2014 IL App (1st) 134034-U

THIRD DIVISION
January 14, 2015

No. 1-13-4034

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PAUL GOMEZ, Plaintiff-Appellant, v. BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF NORRIDGE PARK, ITS MEMBERS and CHIEF OF POLICE JAMES J. JOBE, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. 12 CH 44856 The Honorable Peter Flynn Judge, presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Pucinski and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: The Norridge Board of Fire and Police Commissioners properly terminated plaintiff from his position as a police officer. We affirm.

¶ 2 Plaintiff Paul Gomez appeals from an order of the circuit court of Cook County affirming his dismissal from the Norridge Police Department (NPD) imposed by defendants The Norridge Board of Fire and Police Commissioners (Board) and Chief of Police James J. Jobe (Chief Jobe).

On appeal, plaintiff contends that the trial court erred in affirming his termination because it was against the manifest weight of the evidence in light of his minimal disciplinary history. We affirm.

¶ 3 BACKGROUND

¶ 4 We recite only those facts necessary to understand the issues raised on appeal. On January 15, 2012, an incident occurred involving numerous NPD off duty officers at Possum's Pub located at 2324 N. Mannheim Road in Melrose Park, Illinois. Plaintiff, a NPD patrol officer for 12 years, initiated a verbal argument with other patrons, which set off a chain of events culminating in a physical altercation and the intervention of Cook County Sheriff's Police Department (Cook County Police). On May, 8, 2012, Chief Jobe filed charges alleging that plaintiff had violated five NPD Rules of Conduct (rules), including:

> Rule 1.2.1: "On-duty and off-duty conduct: Department members shall conduct themselves in their private and professional lives in such a manner as to avoid bringing discredit to themselves or the department."
>
> Rule 1.2.3: "Immoral or disorderly conduct: Department members shall not conduct themselves in an immoral, indecent, lewd, or disorderly manner, or in a manner that might be construed by an observer to be immoral, lewd, or disorderly."
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> Rule 2.18: "Association with co-workers: Department members shall treat superior officers, subordinates, and all associates courteously and with respect."
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> Rule 2.20.1: "Intoxicating Beverages: Department members, whether on or off duty found to be intoxicated while in a public place, shall be subject to disciplinary action."

Rule 2.33.1: "Display/use of firearms: Officers shall exercise the utmost caution in the use of firearms. Firearms shall never be displayed or drawn unnecessarily on or off duty except for inspection, cleaning, range firing, or necessary official use."

¶ 5 In August 2012, the Board conducted a four-day departmental hearing and simultaneously addressed the charges filed against NPD Officer Scott Lorence. Jamie Marie Cook testified that on the day of the incident she attended a party at Officer Lorence's home. Plaintiff had been drinking and told her that "he went out the night before" and "was looking to get into some trouble." After the party ended, Cook and her fiancée Andrew Principio went to Possum's Pub and plaintiff followed in his own vehicle. At the bar, plaintiff initiated an argument with Rick Lorence, Officer Lorence's brother, and Cook's father. When Cook tried to calm plaintiff down, he pushed her.

¶ 6 The combined testimony of occurrence witnesses Kevin Lorence, bartender and Rick's son, as well as bar owner Maryanne Sapp and Principio further revealed that plaintiff banged his gun clip and placed his holstered gun on the bar. Kevin took plaintiff's gun and Sapp stored the weapon in her safe. Plaintiff then continued to verbally argue with Rick until plaintiff was physically escorted out of the bar. Plaintiff returned to the bar approximately 15 minutes later with Daniel Scott Donnelley and another friend. Sapp asked plaintiff to leave, but he continued to harass the other patrons about his car keys. Donnelly then asked plaintiff "which guy hit [him]," and plaintiff looked in Principio's direction. Donnelly took a swing at Principio who swung back. They ended up on the ground, knocking over bar stools, and patrons intervened to break up the altercation. Sapp called 911 and Cook County Police arrived.

¶ 7 Cook County Police Sergeant Rita Mendez testified that she was called in on a disturbance involving multiple off duty police officers. She entered the bar with Officer Enrique

Nieves and observed plaintiff and another man verbally accosting each other. Neither would explain what was going on, but a patron yelled "he [had] a gun." Plaintiff then identified himself as an unarmed police officer and apologized. Cook County Police Detective Carlos Martinez escorted plaintiff to a chair out of the crowd. Sergeant Mendez then called for backup because Officer Lorence was yelling profanities and escalating the situation. In addition, Sergeant Mendez recovered plaintiff's gun. Detective Martinez and Officer Nieves both corroborated Sergeant Medez's testimony, but added that in their opinions, plaintiff was intoxicated due to "slurred speech, glossy-watery eyes, unbalance" and "alcohol on his breath."

¶ 8 NPD Corporal Victor Wendt testified that when he arrived on the scene Cook County Police informed him about the incident and entrusted him with plaintiff and Officer Lorence's handguns, wallets, police IDs and keys to plaintiff's vehicle. Corporal Wendt tried to get plaintiff, who was being uncooperative, to go home with his ex-wife. Plaintiff was cursing, "[f]uck this. I am not going until I get my fucking keys. They are going to tow my fucking car. I am not going. I want my keys." Corporal Wendt threatened to record the incident, but plaintiff did not care. Corporal Wendt then took plaintiff over to his squad car in an attempt to transport him home, but he refused to sit with Officer Lorence who was in the backseat kicking the doors and cage. Corporal Wendt then told plaintiff he would have two officers take his car back to the station. Plaintiff then left with his ex-wife, but unsuccessfully circled back to retrieve his gun. Corporal Wendt had socialized with plaintiff many times and concluded that he was intoxicated.

¶ 9 NPD Detective Corporal Brian Loughran investigated the incident. He recovered a video recording from the bar, as well as audio recordings from the NPD and Franklin Park Police Department,[1] none of which were included in the record on appeal. Detective Loughran also

[1] We note that although not specifically in the record on appeal, in its brief the Board contends that plaintiff allegedly made a 911 call to the Franklin Park Police Department that set off an unnecessary search for him.

interviewed 13 witnesses who essentially corroborated the above testimony. On cross-examination, he testified that during his interview with plaintiff, he admitted that he was "probably" legally intoxicated.

¶ 10 The hearing then segued to the mitigation and aggravation phase. Several witnesses testified on plaintiff's behalf. Melissa Bercier, plaintiff's psychotherapist since January 2012, testified that plaintiff voluntarily sought treatment. She believed that plaintiff's problem with alcohol and his relationship issues with his ex-wife were the reasons for his misconduct. But plaintiff appeared dedicated to his treatment. NPD Officer Louis John D'Attomo also testified that he worked with plaintiff for the past 12 years and believed he was an excellent officer. Plaintiff's supervisor Corporal Wayne Schober testified that he had no issue bringing plaintiff back to the NPD and observed many officers in the department publicly intoxicated.

¶ 11 Plaintiff also testified that he wished to stay with the NPD. He acknowledged a problem with alcohol which stemmed from life issues including divorce, dealing with an autistic son, seeing a child decapitated on the job, and chronic back pain. Plaintiff had seen other officers drink in public and believed that he was being treated unfairly. He intended to never drink again and did not recall his conduct on the night of the incident.

¶ 12 Chief Jobe testified that plaintiff had a disciplinary record consisting of two verbal warnings, two written warnings, and two issuing of suspensions for missing misdemeanor court dates. He recommended that plaintiff be terminated from the NPD because he had a responsibility to the department and Norridge community. He was concerned about the public's safety because plaintiff not only lost control of his weapon, but was publicly intoxicated with impaired judgment.

¶ 13 In October 2012, the Board terminated plaintiff's employment with the NPD based on its conclusion that plaintiff violated four rules based on (1) his removal of his ammo magazine and banging it on the bar top (Rules1.2.1, 1.2.3); (2) his removal of his firearm from his person and losing control of the weapon (Rule 2.33.1); (3) disorderly conduct for repeatedly yelling and screaming profanities at Corporal Wendt and being involved in several verbal arguments with other patrons (Rule 1.2.3); and (4) being intoxicated in a public place (Rule 2.20.1). Following the ruling, plaintiff filed a complaint for administrative review alleging that the Board's decision was against the manifest weight of the evidence. After briefing and argument, the circuit court concluded that the Board's finding regarding plaintiff's "drawing and displaying" his firearm was against the manifest weight of the evidence, as well as the Board's finding regarding the banging of the clip. The circuit court, however, affirmed the disorderly conduct finding as it related to plaintiff's use of profanity and public intoxication. Thus, the circuit court remanded the case back to the Board to reconsider sanctions and the Board affirmed its original decision to terminate plaintiff. Subsequently, the circuit affirmed plaintiff's termination and plaintiff filed this timely appeal

¶ 14 ANALYSIS

¶ 15 Plaintiff contends that the trial court erred in affirming his termination because it was against the manifest weight of the evidence in light of his minimal disciplinary history. In an appeal from the judgment of an administrative review proceeding, this court reviews the decision of the administrative agency and not the decision of the circuit court. *Marconi v. Chicago Heights Police Pension Board,* 225 Ill. 2d 497, 531 (2006). We first observe that the parties dispute whether or not we should consider all four of the Board's rule violations given the circuit court's initial determination that the Board's two findings relating to plaintiff's gun and clip were

against the manifest weight of the evidence. We need not resolve this dispute, however, because we can adequately reach our determination based on plaintiff's violation of the two rules relating to his disorderly conduct and public intoxication.

¶ 16 Review of an administrative agency's decision discharge requires a two-step analysis. *Krocka v. Police Board*, 327 Ill. App. 3d 36, 46 (2001). First, we determine whether the administrative agency's findings of fact are against the manifest weight of the evidence. *Id.* Second, the court must determine if the findings of fact provide a sufficient basis for the Board's conclusion that cause for discharge exists. *Crowley v. Board of Education*, 2014 IL App (1st) 130727, ¶ 29. Because the Board is in the best position to determine the effect of an officer's conduct on the operations of the department, its determination of cause is given considerable deference. *Robbins v. Department of State Police Merit Board*, 2014 IL App (4th) 130041, ¶ 39. Thus, we may not consider whether we would have imposed a more lenient punishment. *Krocka*, 327 Ill. App. 3d at 48. Accordingly, the Board's decision is to be overturned only if it is arbitrary and unreasonable, or unrelated to the requirements of the service. *Siwek v. Police Board*, 374 Ill. App. 3d 735, 738 (2007).

¶ 17 We cannot say that the Board's findings were unreasonable. The Board first determined that plaintiff conducted himself in a disorderly manner when he repeatedly yelled and screamed profanities at Corporal Wendt and initiated several verbal altercations. Corporal Wendt testified that plaintiff publically behaved uncooperatively and screamed profanities in an effort to retrieve his car keys. Plaintiff refused to leave and continued to rant even when Corporal Wendt threatened to record the incident. Plaintiff was in the bar's public parking lot and his behavior could most certainly be construed by an observer as disorderly. In addition, testimony suggests that plaintiff started several verbal arguments with other patrons both on and off the force, was

physically escorted out of the bar, and returned to stir up more trouble. See *People v. McLennon*, 2011 IL App (2d) 091299, ¶ 30 (disorderly conduct is a highly fact-specific inquiry dependent on the surrounding circumstances, but can include "loud and raucous noises of all sorts, unseemly, boisterous, or foolish behavior induced by drunkenness"). Furthermore, the Board had a sufficient basis to determine that plaintiff was publicly intoxicated. Numerous witnesses, such as Corporal Wendt, Cook, Principio, Detective Martinez and Officer Nieves, all testified that they believed plaintiff was intoxicated on the night of the incident. Plaintiff himself admitted during the investigation that he was "probably" legally intoxicated and testified that he did not even recall the events of the evening. Accordingly, we cannot conclude that the Board's findings of fact were against the manifest weight of the evidence. See *Edwards v. Addison Fire Protection District Firefighters' Pension Fund*, 2013 IL App (2d) 121262, ¶34. (the Board, as the finder of fact, makes credibility determinations and assigns weight to testimony and other evidence; we do not weigh the evidence or substitute our judgment for that of the Board).

¶ 18 We next consider whether the findings of fact provide a sufficient basis for the Board's conclusion that cause for a termination exists. "Cause" has been defined as "some substantial shortcoming which renders the employee's continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and something which the law and a sound public opinion recognize as a good cause for his discharge." *Launius v. Board of Fire & Police Commissioners*, 151 Ill. 2d 419, 435 (1992). Illinois courts have recognized that "police departments, as paramilitary organizations, require disciplined officers to function effectively, and have accordingly held that the promotion of discipline through sanctions for disobedience of rules, regulations and orders is neither inappropriate nor unrelated to the needs of a police force." *Siwek*, 374 Ill. App. 3d at 738. Consequently, even an officer's violation of a single rule has long

been held to be a sufficient basis for termination. *Kinter v. Board of Fire & Police Commissioners*, 194 Ill. App. 3d 126, 134 (1990).

¶ 19 Plenty of competent evidence supported the Board's finding that sufficient cause to discharge plaintiff existed because plaintiff's conduct was unprofessional and detrimental to the discipline and efficiency of the NPD. Plaintiff was admittedly intoxicated and caused a public disturbance in front of not only his fellow officers, but members of the public who knew his affiliation to the NPD. Instead of going home after being escorted out of the bar, plaintiff used his impaired judgment and returned with his two friends to harass the other patrons about his keys and gun. This directly led to a physical altercation amongst the patrons and the subsequent involvement of three police departments. Thus, plaintiff's behavior caused a domino effect that brought discredit on the NPD while jeopardizing the safety of the public, his fellow officers and other area police departments. Therefore, it was not unreasonable for the Board to find that termination was warranted to deter similar acts of misconduct and protect the NPD's morale with the public. See *Remus v. Sheahan*, 387 Ill. App. 3d 899, 904 (2009) (law-enforcement officer is in a unique position of public trust and responsibility, thus must at all times, exercise sound judgment and uphold responsibilities to the public and the department); *Kappel v. Police Board*, 220 Ill. App. 3d 580, 594 (1991) (important to effectively deter similar acts of misconduct by other officers to maintain the public's confidence in the department); see also *Albert v. Board of Fire & Police Comm'n*, 99 Ill. App. 3d 688, 692 (1981) (where the reviewing court upheld the Board's termination when an intoxicated police officer was involved in an altercation at a bar).

¶ 20 We also reject plaintiff’s contention that termination was too harsh in light of his minor disciplinary record and the NPD's inconsistent treatment of disciplinary matters. In making his argument, plaintiff contends that the Board's reliance on the unpublished Rule 23, *Whelehan v.*

The City of Chicago, 2013 Ill. App (1st) 122680-U, has no precedential value, and while we agree, the legal principles relied upon are paramount. The law is clear in that cause for discharge can be found regardless of whether other employees have been disciplined differently. See *Launius*, 151 Ill. 2d at 441-42 (fact that different individuals had been disciplined disparately was not a basis for concluding that the board's disciplinary decision was unreasonable; such conclusions were only appropriate when individuals received different discipline in a single, identical, "completely related" case); *cf. Massingale v. Police Board*, 140 Ill. App. 3d 378 (1986) (where the reviewing court found discharge unreasonable when the plaintiff driving alone in her off duty vehicle received a citation for driving under the influence); *Kreiser v. Police Board*, 69 Ill. 2d 27 (1977) (where the reviewing court found the officer's infractions unrelated to service when he failed to log out for lunch, drove his personal vehicle while on duty, and did not possess a front license plate or city sticker). Here, Officer Lorence, the only other NPD officer charged in the incident, received an identical sanction. In addition, while we appreciate that other NPD officers may occasionally be publicly intoxicated off duty, plaintiff fails to cite to any specific instances. Furthermore, the record suggests that the Board did consider plaintiff's disciplinary history and mitigating circumstances in reaching its determination. See *Kappel*, 220 Ill. App. 3d at 596 (Board was not required to suspend, rather than discharge, an officer solely because he had provided numerous years of good service); see also *Glenville v. Police Board*, 177 Ill. App. 3d 583, 587 (1998) (where the plaintiff's alcoholism did not mitigate or excuse the his misconduct). Moreover, 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 and issue an appropriate sanction. See *Kappel*, 220 Ill. App. 3d at 590. Consequently, based on the record as a whole, we

cannot say that the Board's decision to terminate plaintiff's employment was arbitrary, unreasonable, or unrelated to the requirements of service.

¶ 21 CONCLUSION

¶ 22 Based on the foregoing, we affirm the decision of the Board.

¶ 23 Affirmed.