

No. 1-11-2238

**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).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

BRIAN GARCIA and AARON PORADZISZ,	)	Appeal from the Circuit Court
	)	of Cook County.
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 10 CH 31078
	)	
GARRY McCARTHY, Superintendent of the	)	
Chicago Police Department, and THE POLICE	)	
BOARD OF THE CITY OF CHICAGO,	)	
	)	
	)	Honorable Mary Anne Mason,
Defendants-Appellees.	)	Judge Presiding.

---

Justice Simon delivered the judgment of the court.

Harris, P.J., and Quinn, J., concurred in the judgment.

**ORDER**

¶ 1 *HELD:* Where the Police Board of the City of Chicago considered the testimony of several witnesses and other evidence presented, it weighed the credibility of the witnesses and properly gave weight to occurrence witnesses over accident reconstruction experts such that the decision of the police board was not against the manifest weight of the evidence.

¶ 2 *HELD*: Where the Police Board of the City of Chicago properly considered the evidence at hearing, its finding of cause for termination was not arbitrary, capricious, or unrelated to the needs of service where the officers violated various department rules in undertaking a vehicle pursuit for a minor traffic violation, failing to report their location, leaving the scene after the motorcyclist they were pursuing crashed, and engaging in a coverup for their actions by filing false reports.

¶ 3 This appeal is before this court on the administrative review of the June 17, 2010, final administrative decision of the Police Board of the City of Chicago (Board), discharging plaintiffs, Brian Garcia and Aaron Poradzisz, from their employment with the Chicago police department. On July 7, 2009, the superintendent of police filed charges against plaintiffs with the Board, recommending they be discharged for violating several rules of conduct in relation to plaintiffs' pursuit of a motorcycle on July 9, 2007. Following a full hearing, the Board issued its final decision finding plaintiffs violated five rules of conduct related to their actions on July 9, 2007, and ordered the discharge of the officers.

¶ 4 Plaintiffs sought administrative review in the Circuit Court of Cook County pursuant to the Administrative Review Law (735 ILCS 5/3-101, *et seq.* (West 2010)). The circuit court affirmed the findings of the Board and this appeal followed. Plaintiffs argue on appeal that the Board's findings and decision are against the manifest weight of the evidence. Plaintiffs also argue that the Board's finding that cause for termination existed was arbitrary, capricious, and unrelated to the needs of service and must be reversed. For the following reasons we affirm the findings and decision of the Board terminating plaintiffs as officers of the Chicago police department and the ruling of the circuit court affirming the decision of the Board.

¶ 5 I. BACKGROUND

¶ 6 Plaintiffs were appointed police officers in the Chicago police department on April 26,

No. 1-11-2238

2004. Both also graduated from the Chicago police department's training academy in October 2004. Following graduation, plaintiffs were assigned to serve the fifth district of the police department, located on the far south side of the City of Chicago. On July 7, 2009, the superintendent of police filed charges against plaintiffs with the Board, recommending the dismissal of plaintiffs from the department for their on-duty actions of July 9, 2007, in violation of the following department rules of conduct: (1) Rule 2, "Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;" (2) Rule 5, "Failure to perform any duty;" (3) Rule 6, "Disobedience of an order or directive, whether written or oral;" (4) Rule 10, "Inattention to Duty;" and (5) Rule 14, "Making a false report, written or oral."

¶ 7 The Board held a consolidated hearing on these charges against plaintiffs. The Board found plaintiffs guilty of violating each of these rules in some manner, presenting a final order summarizing each count for which plaintiffs were found guilty or not guilty. The following recitation of facts is derived from the administrative record, including, *inter alia*, the Board's decision and the evidence presented at the hearing including the testimony of numerous witnesses, video and photo evidence from red light cameras, and pre-hearing discovery documents including reports submitted by plaintiffs relating to the date at issue.

¶ 8 On July 8-9, 2007, plaintiffs were working the midnight shift, from 10:30 p.m. to 6 a.m. the next morning. Plaintiffs wore plain clothes and drove an unmarked, silver 2003 Ford Grand Victoria police vehicle that was equipped with sirens and oscillating "wig wag" lights. Poradzisz was driving the vehicle with Garcia as passenger. At some time around 2 a.m., plaintiffs observed a motorcycle on West 103rd Street with a license plate that was bent upward and not

No. 1-11-2238

visible. They activated the lights and sirens of their vehicle and pulled the motorcycle over at West 103rd Street and South Yale Avenue. Plaintiffs exited their vehicle to approach the motorcycle and investigate, but as they approached, the motorcycle sped away. Plaintiffs returned to their vehicle and initiated pursuit of the motorcycle, but lost sight of the motorcycle after it had turned down a side street.

¶ 9 Plaintiffs proceeded west on West 103rd Street and turned right, north, on South Halsted Street. At this time, plaintiffs recognized that they had left the 5th district and entered the 22nd police district. In any event, they saw the motorcycle turn north onto Halsted in front of them somewhere between West 103rd Street and West 101st Street. Plaintiffs again activated the siren and lights of their vehicle and accelerated to try and get closer. The motorcycle again accelerated and ran a red light at the intersection with West 99th Street.

¶ 10 Plaintiffs decided to discontinue their pursuit and made a right turn at the red light at West 99th Street. Less than a block from this intersection, at around West 98th Place and South Halsted Avenue, the motorcycle collided with an automobile, throwing the motorcycle driver from the motorcycle and causing him to sustain fatal injuries. Video from the red light camera at the intersection of West 99th Street and South Halsted Avenue showed that the motorcycle did run the red light at the intersection and also, seconds later, plaintiffs' unmarked police car, with lights flashing, turning right onto West 99th Street.

¶ 11 Plaintiffs testified that they did not see the collision or hear any subsequent radio calls concerning the accident. Plaintiffs also stated that they did not learn about the accident and fatality until informed during the internal affairs division (IAD) investigation of the incident. Garcia testified that when they made the turn he was entering their location into the portable data

No. 1-11-2238

terminal (PDT) of their vehicle as West 119th Street and South Emerald Avenue.

¶ 12 Jovon Davis testified that he was 17 years-old on the date of the accident and was heading northbound on South Halsted Avenue when a motorcycle and then a police car, with its lights flashing, passed him at approximately West 100th Street. Davis estimated that they were traveling at a rate of 50 miles per hour. He saw the motorcycle run the red light, hit another vehicle, and the body of the motorcycle driver fly into the air and hit trees nearby. Davis testified that the police car then turned the corner and turned off its lights.

¶ 13 Davis further testified that he and his fellow passengers went to the accident area, saw the man on the ground, and talked to him until the police arrived. He said he remembered details because it was "one of the craziest things ever seen in my life." However, Davis did not remember the exact street the police turned, but remembered it was at a stoplight. He also did not recall if the police car made a U-turn. After Davis talked with the police that night and gave his contact information, he was not contacted again by the police. While the investigator's report indicated that Davis stated the police performed a U-turn, Davis testified at the hearing that he did not tell the officer that it did.

¶ 14 Steven Poindexter testified that he was on the front porch of a friend's home at West 99th Street and South Green Street when he heard a motorcycle and police siren approaching. He testified that he went to West 99th Street to see what was happening, saw a motorcycle slow down at the intersection, not stop, cross the intersection, and "gun it." He then heard a "crack noise, a real loud crack." Poindexter testified that her heard the sirens stop and maybe five seconds later a police car turned right at the intersection. He ran to the accident scene and called 911. Poindexter spoke with a plain-clothed officer that arrived. He denied stating that he heard

No. 1-11-2238

a crash while he looked at the squad car.

¶ 15 Both parties presented the testimony of accident reconstruction experts who testified to using the video and photographs from the red light cameras as well as actual measurements taken from the scene to reconstruct the accident and make their conclusions. Both experts opined that the police, if unobstructed by unseen obstacles, had a clear view of the accident, if they chose to look in that direction. However, based on when the wheels of the police car started turning, even utilizing a conservative timeframe, one expert opined that plaintiffs made the decision to turn right before the accident occurred.

¶ 16 Both experts also testified to the estimated speed of the motorcycle and police car as well as an estimated moment of impact for the accident. While they both approximated the speed of the motorcycle and the police car to be in the range of 40-44 miles per hour as they approached the intersection, they could only guess on the time of impact. They noted that they did not know the exact speeds and did not know what occurred when the motorcycle went out of the view of the camera; however, because of his conservative computation, plaintiffs' expert maintained that plaintiffs decided to turn prior to the time of impact.

¶ 17 Captain Thomas McMahon testified that there is not a requirement for officers to remain within district at all times or to radio the dispatcher when they do. He stated that such an action does not change the status of the officer, and he or she remains available for assignment when outside of the district. However, both Captain McMahon and IAD investigator Sergeant Moore testified that such a notification is the normal course of action by an officer so that the department can assure that all areas are sufficiently staffed.

¶ 18 Plaintiffs admitted that they did not radio that they stopped when they initially pulled the

No. 1-11-2238

motorcycle over or radio their location during their pursuit. Plaintiffs admitted that they violated a general order when they pursued the motorcycle for a minor traffic violation. They also admitted that they knew they went out of district during the course of their tour, but asserted that is not improper and they were not required to radio every time that occurred, such as when it provides a faster route or when they are getting refreshments. Plaintiffs admitted that the information that Garcia entered into the PDT was incorrect, but maintained throughout the investigation and the hearing that they did not submit a false report.

¶ 19 Garcia testified that he tried to input information into the PDT that plaintiffs saw a motorcycle gang earlier at West 119th Street and West Emerald Avenue. However, the PDT would not take that information so he entered that was where they were. Poradzisz opined that Garcia entered the incorrect location because they were heading there to investigate the motorcycle gang they had seen in that area and entered that location so that plaintiffs would avoid getting a different assignment that would not allow them to continue their investigation.

¶ 20 Poradzisz testified that, as was typical, he created his paperwork after their shift and he completed a traffic stop survey and contact card. The card indicates that plaintiffs were engaged in a traffic stop of a "James Norwood" at West 119th Street and South Emerald Avenue from 2:22 to 2:30 a.m. Both plaintiffs averred in their statements to the IAD investigator that they did make this traffic stop, but the time was simply entered incorrectly.

¶ 21 McMahon and several other officers, including plaintiffs' supervisors and colleagues, testified. Each of the officers testified that plaintiffs were quality officers that were dependable and hard working. The testimony indicated that plaintiffs were conscientious and assigned special responsibilities because of these qualities.

No. 1-11-2238

¶ 22 The Board issued its final decision finding plaintiffs violated all alleged five rules of conduct related to their actions on July 9, 2007, and ordered the discharge of the officers. The Board expressly found the testimony of Davis and Poindexter to be credible, but did not find the plaintiffs credible. In addition, it did not rely on the testimony of either of the expert witnesses' reconstruction testimony, stating it did "not find the testimony of either expert helpful in resolving the factual and legal issues raised by this case" and cited to *Cleary & Graham's Handbook of Illinois Evidence*, Section 703.2 (5th ed. 1990) for authority. The Board did not find plaintiffs guilty of charges that involved actions they were not required to complete, for example, Garcia was not guilty of failing to complete a traffic pursuit report because he was not the driver during the pursuit of the motorcycle.

¶ 23 In conclusion, the Board noted that plaintiffs were found guilty of each alleged areas of conduct, specifically noting leaving the scene and failing to render aid to the victim of a fatal crash and making false reports in an attempt to cover-up this misconduct. The Board found that the conduct each plaintiff was found guilty of "is sufficiently serious to constitute a substantial shortcoming that renders each Respondent's continuance in his office detrimental to the discipline and efficiency of the service of the Chicago Police Department, and is something which the law recognizes as good cause for each Respondent no longer occupying his office." Plaintiffs sought administrative review in the Circuit Court of Cook County, which affirmed the final administrative decision and this appeal followed.

¶ 24

## II. ANALYSIS

¶ 25

### A. Manifest Weight of the Evidence

¶ 26 Plaintiffs first argue on appeal that the Board's decision is against the manifest weight of

No. 1-11-2238

the evidence. In an action under the Administrative Review Law, factual determinations by an administrative agency are held to be *prima facie* true and correct and will stand unless contrary to the manifest weight of the evidence. 735 ILCS 5/3-110 (West 2004); *Amigo's Inn, Inc. v. License Appeal Comm'n*, 354 Ill. App. 3d 959, 964 (2004). A plaintiff in an administrative proceeding bears the burden of proof, and if he fails to meet that burden, relief will be denied. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532 (2006). We review the decision of the agency, not the circuit court, as the hearing officer is the fact finder responsible for overseeing testimony, making credibility determinations, and assigning weight to statements made by witnesses. *Ahmad v. Board of Education*, 365 Ill. App. 3d 155, 162 (2006). However, questions of law are subject to *de novo* review. *Enesco Corp. v. Doherty*, 314 Ill. App. 3d 123, 131 (2000).

¶ 27 To find a determination against the manifest weight of the evidence requires a finding that all reasonable people would find that the opposite conclusion is clearly apparent. *North Avenue Properties, L.L.C. v. Zoning Board of Appeals*, 312 Ill. App. 3d 182, 184 (2000). As the hearing officer is the fact finder responsible for overseeing testimony, making credibility determinations and assigning weight to statements made by witnesses, we review the decision of the Board, not the circuit court. *Ahmad*, 365 Ill. App. 3d at 162. In making this determination, we do not weigh the evidence or substitute our judgment for that of the administrative agency. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992). This discretion is not boundless however, and a reviewing court “may put aside any findings which are clearly against the manifest weight of the evidence.” *Kouzoukas v. Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago*, 234 Ill. 2d 446, 465 (2009).

No. 1-11-2238

Simply put, if there is evidence of record that supports the agency's determination, it must be affirmed. *Abrahamson*, 153 Ill. 2d at 88.

¶ 28 Plaintiffs argue that the Board's decision is against the manifest weight of the evidence because: plaintiffs denied many of the charges; the experts provided effective and credible testimony; the other witnesses' testimony is "completely contradicted" by the video and photo evidence; and the superintendent failed to provide any evidence that there was any written rule underlying the violations that their own commander testified was acceptable. Plaintiffs contend that this situation is precisely the scenario envisioned by the *Kouzoukas* court and this court should find the Board's decision against the manifest weight of the evidence. We disagree.

¶ 29 As defendants point out, *Kouzoukas* does not represent a grand departure from the manifest weight of the evidence standard in administrative review and there is evidence of record to support the Board's final determination. Plaintiffs point to discrepancies in Davis and Poindexter's testimony with details that are contained in the report from the investigating officer that interviewed the two men on the scene. The witnesses testified before the Board on these issues and the Board made its credibility determinations. Plaintiffs argue that their testimony is implausible or contradicted; however, the evidence produced does not provide for such an argument. Also, while there may have been inconsistencies in the testimony of the witnesses, the overall scope of their testimony clearly evidenced that they witnessed and accurately recounted the major elements that formed the basis for the Board's decision.

¶ 30 The experts were each properly qualified to testify and presented their opinions on the accident reconstruction. However, despite plaintiffs' argument that the Board did not explain exactly what it found deficient in the experts' testimony, it need not present such a statement. As

No. 1-11-2238

addressed in the passage cited from Cleary & Graham's, reconstruction testimony is not to be used as a substitute to eyewitness testimony but as support to explain scientific principles outside of the knowledge of the average juror or in the absence of some testimony. *Kimble v. Earle M. Jorgenson Co.*, 358 Ill. App. 3d 400, 409 (2005).

¶ 31 Therefore, as defendants assert, after determining the credibility of the testifying witnesses, the Board properly limited its consideration of the expert testimony. Even if this testimony was considered, it does not provide the conclusive proof claimed by plaintiffs. Both experts testified to the serious limitations provided by the lack of evidence concerning the activity after the motorcycle passed through the intersection and the inability to make precise calculations. Furthermore, both experts also agreed that plaintiffs had an unobstructed view of the accident, but could not add whether plaintiffs were looking toward the accident scene at or near the moment of impact.

¶ 32 Finally, much of plaintiffs' argument centers on the lack of evidence that there is any actual written rule requiring an officer who leaves his district to radio the dispatcher of this fact. While there was testimony that this was a common and acceptable practice, it was all grounded in situations such as the officer seeking refreshments or traveling a faster route, not when the officer is in pursuit. Here the Board found plaintiffs violated a written or oral order or directive by failing to radio the dispatcher that they had left their district in pursuit of a motorcycle. The evidence and testimony of McMahon and, arguably, even the plaintiffs, supports that notice in such a situation was the correct and required course. Furthermore, as defendants point out, and addressed below, the manifest weight of the evidence clearly supports the more serious findings of the Board that support their ultimate finding.

¶ 33 B. Whether Discharge for Cause was Arbitrary and Unreasonable

¶ 34 Plaintiffs also argue that the alleged rule violations do not support their dismissal and that decision was arbitrary and unreasonable. Because law enforcement officers are in such a unique position of public trust and responsibility, discipline is absolutely essential for the proper functioning of the department and the respect of the public. This requires disciplining officers without distinction between their off duty and on duty status. *Remus v. Sheahan*, 387 Ill. App. 3d 899, 904 (2009).

¶ 35 In order to dismiss an officer, the Board must find cause to discharge the officer. *Id.* Cause has been defined as " 'some substantial shortcoming which renders [the employee's] continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and something which the law and sound public opinion recognize as a good cause for his [discharge].' " *Walsh v. Board of Fire & Police Commissioners*, 96 Ill. 2d 101, 105 (1983), quoting *Fantozzi v. Board of Fire & Police Commissioners*, 27 Ill. 2d 357, 360 (1963). A board's finding of cause will be " 'overturned only if it is arbitrary and unreasonable or unrelated to the requirements of service.' " *Launius v. Board of Fire and Police Commissioners of the City of Des Plaines*, 151 Ill. 2d 419, 435 (1992), quoting *Walsh*, 96 Ill. 2d at 105.

¶ 36 The board's determination of cause could be considered arbitrary and unreasonable on review when compared to the discipline imposed in a "completely related case." *Id.* at 442. However, discrepancies in discipline do not require overturning a finding of cause. Rather, it is proper to affirm where a thoughtful consideration of all the surrounding facts requires affirming a finding of cause despite an otherwise meaningful comparison. *Id.*

¶ 37 Plaintiffs point to the several witnesses that testified that plaintiffs were both high quality

No. 1-11-2238

police officers and people and served the police department well. They contend that the alleged violations do not rise to cause, and argue that this case falls within the line of cases that have reversed dismissals from the department as excessive. See *Massingale v. Police Board of the City of Chicago*, 140 Ill. App. 3d 378, 382 (1986) (discharge of seven-year officer for driving while intoxicated with open containers of alcohol too harsh); *Kirsch v. Rochford*, 55 Ill. App. 3d 1042, 1046 (1977) (discharge for officer who was intoxicated and in a public disturbance at O'Hare Airport and refused order to submit to alcohol testing); *Styck v. Iriquois County Sheriff's Merit Commission*, 253 Ill. App. 3d 430, 436 (1994) (discharge overturned for officer for using loud, vulgar, and abusive language toward ex-wife during public quarrel). Plaintiffs argue that the facts of this case do not reveal any malice, corruption, or criminality and the Board must be reversed because their discharge is not " 'disciplinary action [that] must in some manner promote the discipline and efficiency of the service.' " *Humbles v. Board of Police and Fire Commissioners of the City of Wheaton*, 53 Ill. App. 3d 731, 735 (1977).

¶ 38 We agree with defendants that the Board's decision is not arbitrary or unreasonable. As defendants' argue, this case is not like those argued by plaintiffs where officers engaged in misconduct. This case involves misconduct directly related to plaintiffs' duties. Unfortunately, it also involved a fatality resulting from a pursuit involving plaintiffs. In addition, if plaintiffs' coverup, as found by the Board, reflects poorly upon plaintiffs' character that itself warrants dismissal.

¶ 39 The *Remus* court presented the policy underlying this determination succinctly, stating that the police "cannot act with integrity to protect the public from the wrongdoing of officers working for the department if their fellow officers help cover up the wrongdoing. To retain the

No. 1-11-2238

respect of the public as fair and impartial enforcers of the rule of law, police must police the police." *Remus*, 387 Ill. App. 3d at 905. Quite simply, this cuts to the core of the police being able to police themselves, acting with integrity, and preserving the trust of the public. While plaintiffs may have had a commendable record prior to the instant situation, given the facts of this case, the Board acted appropriately in finding cause for discharge.

¶ 40

### III. CONCLUSION

¶ 41 For the foregoing reasons, the judgment of the Board is affirmed.

¶ 42 Affirmed.