2011 IL App (1st) 102568-U

FIRST DIVISION
FILED: September 12, 2011

No. 1-10-2568

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PAUL ELSNER, Plaintiff-Appellant and Cross-Appellee, v. THE PROSPECT HEIGHTS FIRE PROTECTION DISTRICT, CHIEF DON GOULD, THE PROSPECT HEIGHTS FIRE PROTECTION DISTRICT BOARD OF COMMISSIONERS, THE PROSPECT HEIGHTS FIRE PROTECTION DISTRICT BOARD OF TRUSTEES, and ITS INDIVIDUAL MEMBERS, Defendants-Appellees and Cross-Appellants.	)	Appeal from the Circuit Court of Cook County. No. 07 CH 37622 The Honorable LeRoy K. Martin, Jr., Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Karnezis and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court had jurisdiction to consider the plaintiff's request for administrative review, and the decision of the Prospect Heights Fire Protection District Board of Commissioners to terminate the plaintiff's employment for falsifying two answers on his employment application was not clearly erroneous.

¶ 2 The plaintiff, Paul Elsner, appeals from a judgment of the circuit court confirming, in part,

a decision by the Board of Commissioners of the Prospect Heights Fire Protection District (the Board) to terminate the plaintiff's employment with the Prospect Heights Fire Protection District (the District). On appeal, the plaintiff contends that the Board erred in finding that he had falsified information on his employment application and that such conduct constituted sufficient cause for discharge. The defendants have cross-appealed, claiming that the circuit court lacked jurisdiction to review the discharge decision and that the court erred in reversing the Board's decision with regard to one of the plaintiff's application statements. For the reasons that follow, we affirm the circuit court's decision in all respects.

¶ 3 The record establishes the following relevant facts. During August 1999, the plaintiff was employed by the public works department of the City of Prospect Heights (the City), and he also worked part-time as a paid, on-call firefighter for the District. On August 13, 1999, the City began an internal investigation concerning an allegation that the plaintiff had sexually harassed another employee in the department. Following that investigation, the City informed the plaintiff that he was subject to disciplinary action based upon a finding that he had committed sexually harassing conduct. In particular, the District advised the plaintiff that he would be suspended for five days and, immediately following the suspension, would be terminated from his employment.

¶ 4 After receiving this notification, the plaintiff retained Margaret Angelucci, an attorney, to represent him in challenging the disciplinary action. On January 10, 2000, Angelucci sent a letter concerning the plaintiff's discharge to counsel for the City. The letter outlined an agreement reached by the parties, stating:

"1. [t]he City *** shall convert [the plaintiff's] termination to a resignation

and insure that his employment files will be changed accordingly;

2. [the plaintiff] will waive his right to appeal his termination pursuant to the City's Employment Manual;

3. [a]ll potential employers of [the plaintiff] will only be provided with his job title, salary and benefits[,] and term of employment;

4. [t]he parties agree not to disclose the terms of this understanding to anyone other than legal counsel."

¶ 5 After resigning from his position with the City, the plaintiff continued his employment as a firefighter for the District. In that capacity, he performed at an acceptable level, gained a number of certifications, and received several commendations for his service. He also was the subject of a number of disciplinary actions. The plaintiff was promoted to the position of part-time lieutenant in October 2001.

¶ 6 In early 2005, the District compiled an "eligibility list" for the position of full-time captain/paramedic. To be considered for inclusion on the list, the plaintiff was required to fill out an application. Question number 32 of the application requested that he provide a list of prior employers and the reason for leaving those employers. With regard to his previous position with the City, the plaintiff answered "Resigned – hostile environment due to results from mayoral election." Question number 34 asked whether he had ever been suspended or terminated from any prior employment. The plaintiff's response to this question indicated that he had been suspended by the District for improperly backing up a fire department vehicle and causing damage. The plaintiff did not report his suspension or termination from the City for engaging in sexually harassing conduct.

Question number 35 asked whether he had ever resigned from any employment position because of misconduct or unsatisfactory performance or while under investigation. The plaintiff answered "No." The application concluded by requiring that the plaintiff sign the form to certify that the information was true and correct. The form specifically stated that any falsification of information could subject the applicant employee to termination from his employment or disqualification for the desired position.

¶ 7 The plaintiff subsequently was extended an offer of employment for the position of captain/paramedic with the District and was given a packet of personnel documents to complete prior to taking that position. The packet contained the plaintiff's employment application and a form that requested him to review his application and verify that the information was true and correct. The form specifically stated that any falsification of information could subject the employee to discipline and could result in termination. The plaintiff wrote "not applicable" on the form and signed the verification. Thereafter, the plaintiff was sworn in as captain/paramedic with the District on June 15, 2005.

¶ 8 In November 2007, the plaintiff was issued an ordinance violation citation, charging that he had provided alcohol to a person who was under 21 years of age, and a departmental investigation was initiated. As a result of that investigation, disciplinary proceedings were brought against the plaintiff for serving alcohol to a minor. Thereafter, the charges against the plaintiff were amended to include a second count alleging that the plaintiff had falsified his application for employment for the position of captain/paramedic by failing to disclose his termination from the City for sexual harassment.

¶ 9 At the evidentiary hearing on the charges against the plaintiff, Pamela Arrigoni, the city administrator, produced a copy of the plaintiff's personnel file and testified that the file contained three documents concerning the plaintiff's termination from the City for sexual harassment. Ms. Arrigoni stated, however, that the January 10, 2000, settlement letter drafted by Angelucci was not in the plaintiff's personnel file, and the plaintiff's offer of proof regarding the contents of the letter was denied. The District also presented the testimony of Chief Gould, who identified the employment application that was submitted by the plaintiff.

¶ 10 The plaintiff testified on his own behalf that he had been a firefighter with the District for 12 years and had been employed as a full-time captain for the last two years. The plaintiff acknowledged that he was notified in August 1999 that he was being suspended and terminated by the City for sexual harassment. The plaintiff further stated that he retained counsel and subsequently received a letter from his attorney that led him to believe that he had resigned from his position with the City. The plaintiff testified that he filled out the employment application for the captain's position based upon the letter he received from his attorney. The plaintiff did not call his former attorney or the former City attorney to testify in his case in chief regarding the Angelucci letter dated January 10, 2000.

¶ 11 In its written decision, the Board determined that the evidence presented at the hearing established that the plaintiff had falsified information on his employment application. Specifically, the Board found that the plaintiff had not disclosed that he had been terminated from the City for sexual harassment and had not proven that any agreement had been reached between him and the City such that his termination was converted into a resignation. Therefore, the Board concluded that

the plaintiff's responses to questions 32, 34, and 35 of the employment application contained deliberate and intentional misrepresentations, falsifications, and omissions.

¶ 12 The Board subsequently heard additional evidence to determine the appropriate penalty to be imposed against the plaintiff. At the penalty phase of the disciplinary proceeding, the Board allowed Angelucci to testify in mitigation. Angelucci testified regarding her representation of the plaintiff in the employment case brought by the City in August 1999. Angelucci further testified that she mailed the settlement letter to the City's former attorney on January 10, 2000.

¶ 13 The plaintiff also called Chief Gould to testify in mitigation. Gould stated that he was aware that the plaintiff had been terminated by the City because he had been approached by the mayor soon after the plaintiff's termination. However, Gould testified that the reasons he had been given for the plaintiff's termination were not the reasons that were revealed in the District's investigation. Gould further stated that he relied on the information provided by the plaintiff in his employment application in making the decision to hire him for the position of captain. It was not until after the plaintiff was hired that he first became aware of the charge of sexual harassment.

¶ 14 In addition, the plaintiff called firefighter John Moore to testify on his behalf. Moore stated that the plaintiff is capable of discharging his duties as a firefighter and that he does a "great" job. Moore also testified that he had overheard Chief Gould make a statement several years prior to the hearing that he would not fire the plaintiff because of a problem with the mayor of Prospect Heights.

¶ 15 Following consideration of the evidence presented at the penalty phase of the disciplinary hearing, the Board found that Chief Gould believed that the plaintiff had been terminated from the City because he had backed the wrong mayoral candidate. The Board further noted that the

plaintiff's justifications for the statements on his employment application were "troubling" and that the plaintiff's behavior displayed "a lack of truthfulness, honesty and integrity." The Board also expressed concern that the veracity of the plaintiff's reports would be questioned in the future. The Board determined that the plaintiff's continued presence as an employee of the District would be detrimental to the efficiency of the Department and that good cause existed to terminate the plaintiff from his employment.

¶ 16 On May 23, 2008, the plaintiff moved to amend his previously filed action for injunctive relief against the District. The plaintiff's motion was filed along with the amended complaint, which included a count requesting administrative review of the Board's decision to terminate his employment. Summonses and copies of the amended complaint were mailed to the defendants on May 23, 2008. When the plaintiff's motion for leave to amend was called for hearing on May 30, 2008, neither the defendants nor their counsel appeared in court. The circuit court entered an order stating that the plaintiff was granted leave to file his amended complaint *instanter* and that the defendants were granted leave to answer or otherwise plead by June 30, 2008. The amended complaint that was submitted along with the motion to amend was not file-stamped on May 30, 2008. During June and July 2008, the parties appeared at two status hearings, and the defendants did not challenge the propriety of the filing of the amended complaint, nor did they challenge the issuance or service of summons.

¶ 17 In October 2008, the plaintiff filed a motion seeking leave to file a second-amended complaint, which was granted on November 18, 2008, and the second-amended complaint was file-stamped on that date. Thereafter, several defendants moved to dismiss the second-amended

complaint, arguing that (1) the plaintiff had failed to file his action for administrative review in a proper and timely manner, and (2) the summonses for the amended complaint had been issued prematurely. The circuit court denied the defendants' motion to dismiss.

¶ 18 Thereafter, the circuit court remanded the cause to the Board for reconsideration, with directions to consider the January 10, 2000, letter from the plaintiff's former attorney along with all of the other evidence and to consider the argument that the plaintiff provided the answers on the employment application with the belief that the information contained in the January 2000 letter was accurate. After reconsidering the evidence as directed by the circuit court, including the January 10, 2000, letter, the Board issued a new decision, in which it again found that the plaintiff had provided false information on his employment application and that such action constituted cause for discharge.

¶ 19 The plaintiff subsequently filed an amended complaint for judicial review of the Board's decision. The circuit court upheld the Board's decision that the plaintiff had provided false information in answering questions 32 and 34 of the employment application, but the court reversed the Board's finding as to question 35 of the application. This appeal followed.

¶ 20 Before considering the parties' arguments with regard to the substance of the Board's decision, we initially address the defendants' assertion that the circuit court erred in denying their motion to dismiss for lack of jurisdiction. In support of this assertion, the defendants claim that the circuit court was without jurisdiction to review the Board's decision because the complaint for administrative review was not filed in a timely and proper manner. We review an order granting or denying a section 2-619 motion to dismiss *de novo*. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59, 857 N.E.2d 229, 236 (2006).

¶ 21 All final administrative decisions of the board are subject to review in accordance with the terms of the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2008)). See 70 ILCS 705/16.13(b) (West 2008). Section 3-103 of the Administrative Review Law provides as follows:

> "Every action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision * * *." 735 ILCS 5/3-103 (West 2008).

Here, there is no dispute that the substance of the allegations in count II the amended complaint were sufficient to vest the circuit court with subject-matter jurisdiction under the Administrative Review Law. See generally *King v. Ryan*, 153 Ill. 2d 449, 454-55, 607 N.E.2d 154 (1992). The defendants claim, however, that the request for administrative review was not timely and properly filed because the amended complaint was not file-stamped by the clerk of the court after the plaintiff was granted leave to amend. We cannot agree.

¶ 22 The record reflects that the plaintiff filed his motion for leave to file an amended complaint and the proposed amended complaint, which included a count requesting administrative review, on May 23, 2008, the 25th day after the Board issued its decision. In addition, the record affirmatively demonstrates that the defendants were served with copies of the motion for leave to amend and the amended complaint, but they failed to appear when the motion was called for hearing on May 30, 2008. On that date, which was three days prior to the expiration of the 35-day period specified in section 103 of the Administrative Review Law, the circuit court granted the plaintiff's motion to amend *instanter* and ordered that the defendants were given until June 30, 2008, to answer or

otherwise plead. Thus, the circuit court accepted the amended complaint as filed on May 30, 2008, and required that the defendants file their responsive pleading within 30 days, as required by the supreme court rules (see 735 ILCS 5/2-201 (West 2008); Ill. S. Ct. R. 101(d) (eff. May 30, 2008); R. 181 (eff. Feb. 10, 2006)). In light of these circumstances, the circuit court deemed the amended complaint as actually filed, and no further action was required by the plaintiff. The mere fact that the plaintiff did not go through the motions of having the clerk of the court file-stamp the amended complaint again on May 30, 2008, does not provide support for the defendants' contention that the court lacked jurisdiction to consider the request for administrative review.

¶ 23 The defendants also claim that the circuit court should have dismissed the administrative review action because the plaintiff caused summonses to issue prior to the grant of leave to amend. This argument is premised on the assertion that the prematurely filed summonses were without force or effect. This argument has been forfeited where the defendants appeared at status hearings during June and July 2008 and failed to raise a timely objection to the service of summons before the circuit court. See *Illini Carrier, L.P. v. Illinois Commerce Comm'n*, 288 Ill. App. 3d 835, 839-40, 681 N.E.2d 1022 (1997). Also, though the requirement that summons be issued within 35 days is mandatory, it is not jurisdictional. *Illini Carrier, L.P.*, 288 Ill. App. 3d at 840 (citing *Lockett v. Chicago Police Board*, 133 Ill. 2d 349, 355, 549 N.E.2d 1266 (1990)). Considering the circumstances set forth above, we conclude that the circuit court did not err in denying the defendant's motion to dismiss for lack of jurisdiction.

¶ 24 We next address the plaintiff's argument that the Board erred in finding that he falsified information on his employment application and that such conduct was sufficient cause for discharge.

In administrative cases, we review the decision of the administrative agency, not the determination of the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531-32, 870 N.E.2d 273 (2006). The applicable standard of review depends upon whether the question presented is a question of fact, a question of law, or a mixed question of law and fact. *Marconi*, 225 Ill. 2d at 532. Rulings on questions of fact will be reversed only if they are against the manifest weight of the evidence, while questions of law are reviewed *de novo*. *Marconi*, 225 Ill. 2d at 532. When the question presented is a mixed question of law and fact, as in this case, the clearly erroneous standard is applied. *Marconi*, 225 Ill. 2d at 532. A mixed question of law and fact "involves an examination of the legal effect of a given set of facts." *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205, 692 N.E.2d 295 (1998). An administrative decision "will be deemed to be 'clearly erroneous' only where the reviewing court is 'left with the definite and firm conviction that a mistake has been committed.' " *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill.2d 380, 395, 763 N.E.2d 272 (2001) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S. Ct. 525, 542, 92 L. Ed. 746, 766 (1948)). Under any standard of review, the plaintiff in an administrative proceeding bears the burden of proof, and relief will be denied if he or she fails to sustain that burden. *Marconi*, 225 Ill. 2d at 532-33.

¶ 25 In this case, the underlying facts are undisputed, and the Board's ultimate decision that there was sufficient cause to discharge the plaintiff depended upon its determination that he had provided false information on his employment application. That determination, in turn, depended upon the construction of the language set forth in the settlement agreement with the City. Consequently, this case requires the examination of the legal effect of a given set of facts, that is, whether the

established facts, when considered in light of the settlement contract, amounted to sufficient cause for discharge. Consequently, we review this mixed question of law and fact for clear error.

¶ 26 As noted, the Board's determination that the plaintiff falsified information on his employment application was premised, in part, on the construction of the terms of the settlement agreement. In construing a contract, the court's primary objective is to give effect to the intent of the parties. *Gallagher v. Lenart*, 226 Ill. 2d 208, 232-33, 874 N.E.2d 43 (2007). When determining the intentions of the parties, a reviewing court should first consider the plain and ordinary meaning of the contractual language, which is the best indication of the parties' intentions. *Gallagher*, 226 Ill. 2d at 233. A contract should be given a fair and reasonable construction based upon all of its provisions, read as a whole. *Dowling v. Chicago Options Associates, Inc.*, 226 Ill. 2d 277, 296, 875 N.E.2d 1012 (2007); *Gallagher*, 226 Ill.2d at 233. If the language of an agreement is facially unambiguous, then the court interprets the contract as a matter of law and must enforce its terms as written. *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457, 462, 706 N.E.2d 882 (1999); *Rakowski v. Lucente*, 104 Ill. 2d 317, 323, 472 N.E.2d 791 (1984). A court cannot alter, change or modify the existing terms of a contract or add new terms or conditions to which the parties do not appear to have assented, write into the contract something which the parties have omitted or take away something which the parties have included. *Gallagher v. Lenart*, 367 Ill. App. 3d 293, 301, 854 N.E.2d 800 (2006).

¶ 27 The plaintiff initially challenges the Board's decision that he falsified his answer to question 32 of the employment application, which inquired about his work history and the reasons for leaving that employment. As set forth above, the plaintiff answered that question by stating, "Resigned –

hostile environment due to results from mayoral election." The Board found that, based on the settlement agreement, the plaintiff should have answered only that he had resigned from the City, without explanation. The Board further found that the plaintiff's additional explanation was false and a deliberate misrepresentation to conceal the actual reason for his work separation and that the plaintiff knew his explanation could not be verified because the City was bound by the confidentiality clause in the settlement agreement.

¶ 28 In challenging the Board's decision, the plaintiff argues that his response to question 32 was justified based on his understanding of the terms of the January 10, 2000, settlement agreement. In particular, the plaintiff claims that he was not prevented from providing potential employers with an explanation for his resignation because paragraph three of the settlement agreement, providing that "[a]ll potential employers of [the plaintiff] will only be provided with his job title, salary and benefits[,] and term of employment," applies only to the City. This argument is unpersuasive.

¶ 29 We are bound to construe the clear and unambiguous language of the settlement agreement as it is written. *Air Safety, Inc.*, 185 Ill. 2d at 462. Paragraph one expressly states that it applies to the City and requires that the City convert the plaintiff's termination to a resignation and ensure that his employment files be changed accordingly. Paragraph two expressly states that it applies to the plaintiff and mandates that he waive his right to appeal the termination. Paragraph four expressly applies to both parties and precludes them from disclosing the terms of their agreement to anyone other than counsel. Paragraph three specifically limits the information that may be provided to potential employers of the plaintiff, but is silent as to which party is bound by that limitation. In construing this contract provision in a fair and reasonable manner, we believe several circumstances

compel the conclusion that it applies to both parties.

¶ 30 First, there is no language in any of the contract provisions indicating that the limitation contained in paragraph three applies exclusively to the City, and we cannot alter, change or modify the existing terms of a contract, nor can we write into the contract something which the parties have omitted. *Gallagher*, 367 Ill. App. 3d at 301. Second, to the extent that paragraph three is ambiguous as to whether both parties are bound by its terms, we adhere to the maxim *contra proferentum*, which instructs a court to construe the language of contract strictly against the drafter. See *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 108-09, 607 N.E.2d 1204 (1992). Here, the settlement letter was drafted by Angelucci, the plaintiff's attorney, and we will construe the language of the contract strictly against him. Third, we find nothing in the settlement agreement indicating that the plaintiff was free to provide potential employers with his explanation for the resignation from the City, while the City was precluded from refuting the plaintiff's explanation or proffering its own reasons.

¶ 31 At the administrative hearing, the plaintiff admitted he was notified that his termination from the City was based on a finding that he had engaged in sexually harassing conduct, and he also acknowledged that he was allowed to resign as part of the settlement and in exchange for his waiver of the right to appeal the termination. In light of these facts, we cannot say that the Board's finding, that the plaintiff falsely stated that he resigned for political reasons, was clearly erroneous. In addition, we reject the plaintiff's contention that his response to question 32 was justified because paragraph three of the settlement agreement prevented only the City from providing potential employers with the reasons for his work separation.

¶ 32 The plaintiff also claims that the Board erred in finding that he misrepresented his answer to question 34 of the employment application, which inquired whether he had ever been suspended or terminated from any prior employment. Though the plaintiff disclosed that he had been suspended by the District for improperly backing up a fire department vehicle, he did not report his suspension from the City for engaging in sexually harassing conduct.

¶ 33 At the evidentiary hearing, the plaintiff testified that he was aware that the suspension was separate from the termination and that it was imposed as progressive discipline. The plaintiff did not present any evidence that the suspension had been vacated or reversed as a result of the settlement agreement or that he believed the settlement had affected the suspension in any way. Based on the evidence presented and the fact that the settlement did not make any reference to the suspension, the Board found that the plaintiff's failure to disclose the suspension was an intentional omission. We note that the plaintiff has not cited any factual or legal authority to support the assertion that his answer to question 34 was justified because the suspension and the termination were intertwined. In light of the plaintiff's testimony and the terms of the settlement agreement, we cannot say that the Board's determination is clearly erroneous.

¶ 34 In concluding that the Board did not clearly err in deciding that the plaintiff had falsified his answers to questions 32 and 34 of the employment application, we have considered the plaintiff's reliance on *DePluzer v. Village of Winnetka*, 265 Ill. App. 3d 1061, 638 N.E.2d 1157 (1994), and find that it does not govern this case for two reasons. First, the facts presented in *DePluzer* are distinctly different from those presented here. In *DePluzer*, the employer contended that the employee had materially misrepresented his prior work history by stating on the employment

application that he had "resigned [from his previous job] and immigrated to the U.S.A.," when he had been terminated but was allowed to resign as a result of a settlement with his former employer before he immigrated to the United States. *DePluzer*, 265 Ill. App. 3d at 1068. The court in *DePluzer* held that, based on the terms of the settlement, the employee may have been entitled to withhold the information that he originally was terminated, so that the statement on his employment application may not have constituted a falsehood. *DePluzer*, 265 Ill. App. 3d at 1068. In *DePluzer*, the employee did not offer an additional explanation that was not supported by the evidence. In the case at bar, the plaintiff did not merely state that he had resigned from his previous job at the City. Instead, the plaintiff volunteered the additional explanation that his resignation was prompted by a "hostile environment due to results from mayoral election," indicating that his separation from the City was based on political considerations. Yet, the evidence presented at the evidentiary hearing before the Board established that the plaintiff's separation from his employment with the City was not based on political concerns but was premised on the finding that he had engaged in sexually harassing conduct. This circumstance constitutes a significant difference from the facts presented in *DePluzer* and supports the Board's determination that this information was provided by the plaintiff in a deliberate and intentional attempt to mislead the District as to the details of his prior work history.

Second, *DePluzer* was decided under an entirely different procedural posture. There, the employer had been granted summary judgment on the employee's claim for breach of his employment contract, which was premised on an assertion that he had not made material misrepresentations on his employment application. *DePluzer*, 265 Ill. App. 3d at 1066-67. The

court concluded that the question of whether the employee had falsified information on his job application was one of fact for a jury to decide and could not be determined as a matter of law on a motion for summary judgment. *DePluzer*, 265 Ill. App. 3d at 1067-68. Here, the plaintiff was afforded a full evidentiary hearing, and the Board determined that he had deliberately and intentionally falsified information on his employment application. These factual and procedural distinctions render *DePluzer* not controlling here.

¶ 35 We also reject the plaintiff's claim that the Board's decision should be reversed because he acted in good faith by relying on the advice of counsel. There is no testimony or other evidence in the record indicating that the plaintiff consulted an attorney and relied on the advice of counsel in answering the questions contained in the employment application. Moreover, we are unpersuaded by the plaintiff's argument that the Board's decision is contrary to public policy where it has been held that lying on an employment application constitutes cause for discharge. *Village of Oak Lawn v. Human Rights Comm'n*, 133 Ill. App. 3d 221, 224, 478 N.E.2d 1115 (1985); see also *Department of Mental Health & Developmental Disabilities v. Civil Service Comm'n*, 85 Ill. 2d 547, 551, 426 N.E.2d 885 (1981) (quoting *Kreiser v. Police Board*, 40 Ill. App. 3d 436, 441, 352 N.E.2d 389 (1976) (defining "cause" for discharge as "some substantial shortcoming which renders the employee's continuance in office in some way detrimental to the discipline and efficiency of the service and which the law and sound public opinion recognize as good cause for his no longer holding the position").

¶ 36 We next consider the District's cross-appeal challenging the circuit court's reversal of the Board's finding that the plaintiff had misrepresented his answer to question number 35. The plaintiff

answered "No" to this question, which asked whether he had ever resigned from any employment position because of misconduct or unsatisfactory performance or while under investigation. The Board determined that the plaintiff's response was a deliberate misrepresentation where the evidence indicated that he had resigned from the City based on a finding that he engaged in sexual harassment. The plaintiff argued that his negative answer to question 35 was justified in light of the settlement agreement. We find the plaintiff's argument to be persuasive.

¶ 37 Although the record indicates that the plaintiff resigned from his position with the City based on a finding that he had engaged in misconduct, he was entitled to withhold that information under the terms of the settlement agreement. As set forth above, paragraph three of the agreement applied to both the plaintiff and the City equally. That provision precluded the plaintiff from disclosing any information regarding the circumstances underlying his resignation from the City. Because the settlement agreement entitled, indeed obligated, the plaintiff to withhold the reason for his resignation and because he resigned after the investigation into the sexual harassment charge had been completed, we conclude that the Board clearly erred in finding that the plaintiff's answer to question 35 was a deliberate misrepresentation.

¶ 38 For the foregoing reasons, we affirm the judgment of the circuit court, which confirmed, in part, and reversed, in part, the decision of the Board.

¶ 39 Affirmed.