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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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ANTHONY KAFKA,	)	Appeal from the Circuit Court
	)	of DeKalb County.
Plaintiff-Appellant,	)	
	)	
v.	)	
	)	No. 11-MR-175
THE UNIVERSITY CIVIL SERVICE MERIT	)	
BOARD, and NORTHERN ILLINOIS	)	Honorable
UNIVERSITY,	)	Kurt P. Klein,
Defendant-Appellees.	)	Judge, Presiding.

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JUSTICE McLAREN delivered the judgment of the court.  
Presiding Justice Burke and Justice Hutchinson concurred in the judgment.

**ORDER**

¶ 1 *Held:* An administrative board's finding that a university police officer committed aggravated assault was not against the manifest weight of the evidence where a police officer threatened to shoot his co-workers while armed.

*Held:* An administrative board's decision to discharge a university police officer was not arbitrary, unreasonable or unrelated to the requirements of service where the officer, while in the police station and armed, threatened to shoot his co-workers.

¶ 2 Plaintiff, Anthony Kafka, appeals from a circuit court order affirming a decision of the University Civil Service Merit Board (Board) discharging him from his position as a Northern Illinois University (NIU) police officer. On appeal, Kafka argues that the Board's decision to

discharge him must be reversed because: (1) the Board was clearly erroneous by finding that he violated sections of the Criminal Code and rules and regulations of the department; (2) violation of the department rules and regulations is not sufficient cause for discharge; (3) his discharge was retaliatory and violated his first amendment rights; and (4) the Board failed to set forth any facts in its opinion in support of its decision and, thus, its decision was arbitrary and capricious. We affirm.

¶ 3

### I. BACKGROUND

¶ 4 On the morning of May 27, 2010, Kafka was on duty as an NIU police officer. He became angry in the squad room when he saw that the schedule had been changed. Kafka had requested an accommodation in the work schedule for his wedding anniversary. The schedule was changed back because of a co-worker's lingering injury. Kafka became angry, slammed his fist against the wall and on a table, yelled, swore, and, while armed, became emotional and threatened to shoot his co-workers.

¶ 5 On September 29, 2010, a hearing was held before Jesse Perez, the assistant director of labor relations at NIU, regarding the May 27 incident. On December 13, 2010, Perez notified Kafka that NIU intended to initiate discharge proceedings before the Board. On December 15, 2010, Kafka was served with a suspension notice pending discharge.

¶ 6 On December 15, 2010, NIU filed written charges for discharge against Kafka, charging him with just cause for discharge for violating eight state laws and NIU and department policy rules and regulations. Kafka was charged with committing aggravated assault (720 ILCS 5/12-2(a)(16) (West 2010)), disorderly conduct (720 ILCS 5/26-1(a)(1) (West 2010)), and official misconduct (720 ILCS 5/33-3(b) (West 2010)). Further, Kafka was charged with violating NIU Workplace Prevention

Policy/Procedures, Section II, which provides, in part, “Any behavior that would constitute an act, or threat of unlawful violence in the university workplace is prohibited on all university premises.”

¶ 7 NIU also charged Kafka with violating the following NIU police department rules and regulations: Section I(A), Personal Conduct, Police Authority and Expectations Rules, which provides in part:

“It is essential that sworn members conduct themselves in a manner that will bring about the highest degree of credit to the department. The public expects sworn members to maintain a posture of honesty, helpfulness, thoughtfulness and conduct beyond reproach. The department expects the same posture. Actions to the contrary, even while off duty, can lead to the initiation of corrective disciplinary action \*\*\*.”

¶ 8 Section I(C), Criticism or Malicious Gossip; Section II. General Duty Requirements, which states in part, “nor shall a member discredit, lower or injure the morale or other personnel of the department”; Section II, General duty requirements, (B), General Knowledge of Laws and General Orders, which states in part, “Members are responsible for thoroughly understanding all pertinent provisions of the department manual, General Orders, applicable local ordinances, and state and federal laws”; Section VII, Penalties, (B) Punishable Offenses, (1) “Commission of a crime under any statute, law or ordinance,” (2) “Disobedience or violation of any departmental rule, regulation, order, instruction, or memorandum,” (3) “Insubordination,” (4) “Disobedience of a Lawful Order,” (7) “Any malfeasance, wrongdoing or misconduct,” (8) “Disrespect towards a superior member,” (18) “Conduct unbecoming a member of the department,” and (19) “Conduct detrimental to the public welfare.”

¶ 9 On February, 28, 2011, a hearing was held before hearing officer, Kim L. Kirn. During the hearing, NIU police Sergeant Dathan Jackson testified as follows. At approximately 7:15 a.m. on May 27, 2010, Jackson, Kafka and Zimberoff were in the squad room. Jackson and Zimberoff were at the front of the room conversing and Kafka was at the back of the room looking at the work schedule. Kafka slammed his fists on the table creating a loud bang which caught Jackson's attention. Kafka then said, loudly and angrily, "I don't know whether to be mad at Karen or be mad at this place." Jackson believed Kafka was referring to Officer Karen Clifton. Kafka was armed at the time. Jackson asked Kafka if his comment was related to his schedule and anniversary plans because Jackson knew there had been some schedule changes related to Kafka's request for time off. Kafka said, "Yes, this is about my f\*\*\*ing anniversary." Kafka then loudly yelled, "I feel like I can shoot someone." Jackson asked whether the threat was directed at him. Kafka screamed, "No. Mother f\*\*\*er." Zimberoff exited the room and Jackson asked Kafka who his threat was directed toward. Kafka said "no one" and he repeated that several times. Kafka also said "I can't take this place anymore," while using profanity several times, saying "f\*\*\*er" and "mother f\*\*\*er." Kafka was "very flush in the face and he lowered his head, cupped his hands behind his head and he appeared to be sobbing." After about 10 to 15 seconds, Kafka told Jackson "I think I need to go home." Jackson's initial reaction to Kafka's comment about shooting someone was, "alarmed because I never heard anyone make that comment." Jackson told Kafka to take a few minutes to compose himself and that if he still felt that he needed to go home he could. Approximately 10 minutes later, Kafka gave Jackson his key-ring and a time-off request in a "semi-aggressive" manner. Kafka's hands were trembling and he pushed the items toward Jackson. The time-off request stated "psychological distress!" on the explanation section. About an hour later, Kafka called the

department to inquire about his schedule and spoke with Jackson. Kafka told Jackson that he had made an appointment at the NIU Wellness Center and that if anyone asked, his gun was in his locker. Later in the day, after Jackson consulted with Kafka's supervisor, Sergeant Wright, Lieutenant Todd Henert and Deputy Chief Darran Mitchell, Jackson informed Kafka that he was being placed on paid administrative leave. Jackson submitted a written statement to his supervisor, Henert. Jackson opined that Kafka should not be allowed to continue in his position as a police officer. Jackson also wrote that Kafka's "statement has made me fearful regarding my safety and the safety of other individuals. I believe Officer Kafka cannot be entrusted with the responsibility of protecting the NIU community after making such a threat." During an unfair labor practice hearing, Jackson testified that he did not feel that Kafka was a threat. Jackson provided that testimony at the unfair labor practice hearing because "that was the truth."

¶ 10 Kafka testified as follows. When he walked into the squad room on the day of the incident he "saw a drastic change in my schedule." The schedule change interfered with his wedding anniversary plans. All that Kafka knew is that his "entire schedule got changed for a two-week block on short notice. So it made me upset. I was very frustrated with that." Kafka became upset. Kafka saw that Clifton was not on the schedule and he knew that she had injured herself. Kafka sat down at a table and started writing down the schedule and thought about how he "had been treated so differently since [he] became a union steward and wrote grievances on behalf of the chapter." He thought about how he had a "great career" seven years ago. While Kafka was thinking about these things, his friends, Jackson and Zimberoff walked into the room and Kafka said, "I don't know if I should shoot Karen Clifton or the rest y'all." Kafka thought he could say "pretty much anything around" Jackson and Zimberoff. Clifton was a "personal friend of" Kafka's and he "never intended

to threaten” her. What Kafka said “was not a threat. It was figurative speech in a moment when [he] was frustrated with the situation. I got their attention.” Jackson asked Kafka, ““Is this because of your wedding anniversary?”” Kafka replied, with a raised voice, “yes, it’s my f\*\*\*\*\*g wedding anniversary,” while he hit his hand on the table “to punctuate [his] frustration.” Kafka “made an outburst” and used profanity, “but there was never any intent to threat [*sic*].”

¶ 11 During cross examination, Kafka testified as follows. Kafka had a “meltdown,” he was upset and angry, his hands were shaking and he was crying and he said, “I don’t know whether or not to shoot Karen [Clifton] or someone else.” Regarding his shaking hands, Kafka testified, “As I got myself worked up and the adrenaline, yes, and that’s something normal for me. [*Sic*] I’ve had that on arrests where my hands were shaking.”

¶ 12 Henert testified as follows. Chief Grady asked him to investigate the incident and determine what had occurred. Henert prepared a “Request for Discipline” report. Henert reviewed written statements of those involved in the incident, interviews he conducted of those involved in the incident, including Kafka, e-mails that were sent or received by Kafka, and the university’s risk assessment team’s assessment of three point five out of five, the highest risk assessment ever given an NIU employee to date. Henert recommended Kafka’s termination. In reaching his conclusion, Henert considered all of the facts from his investigation and applied them to the policies of the university, Department of Public Safety and state statutes. Henert’s report concluded, in part:

“No corrective disciplinary action, counseling or training can reasonably assure the University, the Department of Police and Public Safety, or its employees, that the behaviors demonstrated by Officer Kafka in this circumstance will not be repeated or escalate in the future, placing people at serious risk of personal injury or loss of life.”

¶ 13 Mitchell testified as follows. On the day of the incident he was acting chief because Chief Grady was out of town. After Mitchell was told what had occurred, he told Jackson to secure Kafka's weapon. After Kafka was placed on administrative leave, Mitchell and Henert made Clifton aware of Kafka's threat.

¶ 14 Chief Donald Grady testified as follows. After the incident, Grady instructed Henert to conduct an investigation and make a recommendation. After Grady and Kafka received Henert's recommendation for discipline, Grady held a hearing at which Kafka was represented by counsel, presented witnesses and was given an opportunity to offer "any evidence or mitigating circumstances that [Kafka] thought I should be aware of before I made a decision regarding discipline." After considering Kafka's account of the incident, Dr. Joseph Vaughn's report, a statement from Kafka's doctor, Kafka's personnel file, other information provided by Kafka, and Henert's report, Grady recommended Kafka's discharge to the university's Department of Human Resources. Kafka was granted another hearing before the university's assistant director of labor relations, Jesse Perez. After the hearing, Perez upheld Grady's recommendation.

¶ 15 Dr. Joseph Vaughn, a clinical psychologist, testified as follows. Vaughn evaluated Kafka at the request of Grady. Vaughn prepared a report which was an evaluation of Kafka, his mental status, attitude responses and content of the two-hour meeting with Kafka on July 29, 2010. Vaughn opined that Kafka was extremely angry and had been in emotional turmoil triggered by his reading a change in his work schedule which was going to conflict with personal plans. Kafka was in constant struggle with the department and had extremely negative feelings about his job due to the constant harassment on the part of people in the department. Kafka seemed to feel that he was justified in being angry because the supervisory people in the department were out to get him. Kafka

indicated during his meeting with Vaughn that his schedule was changed more than once, so Kafka's anger was focused on the department and certain people in the department. Kafka told Vaughn that he felt like he was in meltdown at that point and that he indicated on the department form that he was under psychological distress. Vaughn believed this to be true. Vaughn opined that Kafka was extremely distressed and extremely vulnerable in regard to the potential for injuring somebody at the time of the incident.

¶ 16 Psychologist Harold Best testified as follows. Kafka hired Best to evaluate him. Best performed an evaluation which included a two- or three-hour interview and psychological testing of Kafka and prepared a report. Nothing in the testing indicated that Kafka had a personality disorder that would prevent him from continuing his work as a police officer. Kafka told Best about the May 27 incident, including that Kafka said that he was so angry that he could shoot somebody. Best opined that alone would not make a person unfit for duty. If a person was frustrated, they would say something that did not have a meaning behind it. Best found nothing that would indicate that Kafka was unfit for duty and it appeared that he had been performing satisfactorily and would continue to perform so in the future.

¶ 17 NIU police officer Karen Clifton testified as follows. Shortly after the incident, Kafka and other police officers called Clifton and told her about Kafka's alleged threat to shoot her. Clifton did not feel that Kafka would carry out the threat "[b]ecause he was just venting." Clifton was friends with Kafka and worked with him and "knew he was upset." Clifton "was not at all threatened" and did not feel "in harm's way."

¶ 18 NIU police officer Cynthia Zimberoff testified as follows. When Kafka said that he didn't know if he should shoot someone or shoot this place, she did not believe Kafka was a threat to her.

Zimberoff was not alarmed or disturbed; she knew he would not shoot anyone. Zimberoff knew Kafka because he was Zimberoff's friend. Kafka was stressed and he was "just saying how he felt."

¶ 19 NIU police officer Rachael Muszynski testified as follows. Muszynski was the union president at the time of the hearing. When Deputy Chief Mitchell was Muszynski's sergeant, Mitchell told her that a man had just tried to hit Mitchell with his car while Mitchell had been writing parking tickets. Mitchell told Muszynski, "I told him if he ever tries to hit me with his car again, I'm going to blow his brains off—blow his brains out or blow his head off."

¶ 20 NIU police officer Tony Ayala testified as follows. In 2004, Mitchell told Ayala that he had messed up and was on suspension. Mitchell then spoke with "his group" and told them that if he found out who ratted him out he would "write you all up." Mitchell's voice got louder and louder. Ayala also knew about the incident that Muszynski testified about. It occurred before 2004.

¶ 21 On April 15, 2011, the hearing officer submitted her findings to the Board. The hearing officer found that NIU had "proven the allegations it set forth in its Written Charges for Discharge." The hearing officer's findings are summarized as follows.

¶ 22 Before May 27, 2010, Kafka asked for a schedule change to celebrate his wedding anniversary. However, on the morning of May 27, 2010, the previously posted work schedule had been changed again because of a lingering injury of another officer, Clifton. When Kafka saw the new work schedule posted in the squad room that morning, he slammed his fist on the wall. Zimberoff heard the noise and came into the squad room to investigate. Jackson also came into the room. Kafka then slammed his fist on a table and angrily stated, "I don't know whether to be mad at [Clifton] or be mad at this place." Jackson asked Kafka if he was talking about his work schedule or his anniversary plans. Kafka yelled, "Yes, this is about my f\*\*\*ing anniversary. I don't know

whether to shoot [Clifton] or shoot this place.” Kafka was armed. Jackson asked whether the threat was directed at him. Kafka yelled, “No. Mother f\*\*\*er. I can’t take it anymore.” He repeated that phrase several times. According to Jackson, Kafka used profanity repeatedly, loudly expressed his frustration, and his face was flushed, he was crying and his hands were shaking. Jackson was alarmed. Jackson told Kafka to take a few minutes to compose himself and that if he needed to go home, Jackson would allow it. Ten minutes later, Kafka handed Jackson his keys and a request for time off which stated as the explanation for absence, “psychological distress!” Two or three hours later Kafka called Jackson and told Jackson that he left his gun in his work locker. Later that same day, Jackson told Kafka that he had been placed on administrative leave with pay due to the seriousness of his behavior. Kafka began treatment with a counselor at the NIU Wellness Center later that day. Kafka described his own conduct as a “meltdown,” but denied that his threats were serious. He explained that his difficulties with the university began when he became union steward. Kafka vehemently denied that his threats were serious. Kafka felt he was venting his anger amongst friends. However, Kafka was not laughing or “speaking lightly” when he made the threats. Jackson, Jackson’s supervisor and the university took Kafka’s threats very seriously. After the incident, Jackson consulted with his supervisor and attempted to notify Clifton. Grady testified that the threat was taken so seriously because of its context; the university had suffered a devastating incident two years earlier when an individual came onto campus and opened fire, killing five people, injuring 23 people and killing himself.

¶ 23 On May 18, 2011, the Board issued its decision and order. The order states that the Board examined and reviewed the hearing record as supplemented, including, in part, the written charges for discharge, Kafka’s exhibits, Kafka’s post-hearing brief, transcript of evidence and exhibits, and

findings of fact rendered by the hearing officer. The Board found that the record supported and established just cause for discharge based on all the charged violations. The Board approved and certified the hearing officer's findings of facts as summarized above and discharged Kafka.

¶ 24 On June 15, 2011, Kafka filed a complaint in the circuit court for administrative review of the Board's decision. On December 19, 2011, the circuit court affirmed the Board's order. On January 18, 2012, Kafka filed a notice of appeal.

¶ 25 II. ANALYSIS

¶ 26 On appeal, Kafka argues that the Board's decision to discharge him must be reversed. More specifically, Kafka argues that the Board was clearly erroneous by finding that he violated sections of the Criminal Code and rules and regulations of the department.

¶ 27 In cases of discharge, the scope of review of an administrative agency's decision is a two-step process: (1) we must first determine whether the agency's findings of fact are contrary to the manifest weight of the evidence; and (2) if the agency's findings are not contrary to the manifest weight of the evidence, we must next determine if the agency's findings of fact provide a sufficient basis for its conclusion that there is cause for discharge. *Williams v. Illinois Civil Service Commission*, 2012 IL App (1st) 101344, ¶ 9. "A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Gorski v. Board of Fire & Police Commissioners of City of Woodstock*, 2011 IL App (2d) 100808, ¶ 34. The second determination is measured by whether the agency's decision is arbitrary, unreasonable, or unrelated to the requirements of service. *Williams*, 101344, at ¶ 9.

¶ 28 Section 360 of the State Universities Civil Service Act (Act) provides in part that "no employee shall be demoted, removed or discharged except for *just cause*, upon written charges, and

after an opportunity to be heard \*\*\*.” (Emphasis added.) 110 ILCS 70/36o (West 2010). The Act’s regulations define “just cause” as follows:

“[S]ome substantial shortcoming that renders the employee’s continuance in his/her position in some way detrimental to the discipline and efficiency of the service and that the law and sound public opinion recognize as good cause for the employee no longer holding the position \*\*\*.” 80 Ill. Adm. Code 250.110(f)(16) (West 2010).

See also *Valio v. The Board of Fire and Police Commissioners of the Village of Itasca*, 311 Ill. App. 3d 321, 330 (2000) (defining “cause,” for purposes of discharging a police officer, with substantially the same language quoted above in section 250.110(f)(16) of the Illinois Administrative Code).

¶ 29 The Board’s finding that Kafka committed aggravated assault, in violation of section 5/12-2(a)(16) of the Criminal Code, was not against the manifest weight of the evidence.” A person commits an assault when, without lawful authority, he “knowingly engages in conduct which places another in reasonable apprehension of receiving a battery.” 720 ILCS 5/12-1(a) (West 2010). A person commits aggravated assault in violation of section 5/12-2(a)(16) of the Criminal Code when he “[k]nows the individual assaulted to be an employee of a police or sheriff’s department.” When a criminal offense is the basis of a charge before an administrative body, proof of the offense by a preponderance of the evidence is required. *Teil v. City of Chicago*, 284 Ill. App. 3d 167, 170 (1996).

¶ 30 Kafka argues that there was no proof that anyone was apprehensive or fearful of receiving a battery. Kafka relies on the testimony of Zimberoff, that she did not feel threatened; Jackson, that he did not feel Kafka was a threat on the day of the incident; and Clifton, that she did not feel that Kafka would carry out “such a statement.” Although Zimberoff, Jackson and Clifton provided such testimony, this testimony does not change our conclusion. A defendant may be convicted of

aggravated assault even when the victim testified that the defendant did not place him in reasonable apprehension of receiving a battery. For example, in *In re Gino W.*, 354 Ill. App. 3d 775, 778 (2005), this court affirmed the respondent's conviction even though the victim testified that he did not believe that the respondent was going to hit him. We explained that reasonable apprehension is an objective standard: “ ‘ the apprehension must be one which would normally be aroused in the mind of a reasonable person.’ ” *Id.* at 779, citing *In re C.L.*, 180 Ill. App. 3d 173, 178 (1989), quoting Prosser & Keeton on Torts § 10, at 44 (5th ed. 1984). We also considered the victim's conduct to determine that there was sufficient evidence that the victim was in reasonable apprehension. *Gino W.*, 354 Ill. App. 3d at 779.

¶ 31 In this case, there are ample facts to support a finding that Jackson was in reasonable apprehension. Kafka, while armed, had a “meltdown.” After Kafka slammed his fist into the wall and on the table, he then angrily shouted that he did not know whether he should shoot a co-worker or “the rest of y'all,” “this place,” or “the rest of you.” Kafka's hands shook, his face was flushed, he was crying and he was using profanity. Jackson was alarmed; he told Kafka to take time to compose himself and that if Kafka needed to go home, he would allow it. Immediately after the incident, Jackson met with his supervisors and consulted with the vice-president of human resources, took Kafka's weapon into custody, prepared a written statement, and obtained statements from witnesses. Jackson's statement read, in part, that Kafka's “statement has made me fearful regarding my safety and the safety of other individuals. I believe Officer Kafka cannot be entrusted with the responsibility of protecting the NIU community after making such a threat.” After considering the evidence, we determine that the Board's finding that Kafka committed aggravated assault in

violation of section 5/12-2(a)(16) of the Criminal Code, was not against the manifest weight of the evidence.

¶ 32 Kafka was also charged with violating NIU Workplace Prevention Policy/Procedure, Section II. That section provided, in part: “Any behavior that would constitute an act, or threat of unlawful violence in the university workplace is prohibited on all university premises.” The evidence previously discussed established that Kafka threatened to shoot his co-workers in the NIU police department squad room. Thus, the Board’s finding that Kafka violated NIU Workplace Prevention Policy/Procedure, Section II, was not against the manifest weight of the evidence.

¶ 33 Kafka also contends that the Board’s decision must be reversed because it found that he violated the department’s rules and regulations “without the policy manual.” Kafka has forfeited this issue by failing to raise it before the Board or the circuit court. See *Illinois Department of Human Services v. Porter*, 396 Ill. App. 3d 701, 720 (2009) (finding the plaintiff forfeited an argument on appellate review by failing to raise the issue before the ALJ or the circuit court).

¶ 34 Even if Kafka had not forfeited this issue, Kafka ignores that the department rules and regulations were quoted in the NIU’s written charges for discharge. Kafka does not argue that NIU misquoted the department’s rules and regulations; rather, Kafka argues that it is “impossible for this Court to adequately review this matter without the official policy manual containing these rules and regulations.” However, any doubts that may arise from the incompleteness of the record will be resolved against Kafka. See *Foutch v. O’Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 35 Kafka cites *Tinner v. Police Board of City of Chicago*, 62 Ill. App. 3d 204 (1978), to support his argument. In *Tinner*, the appellate court held that the police board improperly considered information contained in a police officer’s employment disciplinary file in imposing a penalty upon

the police officer. *Id.* at 210. The court explained that the information had not been disclosed to the police officer and, therefore, he did not have an opportunity to test it for accuracy. *Id.* In this case, the NIU police department served Kafka with written charges for discharge that contained the rules and regulations of which he was accused of violating. Thus, unlike the police officer in *Tinner*, Kafka cannot complain that the relevant information was not disclosed to him. Thus, *Tinner* is distinguishable from this case.

¶ 36 Kafka also argues that violation of the department rules and regulations were not sufficient cause for discharge. Kafka argues that the penalty of discharge was too harsh considering the evidence regarding his positive record with the department. In reviewing the Board's decision to discharge Kafka, we may not consider whether we would have imposed a less severe penalty; instead, we must determine only whether the Board acted unreasonably or arbitrarily by selecting a type of discipline that was inappropriate or unrelated to the needs of the NIU police. See *Siwek v. Police Board of City of Chicago*, 374 Ill. App. 3d 735, 738 (2007). A single violation of the departmental rules is sufficient to authorize dismissal. See *id.* Further, Kafka's mitigating evidence in the form of his positive employment record, without more, does not render the Board's discharge decision unreasonable, arbitrary, or unrelated to the requirements of service. See *id.* at 738-39.

¶ 37 In addition, Kafka argues that his discharge was retaliatory and violated his first amendment rights. Kafka has forfeited these issues by failing to comply with Illinois Supreme Court Rule 341 (eff. July 1, 2008). This court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented and it is not a repository wherein an appellant may dump the burden of argument and research. *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶38. Kafka

raises these issues without developing them and without any citation to authority to support his position; thus, the issues are forfeited.

¶ 38 Even if Kafka had not forfeited the issues, reversal is not warranted. After considering the testimony regarding NIU's possible "animus" toward Kafka due to his Labor Relations Board testimony and the department's alleged disparate treatment of Chief Deputy Mitchell, we cannot say that the Board's decision to discharge Kafka was unreasonable or arbitrary.

¶ 39 Kafka also argues that the Board's decision to discharge him must be reversed because it failed to set forth any facts in its opinion in support of its decision and, thus, was arbitrary and capricious. Kafka argues that the Board "did not make any findings of fact, other than adopting the findings of the hearing officer." Kafka contends the Board violated section 10-50(a) of the Illinois Administrative Procedure Act (Act) (5 ILCS 100/10-50(a) (West 2010)) and section 250.110(f)(16) of the Illinois Administrative Code (Code) (80 Ill. Adm. Code 250.110(f)(16) (2010)). NIU argues that Kafka has waived these arguments because he failed to raise them before the Board and the circuit court.

¶ 40 We agree that Kafka has forfeited this argument by not raising it before the Board or the circuit court. See *Porter*, 396 Ill. App. 3d at 720. Even if he had not forfeited the issue, the Board properly set forth sufficient facts supporting its decision. Neither section 10-50(a) of the Act nor section 250.110(f)(16) of the Code precluded the Board from adopting the findings of the hearing officer. Contrary to Kafka's contention, the Board's decision is not arbitrary nor capricious. Section 10-50(a) of the Act governs the decisions and orders of administrative agencies and directs, in pertinent part, that an agency's decision "shall include findings of fact and conclusions of law, separately stated." 5 ILCS 100/10-50(a) (West 2010). An agency need not make a particular finding

on each evidentiary claim; rather, its findings need be only specific enough to permit intelligent review of its decision. *Merrifield v. Illinois State Police Merit Board*, 294 Ill. App. 3d 520, 528 (1998). In this case, the Board explicitly adopted, approved and certified the factual findings of the hearing officer to the extent they did not conflict with the Board’s findings contained in its decision. Because we deem the Board’s findings sufficient to permit an intelligent review of its decision, we conclude that it is in compliance with the requirements of section 10-50(a) of the Act. See *Id.*

¶ 41 Further, nothing in section 250.110(f)(16) of the Code prohibits an agency from approving and adopting the findings of a hearing officer. Section 250.110(f)(16) provides in relevant part that, “The Merit Board shall enter findings of fact.” 80 Ill. Adm. Code 250.110(f)(16) (2010). Therefore, we determine that the Board’s findings are in compliance with section 250.110(f)(16) of the Code.

¶ 42 Kafka cites *Austin v. Civil Service Commission*, 247 Ill. App. 3d 399 (1993), to support his argument. In *Austin*, a hearing officer recommended that the police officer be suspended. The civil service commission adopted the hearing officer’s “decision to the extent not inconsistent with the comments set forth below,” but ordered the officer discharged. *Id.* at 402-03. The appellate court reversed because the commission failed to support its decision with any findings of fact that were inconsistent with those of the hearing officer. *Id.* at 404-05. In this case, the Board’s decision is consistent with the hearing officer’s. Thus, *Austin* is distinguishable from this case.

¶ 43

### III. CONCLUSION

¶ 44 For the reasons stated, we affirm the Board’s decision to discharge Kafka.

¶ 45 Affirmed.