

having been modified to a suspension by the Natural Resources Commission (“NRC”). Moss was terminated by the DNR on July 18, 2013, following an investigation into various asserted acts of misconduct by Moss. Moss sought and obtained administrative review of his termination before an administrative law judge (“ALJ”). The ALJ reduced Moss’s sanction to a suspension rather than a termination, and that decision was upheld, in most respects, by the NRC.

On April 30, 2014, the NRC issued a final order regarding Moss’s discipline, the DNR sought judicial review in the Marion Circuit Court and the matter was remanded to the NRC. Following further proceedings, eventually involving an appeal to the Indiana Court of Appeals by Moss, the matter was remanded to the Marion Circuit Court, which remanded the matter to the NRC with instructions on March 18, 2016 (the “3/18/2016 Order”). The 3/18/2016 Order stated in relevant part:

The Commission (NRC) is to reconsider its decision as to sanctions in light of this Court’s finding that Moss contributed to the commission of the crime possession of a handgun by a felon per 18 US Code Section 922(g).

Neither party appealed the 3/18/2016 Order; rather, DNR is now seeking review of the order issued by NRC, the “11/9/2016 Final Order,” in response to the instructions of the 3/18/2016 Order. Upon remand by Marion Circuit Court, the NRC affirmed the initial determination of reinstatement by the NRC, after having considered the 3/18/2016 Order.

During the hearing before this Court, DNR brought up a wide range of topics regarding Moss’s prior disciplinary issues with the DNR, and allegations that had been made against Moss during the course of his employment. As evinced by its final orders,

the NRC carefully considered each of the DNR's proffered acts of misconduct by Moss which, in the DNR's view, should have resulted in his termination. As the NRC's 11/9/2016 Final Order was affirmed in most respects, but for the specific instruction by the Marion Circuit Court recounted above, the scope of this Court's review is necessarily much narrower than that suggested by DNR. The scope of this action is limited to a determination as to whether the NRC comported with statute and "reconsider[ed] its decision as to sanctions in light of this Court's finding that Moss contributed to the commission of the crime possession of a handgun by a felon," as all other matters regarding Moss's discipline have been previously settled in prior rulings.

DNR's arguments are a request for this Court to substitute its judgment for the NRC, which conducted an extensive hearing in this cause and issued two lengthy, detailed orders explaining its findings. Further, although DNR's counsel states otherwise, this Court views DNR's arguments to be, in part, an erroneous interpretation of the 3/18/2016 Order as an instruction by the Marion Circuit Court to order Moss terminated. Moss correctly asserts that the issue before this Court is not, generally, what NRC should have done, but whether the NRC failed to comply with statute, exceeded its statutory authority or failed to comply with the 3/18/2016 Order.

The DNR's Petition states, in part:

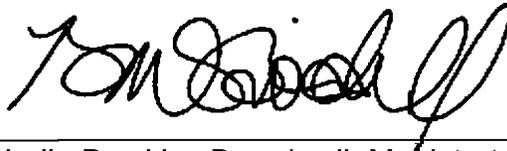
31. NRC's Order is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law. Ind. Code § 4-21.5—5-14(d)(1).
32. NRC's Order was entered in excess of statutory jurisdiction, authority, or limitations, or short of statutory right. Ind. Code § 4-21.5-5—14(d)(3).
33. NRC's Order was unsupported by substantial evidence. Ind. Code §4-21.5-5-14(d)(5).

The Court finds that the NRC's 11/9/2016 Final Order was not issued in violation of statute, comported with the instructions of the 3/18/2016 Order, and was issued after its careful review of all relevant facts and prior rulings in this matter, in keeping with its role as the ultimate authority of the DNR.

ORDER

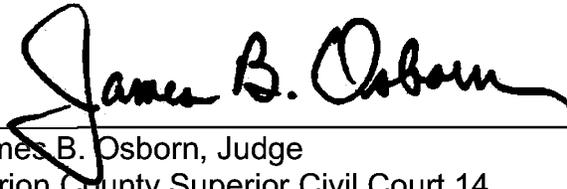
Upon consideration of the evidence presented by both parties and the arguments of counsel, the Court denies the Department of Natural Resource's request, AFFIRMS the 11/9/2016 Final Order of the Natural Resources Commission and vacates the stay issued on 12/15/2016.

Recommended for Approval:



Marshelle Dawkins Broadwell, Magistrate
Marion County Superior Civil Court 14

ORDERED this: September 13, 2017



James B. Osborn, Judge
Marion County Superior Civil Court 14

Distribution
Counsel of Record