

No. 1-11-1409

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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GARY CARR,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	
FIRE AND POLICE COMMISSION OF THE	)	No. 10 CH 25465
VILLAGE OF WILLOW SPRINGS, Ernie Moon,	)	
Chairman of the Commission in his official capacity,	)	
Sam Balark and Frank Gilbert, members of the	)	
Commission, and ROGER ALEXANDER, POLICE	)	
CHIEF,	)	Honorable
	)	Lee Preston,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE CONNORS delivered the judgment of the court.  
Presiding Justice Quinn and Justice Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* Fire and police commission did not err in affirming, after hearing, the decision of police chief to suspend plaintiff, a police sergeant, for three days for losing or misplacing a gas mask. The gas mask was assigned to plaintiff and he admitted that he left it in a file cabinet and then did not check on it for four years, after which it could not be found. His argument that the gas mask was no longer assigned to him is based upon his idiosyncratic interpretation of a verbal order. The suspension was not unreasonable or arbitrary in light of the value of a gas mask as police equipment and of plaintiff's prior two-day suspension for another equipment issue.

¶ 2 Plaintiff Gary Carr appeals from an order of the circuit court confirming a decision by the Fire and Police Commission of the Village of Willow Springs (Commission) affirming the decision by Roger Alexander (Chief), chief of the village police department (Department) to suspend him for three days from his duties as a police sergeant for violating a Department rule holding its officers responsible for the care of Department property by not maintaining proper care or control of a gas mask that the Department issued to him. On appeal, plaintiff contends that the Commission's decision was erroneous and his sanction was unreasonable and arbitrary.

¶ 3 The Chief issued the order suspending plaintiff on January 14, 2010, and he filed an appeal to the Commission.

¶ 4 At the Commission hearing, plaintiff testified that the Department issued him a gas mask in 2004 while he was assigned as a detective. When he was reassigned to patrol duty in May 2005, he was ordered to remove his personal property from the detective office. Plaintiff left the gas mask in a file cabinet in the detective office, on the basis that it was Department and not personal property. When the Department instituted a policy in November 2009 that every officer had to carry a gas mask while on duty, plaintiff asked a detective to retrieve for him the earlier-issued gas mask but discovered that it was no longer in the detective office. Plaintiff requested a new gas mask, and the Chief asked plaintiff in writing to explain the whereabouts of his earlier-issued gas mask. When plaintiff provided the aforementioned explanation, the Chief commenced the instant case. Plaintiff admitted that he was responsible for Department property issued to him, that he could have requested permission to enter the detective office after he was no longer a detective but did not so request until November 2009, and that property left outside one's control can end up lost, stolen or otherwise misplaced. Plaintiff also stated that a gas mask "could be" an important safety device.

¶ 5 Chief Roger Alexander testified that he issued an order in November 2009 that all Department officers carry their gas mask at all times while on duty. The gas masks had been issued "to assist an officer in the escape of a hazardous situation," as Willow Springs is home to "a couple of chemical plants" including a plant that is "one of [the] top five risks in the country because multiple [rail] cars have liquid chlorine in them." Later that month, the Chief was told that plaintiff was requesting a new gas mask. The Chief sent plaintiff a memo asking him to explain what happened to the previously-issued gas mask. When the Chief received plaintiff's reply memo, he "was unsatisfied with the answer" and spoke with several other present and former officers to determine the fate of the gas mask. As a result of this investigation, the Chief issued in January 2010 an order suspending plaintiff for three days. The Chief explained that, while the detective office is locked, a non-detective officer could request admittance. Plaintiff had been suspended for two days for another equipment issue about a year before the instant case arose, and the Chief believed that a three-day suspension was warranted under "progressive discipline," that is, where an officer was suspended "and further discipline is required for a [violation of] similar nature, that subsequent suspension should escalate in severity." On cross-examination, the Chief stated his belief that the canister or filter of the Department gas masks have a shelf-life of five years but admitted that it could be as short as one year. The Chief had not asked any officers to check if their gas masks were in working order since he became chief in October 2005.

¶ 6 Department investigators Ronald Lullo and Robert Tobordon testified that, after plaintiff left the detective office in May 2005, they did not see a gas mask in the detective office in general or in any file cabinet therein in particular. However, Lullo left the Department in 2006.

¶ 7 The hearing record included the Chief's memo of December 11, 2009, to plaintiff, plaintiff's reply memo of December 11, and the Chief's suspension memo of January 14, 2010.

The suspension memo states that plaintiff was suspended for violating a Department rule holding officers "responsible for the care of [Department] property of every description and the prompt reporting of loss, damage, or defect." The record also includes documentation of plaintiff's two-day suspension in January 2009.

¶ 8 Following the hearing, the Commission issued an order affirming the three-day suspension. After summarizing the hearing evidence, the Commission found that it was undisputed that plaintiff was issued a Department gas mask in 2004, was assigned as a detective until May 2005, and removed his personal belongings from the detective office when he was reassigned to patrol duty at that time. While plaintiff admitted to leaving the gas mask in the detective office, two investigators did not see the gas mask there, and the Commission found that, were the gas mask there, "it is likely that [they] would have seen it at some point." The Commission found that there was no dispute that the gas mask was outside plaintiff's control until he requested a new mask in November 2009. Plaintiff could have requested access to the detective office during that time but did not. The Commission concluded that plaintiff failed to show that the three-day suspension was unwarranted, noting that plaintiff admitted that the gas mask was an important piece of safety equipment. Plaintiff timely commenced administrative review in the circuit court.

¶ 9 Following briefing and argument by the parties, the circuit court confirmed the Commission's decision. The court noted that there was no dispute that the gas mask was outside plaintiff's control from 2005 through 2009, in that he never checked on the mask in the detective office file cabinet during that time. The rule that officers care for Department property includes all such property, whether or not some other Department rule also requires that said property be personally carried by the officer while on duty. The court also noted that the property-care rule

does not include an exception for outdated Department property, so that the gas mask was still plaintiff's responsibility even if it had expired. This appeal timely followed.

¶ 10 On appeal, plaintiff contends that the Commission's decision was erroneous and his sanction was unreasonable and arbitrary. In particular, he argues that he left the gas mask in the detective room in obedience to a verbal order, that there was no rule requiring Department officers to carry their gas masks until November 2009, and that there was evidence that his mask would have been inoperative by 2009.

¶ 11 At all relevant times, the Department had the following rule: "Members shall be responsible for the care of [Department] property of every description and the prompt reporting of loss, damage, or defect." Willow Springs Police Department Rules and Regulations, § 2.4.11.

¶ 12 In administrative review cases, we review the decision of the administrative agency rather than the circuit court. *Filskov v. Board of Trustees of Northlake Police Pension Fund*, 409 Ill. App. 3d 66, 69 (2011). The Commission is the trier of fact in cases regarding the discipline of Department officers, and its findings of fact are *prima facie* true and correct. 65 ILCS 5/10-2.1-17; 735 ILCS 5/3-110 (West 2010). We review questions of law *de novo*, questions of fact by the manifest weight of the evidence standard, and a mixed question of law and fact – that is, where the question involves an examination of the legal effect of a particular set of facts – by the clearly erroneous standard. *Filskov*, 409 Ill. App. 3d at 69. An agency's decision is "clearly erroneous" only where we are left, after reviewing the entire record, with a definite and firm conviction that a mistake has been committed. *Filskov*, 409 Ill. App. 3d at 69. As to the appropriate sanction in disciplinary cases, this court may overturn an agency's sanctions when they are overly harsh in light of mitigating circumstances but our review is limited to a determination of whether the agency acted unreasonably or arbitrarily by selecting a type of

discipline inappropriate or unrelated to the needs of the police service. *Matos v. Cook County Sheriff's Merit Bd.*, 401 Ill. App. 3d 536, 542 (2010).

¶ 13 Here, we review the Commission's decision under the clearly-erroneous standard, as the issue before the Commission was a mixed question of law and fact: whether plaintiff's actions or inactions, as could be determined from the hearing evidence, constituted a violation of the Department rule in question. We conclude that the Commission's finding that plaintiff violated that rule was not clearly erroneous. The evidence conclusively established that plaintiff was issued a Department gas mask and then did not take care of or exert any control over it from May 2005 through November 2009, at which time it could not be found. The Commission was not, and we are not, obliged to accept plaintiff's idiosyncratic interpretation of his 2005 instruction to remove his personal property from the detective office as meaning that he was being implicitly ordered to leave behind all Department property including the gas mask. It is therefore not clearly erroneous to conclude that the mask was still plaintiff's responsibility from May 2005 onwards and that he could have prevented its loss or misplacement either by not leaving it behind in the detective room or by checking on it sooner than four years.

¶ 14 While plaintiff is correct that the Department did not adopt until 2009 its rule that all officers carry their gas masks at all times while on duty, he was not found by the Chief or Commission to have violated that rule. Moreover, whether plaintiff maintained sufficient care of Department property assigned to him is a different and broader question, in both scope and time, than whether the property was physically with him at all times. Had he been able to produce the gas mask from his locker, home, personal vehicle or such other place within his control, he would not have violated the property-care rule even if he had not been carrying it with him on patrol. More to the point, not being able to produce the gas mask would have violated the property-care rule even before the always-carry rule was issued.

¶ 15 We also conclude that the Commission's affirmation of the three-day suspension was not unreasonable or arbitrary. The evidence established that a gas mask is a vital piece of police equipment of particular importance in Willow Springs. While there was some evidence that the filter or canister in the mask issued to plaintiff may have expired by 2009, that does not either justify or render harmless the misplacement or loss of the entire gas mask, and moreover the rule in question is not restricted to property in immediate working order. Additionally, plaintiff had been previously disciplined for an equipment issue, receiving a two-day suspension, and the Chief considered a three-day suspension commensurate with progressive discipline.

¶ 16 Accordingly, we affirm the judgment of the circuit court.

¶ 17 Affirmed.