

No. 1-08-3277

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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JACK L. GENIUS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	
THE COUNTY OF COOK, a Municipal Corporation;	)	
THE BOARD OF COMMISSIONERS OF THE	)	
COOK COUNTY FOREST PRESERVE DISTRICT,	)	No. 05 CH 1085
a Municipal Corporation; STEVEN M. BYLINA,	)	
Superintendent of the Cook County Forest Preserve	)	
District; COOK COUNTY CIVIL SERVICE	)	
COMMISSION; COOK COUNTY EMPLOYEE	)	
APPEALS BOARD; LAWRENCE HOFFMAN; GARY	)	
WEINTRAUB; RITA REZKO; and RUBY	)	
PATTERSON,	)	Honorable
	)	Mary K. Rochford,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE CONNORS delivered the judgment of the court.  
Justices Cunningham and Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* Administrative review board’s refusal to apply the doctrine of laches to dismiss a complaint filed several years after alleged misconduct occurred was not an abuse of discretion where the plaintiff failed to demonstrate prejudice. There was sufficient evidence to support the administrative review board’s findings that the plaintiff engaged in alleged misconduct. Its finding that there was sufficient

cause to discharge the plaintiff as a result of his misconduct was not arbitrary or unreasonable. The plaintiff was not entitled to back pay resulting from improper suspension where he failed to exhaust all available remedies.

¶ 2 Plaintiff, Jack L. Genius, appeals from a judgment of the circuit court confirming a decision by defendant, the Cook County Employee Appeals Board (formerly the Civil Service Commission of Cook County) (the Employee Appeals Board or the Board), terminating his employment as a police officer with the Forest Preserve District of Cook County (the District), and denying his request for back-pay. On appeal, Genius contends that: (1) the Board erred in denying his motion to dismiss the District's written charges based on the doctrine of laches; (2) the Board's decision to discharge him was against the manifest weight of the evidence; and (3) the Board erred in denying his request for back-pay because the District's suspension without pay for more than 30 days and without written charges violated the Rules of the Civil Service Commission of Cook County.

¶ 3 In 2010, we determined that the Employee Appeals Board lacked jurisdiction to hear Genius's appeal because the District filed its initial disciplinary charges against Genius in the Civil Service Commission after it had been abolished by ordinance and replaced with the Board. Thus, we concluded, the Civil Service Commission had no statutory authority to render a decision on the District's charges and the Board had no authority to hear Genius's appeal from an adverse decision rendered by its predecessor agency. *Genius v. County of Cook*, 398 Ill. App. 3d 321, 327 (2010). Accordingly, we reversed the judgment of the circuit court and vacated the decision of the Board without addressing Genius's claims on the merits. *Genius*, 398 Ill. App. 3d at 327. The supreme court then reversed our decision, finding that section 44-50 of the Cook

County Municipal Code preserved the Board’s jurisdiction. Cook County Municipal Code § 44-50(b)(2) (“[n]othing in this article [governing personnel policies] shall deprive the Employee Appeals Board of jurisdiction to decide the merits of the disciplinary action”). The supreme court then remanded this cause to us to address the merits of Genius’s claims. *Genius v. County of Cook*, No. 110239, slip op. at 10 (Ill. June 16, 2011). For the following reasons, we now confirm the decision of the Board.

¶ 4

#### I. BACKGROUND

¶ 5 Plaintiff was hired as a District police officer in 1988 after having completed the requisite civil service examination. He was later promoted to sergeant on March 6, 1992. Thereafter, in March 1996, he was placed on paid administrative leave due to the pendency of an internal affairs investigation. On May 24, 1996, the District Chief of Police informed Genius that based on the internal affairs investigation regarding his unauthorized purchases and sales of District police badges, the District Chief of Police would be recommending his discharge.

¶ 6 Shortly thereafter, on June 17, 1996, Genius was suspended without pay pending the resolution of felony criminal charges filed against him in Vermillion County for the unlawful sale of law enforcement badges. On June 18, 1996, Genius responded to the suspension letter. Therein, he asserted his due process rights under the civil service laws and requested to be informed if formal charges were brought or civil service hearings held. He sent a copy of his response letter to the then-designated Civil Service Commission.

¶ 7 At that time, the District had sought a mutual agreement with Genius that it would stay any disciplinary proceedings against him pending the resolution of the criminal proceeding in

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return for Genius's agreement to a suspension without pay and a waiver of his right to seek back pay regardless of the ultimate resolution of the criminal charges. Genius was informed that the State's failure to obtain a conviction on the criminal charges would not preclude the District from taking subsequent disciplinary action. Genius chose not to agree to this arrangement and never executed a written waiver of his right to back pay. According to the District, Vermillion County requested that it not pursue further action while the criminal case was pending.

Therefore, while the criminal case was pending between 1996 and 2001, the District did not pursue any further disciplinary action against Genius. The record reflects that after Genius's June 18th letter demanding his due process rights, Genius filed no written communication with the District or the Civil Service Commission during the five years that he was suspended without pay while the criminal case was pending.

¶ 8 The record regarding the criminal proceeding was not before the Board and, therefore, not before this court. However, the parties do not dispute that the criminal proceeding resulted in a mistrial. Genius then appealed, seeking a determination that any retrial should have been barred by prosecutorial misconduct. According to Genius, the appellate court declined to find that a retrial would be barred. Thereafter, on February 5, 2001, the indictment against Genius was dismissed by the Vermillion County State's Attorney.

¶ 9 Three months later, on May 1, 2001, Genius sent a letter to the District Superintendent, Joseph Nevius, demanding his reinstatement and back pay. On May 25, 2001, Nevius served Genius with a notice of intent to seek his discharge. Therein, the District alleged that Genius engaged in forgery, fraudulent behavior, and sexual improprieties unbecoming an officer in

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violation of certain rules and regulations of the District Police Department and the District ethics ordinance. Section VII of the District's Disciplinary Action Policy and Procedure provided that "[a]ny suspension for a period of more than 30 days or discharge for those employees covered under Civil Service will be as provided by the Civil Service Commission."

¶ 10 The District informed Genius that, pursuant to Section 4A(13) of the Cook County Human Resources Ordinance, Genius had a right to file a written response to the charges within 30 days, and that the charges and response would be reviewed by a panel. Genius filed a written response to the charges. Additionally, on June 22, 2001, Genius filed a grievance and petitioned for appeal and review of his suspension by the Cook County Employee Appeals Board pursuant to the provisions of the Cook County Bureau of Human Resources Ordinance then in effect. On August 7, 2001, the Board refused to consider his petition after concluding that it lacked jurisdiction to hear his appeal and that the proper forum for resolution of his claims as a civil servant was the Cook County Civil Service Commission.

¶ 11 Thereafter, a pre-disciplinary hearing was held on August 29, 2001, by a District hearing panel pursuant to a directive from District Superintendent Nevius. At that hearing, counsel for Genius repeatedly requested that the panel identify the specific rules, regulations or ordinances authorizing them to conduct such a hearing and to identify the rules under which they would be proceeding. The panel refused to respond to questions regarding its authority other than to indicate that its authority was "part of the Civil Service process" and that it was an informal hearing to determine whether or not "any other disciplinary action is appropriate." The panel read the charges and provided Genius with an opportunity to respond. Genius denied the

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charges. Thereafter, on September 13, 2001, the panel recommended to Nevius that discharge proceedings be initiated against Genius.

¶ 12 On September 26, 2001, Nevius brought the charges against Genius before the Civil Service Commission seeking Genius's discharge from employment based upon the District panel's recommendation. The referral of charges indicates that it was brought pursuant to the rules of the Civil Service Commission of Cook County.

¶ 13 The Employee Appeals Board presided over an evidentiary hearing on several dates between October 2003 and August 2004 and issued a written decision on September 20, 2004. With respect to the charges relating to the buying and selling of police badges, the Board concluded that, as a matter of law, the conduct of collecting, possessing, buying, selling, and trading of police badges was not prohibited by any specific law, ordinance, or regulation. Therefore, those charges were not sustained.

¶ 14 A. The Forgery Charge

¶ 15 With respect to the unauthorized purchase of police badges and misuse of property, the District charged Genius with, *inter alia*, violating several rules and regulations of the District police department and specifically charged Genius as follows:

“You improperly used Police Department stationary and represented to an agent of the Ray O'Herron [*sic*] Company that you were authorized to purchase badges of the [District] Police Department.”

¶ 16 The following relevant evidence was presented on this charge. Genius had been a collector of police badges and insignia for about 30 years since 1973. His hobby was common

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knowledge within the District police department. Genius testified that he had been purchasing badges from the Ray O'Herrin Company, a distributor of police equipment, since the early 1980s. He paid for the badges from his own personal funds. The District police badges were manufactured by V.H. Blackington & Company.

¶ 17 Debbie Okerlund, an employee of Ray O'Herrin, testified about the procedure for ordering District badges. She stated that Blackington required a letter from the District police department authorizing Ray O'Herrin to order badges. In June 1992, Genius faxed a letter to Okerlund on the District's Department of Law Enforcement letterhead authorizing Ray O'Herrin to order District police badges. The letter was purportedly signed by then-Deputy Chief of Police, Chris Siragusa. Genius faxed the following cover letter along with the authorization:

“Hi Debbie;

Heres [*sic*] the letter of authorization I've been promising! As you know it's a fake, but it should work. Please just fax a copy to Blackington and then destroy the original. If you are ever questioned about it, just say it was faxed to you from the Forest Preserve district (Fax # 708-771-1512) and thats [*sic*] all you know. Thanks.”

¶ 18 At the time, Olde Scotland Yard was actually the sole distributor for District police equipment. Okerlund understood that the letter she received from Genius was forged. According to Okerlund, Genius explained to her that the District was having problems with their current distributor. Accordingly, as requested by Genius, and based upon the authorization letter, Okerlund placed orders with Blackington for police badges.

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¶ 19 Genius testified that he was authorized in 1988 or early 1989 by Gerald Palacios, who was then Chief of Detectives, to purchase detective badges when the District's detective unit was being formed. He further testified that Deputy Chief Siragusa authorized him to order police badges for his collection and that Siragusa drafted and signed the letter in June 1992 to Ray O'Herrin. Genius stated that he provided the letter to Ray O'Herrin and drafted the cover letter. He testified that the cover letter was a joke, and that he and Okerlund "had this kind of surreptitious or intriguing relationship," that he knew she would not receive the fax, and that he just "wanted to add to that and have some fun with her and her co-workers." He denied ever falsifying a document using District police department stationery that purportedly authorized him to order police badges. He later sent the authorization letter again in 1995 or 1996 because Okerlund said she needed a new letter of authorization to continue ordering badges. The authorization letter was faxed from his home.

¶ 20 Retired District Chief of Police Steven Castans testified that during his tenure he had only two officers designated to handle the ordering and repairing of badges, Chris Siragusa and Sergeant Steven Misicka. Castans testified that it was possible Siragusa could have authorized other persons below him to order badges. However, he also testified that Siragusa and Misicka were not allowed to order badges without Castans's approval. He also indicated that then-Chief of Detectives Palacios was authorized to order badges for the Detective unit while Castans was on a three-month training session from April 1988 through the end of June 1988.

¶ 21 Additionally, Castans testified that between the period April 1989 through August 1992, and during Castans's tenure, Ray O'Herrin was not an authorized distributor of District police

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badges. Olde Scotland Yard was the only authorized distributor at that time. In August 1992, one month after Genius's order was placed, Castans sent a letter to Blackington confirming that Olde Scotland Yard was the sole vendor for the District police insignia and requested that Blackington not accept any other request from other vendors for their insignia. When Castans was asked by the Board to compare a letter introduced by Genius with Siragusa's signature to the signature on the June 1992 authorization letter, Castans stated that based on working with Siragusa for over 15 years, the signature on the June 1992 authorization letter to Ray O'Herrin was not Siragusa's signature.

¶ 22 B. The Sexual Impropriety Charges

¶ 23 With respect to the allegations of sexual impropriety and conduct unbecoming an officer, the District charged Genius with six separate violations of District Police Department Rules. The Board directed a finding in favor of Genius on four of these charges for lack of evidence. The two remaining charges involved violations of District Police Department Rules 138 and 178. Rule 138 relates to conduct unbecoming an officer which includes conduct "which brings the Department into disrepute or reflects discredit upon the employee as a member of the Department, or that which impairs the operation or efficiency of the Department or employee." Rule 178 provides that employees:

"shall avoid actions which give the appearance of impropriety. Activities on or off-duty engaged in by Department personnel which indicate instability in character or personality shall subject the officer to disciplinary action."

¶ 24 The specific charges brought by the District and considered by the Board were as

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follows:

(1) “While on duty and while the individual was a student at the University of Illinois, you picked the individual up from a dormitory and thereafter transported the individual to a secured Forest Preserve District Grove in the Palos District (Route 45 between 95<sup>th</sup> and 111<sup>th</sup> Street)[;] that you then unlocked, entered and there you performed oral sex on the individual while you masturbated.”

(2) “[u]tilizing Forest Preserve District keys, you entered closed Forest Preserve District property for the purpose of engaging in sexual conduct.”

¶ 25 The following relevant evidence was presented at the hearing on these charges. B. Wilson testified that in the Fall of 1990, he was a student at the University of Illinois in Chicago. A mutual friend introduced him to Genius. Genius called him at his dorm room to arrange a “blind date.” Genius picked him up in a dark sedan resembling a typical police car with a scanner. There was nothing on the vehicle to indicate that it was a District police car. Genius told him he was a police officer and showed him his badge and identification to “reassure [his] fears about heading into the forest preserve” that evening. Wilson stated that he was nervous about going into a locked forest preserve, but Genius indicated that “since he was an officer[,] it was okay.” According to Wilson, Genius was not in uniform and never claimed to be on duty. They drove south on Interstate 55, exited at LaGrange Road, and turned right somewhere

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between 95<sup>th</sup> Street and 123<sup>rd</sup> Street. They arrived at a forest preserve location where Wilson observed a red sign stating “Forest Preserve District.”

¶ 26 Wilson said that the preserve was locked, “meaning the chain link gate was on it.”

Genius opened the gate, drove inside and closed the gate behind him. Wilson did not recall whether Genius used a key to open the gate, but indicated that the preserve was locked. The two drove back to some picnic tables where the road dead-ended and where they would not be seen. While inside the car, they had a sexual encounter wherein Genius performed oral sex on Wilson and masturbated. There was nobody else in the area at the time and it was dark. They were there for about 15 minutes. Wilson denied that Genius used his badge and identification to force him to engage in sexual acts. Wilson also testified that he gave a statement about the encounter to the District in February 1996. That statement was not introduced into evidence, but Wilson indicated that it was consistent with his testimony at the hearing.

¶ 27 Genius confirmed that he met Wilson through a mutual friend, that he picked Wilson up at his dormitory in his personally-owned vehicle equipped with a police scanner, that he was wearing street clothes at the time, and that the two engaged in sexual conduct as testified to by Wilson. Genius denied telling Wilson that he was a District police officer and he was never asked whether he was on duty at the time of the occurrence. Genius denied that the encounter took place on District property. He described the location as being in Willow Springs “at Route 45 around Archer Avenue in that area between the ship and sanitary canal and the [District] property south of Archer Avenue.” He described the location as an undeveloped wooded area having picnic tables and that the area was surrounded by forest preserve property. Genius

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additionally testified that he did not use his keys to obtain access to the location where the encounter took place because it was not District property. Castans testified that because Genius was a District officer, Genius had access to all District property. He specifically stated that Genius was able to access District property after hours when the forest preserve gates were locked.

¶ 28 C. The Board's Decision

¶ 29 The Board sustained the forgery charge against Genius, finding that he improperly used a forged letter on Department letterhead to obtain police badges in order to further his personal badge collection hobby and rejected Genius's explanation that the cover letter was a joke.

¶ 30 As to the sexual impropriety charges, the Board found Wilson's testimony to be credible. The Board found that Genius identified himself to Wilson as a police officer. It further rejected Genius's testimony that the encounter did not take place on District property. The Board sustained both sexual impropriety charges, concluding that,

“the conduct of Sgt. Genius in using his police badge and identification and keys to facilitate a private sexual encounter in a Forest Preserve District facility closed for the evening violated Rule 138 (conduct unbecoming) and Rule 178 (actions which give the appearance of impropriety) of the Rules and Regulations of the Forest Preserve District of Cook County.”

¶ 31 The Board additionally held that by “using his position to facilitate a private sexual encounter in a Forest Preserve District facility closed for the evening,” Genius engaged in conduct unbecoming a police officer, and that allowing him to continue as a police officer would

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be detrimental to the discipline and efficiency of the Department and the public. The Board concluded that the sustained charges constituted good and sufficient cause to discharge Genius as a police officer of the District police department.

¶ 32 The Board also rejected Genius's argument that the action against him was barred by the doctrine of laches. Genius maintained that the District's delay in bringing the charges based upon conduct that occurred ten years prior severely prejudiced his ability to defend against the charges. The Board stated that its findings regarding the forgery charge were based upon the documentary evidence and Genius's own testimony. The sexual impropriety charges were sustained based upon Genius's testimony and the testimony of Wilson, which was consistent with a statement he had given in 1996.

¶ 33 The Board also rejected Genius's demand for an award of back pay for his suspension without pay for five years without written charges filed against him by the District. The Board made no findings on whether the District violated his right to due process or had the authority to suspend Genius without pay for that period of time. However, the Board found that Genius was not entitled to any back pay because he failed to appeal his suspension to the Civil Service Commission or file an action for *mandamus* during the period of his suspension without pay.

¶ 34 The evidence adduced at the hearing regarding this issue included the letter Genius sent to Castans on June 18, 1996, with a copy to the Civil Service Commission, stating that he was "demanding his Due Process Rights" and asking to be advised if formal charges were to be issued and if so to inform him when the hearing would be held. Genius further testified at the hearing before the Board regarding his efforts to obtain due process between 1996 and 2001

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when the formal charges were filed. He stated that in 1997 he spoke with Castans a number of times as well as other officers. Superintendent Nevius would not return his telephone calls. He occasionally called Nevius in 1998. He did not talk to Nevius about his suspension in 1999 or 2000. Castans acknowledged that Genius was very adamant about resolving the suspension. Castans also acknowledged that in a conversation with Genius in December 1996, he told Genius that if he was acquitted of the criminal charges, he would be reinstated, but whether further disciplinary action would be taken would be determined by the general superintendent. After the letter of June 18, 1996, Genius sent no written communication to anyone regarding his suspension until May 1, 2001, when he sent the letter to Nevius seeking a return to service and back pay after being acquitted of the criminal charges.

¶ 35 The Board found the letter of June 18, 1996, to be insufficient to serve as a proper appeal of his suspension because it did not request a hearing before the Commission, did not mention the suspension, and the request was conditional, merely asking to be notified if formal charges were filed. Accordingly, the Board denied Genius's request for back pay.

¶ 36 Subsequently, Genius filed a complaint in the circuit court seeking judicial review of the Board's decision. Following a hearing, the circuit court confirmed the decision of the Board to discharge Genius as a District police officer. The court held that Genius's claim of laches was not substantiated by the record; that although the suspension violated the Rules of the Civil Service Commission of Cook County, the record supported the Board's conclusion that Genius failed to timely appeal from his unlawful suspension; and that the Board's findings on the charges were not against the manifest weight of the evidence. Genius now appeals.

¶ 37

## II. ANALYSIS

¶ 38

### A. Laches

¶ 39 We first consider Genius’s contention that the Board erred in failing to dismiss the disciplinary charges based on the doctrine of laches because the conduct for which he was ultimately terminated occurred several years before the date on which those charges were filed against him. The doctrine of laches has been applied when a party’s failure to timely assert a right has caused prejudice to the adverse party. *Van Milligan v. The Board of Fire and Police Commissioners of the Village of Glenview*, 158 Ill. 2d 85, 89 (1994). The two fundamental elements of laches are: (1) lack of due diligence by the party asserting the claim; and (2) prejudice to the opposing party. *Van Milligan*, 158 Ill. 2d at 89. Whether to apply laches to bar a party from bringing charges is generally a discretionary matter and depends upon the particular facts and circumstances of each case. *Van Milligan*, 158 Ill. 2d at 91; *Monroe v. Civil Service Comm’n*, 55 Ill. App. 2d 354 (1965).

¶ 40 In particular, as applied to the actions of a governmental entity in the exercise of its governmental powers, there is considerable reluctance to impose the doctrine “unless unusual or extraordinary circumstances are shown.” *Van Milligan*, 158 Ill. 2d at 90. The concern is that applying the doctrine of laches “ ‘may impair the functioning of the [governmental body] in the discharge of its government functions, and \* \* \* valuable public interests may be jeopardized or lost by the negligence, mistakes, or inattention of public officials.’ ” *Van Milligan*, 158 Ill. 2d at 90-91 (quoting *Hickey v. Illinois Central R.R. Co.*, 35 Ill. 2d 427, 447-48 (1966)).

¶ 41 Based on our review of the record, Genius has not demonstrated a valid reason to disturb

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the discretionary determination of the Board. With respect to the forgery charge, Genius argues that he was prejudiced because Okerlund's recollection of the events from 1992 was poor, and Genius was no longer able to call Siragusa as a witness to verify the signature on the authorization letter due to his death. Nevertheless, the Board stated that its findings were based primarily on Genius's testimony and the documentary evidence he admittedly wrote stating that the Siragusa authorization letter was "fake." The Board found that Genius's explanation was not credible. Thus, notwithstanding the lapse in time, Genius has not demonstrated how he was prejudiced in defending this charge. See, e.g., *Forberg v. Board of Fire & Police Commissioners*, 40 Ill. App. 3d 410, 412 (1976) (laches inapplicable where discharged police officer could not show prejudice or that factual disputes were solely dependent upon witness recollection).

¶ 42 With respect to the sexual impropriety charges, Genius argues generally that he was prejudiced because the charges were brought ten years after the incident occurred, and that he would have taken steps to gather evidence or prevent the destruction of evidence that would have allowed him to present a defense to the charges. We find this argument unpersuasive and speculative because Genius does not indicate what specific other relevant evidence those witnesses would have presented or what relevant evidence was destroyed that hindered his defense of the charges. See *Van Mulligan*, 158 Ill. 2d at 91 (discharged police officer was not prejudiced by a five-year delay in filing disciplinary charges where the argument was speculative that he was actually harmed by the lapse of time).

¶ 43 We also find the case upon which Genius relies to be factually distinguishable. In *Mank*

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*v. Board of Fire & Police Commissioners*, 7 Ill. App. 3d 478 (1972), the appellate court upheld the circuit court’s finding that laches applied to charges filed against a police officer where those charges relied upon conflicting evidence and the sole recollection of witnesses, several of whom were unavailable. Unlike *Mank*, the Board sustained the charges based upon documentary evidence in the case of the forgery charges, and the testimony of the only two witnesses involved in the sexual encounter that gave rise to those sustained charges. The conflicts in their testimony focused on where the encounter occurred, whether Genius told Wilson he was a police officer, and whether Genius used his keys to unlock the forest preserve entrance. Only those two eyewitnesses could have testified to these facts. Furthermore, Wilson stated that he was testifying from his independent recollection of the evening’s events and that his testimony was nevertheless consistent with a written statement he gave to the District in 1996. Accordingly, we cannot say that the Board abused its discretion in finding that Genius was not prejudiced in defending against the charges and that laches did not apply to bar the District from bringing the sexual impropriety charges in 2001.

¶ 44

#### B. Discharge for Cause

¶ 45 We next consider Genius’s contention that the decision to discharge him was erroneous. We begin with an understanding of the scope of our review of this issue. “In administrative cases, we review the decision of the administrative agency, not the determination of the circuit court.” *Outcom, Inc. v. Illinois Department of Transportation*, 233 Ill. 2d 324, 337 (2009) (quoting *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 504 (2007)). The scope of review of an administrative agency’s decision regarding discharge requires a two-

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step analysis. *Ehlers v. Jackson County Sheriff's Merit Commission*, 183 Ill. 2d 83, 89 (1998).

First, a court must determine whether the agency's findings are contrary to the manifest weight of the evidence. *Ehlers*, 183 Ill. 2d at 89. Second, the reviewing court must determine whether the findings of fact provide a sufficient basis for the agency's conclusion that "cause" for discharge exists. *Ehlers*, 183 Ill. 2d at 89.

¶ 46 Genius asserts that the Board's finding that he used a forged authorization letter to obtain police badges was against the manifest weight of the evidence. The decision of an administrative agency is against the manifest weight of the evidence only where the opposite conclusion is clearly evident. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992). The mere fact that the opposite conclusion might be reasonable or that a reviewing court might have ruled differently will not justify reversal of the agency's findings. *Abrahamson*, 153 Ill. 2d at 88. Rather, we must consider whether there is sufficient evidence in the record to support the agency's findings. *Abrahamson*, 153 Ill. 2d at 88. It is not a court's function on administrative review to reweigh evidence or make an independent assessment of the facts. *Abrahamson*, 153 Ill. 2d at 88.

¶ 47 Here, Genius maintains that in finding that the authorization letter was forged, the Board improperly relied on Castans's testimony comparing Siragusa's signature on two of Genius's admitted exhibits with the disputed signature on the June 1992 authorization letter. Genius contends that the evidence was improperly admitted because there was no foundation laid regarding the genuineness of the signature on Genius's exhibits. "A witness who is not an expert can give his opinion authenticating a writing or signature if he has sufficient familiarity with the

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handwriting of the putative writer.” M. Graham, Cleary & Graham’s Handbook of Illinois Evidence § 901.3, at 629 (4th ed. 1984). However, we need not determine whether the comparison testimony was properly admitted where there was other sufficient evidence in the record to support the Board’s factual determination on this charge even without considering Castans’s testimony on this point.

¶ 48 Genius acknowledged that he sent the authorization and cover letter of June 3, 1992, to Ray O’Herrin. It was uncontradicted that Ray O’Herrin was not an authorized distributor of District police badges at that time. Genius’s cover letter, which he drafted and sent to Okerlund, clearly indicates that the authorization letter was a “fake.” This documentary evidence speaks for itself. The Board further found Genius’s explanation that the cover letter was simply a “joke” to be not credible and rejected it. It is the function of the agency who heard the evidence and observed the witnesses to make these types of credibility determinations (*Matos v. Cook County Sheriff’s Merit Board*, 401 Ill. App. 3d 536, 542 (2010)), and we will not substitute our judgment for the agency’s determination on these matters (*Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 540 (2006)). Okerlund’s testimony that she understood the authorization to be forged also supports the Board’s findings.

¶ 49 Additionally, Genius acknowledged that he sent the authorization letter again in 1995 or 1996. The uncontradicted evidence established that Ray O’Herrin was not the authorized distributor of District police badges at that time, and there is no evidence in the record to support a finding that Genius was given permission to resend that letter in 1995 or 1996 to order badges from an unauthorized distributor. As the Board stated, even if Genius “may have been

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authorized at one point to obtain detective badges[, that] does not mean that he was given carte blanche to order [District] police badges for his own purposes years later.” Accordingly, there is sufficient competent evidence in the record to support the Board’s determination. Thus, we conclude that the Board’s findings on this charge are not against the manifest weight of the evidence.

¶ 50 We next consider the Board’s findings regarding the charges related to the sexual conduct on District property. Genius initially argues that: (1) there was no evidence to support the charge that he was on duty at the time of the occurrence; and (2) there was no evidence to support the Board’s conclusion that Genius used his badge, identification, and District keys to facilitate the encounter in the preserve. The District fails to address either of these arguments, instead maintaining that the issue is one of conflicting testimony and that the Board was free to resolve conflicts in the evidence by crediting Wilson’s testimony and rejecting Genius’s testimony.

¶ 51 Although the District is correct that the Board was free to resolve conflicts in the evidence and weigh that evidence accordingly (*Matos*, 401 Ill. App. 3d at 542), the issue Genius raises is whether there was a lack of evidence to support the charges that were brought by the District. The District charged Genius with specific conduct that it alleged constituted a violation of the District Police Department Rules. The first sexual impropriety charge provides that the conduct occurred “[w]hile on duty.” However, there is no evidence in the record to support that charge and no finding was made to this effect by the Board.

¶ 52 Genius denied that he was on duty at the time and Wilson confirmed that Genius never

claimed to be on duty at the time of the encounter. The record also reflects that Genius was not in uniform at the time of the encounter. Although the District rules provide that an employee may be discharged for certain improper conduct during off-duty hours, Genius was not given sufficient notice that he would be subject to discipline for “off-duty” conduct based on the charges presented. See *Cartwright v. Civil Service Commission*, 80 Ill. App. 3d 787 (1980) (charges in administrative proceeding need not be drawn with same precision required of pleadings in judicial actions, but it is essential that they be sufficiently clear and specific to allow preparation of a defense). Therefore, there was insufficient evidence to support the Board’s conclusion that the encounter occurred while Genius was on duty.

¶ 53 On the other hand, there was sufficient evidence to support the Board’s conclusion that Genius used the instrumentalities of his office to facilitate the sexual encounter. Although the Board concluded that Genius used his “police badge and identification and keys” to facilitate the sexual encounter, the District’s charging statement asserted only that Genius used his keys to enter closed District property for the purpose of engaging in sexual conduct.

¶ 54 The District’s evidence, while minimal, is sufficient to sustain the charge. The agency is responsible for hearing the witnesses’ testimony, making all credibility determinations, and drawing reasonable inferences from all of the evidence presented. *Lapp v. Village of Winnetka*, 359 Ill. App. 3d 152, 167 (2005). The agency’s “findings and conclusions \*\*\* on questions of fact are accepted as *prima facie* true and correct.” *Lapp*, 359 Ill. App. 3d at 167. As the reviewing court, we must view the evidence presented in the light most favorable to the agency and determine whether any rational trier of fact could have agreed with the agency’s findings

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and conclusions. *Lapp*, 359 Ill. App. 3d at 167. If so, then we must confirm the agency's determination. *Marconi*, 225 Ill. 2d at 534.

¶ 55 Here, Wilson testified that on the night of the encounter, he saw Genius open and close the chain link gate that "locked" the entrance to the forest preserve, although he could not recall whether he saw Genius use a key to do so. However, Castans testified that as a sergeant with the District, Genius could access District property after hours when the gates to the properties were locked. Wilson also testified that Genius indicated to him that "since he was an officer[,] it was okay" to enter District property after hours. From this testimony, the Board could reasonably infer that Genius used his District-issued keys to enter the locked forest preserve property after hours for the purpose of engaging in sexual conduct. See *Lapp*, 359 Ill. App. 3d at 167. While a different inference may have been drawn from the evidence presented, we cannot say that no rational trier of fact would agree with the Board's conclusion. *Lapp*, 359 Ill. App. 3d at 167.

¶ 56 Furthermore, we cannot say that the opposite conclusion is clearly evident such that the Board's decision was against the manifest weight of the evidence. See *Abrahamson*, 153 Ill. 2d at 88. Although Genius denied using his keys to open locked District property, because he claimed that the encounter did not occur on District property, the Board chose not to credit Genius's version of events, which was within its authority to do. *Lapp*, 359 Ill. App. 3d at 168.

¶ 57 Having determined that there was sufficient evidence to support dismissal based on the forgery charge and the sexual impropriety charge, we must now determine whether the Board's factual findings are sufficient to support the Board's conclusion that "cause" existed for Genius's discharge. *Ehlers*, 183 Ill. 2d at 89. An officer in the civil service may be removed only for

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“cause” (55 ILCS 5/3-14023 (West 2006)), which has been judicially defined as “ ‘some substantial shortcoming which renders [the employee’s] continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and something which the law and a sound public opinion recognize as a good cause for his [discharge].’ ” *Ehlers*, 183 Ill. 2d at 89 (quoting *Fantozzi v. Board of Fire & Police Commissioners*, 27 Ill. 2d 357, 360 (1963)). An administrative tribunal’s finding of “cause” for discharge commands the reviewing court’s deference and should not be overturned unless it is arbitrary, unreasonable, or unrelated to the requirements of the service. *Ehlers*, 183 Ill. 2d at 89.

¶ 58 Here, the Board’s finding of “cause” for discharge is not arbitrary or unreasonable. “A police officer who freely disregards laws that he has sworn to uphold impairs the discipline and efficiency of his entire department and undermines the authority of every officer on the street.” *Duncan v. City of Highland Board of Police and Fire Commissioners*, 338 Ill. App. 3d 731, 737 (2003). The evidence revealed that Genius engaged in conduct unbecoming an officer by using the instrumentalities of his office to facilitate a sexual encounter on District property at a time when the property was closed and by forging an authorization letter on District letterhead to purchase police badges for his own personal hobby. Genius’s conduct indicates a lack of good judgment and a disregard for the Rules and Regulations of the District.

¶ 59 Taken together, these incidents support the Board’s findings that Genius exhibited substantial shortcomings as a police officer and that his continued employment as a police officer may have a substantial, detrimental impact on the discipline and efficiency of the District police department. Therefore, the Board’s decision to discharge Genius was not arbitrary or

unreasonable nor unrelated to the requirements of service as a police officer.

¶ 60

### C. Due Process Violation

¶ 61 We next consider Genius's argument that his suspension without pay for more than 30 days without written charges and a prompt hearing violated his due process rights and the rights afforded him under the Rules of the Civil Service Commission of Cook County. An agency's decisions on questions of law are reviewed *de novo*. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998). Initially, we note that Genius has presented no legal analysis to support a federal constitutional deprivation, in violation of Supreme Court Rule 341(h)(7), and he has forfeited review of this issue. See *Vine Street Clinic v. Healthlink, Inc.*, 222 Ill. 2d 276, 301 (2006).

¶ 62 Even if we were to consider his contention that he was denied due process, we would find it without merit. The constitutions of the United States and the State of Illinois provide a right to procedural due process and prohibit the deprivation of property without due process. U.S. Const., amends. V, XIV; Ill. Const. 1970, art. I, §2; see also *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). To establish a violation of the constitutional right to due process, a plaintiff must show a deprivation of property and a denial of due process. See *Schroeder v. City of Chicago*, 927 F.2d 957, 959 (7th Cir. 1991); see also *Trettenero v. Police Pension Fund*, 333 Ill. App. 3d 792, 799 (2002) (“[a]s a threshold matter, we must consider whether a constitutionally protected liberty or property interest is at stake”). Here, as a police officer in the classified service, Genius had a property right in his continued employment and was entitled to due process protection because he could only be suspended beyond 30 days for cause. 55 ILCS 5/3-14023 (West 1996).

¶ 63 Genius argues that under *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), the Due Process Clause requires a hearing “ ‘at a meaningful time.’ ” *Loudermill*, 470 U.S. at 547 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). Genius argues that under the civil service rules, he was entitled to due process protections prior to any suspension beyond 30 days. The District responds that Genius’s due process rights were not violated during the pendency of the criminal proceedings in Vermillion County. In support, the District cites *Gilbert v. Homar*, 520 U.S. 924 (1997). *Gilbert* specifically addressed whether a public employee’s suspension without pay must always be preceded by notice and an opportunity to be heard in order to satisfy due process. The Court in *Gilbert* began its analysis by explaining that due process is a flexible concept, and “ ‘calls for such procedural protections as the particular situation demands.’ ” *Gilbert*, 520 U.S. at 930 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

¶ 64 The Court explained that resolution of the issue requires a balancing of the private and governmental interests that are affected. In determining what process is constitutionally due, the court must balance the three distinct factors set forth in *Mathews*: (1) the private interest affected by the official action; (2) the risk of erroneous deprivation of that interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards, and (3) the government’s interests, including the fiscal and administrative burdens that additional or substitute procedural safeguards would entail. *Gilbert*, 520 U.S. at 931-32 (quoting *Mathews*, 424 U.S. at 335).

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¶ 65 In *Gilbert*, a university police officer was arrested on August 16, 1992, and charged with certain felony offenses. He was immediately suspended without pay pending an investigation. Although the criminal charges against him were dropped on September 1, 1992, his suspension remained in effect. Thereafter, on September 18, he was provided an opportunity to be heard by university officials. On September 23, he was demoted to groundskeeper. He subsequently filed an action claiming that the university's failure to provide him with notice and an opportunity to be heard before suspending him without pay violated his right to due process.

¶ 66 In considering what process is due prior to a suspension of a public employee, and in balancing the *Mathews* factors, the Court acknowledged the officer's interest in "the uninterrupted receipt of his paycheck," but determined that account must be taken of the length and finality of the deprivation. *Gilbert*, 520 U.S. at 932. The Court balanced that interest with the important state interest at issue. The Court held that the state "has a significant interest in immediately suspending, when felony charges are filed against them, employees who occupy positions of great public trust and high public visibility, such as police officers." *Gilbert*, 520 U.S. at 932.

¶ 67 Lastly, the court held that the most important factor in resolving the case was the risk of erroneous deprivation factor. The court found that the arrest and filing of charges imposed upon the officer by an independent body demonstrated that the suspension was not arbitrary and served as an objective fact that would raise serious public concern. *Gilbert*, 520 U.S. at 933. Accordingly, the court held that the arrest and charges "serve to assure that the state employer's decision to suspend the employee is not baseless or unwarranted \*\*\* in that an independent third

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party has determined that there is probable cause to believe the employee committed a serious crime.” *Gilbert*, 520 U.S. at 934. Thus, the arrest and filing of criminal charges assure that there are reasonable grounds to support the suspension without pay. However, the court held that once the charges are dropped, the risk of erroneous deprivation increases substantially and at that point there would be likely value in holding a prompt hearing. *Gilbert*, 520 U.S. at 935.

¶ 68 Here, Genius had a significant property interest in the continued receipt of his salary. Genius’s interest here was greater than the plaintiff’s interest in *Gilbert* because the suspension, although not permanent, was indefinite and dependent upon the outcome of the criminal proceedings. See *Gilbert*, 520 U.S. at 932 (stating that the length and finality of deprivation must be considered when determining what process is due). Nevertheless, that interest must be balanced against the District police department’s interest in immediately suspending Genius when the criminal charges were filed against him where he occupied a position of great public trust and high public visibility. With respect to the third factor, the arrest and charges in relation to the police badges constituted an independent finding of probable cause that provided sufficient protection against an erroneous deprivation.

¶ 69 Nevertheless, unlike *Gilbert*, here, there was an appreciable five-year delay between 1996 when the criminal charges were brought and 2001 when the criminal charges were eventually dropped. This is more troubling because of the length of time after the suspension without any hearing. The District cites a Connecticut Appellate Court decision, *Santana v. City of Hartford*, 94 Conn. App. 445, 894 A.2d 307 (2006), which is very close factually to the present case in which there was a similar delay (8 years and 5 months). In *Santana*, the court,

citing *Gilbert*, excluded the time frame from the Genius's suspension until his acquittal in its due process analysis.

“In accord with *Gilbert*, following the plaintiff's arrest and the presentment of charges by the grand jury, there was an independent finding of probable cause that provided sufficient protection against an improper suspension. This finding remained in effect until the criminal prosecution was completed. Any additional hearings would not serve any useful purpose in light of the probable cause determination underlying the plaintiff's arrest and charges filed against him.” *Santana*, 94 Conn. App. at 472.

¶ 70 Accordingly, the court found that although there was an appreciable delay, it did not constitute a violation of his due process rights. *Santana*, 94 Conn. App. at 473. The court, in a footnote, also noted, similarly to this case, that the record did not explain the cause of the eight-year delay and that there was nothing to suggest that Genius filed a motion for a speedy criminal trial. *Santana*, 94 Conn. App. at 473, n. 23.

¶ 71 Nevertheless, Genius contends that the Rules of the Civil Service Commission afforded him greater pre-suspension protection. Specifically, Genius argues that the District was not authorized to suspend him for more than 30 days without filing its own written disciplinary charges before the Civil Service Commission and providing an opportunity for a hearing. Specifically, Genius directs our attention to Rule IX, section 1, which provides in pertinent part as follows:

“ No officer or employee in the classified service, who shall have been

certified and appointed under these rules, shall be removed, discharged, reduced in rank or suspended for a period of more than 30 days, except for cause, upon written charge or charges filed in the office of the Commission by the appointing or executive officer of the department in which the officer or employee is then employed and after an opportunity is give to the officer or employee to be heard in his own defense. Any charge or charges shall be investigated or heard by the Commission, or by such person or board which may be appointed by the Commission to conduct such investigation or hearing.” Rule IX, section 1 of the Civil Service Rules.

¶ 72 The rule establishes that the District was without authority to suspend Genius for more than 30 days without filing written charges before the Civil Service Commission and providing him with an opportunity to be heard in his own defense. Here, Genius was suspended without pay for five years before the District filed any written charges against him with the Commission and provided him with a subsequent hearing.

¶ 73 In addressing Genius’s argument, the Board did not make a finding as to whether there was a deprivation of due process rights. Instead, the Board found that, even if there was a deprivation, Genius failed to avail himself of meaningful remedies subsequent to the alleged unlawful suspension. Specifically, the Board held that Genius failed to appeal his suspension to the former Civil Service Commission during the five-year period or file an action for *mandamus* in the circuit court. Accordingly, the Board held Genius was not entitled to back-pay during his suspension.

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¶ 74 The District maintains that there were post-suspension administrative remedies available to Genius and he failed to avail himself of these remedies. Specifically, the District maintains that the notice provided in the June 1996 suspension letter to Genius was sufficient to trigger Rule IX, section 2 of the Rules of the Civil Service Commission, which it contends provided Genius with an opportunity to request a hearing before the Commission. Section 2 provides in pertinent part that:

“The person sought to be \*\*\* suspended shall have written notice of any such charge or charges. \*\*\* Such person shall be allowed 7 days from the date of the mailing of the charge or charges \*\*\* to file in the office of the Commission a written answer to any such charge or charges and request an opportunity to be heard.”

¶ 75 We disagree that the letter to Genius in June 1996 sufficed to satisfy the District’s initial obligation under section 1 to file its own written charges before the Commission, which was not done in this case until three months after Genius’s acquittal of the criminal charges. Therefore, section 2 did not provide Genius with a procedural mechanism to seek meaningful review of his suspension until formal written charges were filed with the Commission in 2001. The Board’s determination that Genius could have “appealed” to the Commission is equally unavailing since there was no procedural mechanism in section 1 to “appeal” anything until written charges were filed with the Commission. Only then would that prompt an opportunity for response by Genius and an opportunity for a hearing under section 2.

¶ 76 Nevertheless, we reject Genius’s assertion that “he had no avenue of recourse for his

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unlawful suspension because no written charges were filed.” Where there are meaningful post-deprivation remedies available, the failure to pursue post-deprivation remedies precludes a due process claim. See *Stachowski v. Town of Cicero*, 425 F.3d 1075, 1078 (7th Cir. 2005). Here, Genius could have availed himself of other post-suspension remedies. As the Board indicated, Genius could have filed an action in the circuit court for a writ of *mandamus*. *Mandamus* is an extraordinary remedy to enforce the performance by a public officer of nondiscretionary official duties. *1350 Lake Shore Associates v. Healey*, 223 Ill. 2d 607, 614 (2006) (citing *People ex rel. Birkett v. Jorgensen*, 216 Ill. 2d 358, 362 (2005)). To show entitlement to *mandamus* relief, the petitioner must show (1) a clear right to the requested relief, (2) a clear duty of the public officer to act, and (3) a clear authority of the public officer to comply with the order. *Pucinski v. County of Cook*, 192 Ill. 2d 540, 545 (2000) (citing *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 229 (1999)).

¶ 77 “A writ of *mandamus* ‘provides affirmative rather than prohibitory relief [citation] and can be used to compel the undoing of an act.’ ” *People ex rel. Waller v. McKoski*, 195 Ill. 2d 393, 398 (2001) (quoting *Noyola v. Board of Education of the City of Chicago*, 179 Ill. 2d 121, 133 (1997)). *Mandamus* is an appropriate remedy to compel compliance with mandatory legal standards. See *Jorgensen*, 216 Ill. 2d at 362. However, relief will not be granted when the act in question involves the exercise of an official’s discretion. *People ex rel. Devine v. Sharkey*, 221 Ill. 2d 613, 616-17 (2006).

¶ 78 As applied in this case, Genius could have filed an action seeking a writ of *mandamus* to compel the Commission to either direct the District to file charges and provide an opportunity for a hearing before the Commission concerning his suspension beyond the 30 days or order his

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reinstatement. See *Szewczyk v. Board of Fire and Police Commissioners of Village of Richmond*, 381 Ill. App. 3d 159, 170 (2009) (denial of hearing was properly remedied by complaint for *mandamus* by former police chief requesting an order directing the Board to conduct a hearing on his request to be restored to rank of sergeant); *Farmer v. McClure*, 172 Ill. App. 3d 246, 252 (1988) (*mandamus* was proper procedure to order unlawfully discharged plaintiff reinstated and award back pay where plaintiff established a right to enforcement of administrative rules); *Shawgo v. Department of Children and Family Services*, 182 Ill. App. 3d 485, 490 (1989) (court held proper remedy for a petitioner before an administrative agency when the agency refuses a clear right to a hearing is to proceed in *mandamus*); *People ex rel. Jaworski v. Jenkins*, 56 Ill. App. 3d 1028, 1031-32 (1978) (police officer appropriately filed for a writ of *mandamus* after he had been placed on inactive duty without notice of the charges or a response to his letter requesting reinstatement or a hearing).

¶ 79 Here, Genius indeed had a clear legal right under the Rules of the Civil Service Commission that were intended to govern his procedural rights. *Farmer*, 172 Ill. App. 3d at 252. Further, the District lacked the authority to suspend him beyond the 30 days without filing written charges and providing him an opportunity to be heard. The Commission had the duty and the authority to follow the disciplinary procedures set forth by those rules. See *Nolan v. Hillard*, 309 Ill. App. 3d 129, 143-44 (1999) (rules adopted by an administrative agency have the force of law and binds the agency to them). However, Genius did not seek this available relief and instead waited five years to seek redress. Accordingly, we conclude that Genius had a meaningful remedy for the District's violation of the Rules of the Civil Service Commission but

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failed to pursue that remedy. Consequently, we confirm the Board's finding that Genius is not entitled to back pay for the period of his suspension.

¶ 80

### III. CONCLUSION

¶ 81 For the foregoing reasons, we confirm the decision of the Board in all respects. Because Genius could not demonstrate prejudice in the delay of filing charges, the doctrine of laches did not preclude the District's claims. Additionally, the Board's determination that Genius was properly discharged for cause was not against the manifest weight of the evidence. Finally, Genius did not exhaust his remedies before asserting his due process claim and, thus, it fails.

¶ 82 Confirmed.