

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

PAUL COUCHMAN,

Petitioner,

CASE NO.: 2012-CA-8319-O

WRIT NO.: 12-35

v.

UNIVERSITY OF CENTRAL FLORIDA,

Respondent.

Petition for Writ of Certiorari from the
Decision of the University of Central Florida

Bruce D. Lamb, Esquire, for Petitioner.

Youndy C. Cook, Associate General Counsel, for Respondent.

Before WHITEHEAD, HIGBEE, O'KANE, JJ.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner, Paul Couchman (“Couchman”), seeks issuance of a writ of certiorari to quash the Final Action of the University of Central Florida (“UCF”) imposing discipline against him as a student of UCF. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(3). We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

Summary of Facts and Procedural History

As gathered from the record, this action arose from allegations that Couchman, a student at UCF, changed his grades in the Vertebrate Histology course in violation of UCF's Rules of Conduct, specifically "Possessing and/or Providing False and Misleading Information and/or Falsification of University Records and Misuse of Computing and Telecommunications Resources." These alleged violations were made known to Couchman in a written notice dated June 1, 2011. On July 22, 2011, UCF sent correspondence to Couchman advising him that a student conduct board panel hearing to address the allegations was scheduled for August 4, 2011. At the hearing, Couchman denied the allegations and provided testimony, witnesses, and other evidence in response. After the presentation of the testimony and other evidence, the Student Conduct Board Panel ("Panel") found Couchman in violation of the Rules of Conduct.

On August 9, 2011, Couchman was notified that UCF accepted the Panel recommendation for discipline. Couchman then filed an internal appeal of that decision that was denied on September 20, 2011. Couchman subsequently sought judicial review of UCF's action from the Fifth District Court of Appeal that ultimately led to the transfer of the case from the Fifth District to this Circuit Court, sitting in its appellate capacity.

Arguments

Couchman argues that: 1) He was not afforded due process and the proceeding did not meet the essential requirements of the law because the hearing panel deliberations were not recorded and the hearing panel applied the wrong standard of review and impermissibly shifted the burden of proof and 2) The findings of the hearing panel were not supported by competent substantial evidence.

Conversely, UCF argues that: 1) Couchman was provided procedural due process and was suspended following a fair and impartial proceeding in keeping with the regulations of UCF and 2) The proceeding resulted in a determination and rationale that was supported by competent substantial evidence.

Standard of Review

Where a party is entitled to seek review in the circuit court from a quasi-judicial decision of a state university, the circuit court is limited in its review to determining: (1) whether due process of law was accorded; (2) whether the essential requirements of law were observed; and (3) whether the decision is supported by competent substantial evidence. *Florida Power & Light Co. v. City of Dania*, 761 So. 2d 1089 (Fla. 2000); *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624 (Fla. 1982).

Analysis and Findings

Couchman's Argument - Denied Due Process because Panel's Deliberations were not Recorded

First, this Court reviews whether Couchman was provided due process. From review of the record including the transcript from the hearing on August 4, 2011 and documents presented, Couchman was provided ample notice and the opportunity to be heard on the decisions he challenged throughout the appeal process with UCF. Couchman specifically argues that he was denied due process because the Panel deliberations were not recorded as required under the Florida Board of Governors ("BOG") Regulation 6.0105(1)(j) and UCF's Rule of Conduct 5.009 (3)(d)2.

BOG Regulation 6.0105(1)(j) addresses student conduct and discipline and directs that in furtherance of the educational mission for the universities, each university board of trustees shall establish a student disciplinary system that includes a code of conduct with specific procedures

and provisions. Among the required procedures is that an accurate and complete record of each disciplinary proceeding be made and preserved and that retention of the record is subject to the General Records Schedule GS5 for Universities and Community Colleges. UCF's Rule of Conduct 5.009(3)(d)2. addresses the formal hearings and states that the case record for the hearing shall consist of a recording of the hearing.

UCF states in its Response that per its Rule of Conduct 5.009(3)(c)10., the deliberations of the Panel are confidential and not part of the hearing and UCF has not interpreted the language at issue to require that the deliberations of the Panel be made part of an audio or video recording of the hearing. UCF also points out that its Rules of Conduct, which are more detailed than the BOG Regulations, dictate that the contents of the case record include a recording of the formal hearing, along with various other items (the initial notice, the hearing notice, documentation of the findings and any sanctions) that are prepared and conveyed outside the context of the hearing and therefore not on any electronic recording.

Further, UCF argues that the Panel reads the result and rationale reached during deliberations at the conclusion of the hearing in the presence of the student and puts these findings into the recording and in writing as part of the case record. Lastly, UCF argues that due process does not require UCF to make an electronic recording of the disciplinary proceeding, but the university goes the extra step to record the hearing itself, and that recording becomes part of the case record. In support of its arguments, UCF cites *Student Alpha ID No. Guja v. Sch. Bd. Of Volusia County*, 616 So. 2d 1011, 1012 (Fla. 5th DCA 1993) (holding that disciplinary proceedings do not require the same safeguards afforded criminal defendants); *Matar v. Florida Int'l. Univ.*, 944 So. 2d 1153, 1160 (Fla. 3d DCA 2006) (citing *Student Alpha ID No. Guja* and holding that

the due process requirement of a student administrative proceeding is that the proceeding must be essentially fair).

From review of the BOG Regulations submitted in the record, there is no language that requires that the Panel deliberations be recorded and made part of the case record from the hearing. Therefore, UCF's procedure as to the Panel deliberations is not contrary to the requirements of due process or with the BOG Regulations. Also, as UCF correctly points out, tribunals of various types deliberate privately and off the record, and the results of those deliberations are memorialized afterwards in an opinion or order or other method. UCF's interpretation and application of its Code of Student Conduct, the BOG Regulations, and other governing legal authority is entitled to great deference by this reviewing court precluding the departure from the contemporaneous construction of the governing authority unless the construction is clearly erroneous. *Verizon Florida, Inc. v. Jacobs*, 810 So. 2d 906, 908 (Fla. 2002). Accordingly, this Court finds that Couchman was not denied due process because the Panel deliberations were not recorded.

***Couchman's Argument – Wrong Standard of Review
& Burden of Proof Impermissibly Shifted by Panel***

Couchman also argues that the Panel applied the wrong standard of review and impermissibly shifted the burden of proof based on comments made by the Chairman of the Panel. The comments relayed that the Panel was especially concerned regarding the allegations because Couchman intended to pursue a career in medicine. Couchman claims that the comments indicated that his intended career path influenced the decision of the Panel in regard to the consideration of the strength of the evidence presented against him and the recommended sanctions; thus, not in accordance with UCF's Rule of Conduct 5.007 which is to insure fairness and due process in student disciplinary proceedings. Couchman also claims that the Panel made

statements in the rationale for their determination that indicated that it improperly shifted the burden of proof to him to disprove the allegations by stating that Couchman's witnesses did not provide any clear information that refuted the evidence.

From review of the hearing transcript from the August 4, 2011, when the hearing resumed after the Panel's deliberations, the Panel Chairman, James Wilkening, stated to Couchman:

Before I read the finding of the Panel, the Panel would like to take a few minutes to speak with you.

As we were looking through all of the information and kind of listening to it all, trying to put it together, the field of—medical field—and when we think of ethics and integrity, it's—it's just critical when you look to have a doctor work with you or take care of a procedure, that honestly, that integrity, that—that piece is so important that we're able to count on that profession for that. Probably more so than many—many other professions. And we try to weigh everything together we just really wanted that concept and that piece of information to resonate to you, just the importance of ethics and integrity.

Next, Chairman Wilkening read to Couchman the Panel's decision finding him in violation as charged and also read him the recommended sanctions. Lastly, Chairman Wilkening read to Couchman the basis for the Panel's findings and decision as follows:

The rationale used. Paul Couchman was found in violation as the preponderance of the evidence showed he committed the violations.

As a Panel we determined he was in the office during the relevant time period. Was left alone in an office space with his record access open after the professor had asked him to leave. His records had been logged off which provided evidence that the computer had been tampered with, as well as the professor stated he was standing and the [sic] left the room quickly upon his return.

Witnesses that Paul Couchman provided did not provide any clear information that refuted the evidence. The first witness – the first witness, Megan Watson, provided testimony that he got home at a time consistent with his story, but we did not find the evidence to be sufficient to refute the violations. The second witness, Louis Vera, provided lack of information and time references, which did not verify or match other information provided.

Paul Couchman provided the reason of a glitch to explain the changed grades; however, he was – his was the only one effected [sic] by it and matched approximately the same time he was in the office alone.

Additionally, the letters from Susan Yantz and Amanda Colee did not support any specific time of his visits to their office.

Due to the severity of the tampering and misuse of University equipment, the Panel felt the need to issue a two-semester suspension; disciplinary probation till graduation; and the educational sanctions to fit the violation.

Please be advised that these sanctions are recommendations only and are subject to change upon review of the director of the Office of Student Rights and Responsibilities.

The BOG Regulation 6.0105(1)(g) and (h) and UCF's Rule of Conduct 5.009(4)(a)3. address the student conduct review process and require that all hearings be conducted on the basis that the charged student is not in violation until the preponderance of evidence proves otherwise and the burden of proof in a student conduct hearing is not on the student charged with a violation of the Rule of Conduct. Also, UCF's Rule of Conduct 5.007(4)(j) defines the preponderance of the evidence standard of review as evidence, considered as a whole, shows that the fact sought to be proved is more probable than not.

There is nothing obvious in the record that shows that the Panel did not adhere to the correct standard of review and burden of proof. Therefore, for this Court to attempt to determine the impact, if any, that Couchman's intended career had on the Panel's findings and decision would require that this Court speculate outside our scope of review. Further, the Panel's findings that the witnesses did not provide any clear information that refuted the evidence goes to the weight and credibility of the witnesses that is in the scope of review of the Panel as the trier of fact.

The scope of this Court's review is limited to determining whether competent substantial evidence existed in support of the Panel's findings and decision and our review cannot go further

to speculate or re-weigh the evidence. *City of Deland v. Benline Process Color Company, Inc.*, 493 So. 2d 26, 28 (Fla. 5th DCA 1986) (holding that the weight and credibility of the evidence before the administrative agency cannot be reevaluated by the reviewing court); *Dusseau v. Metropolitan Dade County Board of County Commissioners*, 794 So. 2d 1270, 1276 (Fla. 2001) (holding that once the reviewing court determines that there is competent substantial evidence to support the hearing officer's decision, the court's inquiry must end as the issue is not whether the hearing officer made the best, right, or wise decision, instead, the issue is whether the hearing officer made a lawful decision). Further, the Panel as the trier of fact was not required to believe the testimony of any witness, even if unrebutted. *Dep't of Highway Safety & Motor Vehicles v. Luttrell*, 983 So. 2d 1215, 1217 (Fla. 5th DCA 2008).

Couchman's Argument - Competent Substantial Evidence Lacking

Couchman argues that the findings of the Panel were not supported by competent substantial evidence. From review of the record including the transcript from the August 4, 2011 hearing and documents presented, this Court finds that there was competent substantial evidence in support of the Panel's findings that a preponderance of the evidence existed that Couchman more likely than not committed the violations. Also, this Court finds that the Panel had the legal authority to consider both direct and circumstantial evidence in making its findings and decision. *Perry-Ellis, Perry-Ellis v. Dep't of Highway Safety & Motor Vehicles*, 13 Fla. L. Weekly Supp. 942a (Fla. 9th Cir. Ct. 2006) (holding that the reasonable inferences from the facts and circumstances of the case were sufficient to place the petitioner in apparent control of her vehicle when it crashed).

The competent substantial evidence included the testimony and documents provided by UCF's witness, the instructor of the Vertebrate Histology course, Dr. Lopez-Ojeda ("Dr. Lopez")

summarized as follows: Dr. Lopez testified that he met with Couchman around 2:45 p.m. on May 4, 2011. He and Couchman discussed Couchman's grade in his class. To facilitate the discussion, Dr. Lopez logged into the grading system and accessed Couchman's grades in the class, including his entire quiz and test grades. Only Couchman's grades were visible on the computer screen. Their meeting was interrupted twice by another professor, Dr. Ahangari. Dr. Lopez then left his office to assist Dr. Ahangari in her office with an electronic file and asked Couchman to leave his office and wait outside. Dr. Lopez did not close the door to his office when he left. Dr. Lopez did not recall whether Couchman actually left his office. Dr. Lopez stated that the save time on the file he assisted Dr. Ahangari with was around "3:20-something." When Dr. Lopez returned, Couchman was standing in his office and they concluded their meeting. Dr. Lopez stated that Couchman left very quickly after his return.

Dr. Lopez indicated that he was out of his office for less than five minutes, probably only a couple of minutes. Dr. Lopez also noticed that upon his return to his office, his computer was logged out of the grade application. According to Dr. Lopez, only he could enter grades for that class as he entered grades for this class personally. Dr. Lopez noticed later that evening that Couchman's grades had all changed, resulting in a noticeably higher final grade. Dr. Lopez then checked each grade. He also confirmed that no other student's grades had changed. Dr. Lopez stated that it was not possible in this grading application to copy-paste or drag one student's grade record into another student's grade record, though it is simple to manually overwrite each grade. Dr. Lopez prepared a grade audit document that was submitted as evidence showing the grade changes for Couchman's grades in the class and showing that the changes were made on May 4, 2011 at 3:27 p.m.

Conclusion

Based on the foregoing, this Court finds that due process was accorded to Couchman throughout the hearing process; the essential requirements of law were followed by UCF including adherence to the BOG Regulations and UCF's Rules of Conduct; and UCF's findings and decision were supported by competent substantial evidence.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Petitioner, Paul Couchman's Amended Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 4th day of February, 2013.

/S/ _____
REGINALD K. WHITEHEAD
Circuit Court Judge

/S/ _____
HEATHER L. HIGBEE
Circuit Court Judge

/S/ _____
JULIE H. O'KANE
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: **Bruce D. Lamb, Esquire**, Gunster, Yoakley, & Stewart, P.A., 401 East Jackson Street, Suite 2400, Tampa, Florida 33602, blamb@gunster.com and **Youndy C. Cook, Associate General Counsel**, Office of General Counsel, University of Central Florida Board of Trustees, 4000 Central Florida Blvd. MH360, Orlando, Florida 32816-0015, Youndy.Cook@ucf.edu on this 4th day of February, 2013.

/S/ _____
Judicial Assistant