
NO. 25703

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

LAWRENCE W. MAHUNA, Appellant-Appellant

vs.

CIVIL SERVICE COMMISSION OF THE DEPARTMENT OF
CIVIL SERVICE, COUNTY OF HAWAI'I, STATE OF HAWAI'I;
and THE HAWAI'I COUNTY POLICE DEPARTMENT,
Appellees-Appellees

APPEAL FROM THE THIRD CIRCUIT COURT
(CIV. NO. 02-1-0212)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama,
Acoba, and Duffy, JJ.)

Appellant-Appellant Lawrence W. Mahuna (Appellant) appeals from the February 20, 2003 judgment of the circuit court of the third circuit (the court)¹ affirming the June 3, 2002 order of Appellee-Appellee Hawai'i County Civil Service Commission (the Commission) denying Appellant's appeal.

On July 16, 1999, Appellant was hired as an undercover officer under a limited term appointment by Appellee-Appellee The Hawai'i County Police Department (the Department). On December 1, 1999, Appellant's status was changed from limited term to initial probationary appointment as regular Police Officer I. The probationary appointment was for one year to end on November 30, 2000.

¹ The Honorable Greg K. Nakamura presided.

On July 16, 2000, a complaint was filed against Appellant arising out of an incident involving misplaced luggage at the Hilo International Airport. As a result, Appellant was charged with violating the Department's Professional Conduct Code. On November 22, 2000, the Department notified Appellant of his termination effective at close of business on November 30, 2000.

On December 12, 2000, Appellant filed a petition appealing his termination with the Commission. Pursuant to a stipulation, the parties agreed that "the sole issues to be determined at the [Commission] hearing were (1) whether or not Appellant was a regular employee on November 30, 2000 and (2) whether, pursuant to HRS § 76-27, Appellant's service as a temporary appointee should have been subtracted from the initial probationary period."

On June 3, 2002, the Commission denied Appellant's appeal and dismissed the petition. The Commission decided that: 1) "as a result of the incident on July 16, 2000, that led to his termination, Appellant did not successfully complete his initial probationary period"; 2) "Appellant was not a regular employee at the time of his termination"; and 3) "Appellant's time served as an undercover officer should not be subtracted from his one-year probationary period" under HRS § 76-27 (1993)² because "there are

² HRS § 76-27 provides in relevant part that

[a]n employee who is serving a temporary appointment may
(continued...)

substantial differences between the duties of an undercover officer and a regular Police Officer I[.]”

On June 13, 2002, Appellant appealed to the court. The court affirmed the decision of the Commission.

On appeal to this court, Appellant maintains that: (1) the decision by the Commission that Appellant was not a “regular employee” was erroneous because (a) his period of temporary employment as an undercover police officer should have been credited to his probationary period of employment as a Police Officer I pursuant to HRS § 76-27, or (b) in the alternative, Appellant’s one year probationary period was fulfilled because his dismissal, pursuant to the police department termination letter dated November 22, 2000, was not effective until “expiration of his probation” at the close of business on November 30, 2000; and (2) if Appellant is found to have been a regular employee upon termination from his position as a Police Officer I, his dismissal was effected in violation of

²(...continued)

subsequently be given a probationary appointment in the same position or a related position in the same class within the department whenever a permanent position is established or is vacated; provided that the employee has been hired initially from the appropriate eligible list and the temporary period of services has immediately preceded the change to probationary status. Upon certification by the appointing authority that the employee has been performing satisfactorily and that the duties the employee has been performing are essentially similar to those required of the probationary appointment, the period of service performed as a temporary appointee shall be subtracted from the probationary period required by this section, and the employee shall serve only the remaining period, if any, as a probationary employee.

(Emphases added.)

Rules 11.3 and 12A.4 of the Rules and Regulations of Civil Service because he was not afforded his rights under those provisions.

As to the argument in (1) (a), the first four of the conditions required under HRS § 76-27 were established as agreed to in the briefs of the parties. The only condition under dispute therefore is the last condition which requires the duties performed by Appellant in his temporary appointment to be "substantially similar" to those required of the probationary appointment. HRS § 76-27. With respect to that condition, the Commission's Finding of Fact No. 71 which Appellant argues was clearly erroneous, stated that "Appellant's duties as an undercover officer were not 'essentially similar' to the duties of a regular Police Officer I[]" and the Commission's conclusions of law Nos. 14 and 15 stated as follows:

14. Because there are substantial differences between the duties of an undercover officer and a regular Police Officer I, Appellant's duties as an undercover officer were not "essentially similar" to the duties of a regular Police Officer I.
15. Accordingly, Appellant's time served as an undercover officer should not be subtracted from his one-year probationary period.

The undisputed findings of fact by the Commission include the following: 1) The duties of undercover police officers include acting as government informants and gathering information (finding of fact 56); 2) undercover officers do not make arrests or carry badges (finding of fact 56); 3) undercover officers do not receive training equivalent to that of a Police

Officer I (finding of fact 67); 4) undercover officers are never required to perform the duties of a regular Police Officer I (findings of fact 59, 63, and 66³); 5) a regular Police Officer I must serve a probationary term of one year, in which time he/she attends class for approximately six months and then participates in field training for approximately three months (finding of fact 57); 6) the duties of a Police Officer I are more extensive than that of an undercover officer (finding of fact 65).

Those undisputed findings are binding upon this court. See Okada Trucking Co., Ltd, v. Bd. of Water Supply, 97 Hawai'i 450, 458, 40 P.3d 73, 81 (2002) ("Findings of fact . . . that are not challenged on appeal are binding on the appellate court. (Citations omitted.); Poe v. Hawaii Labor Relations Bd., 97 Hawai'i 528, 536, 40 P.3d 930, 938 (2002) (explaining that "[u]nchallenged findings are binding on appeal"); see Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 134, 839 P.2d 10, 35 (1992) (Any "alleged errors in [the findings] not expressly challenged on appeal will be disregarded in the absence of plain error."); see also Hawai'i Rules of Appellate Procedure Rule 28(b)(4)(c). Findings of fact and mixed determinations of fact and law are reviewed under the clearly erroneous standard.

³ Finding No. 66 states as follows:

Undercover officers cannot prevent crimes; cannot enforce the laws; cannot arrest anyone; do not have a badge; do not use search warrants; do not have the authority to arrest; cannot have public recognition. By contrast, a regular Police Officer I who works under cover still has the authority to arrest and enforce the laws.

A finding of fact or mixed determination of fact and law is clearly erroneous when

(1) the record lacks substantial evidence to support the finding or determination, or (2) despite substantial evidence to support the finding or determination, the appellate court is left with the definite and firm conviction that a mistake has been made. We have defined "substantial evidence" as credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion.

In Re Water Use Permit Applications, 94 Hawaii 97, 119, 9 P.3d 409, 431 (2000) (citations omitted). We conclude that the undisputed findings of fact constitute substantial evidence sufficient to support the Commission's finding 71 and conclusions 14 and 15.

In connection with argument (1) (b), in evaluating Appellant's fitness for the Police Officer I position, the Police Department took the July 16, 2000 incident into consideration, and determined prior to the conclusion of the initial probationary period that Appellant was not fit for permanent hire. Based on this determination, the Police Department notified Appellant, prior to the conclusion of the one-year probationary period, that he was to be terminated for failure to "successfully complete" the initial probationary period. Accordingly, Appellant was not a "regular employee" on November 30, 2000 due to his failure to "successfully complete" his period of probationary employment.

As to argument (2), that argument is relevant only to the extent that Appellant was found to be a "regular employee" at his termination. As it is established supra that Appellant did

not successfully achieve regular employee status, that argument is moot. Therefore,

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the third circuit court's judgment filed on February 20, 2003, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, April 8, 2004.

On the briefs:

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