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No. 3–10–0156

Order filed June 8, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT

A.D., 2011

JOHN GNUTEK,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit
Plaintiff-Appellant/Cross-Appellee,	)	Will County, Illinois
	)	
v.	)	
	)	
ILLINOIS CIVIL SERVICE )	)	
COMMISSION,	)	
	)	Nos. 09–MR–435
Defendant-Appellee/Cross-Appellee,	)	09–MR–1294 (Consolidated)
	)	
and	)	
	)	
ILLINOIS DEPARTMENT OF REVENUE,	)	Honorable
	)	Bobbi N. Petrunaro
Defendant-Appellee/Cross-Appellant.	)	Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justices Lytton and Schmidt concurred in the judgment.

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**ORDER**

*Held:* We conclude that the Illinois Department of Revenue and the Illinois Civil Service Commission acted in a timely manner in conducting plaintiff’s disciplinary proceedings in this case. We also conclude that the administrative law judge properly excluded irrelevant evidence and that the Commission properly denied plaintiff’s request to present oral arguments. However, since

plaintiff's multiple violations of Illinois Department of Revenue workplace rules warranted disciplinary discharge, the Illinois Civil Service Commission improperly reduced the disciplinary discharge and imposed a 90-day suspension by failing to follow its own administrative code rules and procedures and by acting in an arbitrary fashion. We affirm the Illinois Civil Service Commission's determination that plaintiff violated workplace rules because the Commission's findings were not against the manifest weight of the evidence, but reverse the Commission's disciplinary decision and remand the cause with directions.

On March 28, 2008, the Illinois Department of Revenue terminated plaintiff's employment as a senior special agent based upon violations of the Illinois Department of Revenue's rules and regulations. Following a hearing and oral arguments before the Illinois Civil Service Commission, an administrative law judge issued a 51-page decision and order on March 6, 2009, finding that the Illinois Department of Revenue proved the charges against plaintiff and recommended plaintiff's discharge as the appropriate discipline.

After receiving the administrative law judge's decision and recommendation, the Illinois Civil Service Commission issued a final decision on March 20, 2009, finding the Illinois Department of Revenue proved the charges against plaintiff, but reducing plaintiff's discipline to a 90-day suspension based upon plaintiff's past performance record and lack of previous discipline. The plaintiff and Illinois Department of Revenue filed cross-complaints for administrative review of the Commission's decision with the circuit court of Will County. The circuit court affirmed the Illinois Civil Service Commission's decision.

Plaintiff appeals the Illinois Civil Service Commission's findings that plaintiff violated rules and regulations, as well as the Commission's disciplinary decision. The Illinois Department of Revenue cross-appeals and challenges only that portion of the decision reducing plaintiff's discipline to a 90-day suspension. We affirm in part, reverse in part, and remand with

directions.

## FACTS

Plaintiff began his employment with the Illinois Department of Revenue (Department) on January 3, 1999, and was ultimately promoted to the position of senior special agent. On February 8, 2008, the Department conducted a pre-disciplinary hearing with plaintiff. On February 13, 2008, plaintiff submitted a written rebuttal to the director of the Department in relation to the pre-disciplinary hearing and the allegations made against plaintiff.

On March 27, 2008, the Director of Central Management Services approved the Department's four charges against plaintiff for violations of the Department's employee handbook and the Department's computer security policy and procedures. The first charge claimed that plaintiff received an Illinois Gaming Board Level 1 background file on the Illinois State Police Director and an Illinois State Police report containing an employee "Official Action Request" form without proper authorization and then utilized such information for non-work purposes. The second charge alleged that plaintiff failed to report knowledge of an Illinois Gaming Board official report being in the unauthorized possession of other employees. The third charge alleged that on August 3, 2007, plaintiff attempted to retrieve e-mails of another employee where plaintiff was not the intended recipient. Finally, the fourth charge claimed that on August 17, 2007, plaintiff conducted three unauthorized audits within the Illinois Gaming Board and failed to submit required reports to his supervisor.

On March 28, 2008, the Department terminated plaintiff from his employment. On April 8, 2008, plaintiff submitted a written request to the Commission for a hearing on the Department's charges and challenging the Department's employment termination.

The Commission conducted an evidentiary hearing before an administrative law judge (ALJ) on June 12 and 13, 2008, and July 18, 2008. During the hearing, the Department presented testimony from plaintiff, Mark Ostrowski, Vincent Pattara, Eileen Wilson, Edward McHale, Dwayne Weatherwax, Rancifer Robinson, and Tom Hawks. The parties stipulated to the testimony of Mark Stevens set forth in a transcript presented to the ALJ. Plaintiff also testified in his own defense.

The testimony of the witnesses established that plaintiff began working for the Department in 1999 and was promoted to the position of senior special agent, assigned to the Empress Casino through the Illinois Gaming Board. As of 2006, plaintiff had a pending federal lawsuit against the State of Illinois. As part of the lawsuit, he turned over certain documents to his attorney, including an official action request form relating to Mark Stevens. Stevens was a member of the Illinois State Police assigned to the Illinois Gaming Board. Stevens was awarded a promotion to a Department position, to which plaintiff had also applied. The official document related to Stevens' promotion award. Plaintiff received this official action request form in a packet of other documents from Jeanette Tamayo, but delivered to plaintiff by Thomas Hobgood.

At the time, Tamayo was administrator of the Illinois Gaming Board. Plaintiff did not receive the documents as part of an official Department investigation. Instead, he received the document in a Tinley Park restaurant at approximately 2 a.m. while off-duty. Further, plaintiff admitted that he recognized the official action request form with Stevens' name and social security number.

On August 3, 2007, plaintiff reported to work at the Empress Casino in Joliet, Illinois at approximately 3 p.m. and worked part of his shift with Vincent Pattara. In the processing room

of the casino, the Department workers shared a computer which required an individual to enter a password to gain access to his or her personal e-mail account. Plaintiff went to the processing room and used the computer without entering his user ID and personal password because the computer was already logged on. While using the computer, plaintiff accessed e-mails, including one e-mail with an attachment. Plaintiff could not open the attachment, so he sought assistance from the Department's help desk. Plaintiff also decided to forward the e-mail to himself, hoping this would allow him to open the e-mail.

Plaintiff claimed that he did not know that he was actually using and accessing Pattara's e-mail account. He stated that his vision was blurry, that he was dizzy at the time, and that his father was gravely ill. After leaving the computer processing room on August 3, 2007, he spoke to Pattara and mentioned that he could not open the e-mail which Pattara sent him. Plaintiff said that Pattara did not respond. Plaintiff did not learn that he was actually using Pattara's account until he was questioned about the incident on October 4, 2007. He said that he never intentionally attempted to access Pattara's account and that there was nothing significant to him in the e-mails.

On August 17, 2007, plaintiff worked at the Empress Casino from 3 p.m. until 1 a.m. On that day, plaintiff testified that he conducted an audit of the surveillance log books at the casino and asked Eileen Wilson for access to Hawk's office. Plaintiff said that an audit consists of looking at business documents and reconciling the documents with one another in order to check on casino operations. Plaintiff testified that in 2006, he completed an audit of the surveillance tapes and as a result of the audit, created the tape release logs stored in the Department office and Hawks' office. Plaintiff said that he spent four hours completing the audit in 2006.

He also stated that after completing an audit, he was required to complete a report and submit the report to his supervisor, Robinson. However, plaintiff acknowledged not making a report in reference to his review of the surveillance logs on August 17, 2007. Plaintiff said that he did not have enough time to prepare a report on August 17, 2007, and knew he did not have enough time to prepare the report when he entered Hawks' office. Further, plaintiff did not look at any tapes on August 17, 2007.

Plaintiff said that he was going to complete the audit on August 19, 2007, but he injured himself that day at work. He did not return to work until September 19, 2007. However, he did not complete the audit at that time because the tapes had already been recycled and taped over. He stated that the October 4, 2007, report regarding his August 17, 2007, audit was prepared at the request of a Department security investigator.

Plaintiff said that on August 17, 2007, he entered Hawks' office but denied picking anything up from Hawks' desk. He testified that he returned a duplicate tape to Hawks' office at the time because he had the tape in his pocket.

Mark Ostrowski, an administrator of the Illinois Gaming Board which was a part of the Department at the time, explained that the Illinois Gaming Board provided regulatory and criminal law enforcement for operating river boats in the State of Illinois. He also explained that during his tenure as administrator, the position of operations supervisor became available. Plaintiff applied for the position, but the position was awarded to Stevens of the Illinois State Police.

When Ostrowski reviewed discovery documents, as part of the pending federal lawsuit initiated by plaintiff, Ostrowski observed Stevens official action request form in the discovery

materials. It was his understanding that plaintiff provided the report to his attorney who then disclosed it to the Department as part of discovery. He said that the form could only be obtained from the Illinois State Police and could not be disseminated or used for personal reasons.

Ostrowski said that an employee of the Department was required to report any unauthorized use or access of a document to a higher authority. According to Ostrowski, even if plaintiff received the document from Hobgood or Tamayo, plaintiff was required to report these facts to a higher authority.

Ostrowski also described the manner in which a Department employee accessed a Department computer. He said that the employee must hit a set of keys to display the log-in screen. Then, the employee had to enter an identification number and password followed by an additional group password. Upon completion of these steps, an employee had access to the Department system, the internet and the employee's individual e-mail account. He explained that the e-mail screen displayed the employee's name.

It was Ostrowski's understanding that on August 3, 2007, plaintiff used the shared computer which was logged into Pattara's account. Apparently, Pattara did not log off the computer when he left the processing room, contrary to Department policy. However, Pattara was not disciplined for this event, and an investigation was not completed as a result of Pattara failing to log off the computer in the processing room.

During cross-examination, plaintiff questioned Ostrowski about the release of documents containing Cellini's, another gaming official's, social security number despite the fact that such information was confidential and should not be released pursuant to Department policy. The Department's attorney objected. The ALJ specifically asked plaintiff's counsel if Pattara and

Cellini were the only issues to be presented or if counsel had a “laundry list” of others.

Plaintiff’s counsel responded that he could not think of any other issues. The ALJ allowed plaintiff’s counsel to continue with a limited inquiry. After asking a few more questions on the disclosure of the social security number, the ALJ sustained the Department’s objection stating that it did not find counsel’s questioning persuasive.

Ostrowski said that the casinos utilized a taped surveillance system and that the tapes were maintained for 14 days. If there was not a need for the tape, it would be used for further surveillance, resulting in the prior contents being lost as new recordings were made on the tape. He explained that in order to conduct a surveillance audit, an employee would have to compare the numbers on the tapes to a log in order to ensure that the tapes were being maintained for the required 14 days. Ostrowski further explained that there were not any rules as to how to conduct an audit or an investigation or when to make a report.

Vincent Pattara, senior special agent assigned to the Empress Casino, recalled working with plaintiff on August 3, 2007. He stated that during his shift, he logged into the computer in the processing room to check e-mails, but could not remember logging out of the computer when he left. Pattara later saw plaintiff using the computer in the processing room. Pattara needed to complete a report. Since plaintiff was using the computer in the processing room, he logged into another computer in Robinson’s office. While working, a window popped up stating that he had an e-mail from the help desk. However, Pattara had not requested any help.

After completing the report, he went to the processing room where he saw plaintiff. He observed plaintiff open an e-mail on the computer, which Pattara recognized as an e-mail he received earlier in the day, and questioned plaintiff as to how he had the e-mail. First, plaintiff

told Pattara that Robinson sent him the e-mail. Pattara looked at the screen and saw that plaintiff was logged into his own e-mail account but had three e-mails from Pattara's account. Again, he asked plaintiff how he had these e-mails. Plaintiff again said that Robinson sent them or possibly blind copied them. Pattara said that one of the e-mails contained information Pattara requested from the Statewide Terrorist Information Center which included sensitive and confidential information on an individual.

Later that same day, Pattara called Robinson and asked if Robinson had forwarded the e-mails to plaintiff. A few days later, Pattara met with Robinson to discuss the incident. They reviewed Pattara's e-mail account together and found that two of Pattara's e-mails had been forwarded to plaintiff's account during the time period that Pattara was preparing the report in Robinson's office. The e-mails contained information from the Statewide Terrorist Information Center. Pattara said that he never gave plaintiff permission to access his e-mail account, and he did not give plaintiff his log-in information.

According to the stipulated testimony of Mark Stevens, deputy director of the Illinois Gaming Board, he never gave anyone consent to access the contents of his personnel file. Further, he did not give Hobgood consent to disseminate any part of his personnel file, including official action request forms.

Eileen Wilson testified that she worked as a computer technician at the Empress Casino in August 2007. On August 17, 2007, plaintiff asked her several questions about the capability of the computer system to trace telephone calls outside of the 815 area code. Wilson said that plaintiff did not explain why he wanted to know the information. She told him that there was no way to trace the calls, but that she would make additional inquiries. Plaintiff never followed up

with her on the information.

Edward McHale, a senior surveillance agent for Empress Casino, testified that on August 17, 2007, he worked in the land surveillance room when plaintiff entered and asked to see the tape retention log so that he could do an audit. McHale gave the book to plaintiff, but plaintiff did not look at anything else in the room, did not ask any questions, and did not obtain copies of any of the tapes. McHale asked plaintiff if he wanted a particular incident within the last 14 days, since those tapes were being reused on that date. McHale did not consider plaintiff's request out of the ordinary. McHale said that the cameras in the land surveillance room record portions of the Empress property other than the casino. Further, he explained that the log sets forth to whom the surveillance tapes had been provided. McHale did not see plaintiff compare the log to the tapes in the room to verify that the tapes were maintained in the office for 14 days.

Dwayne Weatherwax, a surveillance supervisor at Empress Casino, worked in the casino surveillance room on the night of August 17, 2007. During his shift, plaintiff came into the room and requested to see the tape release log. Weatherwax said it was the first time an agent ever asked him for that log. He described plaintiff briefly looking at the log before requesting access to the evidence log in Hawk's office. Weatherwax said that plaintiff did not inspect any of the tapes in the surveillance room.

Weatherwax accompanied plaintiff to Hawk's office. They entered the office and walked to the front of Hawk's desk. Weatherwax opened the evidence locker and removed the evidence log. While he was doing this, Weatherwax noticed that plaintiff very briefly examined the three or four tapes sitting on Hawk's desk. Plaintiff took the log from Weatherwax, opened it, and started looking through the pages of the log book. Plaintiff asked Weatherwax a few questions as

to how the book was structured. Weatherwax believed that plaintiff did not spend more than two minutes looking at the log, did not make any inspection of the locker, and never requested that any tapes be pulled. Weatherwax thought this was out of the ordinary for plaintiff to inspect the evidence log in Hawk's office because it was the only time that an agent actually went into Hawk's office. Rancifer Robinson, an Illinois State Police employee assigned to the Illinois Gaming Board, testified that he became dock supervisor of the Empress Casino in January 2007. He stated that during meetings with his agents, he directed them to document everything in incident reports and to submit those reports to him as soon as possible. Robinson said that he directed the agents to minimize their dealings with directors at the casino and that issues involving directors should involve him. He explained that Hawks was a director.

He testified that State Terrorism inquiries were handled by the individual, requesting agent and that the reports would be delivered to him, unless the requesting agent was a member of the Illinois State Police. Then, the reports would be delivered directly to the requesting agent. Robinson required agents to complete incident reports at the time they completed an audit, although there was no Department reporting requirements.

Robinson said that plaintiff was one of the best agents in completing audits and incident reports. Robinson could not recall plaintiff ever conducting an audit that lasted more than one day. Plaintiff never informed Robinson that he would be conducting a prolonged surveillance audit in August 2007. Further, during his tenure, Robinson was unaware of any other agents conducting audits of the surveillance tape release logs or the evidence locker tape release logs and explained that there were internal controls regarding surveillance and the release logs.

Robinson explained that agents accessed the Illinois Gaming Board computer system by

using two passwords during the log-in process and that agents were not allowed to access other agent's e-mail systems. On August 3, 2007, Robinson e-mailed Statewide Terrorist Information reports to Pattara, at Pattara's request. Robinson did not e-mail or forward his e-mail to plaintiff or to any other agents. During that same day, Pattara used Robinson's computer to prepare an incident report because other computers were being used by other agents. Robinson said that during this time, plaintiff was working, and Robinson saw plaintiff using the computer in the processing room.

After Robinson left work on August 3, 2007, Pattara called Robinson and asked why he sent the Statewide Terrorist Information documents to plaintiff. Robinson testified that he told Pattara that he did not send the documents to plaintiff and that the three of them would discuss the matter when he returned to the office. On the following Monday, Robinson discussed the matter with Pattara and reviewed Pattara's e-mail account. He observed that Pattara's account indicated that Pattara forwarded e-mails to plaintiff. The account also showed requests to the computer help desk. Pattara denied forwarding or sending such e-mails. Robinson, along with Pattara, opened the help desk requests which indicated "my supervisor is requesting me to open these e-mails for my work or something to that effect." After contacting Information Services in Springfield, Illinois, Robinson learned that Pattara did not log out of the computer in the processing room on August 3, 2007, when Pattara went to lunch.

Robinson counseled Pattara on not logging out of the computer and then forwarded this information to his supervisor. On August 18, 2007, Hawks contacted Robinson and discussed the events of August 17, 2007. Hawks told Robinson that plaintiff contacted Weatherwax and asked questions about the release log book and what tapes had been released. Further, plaintiff

went into Hawks' office. Robinson explained that Hawks was concerned about this incident because according to Hawks, no one had ever gone into his office or gone through the evidence locker, and Hawks found the whole incident odd. Hawks told Robinson that the incident occurred near midnight. Robinson did not believe that Hawks' office was an appropriate place to conduct an audit.

Robinson said that near the time of August 17, 2007, plaintiff did not have any active investigations relating to the surveillance office or the evidence tape release logs, and plaintiff never discussed with Robinson the possibility of conducting an investigation of Hawks, the Empress Casino director. Robinson testified that plaintiff submitted an audit report regarding the August 17, 2007, incident on October 4, 2007. However, Robinson believed that such a report should have been submitted before plaintiff left work on August 17, 2007, or the next working day. Robinson acknowledged that plaintiff injured himself during his next working day following August 17, 2007. However, plaintiff returned to work in September but did not submit the audit until after the Department conducted an internal interview with plaintiff regarding the events of August 17, 2007.

Prior to August 17, 2007, plaintiff had conducted three surveillance audits, and those audits lasted one day. Robinson believed that plaintiff conducted an unauthorized investigation for his own personal reasons and that plaintiff overstepped his bounds in accessing Hawks' office. Tom Hawks testified that he served as director of surveillance at the Empress Casino. Hawks said that Weatherwax informed him that plaintiff performed an audit of the evidence locker and some evidence tapes in his office on August 17, 2007. Hawks found this midnight audit unusual since normally the agents ask for the evidence tapes. Hawks said that this

was the first audit conducted late at night in his absence. Hawks explained that the evidence locker in his office contained tapes of unusual or suspicious activity and that there was an evidence log in his office for all tapes taken into and out of his office. Further, he explained that the surveillance rooms also have tape release logs, which document what tapes are either entered or removed from the surveillance rooms. Hawks acknowledged that plaintiff could properly review the evidence logs.

Following the hearing, the ALJ set a time frame for the parties to submit briefs and to set a date for closing arguments. Based upon agreed extensions of time, the Department submitted a closing brief and a reply brief on September 16, 2008, and November 25, 2008, respectively. Plaintiff submitted a closing brief on November 7, 2008. During a telephone conference on December 8, 2008, the parties agreed to present closing arguments to the ALJ on January 8, 2009. On January 23, 2009, the Commission received the transcript of the closing arguments conducted on January 8, 2009.

On March 6, 2009, the ALJ issued a 51-page document. In the document, the ALJ first set forth a list of the witnesses who testified and a summary of the evidence presented at hearing. Then, the ALJ outlined 10 specific findings of fact, followed by 17 conclusions of law in conjunction with the Department's charges against plaintiff. The ALJ wrote in the decision that his findings of fact were based upon consideration of the testimony and admitted documentary evidence and the judge's determinations of the credibility of witnesses.

The ALJ first found that plaintiff received one prior disciplinary action due to an offensive racial slur made about Robinson and that this incident occurred contemporaneously with the Pattara e-mail incident. The Department sanctioned plaintiff for the racial remark by

suspending plaintiff for 20 days. Prior to the charges in question, plaintiff's performance record was considered " 'Exceeds Expectations.' "

Second, the ALJ found that in November 2007, Hobgood delivered a sealed envelope to plaintiff while off duty at approximately 2 a.m. The envelope contained various Illinois Gaming Board documents including Stevens' official action request. Plaintiff then delivered the official document to his attorney in conjunction with a federal lawsuit which plaintiff filed against the Illinois Gaming Board. The attorney then disclosed the document to the Illinois Gaming Board as part of discovery in the federal lawsuit. The judge found that the official document did not have anything to do with plaintiff's official responsibilities and that plaintiff did not inform anyone as to how he came to receive the document.

Third, the ALJ found that on August 3, 2007, Pattara was logged onto a work computer in the processing room, but failed to log out when he left for lunch in violation of Department policy. Plaintiff arrived at work at 3 p.m. that day and went to the processing room. Plaintiff used the computer for 20 or 30 minutes while logged into the computer under Pattara's name. During this time period, plaintiff opened, read, composed and forwarded e-mails. Plaintiff then logged off the computer and then logged back into the computer under his own account. Pattara entered the processing room and observed that plaintiff's e-mail inbox contained e-mails from Pattara's account. Pattara questioned plaintiff about the e-mails. Since Pattara was not satisfied with plaintiff's explanation, Pattara reported the incident to plaintiff's supervisor, Robinson.

Fourth, the ALJ found that on the evening of August 14, 2007, [*sic*] plaintiff asked Wilson about the ability to monitor employee telephone calls at the Empress Casino, and that Wilson told plaintiff that such a system did not exist. Fifth, the ALJ found that later that same

night at 11:30 p.m., plaintiff approached McHale in the land surveillance room and asked to see the tape release log. McHale provided the log to plaintiff who reviewed it. Plaintiff did not examine any tapes in the land surveillance room.

Sixth, the ALJ found that after reviewing the tape release log on the night of August 14, 2007, [*sic*] plaintiff then proceeded to the casino surveillance room where he requested to see the tape release logs for that room. Plaintiff reviewed the log, but again did not examine any tapes in the casino surveillance room.

Seventh, the ALJ found plaintiff asked Weatherwax to accompany him to Hawk's office. While in Hawk's office, plaintiff reviewed the evidence log in the evidence locker and looked at tapes sitting on Hawk's desk.

Eighth, the ALJ found that pursuant to policy, the Empress Casino would "have been taping over tapes from August 3 – the date Gnutek was on the IGB computer under Pattara's account." The court further found that the processing room where plaintiff accessed Pattara's account was not subject to surveillance but that there was not any evidence to show plaintiff knew that fact.

Ninth, the ALJ found that Hawk's office was generally inaccessible to agents of the Illinois Gaming Board, although they had a right to access any other location on the casino. Tenth, the ALJ found that there were "no hard and fast rules governing the manner or the frequency agents report their activities – including audits – to their superiors." However, the ALJ found that agents do not have unrestricted authority to conduct their work without notifying their supervisor of their activities.

The ALJ then set forth his conclusions of law. He stated that the Rules of the Civil

Service Commission set forth the standard of cause for discharge, along with the burden of proof. Further, the Department's employee handbook at chapter 4 set forth the rules of conduct, including " 'Conduct unbecoming an employee,' " " 'Care of official documents,' " and " 'Reporting employee misconduct.' " Chapter 5 of the employee handbook set forth rules on computer security and reporting potential security problems.

In summary, the ALJ stated that the Department argued that plaintiff took an oath to discharge his investigatory duties to the best of his abilities and that plaintiff was granted access to sensitive information. Based upon plaintiff's conduct set forth in the charges, the Department argued that plaintiff's conduct discredited him as a member of the Department assigned to the Illinois Gaming Board and impaired the operation, efficiency or integrity of the Department.

In reviewing the first charge against plaintiff, the ALJ stated that plaintiff did not have the authority to possess Stevens' official action request document and that plaintiff did not report receiving the document. Instead, plaintiff gave the document to his attorney to use in plaintiff's lawsuit. The ALJ stated that plaintiff knew that possessing and then forwarding the document violated Department directives.

With regard to the second charge against plaintiff, the ALJ stated that plaintiff received the official document in question during a 2 a.m. off-duty meeting in a restaurant with Hobgood. The ALJ further stated that once plaintiff became aware that the sealed envelope contained official documents, plaintiff was obligated to notify Department officials that Tamayo and Hobgood were in unauthorized possession of official documents. However, plaintiff admitted that he failed to report same and therefore, violated his employment obligation.

Concerning the third charge, the ALJ stated that logging into the Illinois Gaming Board

computer system required numerous steps and two different passwords. Further, each employee inbox clearly displayed their name across the top of the computer screen. The ALJ noted that plaintiff claimed that he forgot to log-in and accidentally accessed Pattara's e-mail inbox. The court stated that such claim was not credible given the computer access steps involved, as well as plaintiff's actions. The ALJ explained that plaintiff opened Pattara's e-mails involving unfamiliar cases, attempted to open attachments to the e-mails, sought assistance in opening the e-mails, and then forwarded the information to plaintiff's own e-mail account. The court outlined that plaintiff lied to Pattara when confronted about the incident and that plaintiff claimed that his error occurred due to vision problems and stress. Again, the ALJ found such claims by plaintiff to be "not believable."

In reviewing the fourth charge, the ALJ further explained that plaintiff conducted three unauthorized audits and failed to submit required reports to his supervisor. The ALJ noted that plaintiff attempted to distract from the issue by calling into question what is defined as an audit and claiming that he did not conduct any audits. However, Robinson's testimony established that when an agent makes an inquiry, which plaintiff did in this case, the agent is required to submit a report to Robinson. After questioning Wilson about tracing telephone calls, plaintiff failed to submit a report, despite the fact that a report was required and that in similar, prior instances, plaintiff had submitted reports. The court observed that plaintiff's inquiry into the surveillance tapes occurred on the exact day that "surveillance tapes of Gnutek accessing Pattara's e-mail account would have been taped over if any such tapes existed." The court also observed that plaintiff's review of the evidence locker in Hawk's office was also suspect because it occurred on the same evening as the other events in question and allowed plaintiff access to any surveillance

tapes which might have recorded him accessing Pattara's account. Plaintiff did not prepare any report or audit until after he was interviewed as part of the investigation in this case. The ALJ said that the audits, themselves, were authorized. However, conducting the audits for plaintiff's personal reasons made the audits unauthorized. The ALJ again noted that he did not believe plaintiff's explanation for failing to complete an audit report. The ALJ stated that the third and fourth charges were intertwined and that with the exception of the inquiry with Wilson, the Department proved these charges.

After finding the Department had proven all four charges, the ALJ noted that plaintiff's own attorney described him as a " 'pretty bright guy.' " The ALJ agreed and stated that plaintiff was an employee with "an exceptional work history which soured." According to the ALJ, plaintiff disregarded his work responsibilities and then abused his position by using his authority to access Empress records in an attempt to hide his actions. Plaintiff took an oath as a sworn officer for the Department. The ALJ concluded that cause for discharge existed when the Department established some substantial shortcoming on the part of an employee that rendered the employee's continued employment to be detrimental to the Department.

Based upon plaintiff's actions, the ALJ concluded that plaintiff could "no longer be trusted with access to that information [tax returns, criminal histories, and other personal and financial information] so he can no longer perform his duties." The ALJ found discharge was warranted because plaintiff's personal credibility and trustworthiness were questionable and concluded that discharge was appropriate.

The ALJ stated that it was his recommended finding and decision "that the written charges for discharge approved by the Director of Central Management Services, State of Illinois,

have been proven and that said proven charges warranted the discharge of the Respondent, John Gnutek, from his position of Revenue Senior Special Agent with the Illinois Department of Revenue, State of Illinois.”

On March 20, 2009, the Commission issued a written decision stating the Commission stated that it read the recommended decision of the ALJ, but elected to modify that decision. After correcting a few findings of fact regarding dates contained in the ALJ’s written decision, the Commission found that the Department proved the written charges against plaintiff. However, the Commission also found that:

“GIVEN GNUTEK’S PREVIOUS PERFORMANCE RECORD THAT HE EXCEEDED EXPECTATIONS AS A REVENUE SENIOR SPECIAL AGENT, LACK OF SUBSTANTIAL PRIOR DISCIPLINE, AND THE ABSENCE OF ANY EVIDENCE THAT GNUTEK GAINED AN ADVANTAGE FOR HIS ACTIONS, THE UNIQUE FACTUAL CIRCUMSTANCES SURROUNDING THE DISCHARGE DO NOT RISE TO THE LEVEL WHICH SOUND PUBLIC OPINION RECOGNIZES AS GOOD CAUSE FOR THE EMPLOYEE TO NO LONGER HOLD THE POSITION.” (Emphasis in original).

The Commission did not find plaintiff “TO BE A CREDIBLE WITNESS GIVEN HIS SOMEWHAT INCREDULOUS EXPLANATIONS FOR HIS ACTIONS AND THE INCONSISTENCIES IN HIS TESTIMONY WITH THAT OF OTHER CREDIBLE WITNESSES.” (Emphasis in original). The Commission found plaintiff’s actions subsequent to

accessing Pattara's email account were sufficient to warrant discipline and that plaintiff's actions were not a mistake as plaintiff suggested. However, the Commission made the following decision: "THEREFORE SAID PROVEN CHARGES WARRANT A 90-DAY SUSPENSION IN LIEU OF DISCHARGE." (Emphasis in original). Three of the commissioners joined in the decision, and two commissioners dissented.

On April 24, 2009, plaintiff filed a complaint for administrative review with the Will County circuit court in cause No. 09-MR-435. Plaintiff asked the court to determine whether the Department adequately demonstrated that there was cause to discipline plaintiff and whether the Commission made factual findings that were against the manifest weight of the evidence. Thereafter, the Department filed a complaint for administrative review in Will County case No. 09-MR-1294 which was consolidated with cause No. 09-MR-435. The Department contended that the Commission erred by not adopting the recommendations of the ALJ to terminate plaintiff's employment.

On January 19, 2010, the trial court issued a written decision finding that the Department proved the charges against plaintiff and finding the Commission's decision to suspend plaintiff in lieu of termination was supported by the record and was not arbitrary and capricious. Finally, the court found that since plaintiff did not object to the ALJ's scheduling and the parties' agreement to present briefs and oral arguments to the ALJ, plaintiff waived any argument that the ALJ did not issue a timely ruling. Accordingly, the trial court affirmed the Commission's March 20, 2009, decision.

On February 18, 2010, plaintiff filed a notice of appeal. The Department filed a cross-appeal challenging the circuit court's order affirming the Commission's March 20, 2009,

decision which suspended plaintiff in lieu of termination.

## ANALYSIS

On appeal, plaintiff argues that the Commission's decision must be reversed because neither the Commission nor the Department acted in a timely manner; the Commission and the ALJ improperly refused to allow argument and evidence offered by plaintiff; the Commission's written decision did not comply with the Administrative Procedure Act; and the Commission's factual findings were against the manifest weight of the evidence. Alternatively, plaintiff argues that the disciplinary suspension imposed by the Commission was unduly harsh and should be vacated by this court.

On cross-appeal, the Department argues that the Commission arbitrarily decided to reduce plaintiff's discipline and requests this court to direct the Commission to follow the ALJ's recommendation that plaintiff's employment should be terminated because the decision was supported by the ALJ's findings of fact which were adopted by the Commission when electing to suspend rather than terminate plaintiff's employment.

In cases of administrative review, we review the administrative agency's decision and not the circuit court's decision. *Illinois Department of Human Services v. Porter*, 396 Ill. App. 3d 701, 718 (2009) (citing *Kimball Dawson, LLC v. City of Chicago Department of Zoning*, 369 Ill. App. 3d 780, 786 (2006)).

### I. Timeliness

The Illinois Personnel Code provides that "the finding and decision of the Commission, or the approval by the Commission of the finding and decision of the officer or board appointed by it to conduct such investigation, shall be rendered within 60 days after receipt of the

transcripts of the proceedings.” 20 ILCS 415/11 (2008).

Plaintiff asserts that since the Commission received the transcript of the administrative hearing on August 13, 2008, the Commission’s written decision, issued more than 60 days later on March 20, 2009, was not timely based upon the requirements of the Illinois Personnel Code. 20 ILCS 415/11 (2008). Consequently, plaintiff contends the Commission cannot proceed with termination.

The Department agrees that the transcript of the administrative *hearing* was received by the Commission on August 13, 2008, but emphasizes that the parties filed closing briefs and also presented closing arguments to the ALJ on a later date, namely, January 8, 2009. The Department contends the transcript pertaining to the January 8, 2009, oral arguments was prepared and then received by the Commission on January 23, 2009. According to the Department, the written decision issued by the Commission on March 20, 2009, was issued within 60 days of the receipt of the final transcript, completing the record of these administrative proceedings. Therefore, the Department argues the Commission’s decision was issue in a timely manner.

In this case, the administrative hearing began on June 12, 2008, but was not completed until the parties had an opportunity to present their final summary of the evidence in the form of both closing briefs and oral arguments. The record verifies that the closing arguments took place on January 8, 2009, and the transcript of those arguments was delivered to the Commission on January 23, 2009.

Based on this record, we conclude the Commission’s decision was timely. Moreover, plaintiff did not raise the issue of timeliness in conducting the administrative hearing or object to

submitting closing briefs or oral arguments when before the ALJ, and therefore, plaintiff has forfeited this issue. *Illinois Department of Human Services v. Porter*, 396 Ill. App. 3d at 720; *Smith v. Department of Professional Regulation*, 202 Ill. App. 3d 279, 286-87 (1990).

Next, plaintiff argues that since the Department did not comply with the terms of plaintiff's employment contract which required the Department to commence any disciplinary action within 45 days of the pre-disciplinary hearing, the Department has waived its right to terminate plaintiff. Plaintiff claims that the pre-disciplinary meeting occurred on February 8, 2008, but the Department did not terminate plaintiff until March 28, 2008, more than 45 days later. The Department responds by arguing that while the parties conducted a pre-disciplinary meeting on February 8, 2008, plaintiff requested to submit a written rebuttal to the alleged charges. The Department submits this written rebuttal, dated February 13, 2008, completed the pre-disciplinary proceedings.

Here, rather than presenting a verbal rebuttal argument on February 8, 2008, the date the parties met in person, plaintiff requested a period of time to submit a written rebuttal. Thus, we conclude the pre-disciplinary meeting was not completed until plaintiff submitted his written rebuttal, dated February 13, 2008. Therefore, the Department's disciplinary action, which began on March 28, 2008, was timely because it commenced within 45 days of February 13, 2008.

## II. Compliance with the Administrative Procedure Act

Next, we address plaintiff's contention that the Commission did not comply with the Administrative Procedure Act (5 ILCS 100/1-1 *et seq.* (West 2008)) by intermingling the findings of fact section with the conclusions of law. The Department responds that the written decision adopted portions of the ALJ's report which clearly and separately set out both findings

of fact and conclusions of law.

It is true that the Illinois Administrative Procedure Act requires the Commission's final decision to separately state both findings of fact and conclusions of law. 5 ILCS 100/10-50 (2008). The final written decision of the Commission adopted the ALJ's findings of facts with a few modifications and clearly set forth this information in a section entitled "FINDING." Accordingly, we conclude that the Commission's written decision satisfied the Administrative Procedure Act by separately designating the findings of fact from the Commission's ultimate written conclusion that the Department's evidence proved the underlying four charges against plaintiff.

### III. Evidentiary Rulings and Closing Arguments

Plaintiff argues that the ALJ improperly limited plaintiff's evidence pertaining to other employees who received little or no discipline for policy infractions. Plaintiff contends additional evidence would have established the Department acted in an arbitrary fashion with a particular animus toward plaintiff. Plaintiff also argues that the Commission improperly refused to allow plaintiff to present oral argument to the Commission on certain issues. The Department responds that the ALJ properly limited plaintiff's evidence to relevant issues and that the Commission did not err by refusing to hear oral arguments.

It is true that disciplinary actions directed toward other employees by an administrative tribunal can be considered when determining whether the tribunal's findings may be arbitrary and unreasonable regarding cause for discharge in another employee's related case. See *Launius v. Board of Fire and Police Commissioners of City of Des Plaines*, 151 Ill. 2d 419, 442 (1992) (citing *Wilson v. Board of Fire & Police Commissioners of City of Markham*, 205 Ill. App. 3d

984, 992 (1990)); *Basketfield v. Daniel*, 71 Ill. App. 3d 877, 881 (1979). However, cause for discharge may be found to exist regardless of whether other employees have been disciplined differently or more leniently in cases where a meaningful comparison cannot be made based on unrelated circumstances and employee conduct. *Launius v. Board of Fire and Police Commissioners of City of Des Plaines*, 151 Ill. 2d at 442; *Lyles v. Department of Transportation*, 183 Ill. App. 3d 901, 911-12 (1989); *Sheehan v. Board of Fire & Police Commissioners of City of Des Plaines*, 158 Ill. App. 3d 275, 290, n. 15 (1987).

This is the situation in the case at bar. Here, plaintiff has not presented any other disciplinary action based on another employee's attempt to access a co-worker's e-mail account by forwarding e-mail from that account or by contacting the "help desk" without fully disclosing that he was not the employee assigned to that e-mail account. In this case, plaintiff's counsel questioned Ostrowski concerning the fact that Pattara had violated the Department rules by failing to log off the computer in the processing room, but Pattara's failure to log off of his own account constitutes a distinctly different policy infraction.

The ALJ also allowed plaintiff to conduct a limited inquiry into the issue of the release of the social security number of another gaming official, Mr Cellini, in violation of Department policy. The ALJ specifically asked plaintiff's counsel if the violations pertaining to Pattara and Cellini were the only disciplinary incidents treated more leniently or whether plaintiff's counsel had a "laundry list" of other incidents. Plaintiff's counsel responded that he could not think of any other examples. After plaintiff's counsel asked a few more questions of Ostrowski regarding the disclosure of Cellini's social security number, the ALJ sustained the Department's objection to further questioning.

We conclude that Pattara's failure to log off his computer represents a different violation from the alleged attempt by plaintiff to access Pattara's e-mail records which became possible because Pattera failed to log off his computer. Thus, the comparison of the failure to discipline Pattera does not support plaintiff's contention of animus toward plaintiff, and therefore, the ALJ did not err in limiting plaintiff's evidence. The analogy to the improper disclosure of Cellini's social security number by another employee was properly explored by plaintiff's counsel as an example of inconsistent discipline based on comparable violations. The record reveals that the ALJ allowed plaintiff's counsel to inquire on the issue and make an argument to the ALJ.

Next, plaintiff argues that the Commission should have allowed him to present oral arguments. However, the administrative rules allow oral arguments in cases involving novel and precedent setting questions of *law or policy*. (Emphasis added). See 80 Ill. Admin. Code Sec. 1.260 (2008). In this case, plaintiff was not challenging the policy which prohibited disclosing personnel records or plaintiff's purported attempts to gain access to the computer files of another employee without the permission of that employee. While we agree the allegations regarding plaintiff's behavior involved a very unique set of factual circumstances which occurred over the course of a short period of time, the disciplinary proceedings in this case did not involve any challenge which raised novel or precedent setting questions of law or policy. Consequently, we agree the Commission correctly denied plaintiff's request for orals arguments based on their own procedural guidelines.

#### IV. Commission's Findings and Conclusions

Plaintiff contends that the Commission's findings that the Department proved the four charges against plaintiff are against the manifest weight of the evidence. The Department

responds that the Commissions' findings were not against the manifest weight of the evidence and that the Department proved the four charges against plaintiff.

The review of an administrative decision pertaining to the discharge of an employee, subject to civil service protection, is a two-step process. First, a reviewing court should determine whether the factual findings by the administrative agency are contrary to the manifest weight of the evidence. The case law provides that “[a]n administrative agency's decision is against the manifest weight of the evidence where the court concludes that ‘all reasonable and unbiased persons, acting within the limits prescribed by the law and drawing all inferences in support of the finding, would agree that the finding is erroneous and that the opposite conclusion is clearly evident.’ ” *Illinois Department of Human Services v. Porter*, 396 Ill. App. 3d at 722 (quoting *Sheehan v. Board of Fire and Police Commissioners of City of Des Plaines*, 158 Ill. App. 3d at 287).

A reviewing court should not reweigh the evidence or substitute its judgment for that of the agency (*Illinois Department of Human Services v. Porter*, 396 Ill. App. 3d at 722, (citing *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 272 (2009)), and findings of fact shall be considered “*prima facie* true and correct.” 735 ILCS 5/3-110 (West 2008). Further, if the record on appeal contains evidence that supports the agency's determination, then a reviewing court must affirm the agency's decision. *Illinois Department of Human Services v. Porter*, 396 Ill. App. 3d at 723, (citing *Kimball Dawson, LLC v. City of Chicago Department of Zoning*, 369 Ill. App. 3d at 786).

Next, after the reviewing court determines whether the agency's findings of fact are not contrary to the manifest weight of the evidence, then the reviewing court must determine whether

those findings provide a sufficient basis for the disciplinary sanction. A disciplinary decision which “ ‘is arbitrary, unreasonable, or unrelated to the requirements of service’ ” does not provide a sufficient basis for discharge of a civil service employee. *Mudd v. Department of Children & Family Services*, 281 Ill. App. 3d 90, 94 (1996) (quoting *Department of Mental Health & Developmental Disabilities v. Civil Service Commission*, 85 Ill. 2d 547, 551-52 (1981)); *Brown v. Civil Service Commission*, 133 Ill. App. 3d 35, 39 (1985).

In this case, the ALJ heard testimony from multiple witnesses, considered written memoranda, and heard arguments from counsel. The ALJ set forth detailed findings of fact based upon the evidence presented and the credibility of witnesses. First and foremost, the ALJ did not find plaintiff to be a credible witness. The Commission specifically adopted this finding by stating the Commission did not find plaintiff “TO BE A CREDIBLE WITNESS GIVEN HIS SOMEWHAT INCREDULOUS EXPLANATIONS FOR HIS ACTIONS AND THE INCONSISTENCIES IN HIS TESTIMONY WITH THAT OF OTHER CREDIBLE WITNESSES.” (Emphasis in original). Further, the Commission adopted all of the findings of the ALJ with only a few exceptions.

Based on a review of the proceedings, these Commission findings were based on evidence submitted, were not clearly erroneous, and did not support the contention that an opposite conclusion was evident. Since evidence exists in the record to support the Commissions’ findings, the Commission’s determinations must be affirmed. *Illinois Department of Human Services v. Porter*, 396 Ill. App. 3d at 723, (citing *Kimball Dawson, LLC v. City of Chicago Department of Zoning*, 369 Ill. App. 3d at 786).

Now, we turn to the parties’ last contention on appeal regarding whether discharge was

warranted, along with the appropriateness of the Commission's decision to suspend employment in lieu of termination. Plaintiff contends that the Commission's discipline was overly harsh and grossly disproportionate to the trivial violations. In the cross appeal, the Department argues that the Commission's decision was unreasonable and arbitrary because discharge was warranted based upon the violations committed by plaintiff and that the Commission failed to comply with its own administrative rules and the Administrative Procedure Act in modifying the ALJ's recommendation and decision.

As previously stated, the Code of Civil Procedure provides that "[t]he 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). Unlike an administrative agency's determination of findings of fact, an agency's determination regarding the appropriate discipline is not considered to be *prima facie* true and correct when subjected to judicial review. *Brown v. Illinois Civil Service Commission*, 133 Ill. App. 3d at 39. However, a court should not reverse the Commission's disciplinary decision unless that decision was "arbitrary, unreasonable, or unrelated to the requirements of service." *Department of Mental Health and Developmental Disabilities v. Civil Service Commission*, 85 Ill. 2d at 552.

Our supreme court provided the following guidelines for this court to apply when determining whether an administrative agency's action, in this case the Commission, is arbitrary and capricious. In *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462 (1988), our supreme court held:

"Agency action is arbitrary and capricious if the agency: (1) relies on factors which the legislature did not intend for the agency to

consider; (2) entirely fails to consider an important aspect of the problem; or (3) offers an explanation for its decision which runs counter to the evidence before the agency, or which is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d at 505-06, (citing *Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983)).

The Department claims that by ignoring the ALJ’s factual findings and ultimate conclusion that discharge was appropriate, the Commission ignored an important aspect of the administrative proceeding and also did not address the issue of whether discharge was warranted. The Department alleges this failure to first consider whether discharge was warranted, before the Commission considered plaintiff’s employment record and performance, resulted in the Commission’s failure to follow its own administrative rules. We agree.

The agency rules provide that *unless* the disciplinary violation would “warrant immediate discharge,” the Commission “shall” consider the employee's performance record and the employee's length of continuous service when “determining the appropriate penalty for an offense of which the employee is found guilty” See 80 Ill. Adm.Code Sec. 1.170(b) (2008); *Illinois Department of Human Services v. Porter*, 396 Ill. App. 3d at 726. The Commission's regulations also define a “cause for discharge” as “some substantial shortcoming which renders the employee's continuance in his position 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 the employee

no longer holding the position.” 80 Ill. Adm. Code Sec. 1.170(a) (2008).

In this case, the ALJ issued findings in a 51-page document outlining in detail the evidence heard and the ALJ’s specific conclusions based on that evidence. The ALJ found that plaintiff could “no longer be trusted with access to that information [tax returns, criminal histories, and personal and financial information] so he can no longer perform his duties,” and that plaintiff’s personal credibility had been called into question.

Similarly, the Commission adopted the ALJ’s findings of fact without criticizing the correctness of those findings based on the evidence presented to the ALJ. Significantly, the Commission also found plaintiff was not a “credible witness” due to “incredulous” explanations which were inconsistent with other witnesses, and that plaintiff’s attempt to access Pattara’s email account was not accidental. Having found plaintiff was not credible and had acted deliberately when attempting to access Pattera’s e mail without permission, the Commission did not separately consider whether plaintiff’s intentional violation of policy constituted “some substantial shortcoming which renders the employee's continuance in his position 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 the employee no longer holding the position.” 80 Ill. Adm. Code Sec. 1.170(a) (2008).

The agency rules provide that *unless* the disciplinary violation would “warrant immediate discharge,” the Commission “shall” consider the employee's performance record and the employee's length of continuous service when “determining the appropriate penalty for an offense of which the employee is found guilty” See 80 Ill. Adm.Code Sec. 1.170(b) (2008). Conversely, when a disciplinary violation is found to exist by the Commission, as in the case at bar, the

Commission is required to *first* consider whether the proven violations render the employee's continued service detrimental to the agency and whether sound public opinion would consider the violations cause for discharge.

The record reveals the ALJ followed this procedural protocol when issuing his decision, but the Commission did not. For example, based on the ALJ's own findings later adopted by the Commission, the ALJ first determined that discharge was warranted because plaintiff's personal credibility and trustworthiness were called into question resulting in the ALJ's conclusion that plaintiff could "no longer be trusted with access to that information [tax returns, criminal histories, and other personal and financial information] so he can no longer perform his duties." However, the Commission considered plaintiff's prior favorable employment history contemporaneously with the requisite initial inquiry concerning whether plaintiff should be discharged for the proven violations. This was erroneous.

In other words, the rules require sound public opinion and detriment to the agency to be considered when first deciding whether the employee should "no longer" hold the position due to the nature of the violation itself and without reference to prior employment history. According to the administrative code, if sound public opinion or detriment to the agency warrants discharge for the disciplinary violation, it does not matter whether that employee was a good servant up to that date.

Clearly, the agency rules prohibit the Commission from considering past employment history before deciding whether sound public opinion would render plaintiff's continued employment "no longer" desirable and detrimental to the "discipline" and "efficiency" of "service." See 80 Ill. Adm. Code Sec. 1.170(a), (b) (2008). The Commission's approach in this

case was inconsistent with these administrative code rules. By not following its own rules and electing to ignore cause for discharge in favor of first considering plaintiff's favorable employment history, we are left with one conclusion that the Commission acted in an arbitrary fashion by not adhering to its own rules and regulations. See *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d at 505-06, (citing *Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. at 43).

Consequently, we conclude the Commission's decision to set aside the ALJ's recommendation to discharge plaintiff in favor of a 90-day suspension without pay was arbitrary and unreasonable due to the Commission's failure to follow the procedural protocol established by the Illinois Administrative Code. Therefore, the Commission's decision must be reversed and vacated. See *Austin v. Civil Service Commission*, 247 Ill. App. 3d 399, 404 (1993) (citing *Bell v. Civil Service Commission*, 161 Ill. App. 3d 644 (1987)); *Bodine v. Civil Service Commission of State of Illinois*, 134 Ill. App. 3d 341 (1985)). We remand the cause to the Commission with directions for the Commission to first decide whether the proven violations warrant discharge.

#### CONCLUSION

We conclude that the Commission's written decision finding that the Department proved the four disciplinary violations against plaintiff satisfied the Administrative Procedure Act. The Commission's decision to impose a 90-day suspension without pay is reversed and the cause is remanded to the Commission for further proceedings consistent with this order.

Affirmed in part, reversed and vacated in part; and remanded with directions.