

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY FLORIDA
APPELLATE DIVISION**

HILLSBOROUGH COUNTY SHERIFF'S OFFICE,
Appointing Authority/Petitioner,

CASE NO.: 22-CA-002399

vs.

DIVISION: C

TONIA BALLARD,
Employee/Respondent.

ORDER DENYING PETITIONER'S WRIT OF CERTIORARI

Petitioner, Hillsborough County Sheriff's Office (HCSO), seeks certiorari review of a final decision made by an appeals referee under the Hillsborough County Employee Disciplinary Appeal Process (HCEDAP) to vacate the disciplinary action taken by Petitioner against Tonia Ballard, Respondent. This case was originally brought forth as an appeal to the District Court of Appeal in the Second District of Florida. The Second District transferred the petition to this court pursuant to Florida Rule of Appellate Procedure 9.040(b)(1). This court has jurisdiction. Fla. R. App. P. 9.030(c)(3); Fla. R. App. P. 9.190(b)(3). Petitioner advances two arguments in support of the petition: 1) in reviewing the disciplinary action, the referee departed from the essential requirements of law by failing to apply the correct definition of just cause and by taking into consideration the severity of the discipline; and 2) the referee's decision was not supported by competent, substantial evidence. After reviewing the petition, response, reply, all appendices and applicable law, the court determines first that the appeals referee relied on the appropriate definition of just cause, as defined by the HCEDAP and as such, did not depart from the essential requirements of law. Second, the appeals referee's findings were based on competent and substantial evidence, including but not limited to a combination of the documented Standard Operating Procedures (SOPs), witness testimony, and video recordings.

Procedural History

Respondent has been a deputy with HCSO for 18 years. On September 20, 2020, Respondent, at the time a master deputy, was assigned to the Orient Road Jail. One of Respondent's supervisee inmates attempted to escape via the drop-down ceiling and was injured as a result. After an administrative investigation, Petitioner concluded the Complaint Investigation Report and found three violations of the HCSO Rules and Regulations: Rule 3.4.04, Inattention to Duties; Rule 3.4.05, Failure to Follow SOP, Directive, Sheriff's Order; and Rule 3.5.02 Negligence - Associated with Safety of Persons or Property. Petitioner found that Respondent failed to conduct complete wellness checks in a timely manner. Petitioner also found that Respondent incorrectly logged booking

numbers for 2 inmates and Respondent was performing improper pat searches and strip searches. Respondent was issued a notice of proposed discipline with a five-day suspension.

Respondent filed an appeal with the Complaint Review Board, after which the board recommended a three-day suspension. Respondent then appealed to a Discipline Review Board, after which the Deputy Chief issued a Notice of Discipline that imposed a fifteen-day suspension and removed Respondent's master status. Respondent appealed the disciplinary action with the Hillsborough County Appeal Intake Office, claiming she had not violated the Rules as written, and sought exoneration. Petitioner filed a motion to dismiss and a motion for summary judgement, both of which were denied by the appeals referee. A hearing was held before the referee on May 26, 2021.

Based on review of the evidence, including video recordings and testimony from Respondent's supervisors, the referee found that Petitioner did not meet its burden to show that Respondent violated the rules listed above. The referee found, based on witness testimony, that Respondent had not intentionally deviated from the policies and procedures as written, there was no evidence that the policies as defined by Petitioner were ever communicated to Respondent, and there was no notice to the Respondent that her conduct was a violation that could lead to discipline. Finding that there were no violations, and that the disciplinary action was not supported by just cause, the referee vacated the action in its entirety and restored Respondent to the same position she would have been in had the action not been taken, pursuant to HCEDAP 2.9(c), and issued a written decision on June 10, 2021. This petition followed.

Standard of Review

The court's scope of review is limited to "whether procedural due process is accorded, whether the essential requirements of the law have been observed, and whether the administrative findings and judgement are supported by competent substantial evidence." *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

Discussion

Petitioner contends that the referee departed from the essential requirements of law by focusing on the disciplinary action itself. Petitioner also contends that the referee departed from the essential requirements of the law by using an improper definition of just cause. Finally, Petitioner argues that the referee's decision was not supported by competent, substantial evidence because he ignored evidence of Respondent allegedly admitting to violating SOPs and rules in previous hearings and investigations.

As outlined by HCEDAP 2.9(c), the referee's role is limited to determining whether the disciplinary action was supported by a violation of the appointing authority's rules, policies, or procedures or whether the action was supported by just cause as defined by the HCEDAP. The referee may either uphold the action or vacate the action in its entirety,

but has no jurisdiction to modify. In this case, the referee commented on the escalation of discipline, but explicitly stated that this escalation was not a factor in his findings.

Just cause for disciplinary action is defined in the HCEDAP and includes a long list of circumstances that would constitute just cause. Petitioner argues that the referee did not apply this definition of just cause in making his decision, and for that reason he applied the incorrect law. However, in his decision the referee specifically referred to the HCEDAP definition, and applies that definition to his findings. The referee also stated that an essential component of just cause is notice that the conduct of an employee is a violation and can be subject to discipline. It is evident that the referee applied the correct standard of just cause in making his decision. Because the referee applied the correct definition of just cause, there was no departure from the essential requirements of the law. *Dep't of Highway Safety & Motor Vehicles v. Robinson*, 93 So. 3d 1090, 1092 (Fla. 2d DCA 2012) (“Applying the correct law incorrectly does not warrant certiorari review.”); *Dept. of Highway Safety & Motor Vehicles v. Edenfield*, 58 So. 3d 904, 906 (Fla. 1st DCA 2011) (“[A] misapplication or an erroneous interpretation of the correct law does not rise to the level of a violation of a clearly established principle of law.”).

Petitioner argues that the referee’s decision is contrary to the greater weight of the evidence. However, in a certiorari review, it is not this court’s place to reweigh evidence. *Dep't of Highway Safety & Motor Vehicles v. Trimble*, 821 So. 2d 1084, 1085–86 (Fla. 1st DCA 2002) (“When exercising its certiorari review power, the circuit court is not permitted to reweigh the evidence or substitute its judgment for that of the agency.”). This court instead must determine whether the evidence was reasonable and logical. *Wiggins v. DHSMV*, 209 So. 3d 1165, 1172–73 (Fla. 2017) (stating that “[e]vidence that is confirmed untruthful or nonexistent” or “hopelessly in conflict” is not competent, substantial evidence). The referee relied on documentation of the alleged violations, witness testimony, and video recordings, which were neither hopelessly in conflict nor confirmed untruthful. Having reviewed the SOPs and the evidence available to the referee, this court finds that the referee’s decision was supported by competent, substantial evidence.

It is therefore ORDERED that the petition is DENIED in Tampa, Hillsborough County, Florida, on the date imprinted with the Judae’s signature.

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MELISSA M. POLO, Circuit Court Judge

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