

Affirmed and Memorandum Opinion filed March 11, 2010



In The

Fourteenth Court of Appeals

NO. 14-08-00923-CV

PATRICK N. SWEENEY, Appellant

V.

DYNCORP INTERNATIONAL, LLC, Appellee

**On Appeal from the County Civil Court at Law No. 1
Harris County, Texas
Trial Court Cause No. 915343**

MEMORANDUM OPINION

Appellant Patrick N. Sweeney appeals the trial court's decision to uphold the Texas Workforce Commission's ruling denying Sweeney's claim of an unpaid bonus. Sweeney argues that (1) there was not substantial evidence to support the Texas Workforce Commission's conclusion, and (2) the trial court erred by allowing appellee Dyncorp International, LLC to invoke a state-secrets privilege during Sweeney's cross examination of appellee's sole witness. We affirm.

I

Worldwide Recruiting & Staffing Services, LLC (“Worldwide”) recruited Patrick N. Sweeney to work as a border-security advisor in Iraq for Dyncorp International, LLC (“Dyncorp”). The written job description stated a one-time bonus of \$25,000 would be given to “every successfully deployed candidate . . . to be paid after arrival in Iraq.” In a letter dated April 24, 2007, Worldwide informed Sweeney that his employment with Dyncorp was contingent on meeting all of Dyncorp’s requirements for deployment. Sweeney worked for Dyncorp from April 29, 2007, to May 12, 2007, during which he was undergoing an assessment process.

During the assessment process, Dyncorp amended its bonus eligibility. The U.S. State Department had changed its requirements for recruits deploying to Iraq, and not all of Dyncorp’s new recruits met the changed requirements. Dyncorp, therefore, decided to give a \$25,000 bonus to its recruits who were eligible to be deployed even if the new hires were not actually deployed to Iraq. The eligibility requirements for the new bonus were the same as for the deployment bonus. Sweeney was not eligible to be deployed because of an unsatisfactory background check, and he was informed on May 12, 2007, that he did not qualify for employment.

Sweeney filed a claim with the Texas Workforce Commission (“TWC”), contending Dyncorp promised to remit, but failed to pay the bonus, violating the Texas Payday Law. TWC found Sweeney was not entitled to the bonus because evidence showed he did not successfully complete Dyncorp’s employment assessment. Sweeney then appealed TWC’s decision to the Harris County Court at Law No. 1. After hearing the evidence, the trial court issued an order in favor of Dyncorp, finding there was substantial evidence to support TWC’s decision. This appeal followed.

II

In his brief, Sweeney argues the trial court erred by determining there was substantial evidence to support TWC’s decision. He contends substantial evidence

cannot be based on uncorroborated hearsay or rumor, TWC's testimony was at variance with his physical evidence (his timesheets), and the trial court did not comply with section 61.062(e) of the Texas Labor Code. Dyncorp argues that evidence introduced at trial demonstrates that there were facts in existence at the time of the administrative ruling to reasonably support the decision.

TWC's final decision can be judicially reviewed in accordance with section 61.062 of the Texas Labor Code. Tex. Labor Code Ann. § 61.062 (Vernon 2006); *New Boston Gen. Hosp., Inc. v. Tex. Workforce Comm'n*, 47 S.W.3d 34, 36 (Tex. App.—Texarkana 2001, no pet.). Section 61.0162(e) provides: “An appeal under this subchapter is by trial de novo with the substantial evidence rule being the standard of review in the manner as applied to an appeal from a final decision” Tex. Labor Code Ann. § 61.062(e). The substantial evidence rule discourages courts from overseeing regulatory statutes that the Texas Legislature enacts. *Wishnow v. Tex. Alcoholic Beverage Comm'n*, 757 S.W.2d 404, 409 (Tex. App.—Houston [14th Dist.] 1988, writ denied). “At its core, the substantial evidence rule is a reasonableness test or a rational basis test.” *City of El Paso v. Pub. Util. Comm'n*, 883 S.W.2d 179, 185 (Tex. 1994) (citing *R.R. Comm'n v. Pend Oreille Oil & Gas Co.*, 817 S.W.2d 36, 41 (Tex. 1991)). The substantial evidence standard gives deference to an agency's expertise and decisions. *See R.R. Comm'n v. Torch Operating Co.*, 912 S.W.2d 790, 792 (Tex. 1995).

We review the reasonableness of the agency's order, not necessarily the correctness of its decision. *City of El Paso*, 883 S.W.2d at 185. “An administrative decision is reasonably supported by substantial evidence if the evidence as a whole is such that a reasonable mind could have reached the same conclusion the judge reached in order to justify his decision.” *Garza v. Tex. Alcoholic Beverage Comm'n*, 138 S.W.3d 609, 613 (Tex. App.—Houston [14th Dist.] 2004, no pet.). When reviewing the agency's decision, we are not allowed to substitute our judgment for the agency's judgment. *Wishnow*, 757 S.W.2d at 409; *see Garza*, 138 S.W.3d at 613. Even though substantial

evidence is more than a mere scintilla, the evidence in the agency record may actually preponderate against the agency's decision, yet still equate to substantial evidence. *See Garza*, 138 S.W.3d at 613; *Entergy Gulf States, Inc. v. Pub. Util. Comm'n*, 112 S.W.3d 208, 218 (Tex. App.—Austin 2003, pet. denied). TWC's decision is presumed valid, and the party seeking to set aside the agency decision has the burden to prove the decision was not supported by substantial evidence. *New Boston Gen. Hosp., Inc.*, 47 S.W.3d at 37; *see Wishnow*, 757 S.W.2d at 409.

In this case, there is evidence in the record to support TWC's conclusion that Sweeney was not entitled to the \$25,000 bonus because he did not successfully complete Dyncorp's employment assessment. In its relevant findings of fact, TWC concluded:

- (1) The claimant was recruited to work as a Border Security Advisor in Iraq if he met all the employer's requirements for deployment. During the claimant's employment, he was going through the employer's assessment process.
- (2) According to a written job description, a one-time \$25,000.00 bonus would be paid to "every successfully deployed candidate . . . to be paid after arrival in Iraq."
- (3) In addition, the employer agreed to pay the \$25,000.00 bonus to all employees who successfully completed its assessment process, but did not go to Iraq because the U.S. State Department changed some of its qualifications for the job.
- (4) The claimant was terminated on May 12, 2007 as not qualified for employment in Iraq due to [an] unsatisfactory background investigation.
- (5) Since the claimant did not complete the employer's assessment process, the claimant was not paid the bonus.

In its relevant conclusions, TWC determined:

- (1) The employer testified that the claimant did not successfully complete its assessment process and thus, was not eligible for employment in Iraq. The employer testified that U.S. State Department authorization was just one part of its [the employer's] qualification process, and that the claimant did not pass its background investigation. In addition, the employer stated that it did pay employees who successfully completed the assessment process, but were unable to go to Iraq because the State

Department changed some of its [State Department] qualifications for the job.

(2) The evidence showed that the employer agreed in writing, to pay a one-time \$25,000.00 bonus to every candidate successfully deployed to Iraq as a Border Security Advisor. The evidence also showed that at a later time, the employer decided to pay the bonus to employees who were eligible to deploy but could not because the State Department changed some of its requirements. In addition, the evidence showed that several conditions had to be met to successfully complete the employer's assessment and become eligible to deploy. The evidence showed that the claimant did not successfully complete the employer's assessment, and thus was not deployed as a Border Security Advisor. After considering the evidence, this hearing officer concludes that the claimant is not entitled a bonus from this employer under the Texas Payday Law.

At trial, the only two witnesses to testify were Sweeney and Jas Gill, program-support manager for Iraq CIVPOL for Dyncorp. Sweeney argues that Gill's testimony constitutes uncorroborated hearsay or mere rumor, and that the testimony is at variance with his timesheets indicating he earned the \$25,000 bonus. At trial, Gill explained Dyncorp's administrative assistants routinely complete a new recruit's paperwork without knowing whether the recruit is eligible for the \$25,000 bonus. Gill testified Sweeney's timesheet included the \$25,000 sign-on bonus as an earmark in case he was eligible to earn the bonus. Sweeney testified the timesheets were evidence that Dyncorp owed him the \$25,000 bonus. Although Sweeney contends Gill's testimony is mere rumor, TWC "determines the meaning, weight, and credibility to assign conflicting evidence." *See County of Reeves v. Tex. Comm'n on Envtl. Quality*, 266 S.W.3d 516, 528 (Tex. App.—Austin 2008, no pet.). We will not disturb the agency's decision simply because there was conflicting and disputed testimony. *Id.* (citing *Firemen's & Policemen's Civil Serv. Comm'n v. Brinkmeyer*, 662 S.W.2d 953, 956 (Tex. 1984)).

Additionally, Gill testified Sweeney did not pass all the requirements to deploy. She stated Sweeney had met all of the job requirements, but he failed one portion of the assessment process—the background check. Accordingly, Sweeney did not meet Dyncorp's eligibility requirements; hence, he was not eligible to receive the \$25,000

bonus. The evidence is such that reasonable minds could have reached the same conclusion as TWC. Because there is substantial evidence to support TWC's decision, we overrule Sweeney's first issue.

III

Sweeney also contends the trial court erred by allowing Dyncorp to invoke a state-secrets privilege during Sweeney's cross examination of Gill.¹ Dyncorp claims it did not assert a state-secrets privilege; it merely objected to Sweeney's question on the basis of relevance. Additionally, Dyncorp argues Sweeney has not proven that the court abused its discretion in sustaining the relevancy objection. *See In re J.P.B.*, 180 S.W.3d 570, 575 (Tex. 2005) (per curiam) (discussing that a trial court's exclusion of evidence is reviewed using an abuse-of-discretion standard); *In re Kay*, 273 S.W.3d 703, 709–10 (Tex. App.—Houston [14th Dist.] 2008, no pet.).

When Sweeney asked Gill why he did not pass the background check, Dyncorp objected to relevance. Even though Dyncorp also stated the testimony was “getting dangerously close to classified information,” it explained to the court that TWC only heard evidence that Sweeney failed the background check, not the reason why he failed. Dyncorp, therefore, argued the reason why Sweeney failed was outside the scope of the current appeal. The court stated, “[T]he test is not whether or not [Dyncorp's] background check was properly done, but . . . whether or not the lower court made an appropriate decision.” The court then sustained the objection, but allowed Gill to generally answer that she discovered information about Sweeney during his background check that made him ineligible for deployment. We conclude Dyncorp's objection concerned relevance and not a state-secrets privilege. The trial court did not abuse its discretion in sustaining the objection; therefore, we overrule Sweeney's second issue.

¹ A state-secrets privilege is a common-law privilege that allows the government to withhold information relating to military, intelligence-gathering, diplomatic, and other similar matters. *See United States v. Reynolds*, 345 U.S. 1, 6–7 (1953); *Ellsberg v. Mitchell*, 709 F.2d 51, 56–57 (D.C. Cir. 1983).

* * *

For the foregoing reasons, we affirm the trial court's judgment.

/s/ Jeffrey V. Brown
Justice

Panel consists of Justices Yates, Seymore, and Brown.