

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re Bryan M. Atterson

No. No. 17-0506, Supreme Court of Appeals of West Virginia (June 8, 2018)

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the Raleigh County Circuit Court’s order reversing the decertification of Bryan M. Atterson as a law enforcement officer. The Court held that the circuit court did not abuse its discretion in concluding that the administrative director’s decision was arbitrary and capricious, particularly because the director rejected the administrative law judge’s credibility determinations based on the hearing record. The Court did not address the remaining assignment of error.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Margaret L. Workman; Justice Robin Jean Davis; Justice Allen H. Loughry II; Justice Elizabeth D. Walker; Justice Menis E. Ketchum
JURISDICTION	West Virginia
DECIDED	June 8, 2018
DOCKET	No. 17-0506
DISPOSITION	affirmed
PROCEDURAL POSTURE	The West Virginia Law Enforcement Professional Standards Subcommittee appealed the Circuit Court of Raleigh County's order reversing the administrative decertification of Bryan M. Atterson as a law enforcement officer and ordering his recertification.
STANDARD OF REVIEW	On appeal of a circuit court order deciding an administrative appeal, the Supreme Court reviews questions of law de novo. Administrative factual findings receive deference unless clearly wrong. When the circuit court has reversed the agency decision, the Supreme Court reviews the circuit court's final order and ultimate disposition for abuse of discretion and reviews legal questions de novo.
PRECEDENTIAL VALUE	Memorandum decision; no substantial question of law identified by the court

PARTIES

West Virginia Law Enforcement Professional Standards Subcommittee
v. Bryan M. Atterson

TOPICS

judicial review of agency action

agency adjudication

standard of review

administrative law

appellate procedure

PRACTICE AREAS

administrative law

appellate procedure

law enforcement certification

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion in reversing the agency director's order affirming the LEPS Subcommittee's revocation of Atterson's law-enforcement certification.
2. Whether the agency director's decision was arbitrary and capricious or unsupported by reliable, probative, and substantial evidence.
3. Whether the circuit court's treatment of the ALJ's credibility determinations was proper where the ALJ personally observed the witnesses and the director relied on the record and cold transcripts.

HOLDINGS

1. When a circuit court has reversed the result reached by an administrative agency, the Supreme Court reviews the circuit court's final order and ultimate disposition for abuse of discretion and reviews questions of law de novo; administrative factual findings are ordinarily reviewed deferentially unless clearly wrong.
2. Where an ALJ personally hears substantial testimony and observes the witnesses, an appellate court must defer to the ALJ's credibility determinations and evidentiary inferences unless the factfinder's resolution is physically impossible or inconsistent with contemporary documents.
3. The circuit court did not abuse its discretion in concluding that the agency director acted arbitrarily and capriciously by rejecting the ALJ's credibility-based findings and affirming decertification on the basis of the record and cold transcripts.

KEY QUOTATIONS

“Because the ALJ was in the best position to determine the credibility of the witnesses in this fact-driven case, we find that the circuit court did not abuse its discretion in concluding that Director Staton’s actions were arbitrary and capricious.” (at 6)

“We must defer to the ALJ’s credibility determinations and inferences from the evidence, despite our perception of other, more reasonable conclusions from the evidence.” (at 4)

FACTUAL BACKGROUND

Bryan M. Atterson, a Beckley police officer, was arrested in 2013 on domestic battery and unlawful restraint charges and later entered a provisional plea agreement involving a battery charge, pretrial diversion, probation, and psychological treatment. After learning of the provisional plea, the LEPS Subcommittee revoked his law-enforcement certification despite his appearance and submission of information. An ALJ later conducted a three-day evidentiary hearing involving approximately thirty hours of testimony and recommended reversal, but the agency director rejected that recommendation and affirmed the revocation. The circuit court found the agency decision arbitrary and capricious and clearly wrong, relying in part on the ALJ's credibility determinations, and ordered Atterson recertified.

PROCEDURAL HISTORY

The LEPS Subcommittee revoked Atterson's law-enforcement certification after learning of his provisional plea agreement in a criminal matter. On administrative appeal, the ALJ recommended reversal, but Director W. Richard Staton rejected that recommendation and affirmed the revocation. The circuit court reversed the Director, ordered Atterson recertified, and ordered the relevant records expunged or sealed. The Supreme Court of Appeals affirmed the circuit court.

DISPOSITION

affirmed

CASES CITED

- Muscatell v. Cline, 196 W. Va. 588, 474 S.E.2d 518 (1996)
- Frymier-Halloran v. Paige, 193 W. Va. 687, 458 S.E.2d 780 (1995)
- Board of Education of the County of Mercer v. Wirt, 192 W. Va. 572, 453 S.E.2d 413 (1994)
- Anderson v. Bessemer City, 470 U.S. 564, 574-75 (1985)
- ABF Freight System, Inc. v. NLRB, 510 U.S. 317 (1994)
- NLRB v. Walton Manufacturing Co., 369 U.S. 404, 406-09 (1962)
- Martin v. Randolph County Board of Education, 195 W. Va. 297, 306, 465 S.E.2d 399, 408 (1995)
- State ex rel. Eads v. Duncil, 196 W. Va. 604, 614, 474 S.E.2d 534, 544 (1996)