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2013 IL App (3d) 120314-U

Order filed February 5, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

APRIL SCHREMENTI,)	Appeal from the Circuit Court
)	of the 10 th Judicial Circuit,
)	Tazewell County, Illinois,
Plaintiff-Appellant,)	
)	
v.)	Appeal No. 3-12-0314
)	Circuit No. 10-MR-73
WASHINGTON BOARD OF POLICE)	
COMMISSIONERS, An Administrative Agency,)	
and JAMES W. KUCHENBECKER, Chief of)	
Police,)	Honorable Stuart P. Borden and
)	Honorable Scott A. Shore,
Defendants-Appellees.)	Judges Presiding.

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The Board properly determined that plaintiff had not completed 18 months of active duty to complete her probationary term as a police officer when the Board summarily terminated her employment with the police department.

¶ 2 Plaintiff-appellant April Schrementi (plaintiff) began working as a probationary police officer for the City of Washington, Illinois, on March 31, 2008, and defendant-appellee James W.

Kuchenbecker was the chief of police (chief) of the department at all relevant times. At the time plaintiff was hired, on March 31, 2008, the rules and regulations of defendant-appellee Washington Board of Police Commissioners (Board) provided that original appointments as a police officer required a probationary period of eighteen (18) months of “active duty time.”

¶ 3 On May 6, 2009, 14 months into her initial probationary term, plaintiff began a pregnancy leave of absence and did not return to work until March 17, 2010. Upon her return, deputy police chief James Volk advised plaintiff that her absence “froze” her probationary period during her pregnancy leave and her new probation termination date was August 11, 2010.

¶ 4 Plaintiff began a second, unpaid leave of absence from her police work, due to an injury, beginning on April 8, 2010, until she returned to active duty on July 7, 2010. The deputy chief again told plaintiff her probationary period had been “frozen” during her absence and set a new end date for her probation period to November 11, 2010.

¶ 5 On July 21, 2010, the Board reviewed plaintiff’s performance as a probationary officer and unanimously voted to summarily terminate her employment. On August 12, 2010, plaintiff filed a complaint in the circuit court for administrative review of the Board’s July 21, 2010, decision discharging her without prior notice, just cause, or a full hearing. Plaintiff claimed she was no longer a probationary officer because her original probationary period ended September 30, 2009. On December 5, 2011, the trial court found plaintiff remained a probationary officer and affirmed the Board’s decision to terminate plaintiff’s employment. After the court denied plaintiff’s motion to reconsider that ruling, plaintiff filed a timely notice of appeal.

¶ 6 On September 14, 2012, plaintiff filed an appellate “Motion to Strike New Evidence Which is Not Part of the Record,” wherein plaintiff asked this court to strike new evidence

attached to the appendix of defendant's brief and this court ruled that resolution of that motion is taken with this case. We first grant plaintiff's "Motion to Strike New Evidence Which is Not Part of the Record," and then affirm the Board's decision.

¶ 7

BACKGROUND

¶ 8 On March 31, 2008, plaintiff began working for the Washington Police Department as a probationary police officer and was subject to the "Rules and Regulations of the Board of Police Commissioners of the City of Washington, State of Illinois" (rules and regulations) existing on that date, including chapter IV, section 1, which in relevant parts provided:

"All original appointments to the Police Department shall be for a probationary period of eighteen (18) months of active duty time. The probationary period of a newly appointed police officer shall commence as of the first date said individual reports for active duty with the Department. Said probationary period may be extended for up to an additional six (6) month period by action of the board, upon prior written notice to the probationary officer. * * *

Probationary employees may be summarily dismissed by the Board and are not entitled to the protection afforded to other full-time officers by statute or these rules."

When plaintiff began her employment as a police officer, she signed an "Acknowledgment and Notice of Probationary Period" which expressly stated that, as a condition of her employment, plaintiff must successfully complete a probationary period and that the probationary period "shall be for a period of eighteen (18) months of active duty."

¶ 9 On May 6, 2009, plaintiff informed the chief of police that she was pregnant and, as a result, the chief placed plaintiff on a "pregnancy leave," and excused her from all work duties,

without discussing whether this pregnancy leave would impact plaintiff's probationary term for purposes of her employment. On March 17, 2010, plaintiff resumed her active duties as a police officer after her pregnancy leave of absence. On March 18, 2010, deputy chief Volk told plaintiff that her probationary period, which originally would have ended on September 30, 2009, had been "frozen" while she was on maternity leave. Volk informed plaintiff that her probationary period would now terminate on August 11, 2010, as a result of her absence.

¶ 10 Beginning April 8, 2010, plaintiff missed work due to an injury that she claimed arose during the course of her employment, but the chief disputed the source of the injury. However, the injury caused plaintiff to be unable to work and the chief placed her on an unpaid "disability leave" until she returned to her police duties on July 7, 2010. Upon her return, deputy chief Volk again met with plaintiff and told plaintiff that her probationary period had been "frozen" during her second leave of absence and her probation would now terminate on November 11, 2010. Volk explained, in a memorandum included in the record, the new termination date was calculated by adding the number of scheduled work days plaintiff missed during her extended leave of absence to the end of her previously set probation termination date.

¶ 11 On July 21, 2010, after posting notice of a special meeting and its agenda, the Board went into closed session to address issues regarding various employees.¹ During this special meeting on July 21, 2010, according to the Board minutes, the Board members made a motion that provided: "considering the evaluation, retention, and/or dismissal of Officer Schrementi in her probationary period[,] the Board has decided to dismiss her as an unsuccessful probationary

¹ The record does not contain a transcript of the discussion that occurred during this closed session but only contains a copy of the minutes from the special meeting that documented what was decided in closed session.

officer. Motion carried by unanimous voice vote.” The Board formally notified the chief of this decision, on July 21, 2010, who in turn discharged plaintiff from her employment.

¶ 12 On August 12, 2010, plaintiff filed a complaint in the circuit court, superceded by a first amended complaint on August 19, 2011, requesting administrative review of the Board’s decision to summarily terminate her employment. After briefing their respective positions and submitting the relevant documents to the court as exhibits to their briefs, the parties agreed to argue their positions to the court without an evidentiary hearing.

¶ 13 After considering the arguments of counsel, on December 5, 2011, the trial court entered a written order and found the facts, as set forth below, were not in dispute. The City of Washington hired plaintiff as a probationary police officer on March 31, 2008, and terminated her employment on July 21, 2010. The probationary period was defined as eighteen months of “active duty” and, although more than eighteen months passed since the start of her initial employment, the Board summarily terminated plaintiff’s employment based on her status as a probationary police officer. The written order noted that defendants contended that plaintiff had two extended leaves of absence when she did not report to work and those absences tolled the running of the 18-month period, and plaintiff argued that the Board did not have the authority to toll her 18-month probationary period. The trial court concluded the term “active duty” did not include either maternity or disability leaves of absence. The court order then affirmed the Board’s decision to summarily terminate plaintiff’s probationary employment with the Washington Police Department, and specifically found that this was a final and appealable order. After denying plaintiff’s motion to reconsider, plaintiff filed a timely notice of appeal.

¶ 14

ANALYSIS

¶ 15 On appeal, plaintiff challenges the Board’s decision to summarily discharge plaintiff from her employment as a police officer because the Board did not have the authority to “freeze” her probationary period during her first or second leaves of absence and, therefore, her original probationary period terminated on September 30, 2009. According to plaintiff, at the time of her discharge on July 21, 2010, the Board could not terminate plaintiff’s employment without the due process protections afforded to non-probationary, permanent police officers. Defendants contend that the express language of the rule requires that the probationary period include 18 months of “active duty time” and plaintiff had not yet completed 18 months of active duty at the time of her termination from employment.

¶ 16 I. Plaintiff’s Motion to Strike New Evidence

¶ 17 On September 14, 2012, plaintiff filed a “Motion to Strike New Evidence Which is Not Part of the Record” with this court concerning a “Memorandum of Agreement,” dated May 19, 2011, which was included in defendants’ appendix to their brief on appeal. That motion is taken with the case. We agree that the 2011 “Memorandum of Agreement” did not exist at the time the Board rendered its decision and is not relevant to the outcome of this appeal. Therefore, plaintiff’s motion is allowed and that Memorandum of Agreement is stricken.

¶ 18 II. Standard of Review

¶ 19 In the instant case, the parties dispute the applicable standard of review. Plaintiff contends that the appropriate standard of review is *de novo* since the facts are not in dispute, and this case involves the construction, interpretation, and application of the Board’s administrative rule regarding probationary periods for police officers, citing *Schmidt v. Personnel Board of City of Chicago*, 89 Ill. App. 3d 434 (1980). Defendants propose that the issue in the case at bar is

purely a question of fact regarding how many months plaintiff had served on “active duty” as a police officer at the time of her termination. Therefore, defendants claim the manifest weight of the evidence standard of review applies, citing *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200 (2008).

¶ 20 In *Cinkus*, our supreme court identified three types of questions that an appellate court may encounter on administrative review of an agency decision: questions of fact, questions of law, and mixed questions of fact and law. *Cinkus*, 228 Ill. 2d at 210 (citing *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill.2d 191, 204-05 (1998)). As a result, the applicable standard of review depends upon the issue presented on review and whether the question is one of fact, one of law, or a mixed question of fact and law. *Id.*

¶ 21 In the instant case, there are no disputed facts as to when plaintiff was hired as a probationary police officer, the dates when plaintiff took her maternity leave of absence and her disability leave of absence, or the date that plaintiff was terminated from her employment as a police officer. The parties agree that the Board is an administrative agency and the Board’s applicable rules and regulations are those that were in existence at the time plaintiff was hired by the City of Washington, and not the amended rules adopted in May of 2009. The only question before this court involves the interpretation of the language of the pertinent rule to determine whether plaintiff completed an 18-month probationary period of active duty time as a City of Washington police officer, based on the undisputed facts of this case. The term “active duty time” is not defined in the Board’s rules and regulations.

¶ 22 It is well established that an agency's decision on a question of law, although given some deference, is not binding on a reviewing court. *Cinkus*, 228 Ill. 2d at 210; *Belvidere*, 181 Ill. 2d

at 205. In *Cinkus*, our supreme court stated, “For example, an agency's interpretation of the meaning of the language of a statute constitutes a pure question of law. Thus, the court's review is independent and not deferential.” *Id.* Here, we are called upon to interpret of the meaning of the language of the rule which is a pure question of law. Accordingly, applying the undisputed facts in this case, this court must engage in its own independent analysis with respect to questions of law and the interpretation of the rule which we review *de novo*. *Id.*; *Brown v. Chicago Park District*, 296 Ill. App. 3d 867, 874-75 (1998); *Kapsalis v. Board of Fire and Police Commissioners of City of Burbank*, 143 Ill. App. 3d 465, 472 (1986).

¶ 23 III. Interpretation of the Administrative Rule

¶ 24 At the time plaintiff was hired as a probationary police officer, it is undisputed that plaintiff signed an “Acknowledgment and Notice of Probationary Period” verifying she was informed about the terms of her probationary status. The portions of the rules and regulations regarding the probationary period that existed in March of 2008 were included in chapter IV, section 1, which in relevant parts provided:

“All original appointments to the Police Department shall be for a probationary period of eighteen (18) months of active duty time. The probationary period of a newly appointed police officer shall commence as of the first date said individual reports for active duty with the Department. Said probationary period may be extended for up to an additional six (6) month period by action of the Board, upon prior written notice to the probationary officer. * * *

Probationary employees may be summarily dismissed by the Board and are not entitled to the protection afforded to other full-time officers by statute or these rules.”

The question before us deals with the interpretation of “active duty time” and whether a leave of absence from active duty can toll the probationary period.

¶ 25 Plaintiff contends that her original probationary period would have ended 18 months after her first day of employment, on September 30, 2010. Based on the rules for probationary officers, plaintiff argues that only the Board had the power to extend her probationary period, and then they could only extend her probationary period for six additional months, regardless of her extended absences. In her case, plaintiff claims the Board and the chief did not have the authority to “freeze” her probationary period during her leaves of absence and then set a new probationary termination date of either August 11, 2010, or November 11, 2010. The Board took no action to extend her probationary period, so her probationary period ended on September 30, 2010. Since she was no longer a probationary officer on July 21, 2010, plaintiff submits she should have been afforded the due process rights of a permanent sworn officer. The Board maintains that, at the time of her termination, plaintiff was still subject to the original 18 month probationary status because she had not yet completed 18 months of “*active duty time*” at the time of her termination.

¶ 26 Courts must apply the same rules of construction used in construing statutes when interpreting the meaning of an agency rule and, on review, the language used in the rule is given its ordinary meaning. *Brown*, 296 Ill. App. 3d at 875. When conducting a *de novo* review of an agency rule, to determine the intent of the drafters in adopting a rule or regulation, a reviewing court may consider the language used, the reason and necessity for the regulation, the evil sought to be remedied and the purpose to be achieved. *Id.* Further, constructions that would render ordinances or rules meaningless or absurd are to be avoided. *Kapsalis*, 143 Ill. App. 3d at 472.

¶ 27 Our supreme court addressed the reasons behind establishing probationary periods for police officers and firemen, quoting a 1938 First District case, as follows:

“Because of the very nature of the duties of firemen and policemen, in the performance of which the highest courage in dangerous situations is a prime requisite, we think the Legislature must have intended that the ability to pass a written and physical examination should not be the final test. It is only through probationary appointments for a reasonable period, during which firemen and policemen may be observed in the actual performance of their duties in situations of danger, that their real worth and mettle may be tested.” *Romanik v. Board of Fire and Police Commissioners of East St. Louis*, 61 Ill. 2d 422, 424 (1975) (quoting *People ex rel. Betts v. Village of Maywood*, 298 Ill. App. 160, 170 (1938)).

Here, the plain language of the City of Washington’s rule mandates that all new police officers complete a probationary period of 18 months of active duty time. Although the rules and regulations did not include a definition for “active duty time,” or describe circumstances allowing the period to be formally tolled during prolonged absences from active duty, the plain meaning of the language requires that the officer must be “active” and performing his or her police duties for 18 months before the probationary period ends. It is clear that “active duty time” is something different than time calculated as employment with the police force.

¶ 28 Here, the chief placed plaintiff on a maternity leave of absence from May 6, 2009, through March 17, 2010, at which time plaintiff was still employed but not physically present at the workplace or performing any “active” duties as a police officer. When plaintiff next reported back to work on March 17, 2010, the deputy chief met with plaintiff and told her that, due to her

extended absence from the workplace, plaintiff's original probationary period had been "frozen" and the new termination date of her probationary period was now to August 11, 2010. Once again, after returning from another period of time when she did not report to work from April 8, through July 7, 2010, the deputy chief told plaintiff that the prolonged absence "froze" her probationary period until the date of November 11, 2010, after she completed 18 months of active duty.

¶ 29 After our *de novo* review of the facts and the rules and regulations of the Board, we agree with the Board's interpretation of its rule that the 18-month probationary period required 18 months of active duty time or actual work performed by the probationary police officer to allow for the Board to properly observe plaintiff's ability as a police officer. Under these circumstances, plaintiff was permitted to take two extended leaves of absence from the workplace, while still employed, but the time spent away from the workplace, during these permitted extended absences from police duties, did not qualify as "active duty time." To construe this rule otherwise would render the term "active duty time" meaningless.

¶ 30 Further, plaintiff's argument that the Board has the exclusive power to "extend" the probationary period is correct but irrelevant to the outcome of this appeal because she did not spend more than 18 months on "active duty." Here, plaintiff's 18-month probationary period, was correctly measured by the time she spent on "active duty" and the probationary active duty was not extended by any person beyond the required minimum 18-month period. Instead, her probationary "active duty" period was tolled during the time she spent on extended, but permitted, absences from the workplace and resumed each time she returned to "active duty." Consequently, we confirm the Board's decision that, at the time plaintiff was summarily

dismissed from her employment as a police officer on July 21, 2010, she remained a probationary officer.

¶ 31

CONCLUSION

¶ 32 For the foregoing reasons, the decision of the Board is confirmed.

¶ 33 Order Confirmed.