. Both reflect important public policy determinations. The Commission declines to award attorney fees in this case.

VI. CONCLUSION

Having reviewed the entire record, including the briefs of the parties, there is no reason to upset the Hearing Officer's decision upholding Appellant's dismissal from state employment for cause. The fact of the matter is she lied under penalty of perjury. The substantial and competent evidence in the record clearly establishes this, and the Hearing Officer so found. We affirm the Hearing Officer's decision and uphold Respondent's disciplinary action.

Commissioners Mark Holubar, Nancy Merrill, Sarah E. Griffin, and Amy Manning

CONCUR.

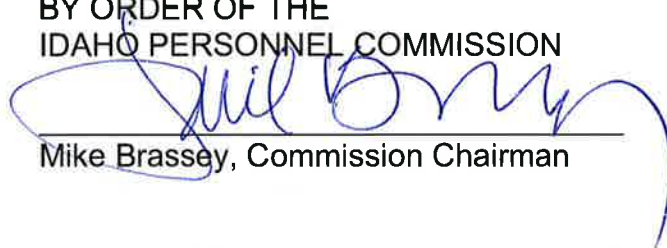
VII. STATEMENT OF APPEAL RIGHTS

Either party may appeal this decision to the District Court. A notice of appeal must be filed in the District Court within forty-two (42) days of the filing of this decision. Idaho Code § 67-5317(3). The District Court has the power to affirm, or set aside and remand the matter to the Commission upon the following grounds, and shall not set the same aside on any other grounds:

- (1) That the findings of fact are not based on any substantial, competent evidence;
- (2) That the commission has acted without jurisdiction or in excess of its powers;
- (3) That the findings of fact by the commission do not as a matter of law support the decision.

Idaho Code § 67-5318.

BY ORDER OF THE
IDAHO PERSONNEL COMMISSION



Mike Brassey, Commission Chairman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the following parties by the method stated below on this 3rd day of November, 2020.

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