

2015 IL App (1st) 133057-U

No. 1-13-3057

February 17, 2015

SECOND DIVISION

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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SCOTT W. LORENCE,	)	Appeal from the Circuit Court
	)	Of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 12 CH 45509
	)	
THE BOARD OF FIRE AND POLICE	)	The Honorable
COMMISSIONERS OF THE VILLAGE OF	)	Rita M. Novak,
NORRIDGE; ITS MEMBERS AND CHIEF	)	Judge Presiding.
JOBE,	)	
	)	
Defendants-Appellees.	)	

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JUSTICE NEVILLE delivered the judgment of the court.  
Justices Pierce and Liu concurred in the judgment.

**ORDER**

¶ 1       *Held:* Because the appellate court defers to an administrative agency's findings of fact, conflicting testimony presented to the agency will not justify reversal of the agency's decision. The Norridge Police Board had sufficient grounds to discharge an officer when the officer, with a prior history of frequently failing to appear in court on police business and several other rule infractions, failed to follow legitimate orders of another police officer, lied

to an officer, used a racial slur, and committed disorderly conduct that brought discredit on the police department.

¶ 2 This case involves two police officers accusing each other of lying. At a disciplinary hearing concerning Norridge police officer Scott Lorence, the Board of Fire and Police Commissioners of the Village of Norridge (Board) found credible Officer Enrique Nieves's testimony that Lorence lied, disobeyed orders, used a racial slur, and acted in a disorderly manner that brought discredit on the Norridge Police Department. The Board discharged Lorence from his position as a police officer, and the circuit court, on administrative review, affirmed the Board's decision. In this appeal, Lorence charges Nieves with perjury, and claims that the Board should not have found Nieves credible. We find that the evidence supports the Board's factual findings that Lorence violated several departmental regulations. We also affirm the Board's finding that, in light of Lorence's disciplinary history, his misconduct warranted discharge. Therefore, we affirm the circuit court's decision affirming the Board's decision.

¶ 3 **BACKGROUND**

¶ 4 On January 15, 2012, Lorence hosted a party at his home. Paul Gomez, also a Norridge police officer, attended the party. Both Lorence and Gomez drank alcohol. Later that day, Lorence, Gomez, and several other persons from the party decided to go to a pub in unincorporated Cook County. Lorence decided not to drive because he thought the alcohol in his blood might exceed the legal limit for driving. Lorence arrived at the pub after 7 p.m. and drank some more alcohol.

¶ 5 At the pub, Daniel Donnelly punched Andrew Principio, and a fight broke out. The pub's owner, Maryanne Sapp, called police. Cook County police officers Rita Mendez and Enrique Nieves responded to the call. A few minutes after they arrived, Mendez called for more officers to come to the pub. Nieves found a gun in Lorence's waistband and gave it to Mendez. Officers handcuffed Lorence and put him in a Norridge police department squad car. Norridge police officer Victor Wendt drove Lorence home and gave Lorence's gun to Lorence's wife.

¶ 6 James Jobe, chief of the Norridge Police Department, charged Lorence with violating departmental regulations. The Board heard evidence concerning the charges at hearings held over several days from May 8, 2012, to September 5, 2012.

¶ 7 At the hearing, Lorence's nephew, Kevin, who worked as a bartender at the pub, testified that Lorence was not intoxicated or disorderly. Sapp also testified that Lorence was neither intoxicated nor disorderly. Sapp testified that when Donnelly hit Principio, "[t]he whole place went up." Principio agreed, as he testified that when Donnelly hit him, "a melee happened." After Mendez and Nieves arrived, Sapp heard some of the patrons yelling at Mendez, telling her that Gomez and Lorence had done nothing wrong. Principio said that even though the patrons made no trouble, eight county police officers came to the pub in response to fight. Donnelly testified that the fight stopped once Sapp announced that she had called the police. According to Donnelly, Nieves came to the pub looking to get into a fight, and Nieves threatened Lorence, who did nothing wrong.

¶ 8 Mendez testified that when she arrived at the pub, two patrons were yelling at each other. She separated one of those patrons, Gomez, from the other. As she started to talk to Gomez,

Lorence came up behind her and said, "County police ain't shit." Lorence added that the patrons did not want her and Nieves there. Other patrons in the pub spoke up to agree with Lorence, saying, "You ain't shit" to Mendez and Nieves. Mendez testified that the crowd's response led her to call for back up. She spoke with Gomez while Nieves spoke to Lorence. She saw Lorence lunge at Nieves and she heard another officer threaten to use his taser on Lorence. She also saw Lorence make a fist and throw a chair.

¶ 9 Nieves testified that when Lorence came up behind Mendez, Lorence identified himself as a Norridge police officer. Nieves asked to see Lorence's credentials. Lorence said he had them, but he did not show them to Nieves. Nieves asked Lorence if he had a weapon, and Lorence said no. Nieves saw signs indicating that Lorence was intoxicated. After repeating that "County isn't shit," Lorence eventually flung his credentials at Nieves, and called Nieves "a Puerto Rican piece of shit." Lorence took an aggressive stance, made a fist and threw down the chair on which he had been sitting.

¶ 10 Nieves testified that, when back up arrived, two officers helped him put handcuffs on Lorence. He needed the assistance because Lorence resisted the cuffing. Nieves again asked if Lorence had a weapon, and Lorence again said no. Nieves patted Lorence down and found a gun hidden in Lorence's pants. Nieves told Lorence to sit, but Lorence got up repeatedly.

¶ 11 Cook County police officer Carlos Martinez testified that when he arrived at the pub, he heard several patrons loudly disparaging county police. He saw Lorence clench his fists in a confrontation with Nieves. Martinez told Lorence that if Lorence did not calm down, Martinez would use his taser on him. Because Lorence resisted cuffing, three officers had to

work together to cuff him. Lorence got up repeatedly after officers told him to sit down. Martinez said Lorence showed signs of intoxication.

¶ 12 Officer Wendt also testified that Lorence appeared to be intoxicated. Lorence, in the back of the Norridge police squad car, kicked the cage to get Wendt's attention. When Wendt opened the door, Lorence asked to go home. Wendt took Lorence home shortly thereafter.

¶ 13 The Board watched videos the pub's cameras recorded around and after the time of the fight.

¶ 14 No one at the pub, not even Nieves, pressed charges against Lorence. However, Jobe asked the Board to find several specified violations of police department rules. The Board found that Lorence violated rules (1) prohibiting intoxication in public places; (2) requiring officers to follow lawful orders of other police officers; (3) prohibiting acts that bring discredit on the police department; (4) prohibiting disorderly conduct; (5) prohibiting use of racial slurs; and (6) requiring officers to respond truthfully to other officers' questions.

¶ 15 The Board specified that Lorence engaged in disorderly conduct and brought discredit on the department "[b]y taking an aggressive stance against [Nieves], to include clenching his fists, chesting, and taking a fighting stance," and "[b]y becoming irate, screaming in a loud manner, and kicking the seats and door of a Norridge squad car." The Board also found that Lorence lied when Nieves asked him whether he had a weapon.

¶ 16 The Board then heard evidence concerning the appropriate sanction to impose for the violations. Jobe testified and submitted records of Lorence's work for the department. The record showed 14 separate disciplinary proceedings, mostly for failure to appear in court.

Missed court dates led to two suspensions in 2001, one for one day and another for two days. Multiple missed court dates in 2006 led to a warning, a formal reprimand, and suspensions of two days and four days. The department suspended Lorence for five days in 2007, and warned him again in both 2008 and 2009, due to more missed court dates.

¶ 17 In March 2009, police officers in Alabama arrested Lorence for driving under the influence of alcohol. According to Jobe, Lorence "had an altercation" with Alabama police, and the police "had to threaten the use of a taser to control [Lorence's] actions." The Norridge police department suspended Lorence for five days due to that misconduct. When Lorence missed a court date on December 1, 2009, for his ninth missed court date of 2009, the department worked out a "Last Chance Agreement" for Lorence to bring his performance in line with the department's needs and expectations. The department suspended Lorence for 30 days and required him to see the Village's doctor on any day he needed to miss court due to illness. In July 2011, Lorence drove 70 miles per hour in a 35 mile per hour zone, and caused an accident. The department suspended Lorence for two more days. When Lorence missed court again in 2011, the department amended the Last Chance Agreement and suspended Lorence for 42 days. The incident at the pub occurred about two months after Lorence returned to work from that suspension.

¶ 18 The police union's president testified that Lorence had excellent work habits and no other officers ever complained about Lorence as a partner.

¶ 19 The Board held that in light of Lorence's disciplinary record, his conduct at the pub on January 15, 2012, constituted a substantial shortcoming that rendered his continuing

employment detrimental to the discipline and efficiency of the service. Accordingly, the Board voted to terminate Lorence's employment.

¶ 20 Lorence sued for administrative review of the Board's decision. The circuit court affirmed the Board's order for termination of Lorence's employment. Lorence now appeals.

¶ 21 ANALYSIS

¶ 22 The Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2012)) governs our review of the Board's decision. The law directs us to consider the Board's fact findings *prima facie* true and correct. 735 ILCS 5/3-110 (West 2012). We review the Board's factual findings only to determine whether the findings are against the manifest weight of the evidence. *Walsh v. Board of Fire & Police Comm'rs of Village of Orland Park*, 96 Ill. 2d 101, 105 (1983). If the record sufficiently supports the Board's factual findings, we next must determine whether the facts support the decision to discharge Lorence. *Kappel v. Police Board of City of Chicago*, 220 Ill. App. 3d 580, 588 (1991). We will not reverse the Board's finding of cause for discharge unless the decision is "arbitrary, unreasonable, or unrelated to the requirements of service." *Sutton v. Civil Service Comm'n*, 91 Ill. 2d 404, 410 (1982).

¶ 23 Fact Findings

¶ 24 Lorence challenges all of the Board's findings of rule violations. He contends that the manifest weight of the evidence shows he violated no rules.

¶ 25 Public Intoxication

¶ 26 Sapp, Principio, and Lorence's nephew all testified that in their opinion, Lorence did not appear intoxicated on January 15, 2012. Officers Nieves, Martinez and Wendt all testified that Lorence appeared intoxicated. All of the witnesses described Lorence's appearance and conduct in ways that supported their assessments of his intoxication. "The existence of conflicting testimony is not a sufficient basis to reverse an administrative decision as it is the province of the agency to resolve any conflict presented by the evidence and to determine the credibility of the witnesses." *Crowell v. Police Board of City of Chicago*, 32 Ill. App. 3d 552, 555 (1975). The Board weighed the conflicting evidence and found Nieves, Martinez and Wendt more credible. We cannot say that the finding of public intoxication is contrary to the manifest weight of the evidence.

¶ 27 Following Orders

¶ 28 Nieves and Martinez testified that Lorence resisted handcuffing, so that three officers needed to work together to cuff him. Lorence also repeatedly rose from his chair after officers ordered him to sit down. The Board saw corroboration of the testimony on the videorecordings made by the pub's cameras. No evidence contradicted the testimony of Nieves and Martinez concerning the orders and Lorence's failure to comply. The evidence supports the Board's finding that Lorence failed to follow lawful orders of Cook County police.

¶ 29 Disorderly Conduct Discrediting the Department

¶ 30 Mendez, Nieves and Martinez all saw Lorence take a fighting stance and clench his fists at Nieves. Wendt testified that Lorence kicked the cage in Wendt's squad car. While other



witnesses did not see Lorence take a fighting stance, that testimony does not show that Lorence took no such stance. The evidence supports the Board's finding that Lorence took an aggressive stance and clenched his fists at Nieves, and that he kicked the cage in the squad car. The Board also noted that Lorence's resistance to cuffing and his refusal to stay seated despite Nieves's orders constituted disorderly conduct that brought discredit on the department.

¶ 31 Lorence argues that his fighting stance and conduct in the squad car does not show that he acted in a disorderly manner or brought discredit on the department. The issue presents a mixed question of law and fact, and we will not disturb the Board's conclusion on the issue unless it is clearly erroneous. *Reichert v. Board of Fire & Police Comm'rs of City of Collinsville*, 388 Ill. App. 3d 834, 843 (2009). Norridge's police department regulations do not define disorderly conduct or conduct that discredits the department. In other cases courts have held that a police officer's failure to follow a lawful order from another officer brings discredit on the department. See *Daniels v. Police Board of City of Chicago*, 338 Ill. App. 3d 851, 859 (2003). We hold that the evidence sufficiently supports the Board's findings that Lorence's failure to follow lawful orders, his assumption of a fighting stance against Nieves, and his kicking of the cage in the squad car, all constituted disorderly conduct that brought discredit on the department. Therefore, we hold that the Board's finding of disorderly conduct was not clearly erroneous.

¶ 32 Racial Slur

¶ 33 Only Nieves testified that Lorence used a racial slur. Although several other witnesses heard much of Lorence's interaction with Nieves, none corroborated Nieves's testimony on

this particular issue. However, the Board may choose to believe a witness even when other witnesses give conflicting testimony. *Collura v. Board of Police Comm'rs of Village of Itasca*, 113 Ill. 2d 361, 373 (1986); *Crowell*, 32 Ill. App. 3d at 555. We cannot say that the manifest weight of the evidence demands a finding that Nieves committed perjury. We find the evidence sufficient to support the Board's determination that Lorence violated the rule prohibiting the use of racial slurs.

¶ 34 Lying to an Officer

¶ 35 Finally, the Board found that in response to Nieves's questions, Lorence said that he had no weapon, when in fact he carried a gun in his pants. Other witnesses heard part of the interaction between Nieves and Lorence, and none testified that Nieves asked Lorence whether he had a weapon. As with the racial slur, the Board could find Nieves credible despite the testimony of other witnesses. We have no adequate basis for disturbing the Board's finding that Lorence lied to Nieves. Therefore, we find that the evidence sufficiently supports all of the Board's findings of rule violations.

¶ 36 Cause for Discharge

¶ 37 Next, we must decide whether the factual findings support the decision to discharge Lorence. The *Kappel* court restated the applicable principles:

"An administrative tribunal's finding of cause for discharge commands respect [citations] and 'substantial' or 'considerable deference' [citations].

The Board has 'considerable latitude' [citation] and 'considerable discretion' [citation] in determining what constitutes cause for discharge.

The Board's decision will stand even if the court were to consider another sanction more appropriate. [Citations.] The court cannot sit as a super-commission in reviewing the punishment imposed. [Citation.] It is the Board, rather than the court, which is best able to determine the effect of the officer's conduct on the proper operation of the department. [Citation.] The wisdom, necessity or propriety of any action regarding the administration of a police force is within the province of the municipality." *Kappel*, 220 Ill. App. 3d at 589-90.

The Board must assess the charged misconduct in light of the officer's employment history. *Fox v. Civil Service Comm'n*, 66 Ill. App. 3d 381, 391 (1978).

¶ 38 Lorence's record includes many instances of missing court dates, conduct which led the department to impose significant suspensions and restrictions on Lorence. The department gave Lorence a last chance following a suspension that ended only two months before the misconduct at issue in this disciplinary hearing. Lorence also drove under the influence of alcohol in Alabama, and when Alabama police stopped him, he had an altercation with the officers, who subdued him by threatening to use a taser on him. Lorence also drove over the speed limit and caused an accident in Illinois.

¶ 39 After all of the prior misconduct, and on a last chance with the department, Lorence, while intoxicated in public, used a racial slur, refused to follow lawful orders of an officer, and lied to an officer, thereby committing disorderly conduct that brought discredit on the police department. In light of Lorence's history, we cannot say that the Board acted arbitrarily or unreasonably, and we cannot say that the decision to discharge Lorence bore no

relation to the requirements of service. See *Department of Mental Health & Developmental Disabilities v. Civil Service Comm'n*, 85 Ill. 2d 547, 551-52 (1981). Accordingly, we affirm the circuit court's judgment affirming the Board's decision.

¶ 40

#### CONCLUSION

¶ 41

The evidence at the hearing supports the Board's findings that while intoxicated in public, Lorence failed to follow legitimate orders of Cook County police, used a racial slur, lied to a police officer, and conducted himself in a disorderly manner that brought discredit on the Norridge Police Department. The findings, assessed in light of Lorence's extensive disciplinary history, warranted the Board's decision to discharge Lorence. Accordingly, we affirm the circuit court's judgment affirming the Board's decision.

¶ 42

Affirmed.