

No. 1-12-0836

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ERIK DANIEL,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 10 CH 32010
)	
THOMAS J. DART, SHERIFF OF COOK COUNTY,)	
and THE COOK COUNTY SHERIFF'S MERIT BOARD,)	Honorable
)	Stuart E. Palmer and
)	Thomas Allen,
Defendants-Appellees.)	Judges Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Sheriff's Merit Board decision discharging plaintiff from employment as a Sheriff's correctional officer was not erroneous. The findings that plaintiff resisted lawful police orders and struck and physically resisted officers were not against the manifest weight of the evidence, especially in light of his guilty plea to battery. The discharge of plaintiff for his off-duty actions was not arbitrary or unreasonable and was related to the requirements of the Sheriff's service.

¶ 2 Plaintiff Erik Daniel appeals from an order of the circuit court of Cook County, which confirmed the order of the Cook County Sheriff's Merit Board (Board) discharging him from employment by the Sheriff of Cook County (Sheriff). On appeal, plaintiff contends that the Board's decision is contrary to the manifest weight of the evidence and that his discharge was without sufficient cause and was unduly severe.

¶ 3 Plaintiff had been employed by the Sheriff as a correctional officer since August 2003. In

June 2009, the Sheriff filed a complaint with the Board seeking plaintiff's termination. The Sheriff alleged that, on July 9, 2008, police were sent to plaintiff's home to investigate "neighbor complaints about dogs barking, a municipal housing violation." Allegedly, plaintiff was uncooperative with the police officers and "resisted their lawful authority." Also, he allegedly pushed Officer Paul Maletich (Officer Maletich) and struck him several times in the torso. Plaintiff was arrested on charges of battery and obstructing a peace officer. Subsequently, he pled guilty to battery and received one year of supervision with 75 hours of community service. In September 2008, plaintiff allegedly lied to Sheriff's investigator, Robert Miller (Miller), that he did not resist police verbal orders and did not strike, "hit, punch, kick, or push" Officer Maletich.

¶ 4 The complaint alleged that these acts violated Sheriff's General Order 3.8, enjoining the Sheriff's employees to "obey all federal, state, county, and municipal laws"; to "respect the importance of agencies within the criminal justice system and work to improve cooperation with each segment"; and to "refrain from engaging in off-duty behavior that would reflect negatively on the department." General Order 3.8(III)(A)(1), (B)(6), (D)(6). The complaint also alleged that plaintiff's actions violated the Sheriff's General Order 4.1, classifying as serious misconduct "[f]ailure to observe all Federal, State and local laws," engaging "in any conduct unbecoming to an employee of the Cook County Department of Corrections which tends to reflect discredit on" that department or the Sheriff, and "[m]aking a false official report, either oral or written." General Order 4.1(III)(A)(5), (17), (18). Lastly, the Sheriff alleged that plaintiff's actions violated the Board's rules and regulations, which prohibited the Sheriff's employees, including correctional officers, from violating any laws, ordinances or the Sheriff's general and special orders. Sheriff's Department Merit Board Rules and Regulations, Art. X, Par. B(1)-(3).

¶ 5 At the March 2010 Board Hearing, the Sheriff's personnel investigator, Miller, testified that he investigated plaintiff's July 2008 arrest for battery of a peace officer. He interviewed the responding police officers and received copies of police reports. Animal Control Officer Rackovich

(Officer Rackovich) told Miller that he had responded to earlier calls to plaintiff's home, as plaintiff's dogs did not have a municipal license and he kept them "in a dirty environment in a garage in cages with their feces." Officer Rackovich also stated that he had safety concerns due to plaintiff's prior uncooperativeness, that he summoned police backup, and that he saw plaintiff push Officer Maletich in the chest several times as plaintiff tried to go inside his home. Police Officer Mason (Officer Mason) told Miller that he used his baton because plaintiff was uncooperative, unresponsive to police orders, and combative. Officer Maletich told Miller that, when he responded to complaints that plaintiff's dogs had been barking all night, he found plaintiff "surly" and "had an attitude." Plaintiff cooperated until he was told that his garage and dog kennel would be photographed, at which point he pushed Officer Maletich in the chest in an attempt to get past him and enter his home. Officer Maletich believed that the situation could escalate if plaintiff went inside the home.

¶ 6 In September 2008, Miller also interviewed plaintiff, who gave a sworn statement denying resisting the officers' verbal orders and denying striking Officer Maletich. Plaintiff informed the Sheriff that he had pled guilty to battery, and Miller's investigation ended with a finding "based on the finding of the court" that plaintiff violated the law, as well as the General Orders and Board rules and regulations alleged in the complaint. On cross-examination, Miller admitted that, though the officers made a use-of-force report for striking plaintiff with a baton, Miller had not received a copy of it. Miller explained that he did not feel he needed the report as he interviewed Officer Mason, who "stood on" or endorsed Officer Maletich's account of the events. Miller also did not elicit from Officer Rackovich specific information on plaintiff's prior uncooperativeness that prompted him to summon police backup.

¶ 7 Officer Maletich testified that, on the day in question, Officer Rackovich – who was responding to complaints of barking dogs – called for backup at plaintiff's home. When Officers Maletich and Mason arrived, Officer Rackovich told them that he had been there previously, that a neighbor had reported barking dogs, and that plaintiff had been "a little uncooperative in dealing with

getting licensing or the proper registration for the animals." There was no indication in the police records that the police had prior calls to plaintiff's home. Plaintiff was initially cooperative, leading Officer Rackovich and the officers back to the garage and opening the door. Officer Maletich entered the dark garage and saw four dogs in undersized cages with no food or water, "sitting in their own feces." When Officer Rackovich told plaintiff that the inside of his garage would be photographed, plaintiff "didn't agree with that." After one of the dogs was taken from its cage to the animal control van, plaintiff picked up the cage. The officers told him to put the cage down as the area was to be photographed as a crime scene, but plaintiff walked with the cage in hand towards his home. Officer Maletich told him to stop and put the cage down, but he did not comply. Instead, plaintiff elbowed Officer Maletich in the chest and pushed him several times in the chest, so as to get past him, before dropping the cage and running towards the door of his home. Because Officer Maletich was wearing a bulletproof vest, he was not injured by plaintiff's blows. Officer Maletich declared that plaintiff was under arrest for battery of a peace officer, after which he and Officer Mason tried to handcuff him. However, plaintiff struggled with them and shoved them away, ignoring their instructions to stop resisting. Thus, Officer Mason struck plaintiff in the knee with a baton, which brought him to the ground where he was handcuffed. Throughout the incident, plaintiff did not identify himself as a corrections officer, nor was he wearing his uniform or badge.

¶ 8 Officer Maletich attended court on the criminal proceedings against plaintiff but did not testify against him because plaintiff pled guilty, nor was Officer Maletich present for the guilty-plea proceeding. In September 2009, plaintiff commenced a police internal investigation against Officer Maletich, for excessive force and failure to provide medical attention. However, the allegations were found to be "not sustained."

¶ 9 Plaintiff testified that he owned four dogs, two Dobermans and two Giant Schnauzers. Two were adults and two were puppies. He kept them in kennels in the backyard, but sometimes he kept them in cages in the garage. Only one of his neighbors "had problems with" his dogs barking in the

preceding six years. Officer Rackovich responded to a call about a year before the incident in question, and animal control had called for police backup "maybe a couple of times prior to this incident." However, plaintiff had no physical altercation with either animal control officers or police officers in any earlier incident. In 2005, plaintiff received a municipal citation for barking dogs and was fined \$200.

¶ 10 On the morning in question, Officer Rackovich came to his home upon the neighbor's complaint that his dogs had been barking all night. Officer Maletich along with another officer initially stayed in their cars. Officer Rackovich asked to see plaintiff's dog licenses and to see where the dogs were housed. Plaintiff brought Officer Rackovich to the garage and let him in. The dogs had been in the garage cages overnight for about eight hours. While there was no water or food in the cages, the dogs were not barking. Officer Rackovich then told plaintiff that he would have to take control of the dogs and photograph the garage because there was feces in one of the cages. Plaintiff handed him one of the puppies but objected to having the garage photographed. He requested to see a supervisor but Officer Rackovich did not call one. Plaintiff told Officer Rackovich to leave his property, but Officer Rackovich refused. Officer Rackovich explained in blunt language that he had the authority to act on plaintiff's premises, and gestured for the police officers to join him. Plaintiff then picked up the cage so that it could not be photographed. Officer Maletich grabbed the cage from plaintiff, who walked away towards his home "to cool down." Officer Maletich then grabbed him and told plaintiff to stop, who complied. The officers then grabbed both of his arms. Although they told plaintiff to allow himself to be handcuffed, he could not put his hands together to do so because the officers were pulling his arms in opposite directions. Plaintiff denied striking or struggling with either officer. When Officer Maletich asked for a taser, Officer Mason approached and struck plaintiff repeatedly with his baton. Plaintiff was then handcuffed and arrested. Although plaintiff was bleeding, he received no medical treatment.

¶ 11 After his arrest, plaintiff told Officer Maletich that he was not a criminal but that he was "in

the same line of work that you are" because plaintiff was a Sheriff's correctional officer. Plaintiff denied that he told this to Officer Maletich "in an attempt to get out of [his] arrest." Officer Maletich replied that he would make every effort to have plaintiff discharged from his employment. Upon his release on bond, plaintiff did not seek medical treatment, though he took aspirin and had a slight limp when he went to work the night after the incident. Plaintiff spoke truthfully when interviewed by investigator Miller. Subsequently, plaintiff pled guilty to battery, for which he received one year of supervision and 75 hours of community service, because he believed that he would be found guilty if he was tried. His belief arose from counsel's advice, his own observation of the court, and Officer Maletich's statement that he would do anything to have plaintiff terminated. Officer Maletich was in court and conferred with prosecutors before plaintiff entered his guilty plea. Plaintiff believed that pleading guilty to a single misdemeanor offense would not result in discharge from his employment.

¶ 12 Plaintiff successfully completed his community service and supervision. He expressed his desire to remain in the Sheriff's employ because it "gives [him] the ability to help others or give others *** some direction with regards to making better choices in life," and expressed his willingness "without question" to obey the Sheriff's orders, rules, and regulations if reinstated to duty. Plaintiff testified that he had no prior discipline by the Sheriff. When confronted on cross-examination with a June 2008 allegation that he abused medical leave, he explained that the allegation was deemed unwarranted. The Sheriff's records were unclear as to whether any discipline was issued on that allegation.

¶ 13 On June 25, 2010, the Board issued an order discharging plaintiff from employment by the Sheriff, effective June 16, 2009. The Board found that plaintiff violated General Order 3.8(III)(A)(1) and (B)(6), General Order 4.1(III)(A)(11) and (17), and Board Rules and Regulations Art. X, Par. B(3). After reciting the hearing evidence, the Board found that plaintiff's conduct "in dealing with two uniformed member[s] of law enforcement and his refusal to obey lawful orders [was] a serious and gross deviation from the standard of conduct" expected from Sheriff's employees. The Board

expressly found Officer Maletich's testimony credible.

¶ 14 Plaintiff timely commenced an administrative review action in the circuit court of Cook County, alleging that the Board's decision was arbitrary and capricious, against the manifest weight of the evidence, and legally erroneous. Following briefing and oral argument, on November 28, 2011, the circuit court issued an order confirming the Board's decision. On March 6, 2012, plaintiff's timely motion for clarification was denied and this appeal timely followed.

¶ 15 On appeal, plaintiff contends that the Board's decision is contrary to the manifest weight of the evidence and that his discharge was without sufficient cause and was unduly severe.

¶ 16 A Sheriff's correctional officer may not "be removed, demoted or suspended except for cause, upon written charges filed with the Board by the Sheriff and a hearing before the Board thereon," where the officer has the right to present evidence and argument. 55 ILCS 5/3-7012 (West 2010). "Cause" may be a substantial shortcoming which renders continuance in office to be detrimental to the discipline and efficiency of the Sheriff's service, or where the law and sound public opinion recognize as good cause for no longer occupying office. *Malinowski v. Cook County Sheriff's Merit Board*, 395 Ill. App. 3d 317, 322 (2009). "If the charges *** are established by a preponderance of evidence, the Board shall make a finding of guilty and order either removal, demotion, suspension for a period of not more than 180 days, or such other disciplinary punishment as may be prescribed by the rules and regulations of the Board which, in the opinion of the members thereof, the offense merits." 55 ILCS 5/3-7012 (West 2010).

¶ 17 An officer's violation of a single rule may constitute a sufficient basis for discharge. *Malinowski*, 395 Ill. App. 3d at 322. An agency's rules and regulations are subject to the rules of statutory construction. *Id.* Legislative intent is best determined from the language of the statute or regulation itself, which should be interpreted as a whole and given its plain and ordinary meaning. *Id.* A statute or regulation should be interpreted in light of the purpose for the law, the problems to be remedied, and the objects and purposes sought. *Id.*

¶ 18 We review the Board's decision rather than the decision of the circuit court. *Id.* Our review of a discharge for cause has two stages. First, we review the Board's finding of guilt, reversing only if it was against the manifest weight of the evidence. Second, we review the Board's finding that said guilt was a sufficient cause for discharge, reversing only if it was arbitrary and unreasonable or was unrelated to the requirements of the Sheriff's service. *Id.* at 322-23. We do not reweigh the evidence or substitute our judgment for that of the Board, but instead affirm when the record contains evidence supporting the Board's decision. *Id.*, at 323. Similarly, the Board need not give mitigating evidence such weight that it overcomes its discharge decision, and a discharge in a case where mitigating evidence was presented is not inherently arbitrary or unreasonable. *Id.*

¶ 19 Here, by the references in its legal findings, the Board found that plaintiff failed to "obey all federal, state, county, and municipal laws" or to "respect the importance of agencies within the criminal justice system and work to improve cooperation with each segment," and that he engaged in "conduct unbecoming to an employee of the Cook County Department of Corrections which tends to reflect discredit on" the Sheriff. The record contains evidence supporting such conclusions so that they are not against the manifest weight of the evidence. Officer Maletich testified clearly that plaintiff refused to heed repeated orders to put down the cage, that he shoved Officer Maletich in order to get past him, and that he did not submit to being handcuffed but shoved the officers away. Moreover, plaintiff pled guilty to battery, thus concretely admitting his failure to obey state laws. The Board as finder of fact was not obligated to accept his later explanation of his guilty plea.

¶ 20 Turning to the propriety of plaintiff's discharge, we do not find it either arbitrary or unreasonable to discharge a Sheriff's employee who behaved as the Board concluded plaintiff had behaved. Plaintiff's discharge was indeed related to the requirements of the Sheriff's service. In particular, Sheriff's personnel as law enforcers are expected at a minimum to obey those laws themselves, that there must be cooperation and respect between the Sheriff's personnel and those of other law enforcement agencies, and that the reputation of the Sheriff's office and its personnel does

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not arise from on-duty acts alone. Plaintiff argues that his discharge was improper because he was off-duty, was not in uniform or displaying his badge, and did not invoke his office to influence the officers so that there was "no nexus" between his off-duty conduct and his employment by the Sheriff. While plaintiff believes that his off-duty conduct did not "reflect discredit upon" the Sheriff, we do not agree, as reasonable persons can reasonably believe that a person does not simply check his off-duty bad behavior or attitudes at the proverbial door when he goes on-duty. The Sheriff's General Orders recognize this by expressly addressing off-duty as well as on-duty conduct, and in that vein we reject plaintiff's off-duty "nexus" argument.

¶ 21 Accordingly, the judgment of the circuit court is affirmed and the order of the Board is confirmed.

¶ 22 Circuit court judgment affirmed; Board's order confirmed.