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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

GENE R. RIFE, Petitioner-Appellee,	)	Filed November 30, 1983
vs.	)	
CIVIL SERVICE COMMISSION OF DES MOINES, IOWA, AND THE CITY OF DES MOINES, IOWA, Respondents-Appellants.	)	3-318 / 83-258

Appeal from Polk District Court - Ray A. Fenton, Judge.

Respondents appeal from a decision of the district court reversing the commission's suspension of petitioner from his job. REVERSED.

Nelda Barrow Mickle, City Solicitor, Des Moines, Iowa, for respondents-appellants.

David J. Isaacson of Isaacson, Clarke, Vernon and Hodge, Des Moines, Iowa, for petitioner-appellee.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

HAYDEN, J.

Respondents, Civil Service Commission of Des Moines and the City of Des Moines, appeal from a decision of the district court reversing the commission's suspension of petitioner from his job. We reverse the district court and reinstate the commission's decision.

Petitioner is a city housing inspector for the City of Des Moines. On July 8, 1981, he was observed going to a liquor store at 10:25 a.m. and to a convenience store later the same morning. He then went home where he remained approximately one hour and forty-five minutes. Petitioner's work record for that day indicated that he had worked from 8:00 a.m. to 5:00 p.m. with an hour lunch break from noon to 1:00 p.m. The Des Moines City Manager charged petitioner with abuse of lunch and break periods, violation of written department rules, and negligence in the performance of duties. Petitioner was suspended from his job for fifteen calendar days without pay. The civil service commission upheld the decision. On judicial review of the agency action, however, the district court concluded that petitioner's penalty was too severe. Although the court agreed that petitioner had been guilty of misconduct, it ordered petitioner's back wages to be restored to him.

In this appeal respondents assert that the district court used the wrong standard for reviewing the agency action and that applying the correct standard of review, the agency's decision should be upheld.

Our scope of review is the same as the district court's which is discussed below. In re Discharge of Fairbanks, 287 N.W.2d 579, 581 (Iowa 1980).

The district court, relying upon Roeder v. Nolan, 321 N.W.2d 1, 3 (Iowa 1982), stated that it reviewed the record **de novo** and entered such judgment as should have been entered by the commission. Roeder, however, dealt with judicial review of a magistrate's decision in a small claims case. The standard of review applied by the court in Roeder is authorized under Iowa Code section 631.13 (1981).

Judicial review of civil service commission cases is governed by Iowa Code section 400.27 (1981). Review by the district court and by this court is **de novo.** However, prior cases have made it clear that the commission's actions should be affirmed if there are any fair or reasonable grounds upon which to sustain them. McCormack v. Civil Service Commission of Cedar Falls, 315 N.W.2d 855, 858 (Iowa Ct. App. 1981); Patch v. Civil Service Commission of Des Moines, 295 N.W.2d 460, 464 (Iowa 1980). This standard gives more deference to the commission's determination than the Roeder standard, which allows the court, on appeal, to substitute its conclusions for those of the small claims court.

Applying the more deferential standard to the present case, the commission's decision is fair and reasonable. Although the commission focused on the incidents of one day, petitioner's responses to questions indicate that he had a habit of running personal errands during official working hours. Petitioner complains that other employees guilty of the same offenses received less severe penalties. There is not necessarily an abuse of discretion when similar offenses are handled differently. McCormack v. Civil Service Commission of Cedar Falls, 315 N.W.2d at 858. Each case must be decided on its own facts. There was evidence in this case that petitioner was uncooperative during the commission's investigation and consistently refused to admit that his actions were mistakes in judgment. The commission did not act unfairly by considering these factors when imposing a penalty on petitioner.

Judgment of the district court is vacated and the decision of the commission is reinstated.

REVERSED.