

NOTICE

Decision filed 03/27/13. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2013 IL App (5th) 120345-U
NO. 5-12-0345
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

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).

GREGORY W. SCRIVNER,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Jefferson County.
)	
v.)	No. 11-MR-51
)	
THE BOARD OF FIRE AND POLICE)	
COMMISSIONERS OF THE CITY OF MT.)	
VERNON; JAMES BROWN, Fire Chief;)	
GEORGE W. (BILL) BECK, ROBERT)	
BROWN, Secretary, and KAY SHAW,)	
Members of the Board of Fire and Police)	
Commissioners of the City of Mt. Vernon;)	
and THE CITY OF MT. VERNON,)	
)	Honorable
Defendants-Appellees.)	Mark R. Stanley,
)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Welch and Stewart concurred in the judgment.

ORDER

- ¶ 1 *Held*: Trial court properly confirmed decision of Board of Fire and Police Commissioners to terminate the employment of one of its firefighters for violation of the city's residency ordinance and other departmental rules and regulations.
- ¶ 2 Plaintiff, Gregory W. Scrivner, seeks review of the decision of the Board of Fire and Police Commissioners of the City of Mt. Vernon (Board), as affirmed by the circuit court of Jefferson County, which sustained charges of misconduct involving Scrivner's alleged violations of several rules and regulations of the Fire Department of the City of Mt. Vernon resulting in his discharge from employment with the City of Mt. Vernon (City). The circuit court, in affirming the decision of the Board and dismissing with prejudice Scrivner's

complaint for administrative review, determined that the findings of the Board were not against the manifest weight of the evidence and provided a sufficient basis for concluding that discharge for cause existed. Scrivner appeals to this court claiming that the decision of the Board is clearly erroneous. We affirm.

¶ 3 At the time of his discharge, Scrivner had been employed some 17 years with the City's fire department. At all times during his employment, the City, by ordinance and as part of its collective bargaining agreement with the local firefighter's union, required all of its fire department employees, as a condition of employment, to reside within the territorial boundaries of Jefferson County. On February 28, 2011, the chief of the fire department issued written charges seeking Scrivner's dismissal from the department on the grounds that he was residing outside the residency requirement's territorial limits. The charges further alleged that Scrivner concealed his true place of residence and was untruthful when requested to provide documentation related to his residency. An additional charge claimed that Scrivner had also abused the department's sick leave policy on February 18, 2011.

¶ 4 At the discharge hearing before the Board, the evidence revealed that the chief of the fire department was notified on October 12, 2010, by the City's human resource department, that mail addressed to Scrivner at his residence of record was being returned. The chief subsequently asked Scrivner in November of 2010 to provide him with his current address. Scrivner stated that he was leasing and staying at property within Jefferson County, owned by his father. Further investigation by the department revealed, however, that the address provided was, in fact, a vacant piece of property, without any buildings. Scrivner was again asked to provide proof that he was residing in the county. Scrivner next provided a month-to-month lease for an address within the territorial boundaries of Jefferson County. The City's police department conducted surveillance to determine whether Scrivner was, in fact, residing at the latest address provided. There was no evidence of Scrivner either entering or

exiting the property. Scrivner ultimately admitted that he never resided at that address because the building was uninhabitable with significant mold problems and was not suitable for his children.

¶ 5 The actual facts revealed that in late 2009, Scrivner had moved into his parents' house for financial reasons. His parents' home, however, was four tenths of a mile beyond the Jefferson County line. Scrivner admitted he never sought permission to temporarily live outside of the county. He further admitted that he had no personal effects in the county and did not own or lease any residential property in the county. He claimed, however, that he never intended to abandon living in the county and always intended to return as soon as feasible.

¶ 6 Additional evidence presented at the discharge hearing revealed that on February 18, 2011, Scrivner called in sick to work. Contrary to departmental regulations that required sick employees to remain at home unless hospitalized or visiting their doctor, Scrivner did not remain at his permanent residence. Instead, Scrivner traveled to his ex-wife's residence to visit with his children.

¶ 7 The Board determined that Scrivner was guilty of misconduct and violating departmental rules as set forth in the written charges. According to the Board, not only had Scrivner failed to comply with the City's residency requirement, his lack of truthfulness throughout the department's investigation also constituted a "substantial shortcoming." His false statements and misrepresentations constituted dishonesty rendering him unfit for service. Accordingly, on May 18, 2011, the Board voted to terminate Scrivner from employment as a member of the City's fire department.

¶ 8 Review of an administrative agency's decision regarding discharge requires a two-step analysis. *Duncan v. City of Highland Board of Police & Fire Commissioners*, 338 Ill. App. 3d 731, 735, 788 N.E.2d 1144, 1147 (2003); *Krocka v. Police Board of the City of Chicago*,

327 Ill. App. 3d 36, 46, 762 N.E.2d 577, 586 (2001). First, the court must determine whether the agency's findings of fact are contrary to the manifest weight of the evidence. *Launius v. Board of Fire & Police Commissioners of the City of Des Plaines*, 151 Ill. 2d 419, 427, 603 N.E.2d 477, 481 (1992). Second, the court must determine whether the findings of fact provide a sufficient basis for the agency's conclusion that cause for discharge does or does not exist. *Kappel v. Police Board of the City of Chicago*, 220 Ill. App. 3d 580, 588, 580 N.E.2d 1314, 1320 (1991).

¶ 9 A decision is against the manifest weight of the evidence if an opposite conclusion is clearly evident from the record. *Residential Real Estate Co. v. Property Tax Appeal Board*, 188 Ill. App. 3d 232, 241, 543 N.E.2d 1358, 1363-64 (1989). Because the Board is an administrative agency, its finding of facts on review are considered *prima facie* true and correct. *Launius*, 151 Ill. 2d at 427, 603 N.E.2d at 481. Only the Board has the responsibility for weighing the evidence, determining credibility, and resolving any conflicts in the evidence. *Nichols v. Department of Employment Security*, 218 Ill. App. 3d 803, 809, 578 N.E.2d 1121, 1126 (1991). A reviewing court is not to resolve factual inconsistencies or reweigh the evidence. *Launius*, 151 Ill. 2d at 427-28, 603 N.E.2d at 481. We, as a reviewing court, are to affirm the Board's findings if there is any competent evidence in the record to support the agency's determination. *Krocka*, 327 Ill. App. 3d at 47, 762 N.E.2d at 587; *Alden Nursing Center-Morrow, Inc. v. Lumpkin*, 259 Ill. App. 3d 1027, 1032, 632 N.E.2d 66, 70 (1994). Therefore, we will overturn the Board's decision in this instance only if, after reviewing the evidence in a light most favorable to the Board, we determine that no rational trier of fact could have reached the conclusion reached by the Board. *Krocka*, 327 Ill. App. 3d at 47, 762 N.E.2d at 587; *Alden Nursing Center*, 259 Ill. App. 3d at 1032, 632 N.E.2d at 70.

¶ 10 Reviewing the evidence in the light most favorable to the Board, the only possible

determination, in this instance, is that any rational trier of fact would have reached the same conclusion as reached by the Board. The Board weighed the evidence, determined witness credibility, and resolved any conflicts in the evidence before finding an abundance of competent and undisputed evidence on the record to support its findings. Additionally, there simply were no factual inconsistencies to resolve. By his own admissions, Scrivner did not live within the territorial limits of Jefferson County for at least 20 months. This prolonged pattern of dishonesty concerning his noncompliance with the residency requirement alone was a sufficient reason for termination of his employment with the City. See *Harvey Firemen's Ass'n v. City of Harvey*, 75 Ill. 2d 358, 389 N.E.2d 151 (1979) (municipality's rule providing that failure of employees to maintain residence in city was cause for termination from service); *Fedanzo v. City of Chicago*, 333 Ill. App. 3d 339, 775 N.E.2d 26 (2002) (upholding termination for violation of residency requirement).

¶ 11 Scrivner argues his violation of the residency requirement was merely technical in nature in that he never intended to live outside the county and fully intended to return. His future intent is of no relevance, however, to the Board's assessment of whether he met the residency requirement. A person's residence is the place where a person lives and has his true permanent home to which, whenever absent, he has an intention of returning. *Fagiano v. Police Board of the City of Chicago*, 98 Ill. 2d 277, 283, 456 N.E.2d 27, 29-30 (1983). Scrivner had no true permanent home located in Jefferson County to which he had the intention of returning or to which he could return. Unlike the situation presented in *Maksym v. Board of Election Commissioners of the City of Chicago*, 242 Ill. 2d 303, 950 N.E.2d 1051 (2011), Scrivner did not continue to own his home in the required county where many of his personal possessions remained. Additionally, Scrivner's residing outside of the territorial limits was for purely personal reasons, not because of service to his country. No opposite conclusion is clearly evident from the record to justify reversing the decisions of the Board

and circuit court in this instance.

¶ 12 We further note that Scrivner's residency requirement violation does not stand alone. Rather, evidence was presented of several violations including multiple acts of dishonesty in concealing his violation of the residency requirement, aggravated by the additional incident of abusing his sick leave. Any one of these violations, standing alone, also would have been sufficient cause for discharge. See *Sindermann v. Civil Service Comm'n of the Village of Gurnee*, 275 Ill. App. 3d 917, 657 N.E.2d 41 (1995) (termination for concealing prior employment on application); *Valio v. Board of Fire & Police Commissioners of the Village of Itasca*, 311 Ill. App. 3d 321, 724 N.E.2d 1024 (2000) (discharge for lying during department investigation). Accordingly, under the circumstances presented, we find no reason to overturn the decision of the Board to terminate Scrivner's employment.

¶ 13 The standard of proof in disciplinary hearings before the Board is a preponderance of the evidence. *Clark v. Board of Fire & Police Commissioners of the Village of Bradley*, 245 Ill. App. 3d 385, 613 N.E.2d 826 (1993); *Grames v. Illinois State Police*, 254 Ill. App. 3d 191, 204, 625 N.E.2d 945, 955 (1993). The Board's decision as to cause will not be reversed unless it is arbitrary, unreasonable, or unrelated to the requirements of service. *Krocka*, 327 Ill. App. 3d at 46, 762 N.E.2d at 586. Even if we were to consider another sanction to be more appropriate, the Board's decision still stands. *Kappel*, 220 Ill. App. 3d at 591, 580 N.E.2d at 1321. This is because the Board is in the best position to determine the effect of the employee's conduct on the proper operation of the department. *Kappel*, 220 Ill. App. 3d at 591, 580 N.E.2d at 1321. In other words, during the review of an administrative agency's decision, a court may not reverse a finding of cause unless the finding is so unrelated to the requirements of service or so trivial in nature that it is unreasonable or arbitrary. *Flynn v. Board of Fire & Police Commissioners of the City of Harrisburg*, 33 Ill. App. 3d 394, 399, 342 N.E.2d 298, 302 (1975). Here, the Board's findings of cause to

terminate Scrivner's employment are clearly related to the requirements of service and were neither unreasonable nor arbitrary.

¶ 14 For the reasons stated above, we affirm the judgment of the circuit court of Jefferson County affirming the decision of the Board to terminate Scrivner's employment.

¶ 15 Affirmed.