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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

ILISA KLEIFIELD)	Appeal from the Circuit Court
)	of Lake County.
Petitioner-Appellant,)	
)	
v.)	No. 09—MR—430
)	
LAKE COUNTY SHERIFF, through)	
Mark C. Curran, Jr., in his official capacity,)	
LAKE COUNTY SHERIFF'S OFFICE)	
MERIT COMMISSION, through)	
Marion Watson, Chairwoman,)	
in her official capacity,)	Honorable
)	Raymond J. McKoski,
Respondents-Appellees.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Jorgensen and Justice McLaren concurred in the judgment.

ORDER

Held: Lake County Sheriff's Office Merit Commission's decision to discharge a deputy sheriff was not against the manifest weight of the evidence where (1) the deputy admitted to lying to a fellow officer and superior officer during a criminal investigation into her involvement as the offender in a hit-and-run accident and (2) the investigation resulted in the deputy pleading guilty to reckless driving and leaving the scene of a property damage accident.

Petitioner, Ilisa Kleifield, was a Lake County Deputy Sheriff who was involved in a hit-and-run accident in which she was the offending driver. After petitioner pleaded guilty to certain charges in the criminal proceeding, the Lake County Sheriff's Office Merit Commission (Commission) found petitioner guilty of dishonorable conduct, and she was dismissed from her job. Petitioner filed a complaint for administrative review of the dismissal, and the circuit court affirmed the Commission's decision. Petitioner appeals, arguing that the Commission's decision is against the manifest weight of the evidence and the findings do not support the imposed sanction. We affirm.

FACTS

On August 2, 2007, petitioner was charged with the offenses of driving under the influence of alcohol (DUI), leaving the scene of a property damage accident, and failure to reduce speed. On December 5, 2007, the Lake County Sheriff filed charges with the Commission, alleging that petitioner had violated Rules 2.1 and 4.2 of the Lake County Sheriff's Office Rules and Regulations (Sheriff's Rules) in that petitioner had engaged in dishonorable conduct and had used prescription or other medication while on duty. The Sheriff asked for petitioner to be discharged.

On January 20, 2009, pursuant to a guilty plea, petitioner was convicted of reckless driving (see 625 ILCS 5/11—503(a) (West 2008)) and leaving the scene of a property damage accident (see 625 ILCS 5/11—404(a) (West 2008)). Both are Class A misdemeanors.

On February 19, 2009, the Commission heard the Sheriff's charges. The parties stipulated that the Commission had jurisdiction to decide whether petitioner had committed the misconduct as alleged and, if so, whether there was just cause to terminate her employment as a Lake County Deputy Sheriff.

Lianne Maloney and her 15-year-old son, Thomas, testified that, on August 2, 2007, they observed petitioner run over their mailbox and drive away without stopping. The Maloneys followed

petitioner and saw her swerving and driving erratically. The Maloneys called 911 and followed petitioner to her driveway, where the police arrived a few minutes later.

Lake County Sheriff's Deputy Tyler Schimanski, Detective John Willer, and Lieutenant Kenneth Johnston testified to their investigation of the incident. Schimanski testified that he took statements from the witnesses and observed that petitioner appeared to be "under the influence," as she had slurred speech and swayed back and forth while standing still. Schimanski reported that he arrived at petitioner's home no more than five minutes after he heard on his radio that she had stopped in her driveway. Willer also testified that petitioner appeared under the influence of alcohol, had slurred speech, and swayed. Willer asked petitioner several times if she had been drinking, and she replied that she had not. Johnston testified that petitioner told him that she had taken two Vicodin pills, but she initially denied having ingested any alcohol. When Johnston asked petitioner again whether she had been drinking, she admitted to having "two beers."

At Johnston's direction, Willer administered a portable breathalyzer test (PBT) which resulted in a reading of .220, which is .14 over the legal limit for operating a vehicle. Johnston testified that petitioner was taken to the Sheriff's Office where she failed two field sobriety tests and registered .16 on another breath test. Petitioner was arrested for DUI, leaving the scene of a property damage accident, and failure to reduce speed. The officers testified that petitioner denied drinking and being in an accident.

At the hearing, petitioner testified that, on the date of the incident, she had taken a Vicodin pill but had not begun drinking until after she arrived home. Upon arriving home with some friends who had followed her, petitioner began drinking Propel fitness water mixed with vodka, and she took another Vicodin pill. Petitioner admitted that she lied to Willer and Johnston about drinking alcohol. Petitioner insisted that she had not been drinking before driving, but she admitted that, while talking

to Willer, she retrieved the bottle of vodka-laced Propel from the refrigerator and used it to swallow a Vicodin pill.

Willer testified that he heard the seal break when petitioner opened the bottle of what appeared to be water. Petitioner also testified that, while standing around and talking with Willer and Johnston, she ingested the equivalent of three drinks, as the Propel container was 20 ounces. Petitioner was aware that she was under investigation for a possible DUI, but she drank the Propel and vodka mixture anyway.

Petitioner testified that, even though the statute requires immediate notification of a property damage accident, she did not think it was necessary in this case because her friend was going to take care of the mailbox the next day. Petitioner stated that she was not under the influence of alcohol or drugs and had swerved and hit the mailboxes only because she was reaching for a paper that had started blowing in her car. Petitioner said she pleaded guilty to reckless driving and leaving the scene of a property damage accident because she and her attorney did not think she would get a fair trial from Judge Shippers.

The Commission voted to sustain the charge of dishonorable conduct in violation of Rule 2.1 of the Sheriff's Rules. The Commission determined that the Sheriff's deputies were believable, petitioner was not believable, and the dishonorable conduct constituted just cause to remove petitioner from her position as a Lake County Sheriff's Deputy. The Commission did not find that petitioner had used prescription or other medication while on duty in violation of Rule 4.2 of the Sheriff's Rules.

On March 23, 2009, petitioner filed a complaint for administrative review of the Commission's decision. The circuit court denied petitioner's complaint in part and remanded the cause for the Commission to make additional findings "as to which allegations of misconduct in the

Charges were the basis for the Commission’s decision that the Petitioner was guilty of dishonorable conduct.” On December 18, 2009, the Commission submitted an amended decision finding petitioner guilty of dishonorable conduct that constitutes just cause to remove her from the position of deputy. The Commission entered the following additional findings of fact and conclusions of law:

“From a demeanor standpoint, each of the Sheriff’s witnesses impressed the Commission as being truthful. Further, there was no evidence of any bias or improper motive on the part of the Sheriff’s witnesses. [Petitioner’s] testimony, on the other hand, was not credible. For example, her explanation as to how she came to hit the mailboxes was vague, equivocating and implausible. The same can also be said for her claim that she had not been drinking prior to hitting the mailboxes on her way home from visiting a friend. Moreover, [petitioner] admitted that she lied when she said ‘no’ in response to Detective Willer’s questions as to whether she had been drinking. She also admitted to lying to Lt. Johnston when she told him that she had not been drinking when, in fact, she had.

* * *

Based on the above additional findings of fact, including but not limited to [petitioner’s] criminal convictions for reckless driving and leaving the scene, as well as her lying to a fellow officer and a superior officer during the course of a criminal investigation, the Commission finds that the Sheriff has established by a preponderance of the evidence that [petitioner] violated Lake County Sheriff’s Office Rules and Regulations 2.1 (Dishonorable Conduct), as alleged in the Charges of Misconduct. The Commission further finds that said dishonorable conduct constitutes just cause to remove [petitioner] from her position as Deputy Sheriff at the Lake County Sheriff’s Office.”

On January 28, 2010, the circuit court affirmed the Commission’s amended decision. On February 26, 2010, petitioner filed a timely notice of appeal.

ANALYSIS

On appeal, petitioner argues that the Commission’s decision is against the manifest weight of the evidence and that the Commission’s findings do not support the imposed sanction. Proceedings for the judicial review of an order of a sheriff’s merit commission imposing discipline are governed by the Administrative Review Law (735 ILCS 5/3—101 *et seq.* (West 2008)). 55 ILCS 5/3—8014 (West 2008). Section 3—110 of the Administrative Review Law provides that, in any administrative review action, review “shall extend to all questions of law and fact presented by the entire record before the court. No new or additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the court.” 735 ILCS 5/3—110 (West 2008). The statute also mandates that the “findings and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct.” 735 ILCS 5/3—110 (West 2008). Accordingly, a court on administrative review should not reweigh the evidence or make an independent determination of the facts. *Kouzoukas v. Retirement Board of Policemen's Annuity and Benefit Fund of City of Chicago*, 234 Ill. 2d 446, 463 (2009).

The scope of a court's review of an agency's decision to discharge is generally a two-step process. First, the court decides “ ‘whether the agency's finding of guilt is contrary to the manifest weight of the evidence.’ ” *Ehlers v. Jackson County Sheriff's Merit Comm'n*, 183 Ill. 2d 83, 89 (1998) (quoting *Walsh v. Board of Fire & Police Commissioners*, 96 Ill. 2d 101, 105 (1983)). Second, the court decides whether the merit commission’s findings of fact support its conclusion that cause exists for the discharge. *Ehlers*, 183 Ill. 2d at 89 (citing *Walsh*, 96 Ill. 2d at 105). “ ‘Cause’ has been defined as ‘some substantial shortcoming which renders 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 not longer occupying the place.’ ” *Ehlers*, 183 Ill. 2d at 89 (quoting *Fantozzi v. Board of Fire & Police Commissioners*, 27 Ill. 2d 357, 360 (1963)). A reviewing court shall respect an agency's finding of cause and shall not overturn an agency's finding that cause for discharge exists unless the finding is arbitrary and unreasonable or unrelated to the requirements of the service. *Ehlers*, 183 Ill. 2d at 89.

A. Finding of Dishonorable Conduct

Petitioner was removed from her position of deputy sheriff based on a finding of dishonorable conduct as charged under Rule 2.1 of the Sheriff’s Rules. Rule 2.1 provides that “whether on or off duty, members will abide by all laws, ordinances and sheriff’s policies, rules, regulations, general orders and directives of the sheriff’s office and will not act in any manner which brings dishonor or discredit to themselves or to the sheriff.”

In arguing that the Commission’s finding of dishonorable conduct is against the manifest weight of the evidence, petitioner alleges several trial errors. Petitioner asserts that certain evidence was admitted improperly, and absent the error, the remaining evidence is insufficient to support the Commission’s finding.

First, petitioner contends that the Commission improperly considered certain testimony that amounts to hearsay and opinion evidence lacking a foundation. Petitioner draws our attention to (1) Sheriff Mark Curran’s testimony that petitioner had a prior DUI from “long, long, long ago;” (2) the Sheriff’s testimony that he believed petitioner had experienced a relapse of alcoholism; (3) the Sheriff’s opinion that he believed a transcript from a prior summary suspension hearing showed that petitioner had lied; (4) Willer’s testimony that he believed petitioner was not being truthful during his investigation; (5) Schimanski’s testimony that he believed petitioner was under the influence of

alcohol when he spoke with her; (6) Johnston's testimony that petitioner failed the field sobriety tests at the Sheriff's department; (7) Chief Richard Eckenstahler's testimony about prescription medications; (8) Willer's testimony of his knowledge of petitioner's medical problems with her back and the effects of prescription pain medication; and (9) Willer's testimony that he believed that petitioner might have accidentally overdosed on pain medication on the date of the incident.

Second, petitioner argues that the Commission improperly considered the results of the PBT administered at petitioner's home and the breath test administered later at the Sheriff's department. Petitioner argues that the evidence was inadmissible because it lacked the foundational requirement that the machines were working properly.

Third, petitioner argues that the Commission improperly considered evidence that does not comport with the Sheriff's Office rules and directives regarding the collection and preservation of evidence. Willer admitted that the "clear liquid" petitioner was drinking in her home was not taken into evidence or tested. Also, Chief Eckenstahler testified that, at the time of the hearing, petitioner's medication was locked in a file cabinet in his office, rather than being taken into evidence and tested. Johnston admitted that he did not follow a Lake County Sheriff's Office directive that states "[c]ommand personnel will not request or require deputies to file report information when another deputy or civilian employee is named as an offender. These matters are to be investigated and documented by command personnel only." As the senior officer, Johnston failed to comply with the requirement that he, not Willer, obtain the witness statements, take photographs, and preserve physical evidence from the scene.

We need not consider whether the admission of the challenged evidence was error, because even if it was error, petitioner cannot show prejudice, which the Administrative Review Law requires. "Technical errors in the proceedings before the administrative agency or its failure to

observe the technical rules of evidence shall not constitute grounds for the reversal of the administrative decision unless it appears that such error or failure materially affected the rights of any party and resulted in substantial injustice to him or her.” 735 ILCS 5/3—111(b) (West 2008); see also *McCleary v. Board of Fire & Police Commissioners*, 251 Ill. App.3d 988, 993 (1993) (“the appellate court may reverse an administrative ruling only if there is error which prejudiced a party in the proceeding”). Nothing in the record demonstrates the Commission relied on such evidence. The Commission's supplemental findings show that the decision was based on (1) petitioner’s lack of credibility regarding her explanation for hitting the mailboxes; (2) petitioner’s admission that she lied to Willer and Johnston about drinking; and (3) the criminal convictions for reckless driving and leaving the scene of a property damage accident. Petitioner did not suffer prejudice as the admission of the challenged evidence did not affect the finding of dishonorable conduct.

The evidence supporting the dishonorable conduct finding was overwhelming. Petitioner requested and was granted a continuance of the Commission’s hearing until after the resolution of the criminal charges pending against her for the hit-and-run accident. Petitioner pleaded guilty to reckless driving and leaving the scene of a property damage accident, and the Commission’s proceedings resumed. At the hearing, petitioner admitted that, while driving, she struck two mailboxes, knocked them off their stand, and “did not give it a whole lot of thought.” Petitioner testified that she was concerned only with getting home, letting her dogs out, and letting the mailbox owners know about the accident. The mailbox owners saw the accident and followed petitioner home, observing her drive erratically. Petitioner acknowledged that, upon arriving home, she drank vodka and Propel and talked with friends until Willer arrived. Petitioner admitted that she lied to Willer when he asked if she had been drinking and that she ingested Vicodin and more of the vodka and Propel mixture while speaking with Willer. Petitioner also admitted that she lied to Johnston

when she said she had not been drinking. Under these circumstances, where petitioner pleaded guilty to two driving offenses in connection with a hit-and-run accident and then lied to a fellow officer and a superior officer, the Commission's finding of dishonorable conduct is not against the manifest weight of the evidence.

B. Cause for Discharge

Petitioner argues that the Commission's findings do not support its conclusion that cause exists for the discharge because petitioner's conduct was not detrimental to the discipline and efficiency of the Sheriff's Office. Petitioner asserts that the discharge was unreasonable because "[c]onsumption of alcohol in one's own home is neither illegal nor contrary to the Sheriff's Office Rules and Regulations." However, mere consumption of alcohol at home while off-duty was not the basis for the discharge. The discharge was based on (1) petitioner's lack of credibility regarding her explanation for hitting the mailboxes; (2) petitioner's admission that she lied to Willer and Johnston about drinking; and (3) the criminal convictions for reckless driving and leaving the scene of a property damage accident.

Petitioner relies upon *Kupkowski v. Board of Fire and Police Commissioners*, 71 Ill. App. 3d 316 (1979), in arguing that "lying to a superior or fellow officer is not sufficient grounds for, nor does it justify, the severe penalty of discharge." In *Kupkowski*, the accused officer accidentally ran his squad car off the road and into a retaining wall; he drove away but the motor stopped working a short distance later. A superior officer came to investigate, and the accused officer repeatedly denied that he had been involved in an accident. *Kupkowski*, 71 Ill. App. 3d at 318. The officer was charged with failing to report the accident, lying to his superior officer, and leaving the scene of the accident, which actions the hearing officer found to be neglect of duty and conduct prejudicial to

good order and discipline. The officer was dismissed from his employment. *Kupkowski*, 71 Ill. App. 3d at 319.

Citing cases to illustrate that lying to a superior officer does not always justify the severe penalty of dismissal, this court stated “[t]he key factor is the subject matter of the falsehood, more specifically, how it directly relates to a policeman's duties to the public.” *Kupkowski*, 71 Ill. App. 3d at 324. This court affirmed the officer’s dismissal because, rather than involving a trivial lie about attending to personal business while on duty, the accused officer’s lie to his superior was “directly connected to an officer's duty to the public.” *Kupkowski*, 71 Ill. App. 3d at 324. We concluded that the dismissal was not unreasonable because “[a]n officer on duty in a squad car has a duty to obey the laws and to avoid negligently damaging either public or private property and a lie relating to these duties is, in our opinion, grounds for dismissal.” *Kupkowski*, 71 Ill. App. 3d at 324-25.

Although petitioner was driving her own vehicle and was not on duty at the time of the incident, *Kupkowski* lends support to petitioner’s dismissal. When asked whether she had been drinking, petitioner lied to a fellow officer and a superior officer, both of whom were investigating a hit-and-run accident that resulted in property damage. The investigation was directly connected to petitioner’s duty to the public, and petitioner’s dishonesty hindered that investigation. See *Kupkowski*, 71 Ill. App. 3d at 324. Moreover, in pleading guilty to reckless driving and leaving the scene of a property damage accident, petitioner admitted that she had failed to obey the traffic laws and avoid negligently damaging public or private property. See *Kupkowski*, 71 Ill. App. 3d at 324-25.

Showing deference to the Commission’s finding of cause for discharge, we agree that petitioner’s conduct constitutes “ ‘some substantial shortcoming which renders continuance in [her]

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 [her] not longer occupying the place.’ ” *Ehlers*, 183 Ill. 2d at 89 (quoting *Fantozzi*, 27 Ill. 2d at 360). The Commission’s finding of cause is not arbitrary and unreasonable or unrelated to the requirements of service. See *Ehlers*, 183 Ill. 2d at 89.

For the preceding reasons, the judgment of the circuit court of Lake County, which affirmed the Commission’s decision to discharge petitioner for dishonorable conduct, is affirmed.

Affirmed.