

2013 IL App (2d) 13-0073-U
No. 2-13-0073
Order filed August 22, 2013

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

MICHAEL JEDLICKA,)	Appeal from the Circuit Court
)	of McHenry County.
Plaintiff-Appellee,)	
)	
v.)	No. 12-MR-254
)	
THE BOARD OF FIRE AND POLICE)	
COMMISSIONERS OF THE CITY OF)	
CRYSTAL LAKE; and JAMES BLACK in)	
His Official Capacity as Police Chief,)	Honorable
)	Michael T. Caldwell,
Defendants-Appellants.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The decision of the Board of Police and Fire Commissioners to uphold a three-day suspension imposed on plaintiff by defendant police chief was reinstated. The Board's findings were not against the manifest weight of the evidence, and its conclusion that there was just cause for the suspension was not arbitrary, unreasonable, or unrelated to the requirements of the service. Therefore, the trial court's order reversing the Board's decision was reversed.

¶ 2 Plaintiff, Michael Jedlicka, was an officer with the Crystal Lake, Illinois, police department. After Police Chief David Linder¹ suspended him without pay for three days, plaintiff sought review from defendant, the Board of Police and Fire Commissioners of Crystal Lake (Board). The Board considered plaintiff's and Linder's written submissions and upheld the suspension without an evidentiary hearing. Plaintiff filed a complaint in the circuit court of McHenry County pursuant to the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2012)), seeking judicial review of the Board's decision. The court reversed the Board's decision, and defendants appealed. For the following reasons, we reverse the circuit court's judgment and reinstate the Board's decision.

¶ 3 BACKGROUND

¶ 4 In April 2012, plaintiff received an "Employment Action Notice" (EAN), which imposed a three-day suspension without pay. The EAN alleged that plaintiff had violated certain of the police department's rules of conduct: Rule 2—"any action or conduct which impedes the Department's efforts to achieve its goals"; Rule 3—"any action or conduct *** which would degrade, discredit or bring disrespect upon any member of the Department or the Department itself"; and Rule 14—"[f]ailure to provide prompt, correct, and courteous service." The EAN detailed the incident from which the violations arose as follows. In February 2012, plaintiff took a theft report at an animal emergency clinic in McHenry County from the proprietor, Ross Oliver, and the office manager, Judy Zell. According to the EAN, when plaintiff ascertained that the business had no

¹Linder was originally named as defendant in plaintiff's complaint. Prior to briefing, we granted Linder's motion to substitute James Black, in his official capacity as police chief. However, since Linder was the police chief who imposed the discipline, in our discussion of the facts, we refer to Linder.

security cameras, he told Oliver and Zell, “ ‘You guys are f***ing idiots. What would happen if someone came in the business and shot Judy, we wouldn’t be able to help you.’ ” The EAN further stated that Oliver and Zell reported that plaintiff made “additional bizarre comments” such as “ ‘I live with Gaston Glock. I shoot first and ask questions after I’m done walking on them.’ ” The EAN also said that plaintiff told Oliver and Zell, “ ‘If anything ever happens to me, my wife will own this City.’ ”

¶ 5 Additionally, the EAN elaborated plaintiff’s disciplinary history, which included several violations of department rules 2 and 3, listed in reverse chronological order as follows. In June 2011, plaintiff received a two-day suspension following an incident that had begun in March 2011, when plaintiff handcuffed a motorist without intending to arrest him, but only to “make a point,” and two months later saw the motorist and threatened to take him to jail. In June 2009, plaintiff received a written warning after using force in violation of department rules. In September 2007, plaintiff received a written reprimand following a verbal confrontation with three individuals while investigating a possible display of gang signs. Finally, in 2006, plaintiff received both a written warning for disrespecting persons during a traffic accident investigation and an oral warning for improper investigation of an incident during an arrest.

¶ 6 After receiving the EAN and the three-day suspension, plaintiff requested a hearing before the Board. The Board responded by asking plaintiff and Linder to submit written position statements, including “any pertinent information” that the parties deemed helpful to the Board.

¶ 7 Plaintiff submitted a “verified” position statement, in which he alleged that the EAN failed to identify either the complainant or the person to whom the complaint was made. Plaintiff further claimed that there were no affidavits from any complainants as required by section 3.8(b) of the

Illinois Uniform Peace Officer's Disciplinary Act (Disciplinary Act) (50 ILCS 725/3.8(b) (West 2012)), and that he never had the opportunity to confront his accusers. Plaintiff admitted interacting with two people in February 2012 and mentioning that he had a Glock firearm to protect his family, as well as a large dog and an alarm system. Plaintiff "specifically and vehemently" denied telling the citizens that they were "f***ing idiots" or that if anything happened to him, his wife would own the city. As to his alleged statement—"I shoot first and ask questions after I'm done walking on them"—plaintiff was silent. Plaintiff claimed that, pursuant to the collective bargaining agreement (CBA) between the local chapter of the Metropolitan Alliance of Police and the city, discipline could be imposed for "just cause" only. Plaintiff attached the EAN and the CBA to his statement.

¶ 8 Linder submitted a position statement to the Board, in which he recited plaintiff's alleged inappropriate statements as detailed in the EAN. Linder noted Oliver's and Zell's concern about plaintiff's "disrespectful and offensive" behavior. Linder said that Commander Bricchetto had interviewed plaintiff, who admitted making the "shoot first" statement but could "not recall" the other alleged statements. Linder further asserted that the February 2012 incident represented a "pattern of inappropriate conduct" about which plaintiff had been warned. Linder also stated that plaintiff had the burden of demonstrating to the Board that his suspension was unwarranted. Linder asserted that, if the Board chose to hear from Oliver and Zell, Linder was confident that the Board would find in favor of plaintiff's suspension, because victims reporting crime should not be subjected to disrespectful and offensive behavior.

¶ 9 Following its receipt of the parties' position statements, the Board held a special meeting. After reviewing and discussing the position statements, the Board concluded that a full hearing was not necessary. The Board produced its "Findings and Order" in which it "found": Linder was the

complainant; Oliver and Zell were the witnesses, were credible, and were not required to submit affidavits; plaintiff had a history of discipline for similar rule violations; the allegations against plaintiff were serious and impacted the department's reputation; and just cause existed for imposing discipline. The Board affirmed plaintiff's suspension.

¶ 10 Plaintiff timely sought administrative review of the Board's decision in the trial court, and the parties submitted written briefs and presented oral argument to the court. Plaintiff argued that the only competent evidence before the Board was his verified position statement and that the remainder of the evidence was inadmissible hearsay. Defendants argued that, even if the court found that some of plaintiff's alleged statements were inadmissible hearsay, in light of the statements that plaintiff admitted making and his past disciplinary record, the three-day suspension was appropriate progressive discipline.

¶ 11 The trial court agreed with plaintiff, finding that the "most damaging statements" were hearsay. The court explained, "In my judgment, the remaining statements, although strange, aren't that actionable." The court reversed the Board's decision but declined to remand the case for a full evidentiary hearing. The court initially acted under the assumption that it could not order the Board to conduct an evidentiary hearing. Upon clarification by plaintiff's counsel that the Board had discretion to conduct an evidentiary hearing, the court concluded that a remand was not appropriate, stating, "If I don't care what they say, why should they care what I say?"

¶ 12 Defendants timely appealed.

¶ 13 ANALYSIS

¶ 14 On administrative review, our job is to review the decision of the administrative agency, not the trial court. *Szewczyk v. Board of Fire and Police Commissioners of Village of Richmond*, 2011

IL App (2d) 100321, ¶ 20. Our review of an administrative agency’s decision regarding suspension entails a two-step process: (1) we decide if the agency’s findings of fact are contrary to the manifest weight of the evidence, and (2) we determine whether the agency’s factual findings provide a sufficient basis for the conclusion that there was cause to impose the suspension. *Chambers v. Flota*, 191 Ill. App. 3d 603, 606 (1989). Findings are against the manifest weight of the evidence when “the opposite conclusion is clearly evident.” *Soto v. Board of Fire & Police Commissioners of the City of St. Charles*, 2013 IL App (2d) 120677, ¶ 22. Under the second step, the test is whether the agency’s conclusion was “arbitrary, unreasonable or unrelated to the requirements of the service.” *Chambers*, 191 Ill. App. 3d at 606; see also *Soto*, 2013 IL App (2d) 120677, ¶¶ 22, 25 (noting that the agency’s findings of fact were reviewed under the manifest-weight standard while the agency’s ultimate decision was reviewed for an abuse of discretion (citing *Schmeier v. Chicago Park District*, 301 Ill. App. 3d 17, 33-34 (1998)). Plaintiff bore the burden of establishing that his suspension was unwarranted.² See *Calanca v. Board of Fire & Police Commissioners of the Village of Northbrook*, 140 Ill. App. 3d 408, 411 (1986) (where the plaintiff police officer sought review of a five-day suspension imposed by the police chief, the appellate court held that the Board properly placed the burden of proof on the plaintiff).

¶ 15 Before considering whether plaintiff demonstrated to the Board that his suspension was unwarranted, we address two preliminary contentions raised by plaintiff. Plaintiff asserts that the Board improperly considered hearsay evidence, arguing that “the only competent non-hearsay evidence” before the Board was his verified position statement. “Hearsay evidence is an out-of-court

²Plaintiff also bore the burden of proof under section 8(b) of the Board’s rules and regulations.

statement offered to prove the truth of the matter asserted in court and is generally inadmissible unless it falls within a hearsay exception.” (Internal quotation marks omitted.) *Holland v. Schwan’s Home Service, Inc.*, 2013 IL App (5th) 110560, ¶ 183; see also Ill. R. Evid. 801(c) (eff. Jan. 1, 2011) (“ ‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”). The prohibition against hearsay evidence applies generally to administrative hearings as well. *Spaulding v. Howlett*, 59 Ill. App. 3d 249, 251 (1978). What plaintiff ignores is that, notwithstanding that his position statement was “verified,”³ the evidence he presented was also hearsay. Accordingly, plaintiff’s hearsay argument is without merit. See *Soto*, 2013 IL App (2d) 120677, ¶ 29 (rejecting the plaintiff’s argument that the Board improperly considered hearsay evidence where the evidence upon which the plaintiff relied was also hearsay in the form of statements collected by an investigator conducting a background check on the plaintiff).

¶ 16 Within his hearsay argument, plaintiff asserts that there was “statutory support for the requirement of sworn evidence” in section 3.8(b) of the Disciplinary Act, which requires that a complaint against a sworn peace officer be supported by affidavit. 50 ILCS 725/3.8(b) (West 2012). Section 3 of the Disciplinary Act provides that “interrogation[s] within the meaning of this Act *** shall be conducted pursuant to Sections 3.1 through 3.11 of this Act.” 50 ILCS 725/3 (West 2012). Section 2(d) of the Disciplinary Act defines interrogation and explicitly excludes questioning “relating to minor infractions of agency rules which may be noted on the officer’s record but which may not in themselves result in removal, discharge or suspension in excess of 3 days.” 50 ILCS

³Plaintiff’s position statement appears to be verified by certification pursuant to section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109 (West 2012)).

725/2(d) (West 2012). Since plaintiff was disciplined with a suspension of only three days, section 3.8(b)'s affidavit requirement was not triggered.

¶ 17 Plaintiff further reasons that if the Board is allowed to consider hearsay evidence, then “it can rely on anything while reviewing discipline and is held to no ascertainable standard.” Section 8(b) of the Board's rules and regulations provides: “The Board may, in its sole discretion, request information or testimony from the appealing officer and/or the Chief of the Police Department to aid in its determination of the appropriate disposition.” Plaintiff does not explain how the Board abused its discretion in requesting the material that it did. Therefore, we need not address this argument further. See *Scott v. Illinois State Police Merit Board*, 222 Ill. App. 3d 496, 502 (1991) (holding that the Board's findings, based upon its review of the written notice to the plaintiff of his suspension and the written brief that the plaintiff submitted to the Board with his version of events, were not against the manifest weight of the evidence).

¶ 18 Similarly unavailing is plaintiff's argument that he was denied his due process right to cross-examine his accusers. As plaintiff notes, “[a] fair hearing before an administrative agency includes the opportunity to be heard, the right to cross-examine adverse witnesses, and impartiality in ruling upon the evidence.” *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 95 (1992). However, plaintiff ignores that the Board did not conduct an evidentiary hearing. No witnesses testified; thus, no right to cross-examine right arose. Plaintiff presents no relevant authority to the contrary.

¶ 19 We now turn to the issue of whether plaintiff established that his suspension was unwarranted. Beyond denying having made certain offensive statements, plaintiff makes no argument as to why the Board's findings were against the manifest weight of the evidence. The

minutes of the Board meeting reflect that the Board thoroughly reviewed plaintiff's suspension. The Board discussed Oliver's and Zell's credibility, and the Board chairman concluded that "the complainants had to be really bothered to follow up with a complaint a week after the occurrence." The chairman also questioned whether it was "normal" for a police officer to "discuss his firearm collection with members of the public." Plaintiff made no argument to the Board that Oliver and Zell were biased against him or had a motive to lie. On this record, we cannot say that the Board's findings that Oliver and Zell were credible witnesses was against the manifest weight of the evidence.

¶ 20 Plaintiff also failed to show that the Board's decision that there was just cause⁴ to support his three-day suspension was "arbitrary, unreasonable or unrelated to the requirements of the service" (*Chambers*, 191 Ill. App. 3d at 606). Having chosen to believe the complaints of Oliver and Zell, the Board found that the allegations against plaintiff were serious and impacted the department's reputation. Moreover, the Board noted plaintiff's repeated violations of the department's rules, as well as the fact that plaintiff had been "directed to a Verbal Judo course in 2011 to work on interactions with the public." On this record, the three-day suspension was clearly part of a history of progressive discipline for similar rule violations. Plaintiff's prior suspension was for two days, and he made no argument to the Board that three days was unwarranted. On this record, we cannot say that the Board abused its discretion in upholding plaintiff's three-day suspension for just cause. See *Scott*, 222 Ill. App. 3d at 502 (under the State Police Act, affirming the Merit Board's decision upholding an officer's three-day suspension without a hearing because it did "not appear that [the plaintiff's] suspension was either summarily imposed *** or arbitrarily upheld by the Board without

⁴The CBA required that disciplinary suspensions be for "just cause."

any opportunity for [the plaintiff] to be heard”). Accordingly, we conclude that plaintiff failed to demonstrate to the Board that his suspension was unwarranted.

¶ 21 For the foregoing reasons, we reverse the judgment of the circuit court of McHenry County and reinstate the decision of the Board.

¶ 22 Reversed.