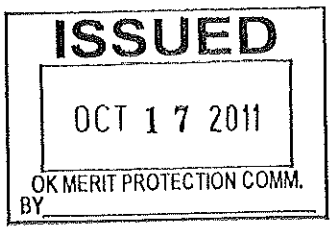
BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA

GERALD GODDARD,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. MPC 11-014
	)	
DEPARTMENT OF CORRECTIONS	)	
	)	
Appellee.	)	



FINAL ORDER

This matter comes on for hearing on September 29, 2011 before the undersigned Administrative Law Judge at the offices of the Oklahoma Merit Protection Commission, Oklahoma City, Oklahoma. The Appellant, Gerald Goddard (hereinafter "Goddard"), appears pro se. The Appellee, Department of Corrections (hereinafter "DOC"), appears by and through counsel, Gary Elliot and Table Representative, Emma Watts.

Appellant Goddard is a classified employee of DOC. Appellant alleges that DOC has engaged in conduct that constitutes a violation of the Personnel Act and/or Merit Rules. Whereupon the hearing began and the sworn testimony of one witness was presented, along with exhibits. Regarding the exhibits, the Appellant and the Appellee submitted Joint Exhibits 1 and 2 which were admitted into the record. Appellee offered its Exhibits 1, 2 and 7 without objection and they were admitted into the record. Appellant offered his Exhibit 8 without objection and it was admitted into the record. Appellant offered his Exhibits 2-7 and they were admitted over the objection of the Appellee. Appellant also offered his Exhibits 1, 9 and 10 which were objected to by the Appellant and were not admitted. Accordingly, the Exhibits offered and admitted are made a part of the record herein.

After careful consideration of the entire record, including all relevant evidence, testimony, and exhibits, the undersigned Administrative Law Judge issues the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

Background of Case

Appellant, Gerald Goddard is a classified employee of the Appellee, Department of Corrections. He filed an appeal with the Merit Protection Commission alleging harassment concerning his refusal to use his contractor's license in fulfilling his job duties and his reporting of violations concerning the improper mechanical trade licensing, among other things. There have been no disciplinary actions initiated or alleged in this matter.

DOC responds that there is no evidence of discrimination or harassment. DOC further argues that its request of Goddard did not violate any laws or merit rules, and regardless, in mediation, they had agreed to discontinue any future requests to do so. DOC argues that this rendered the appeal moot and there are no other properly pled allegations of wrong-doing.

This appeal was originally dismissed by the Executive Director. Goddard appealed the dismissal to the Commission, which remanded the matter for mediation and hearing, if necessary.

Discussion of Evidence

Goddard offered the testimony of 3 witnesses including himself. DOC offered the testimony of three witnesses. All witnesses were properly sworn and provided testimony under oath.

Arthur Wayne Cook testified that in May, 2010, he overheard a conversation between Lester Burgess and Deputy Warden Ricky Moham at the Jackie Brannon Correctional facility. He stated that he heard them discuss that the air conditioning unit needed to be fixed, that the Warden wanted Goddard to fix it and that they were aware that Goddard did not want to use his license to perform the work. He stated that he heard the Deputy state that they would be using the license of Charles Brewer, the DOC state-wide license holder, or possibly, an inmate's license, not Goddard's. The witness testified that they thought the inmate was "legal" even though he wasn't. Cook testified that he possessed a Journeyman's electrical license and that he once volunteered to use it, however he said he was given a choice to do so.

Jim Bauer testified that he witnessed Goddard working on the air conditioning unit. He also testified that he felt threatened for providing testimony in this hearing. He stated that,

earlier, he was warned by the Warden "to be on the right side" or that "license and maintenance people would be fired". He also stated that the Warden came to him and told him that "he didn't have to go to the hearing, but that he could go". He stated that he showed her his subpoena and was still told that "he really didn't have to go". The witness seemed somewhat hesitant to testify in front of the Warden.

Appellant then offered his own testimony. He stated that he had previously informed DOC that he did not want to use his license as part of his job. His job description did not require a license and he did not feel it was appropriate to use his personal license to perform DOC jobs. He said that he personally paid all fees associated with gaining and maintaining his license. Goddard stated that a licensee could not be a contractor for two different employers and he maintained his own personal business. Goddard testified that in order to perform the air conditioning work, DOC must have a licensed journeyman on site and that inmates must have an apprentice license and an EPA certificate to work with Freon. Goddard said that there was no licensed journeyman on site and the inmate in question did not have a proper EPA certificate. Goddard agreed that DOC had subsequently agreed to refrain from asking him to use his license as a Contractor or Journeyman and that part of the appeal had been resolved. He stated that he still felt that he was improperly ordered to use his license in May, 2010 and that he felt he was harassed into doing it. He agreed that there had been no disciplinary action or retaliation as a result of this action. He asked that the warden and deputy warden be disciplined for forcing him to repair the air conditioning unit and that he should be awarded monetary damages.

The Appellee made an oral motion to dismiss the appeal arguing that Goddard had failed to meet his burden of proof that any merit rule had been violated, that the issues had been resolved through mediation, that there was no jurisdiction for the MPC to impose discipline as requested by Goddard, and no authorization to impose monetary damages. Appellee also argued that there was no violation of law when DOC ordered Goddard to perform the work and there was no evidence of threats or retaliation aimed at Goddard. Appellee argued that DOC issued a lawful directive and this appeal should be dismissed. The motion was sustained in part due to the mediation agreement and the lack of jurisdiction regarding the imposition of discipline on the warden and deputy and the imposition of monetary damages. There was also insufficient evidence presented that Goddard was asked to perform an illegal activity. The only remaining

issue was the alleged violation concerning harassment or retaliation against Goddard for disclosing the improper trade licensing.

Appellee offered the testimony of Deputy Warden Rickey Moham. He testified that Goddard could be asked to perform some of the work of higher or lower rated jobs according to the Job Classification Procedures (Appellee's Exhibit 1). He said that duties of a licensed journeyman were part of a lower rated, lower compensated job than Goddard held. As such, he believed that it was appropriate to request that he complete the work on that occasion. He stated that the purpose of Goddard's position as Construction/Maintenance Administrator, Level I, included the general maintenance work and repair of the air conditioning (Appellee's Exhibit 2). Therefore, his request that Goddard get the work done was not improper, despite Goddard's protests about using his license. Moham also testified that he had previously reviewed the licensing rules and that this was an isolated, emergency situation. He stated that he had worked with Goddard for over 10 years and they had a good work relationship. Goddard's wife also worked for him and they had a very good working relationship.

Lester Burgess is Goddard's immediate supervisor. He testified that Goddard was never threatened and was never told he would lose his job if he didn't perform the assigned repair. He admitted that Goddard stated he didn't want to use his license and Burgess simply told Goddard "to get it done", meaning either find someone else to do it or do it himself.

Warden Emma Watts testified that she had been at DOC since 1977. She had been Warden at Jackie Brannon since July, 2007. She has known Goddard since they worked together at Oklahoma State Penitentiary. Watts testified that, although a license was not required for Goddard's position, Goddard had listed his license to help him qualify for his current position. She stated that when he was directed "to get it done", he could either do it himself or take steps to find someone who was qualified to do it. He could have taken the necessary steps to get the proper licensing for the inmates under his supervision. He had several options, but it was ultimately his job as Maintenance Administrator to make sure that the repair got done. Concerning the allegations of witness Bauer, Watts testified that she approached Bauer one day after seeing a number of inmates milling around behind the Maintenance Building. She denied telling Bauer he did not have to go to the hearing. She testified that she told him that "you probably have to be there". She denied ever threatening him in retaliation for his testimony in this matter. Watts testified that the comments about "being on the right side" were not in relation

to this case, but were general comments of encouragement. She said he asked her about another matter and she responded "you should always try to do the right thing, be on the right side of things". She denied ever threatening or intimidating any employee or witness and said it was just a misunderstanding. She said she had been involved in these things many times and knew better than to act in that manner. She specifically denied ever saying anyone would be fired.

Goddard was unable to present evidence of any acts of harassment against him by DOC. Goddard failed to point out any specific Merit Rule that had been violated. Therefore, he was unable to sustain his burden of proof to provide any sufficient, credible evidence that there had been a violation of any merit rule and he failed to request relief that could be granted in this tribunal.

CONCLUSIONS OF LAW

1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and the subject matter in this cause.

2. Any finding of fact which is properly a conclusion of law is so incorporated herein as a conclusion of law.

3. This is an alleged violation appeal, which means "an appeal in which an allegation is made that a violation of law or rules over which the Commission has jurisdiction has occurred." *See* OAC 455:10-1-2. OAC 455:10-9-2 (f) states that the Appellant Goddard has the burden of proof in an alleged violation appeal and must prove by a preponderance of the evidence that a violation did occur.

4. Appellant Goddard has failed to meet his burden to prove, by a preponderance of the evidence, that any violation of any law or merit rule under the jurisdiction of this Commission has occurred. Applicable trade licensing laws and/or rules presented by Goddard are not under the jurisdiction of this Commission.

6. Appellant Goddard has failed to meet his burden to prove, by a preponderance of the evidence, that DOC harassed him or retaliated against him.

7. As a result of Appellant Goddard's failure to prove that any violation did occur, no corrective action is available.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the undersigned Administrative Law Judge that the petition of Appellant Gerald Goddard, MPC 11-014 be DENIED and the appeal is hereby dismissed.

This Order entered this 7th day of October, 2011.

Lydia Lee
Administrative Law Judge