2015 IL App (1st) 141513-U

No. 1-14-1513

Fourth Division
September 30, 2015

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WAYNE OESTERLIN,	)	Appeal from the
	)	Circuit Court of
	)	Cook County.
Plaintiff-Appellant,	)	
v.	)	No. 12CH38165
	)	
COOK COUNTY SHERIFF'S MERIT BOARD and THOMAS J. DART,	)	
	)	Honorable
	)	Rodolfo Garcia
Defendants-Appellees.	)	Judge, presiding.
	)	
	)	
	)	

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice McBride and Justice Howse concurred in the judgment.

O R D E R

¶ 1 *Held*: Cook County Sheriff's Merit Board's findings that plaintiff misused LEADS system for personal use and later lied to investigators and the Board itself about the actions was adequately supported by the evidence. The agency's findings justified its decision to discharge plaintiff.

¶ 2 Defendant, the Cook County Sheriff's Merit Board (Board), issued a decision to terminate plaintiff, Wayne Oesterlin, after the Sheriff of Cook County (the Sheriff), filed a complaint

against him. The Sheriff alleged that Oesterlin misused the Law Enforcement Agencies Data System (LEADS) on more than one occasion. Oesterlin denied the charge, alleging that he was merely testing the system to see if it was working. The Board found the Sheriff's witnesses credible and did not believe Oesterlin's testimony. Accordingly, the Board found it appropriate to discharge him.

¶ 3 Oesterlin filed an administrative review action in the circuit court. The court upheld the Board's decision after the Board, on remand, issued a clarification of its reasons for discharge and Oesterlin now appeals. For the reasons that follow, we affirm.

¶ 4 BACKGROUND

¶ 5 On December 27, 2010, the Sheriff filed a complaint with the Board seeking the termination of Oesterlin for using the LEADS system for personal reasons. The complaint alleged that in June 2007, Oesterlin ran eleven "vanity" license plates unrelated to his work duties and was counseled by the department on improper usage of the LEADS system. Subsequently, on June 11, 12, and 25, 2008, Oesterlin searched his personal information using the LEADS system. The searches included Oesterlin's name, his Firearms Owners Identification Card, and his driver's license and license plates. The complaint alleged that Oesterlin lied to investigators when he denied having any recollection of being counseled about his alleged improper LEADS usage in 2007. The complaint further alleged that Oesterlin violated Cook County Court Services Department General Order 2600 on LEADS policy, which states, in relevant part:

> "It shall be a violation of the Rules and Regulations of the Cook County Sheriff's Department and the Policy of the State of Illinois, and a violation of State Law for anyone to unlawfully make unauthorized inquiries into the L.E.A.D.S. or N.C.I.C.

> computer systems. The L.E.A.D.S. computer system will not be used for the private benefit of oneself or the benefit of another."

Finally, the complaint alleged that Oesterlin violated Court Services General Order 3401.1, which requires members "to truthfully answer questions by, or render material and relevant statements to, competent authority in a department personnel investigation."

¶ 6 The following testimony was adduced at the administrative hearing. Terrence Moore, a sergeant at the Skokie Courthouse where Oesterlin worked, testified that on June 22, 2007, he observed Oesterlin using the LEADS system several times and each time Moore entered the room, Oesterlin would leave the computer. As a diversion, Moore assigned Oesterlin a task away from the LEADS system, during which time he asked Deputy Mark Stecks, a certified LEADS liaison, to review Oesterlin's LEADS activity. Stecks' review revealed that Oesterlin's searches were for a number of vanity license plates. Stecks' print out copy of the searches was admitted into evidence. Moore further testified that he informed Chief Debartolo of this incident and he and Debartolo counseled Oesterlin against his misuse of the LEADS system "a couple days" later. In June of 2008, Moore again noticed Oesterlin using the computer for extended periods and requested that Stecks review what searches Oesterlin had run. The review revealed that Oesterlin had searched his own personal information numerous times.

¶ 7 Investigator Terrence Hake, from the Cook County Sheriff's Office of Professional Review, interviewed Oesterlin on November 5, 2009 regarding his alleged personal use of the LEADS system. According to Hake, Oesterlin admitted to him that he ran his personal information through the LEADS system, but said he did so merely to confirm that the system was running properly.

¶ 8 Jeffrey Sturt, the LEADS coordinator at the Department of Corrections, testified that he trains all Department of Corrections employees on the system. According to Sturt, although he

did not train Oesterlin personally, he trains employees that they should never input their personal information into the system and the system should not be used for personal reasons. In addition, a training video, which Sturt testified Oesterlin would have seen, instructs that personal information should never be entered into the system. He testified that while the system is susceptible to errors, it will notify users of a malfunction either by providing no response to a search or by showing a yellow screen.

¶ 9 Sturt further testified that, at Hake's request, he looked into Oesterlin's LEADS searches and discovered that between June 19, 2007 and June 25, 2008, Oesterlin had run his personal information 39 times. Sturt also confirmed that eleven vanity plates were run in 2007, however, he had no knowledge of whether the plates had been run in response to an official request.

¶ 10 Chicago Police Department (CPD) Officer Kevin Jans testified on behalf of Oesterlin. According to Jans, he was trained to input personal information into the LEADS system to ensure it is working properly. However, he testified that he is not familiar with the Cook County Sheriff's LEADS system. Further, he testified that he is a personal friend of Oesterlin and worked together with him at the CPD.

¶ 11 Oesterlin testified that he started working for the Cook County Sherriff's Office on March 23, 2003. He had previously worked for CPD, and testified that consistent with his CPD training, he entered his personal information into the LEADS system to ensure that it was working properly. When asked about his alleged use of the LEADS system to run 11 vanity license plates and the subsequent counseling, Oesterlin responded that he had no recollection of either the searches or the counseling.

¶ 12 The Board's ruling was issued on September 28, 2012. The Board found the testimony of Hake, Sturt, and Moore credible, but found Oesterlin's testimony not credible. The Board noted

that Oesterlin easily recalled certain dates and times but had no recollection of the events subject to the inquiry. Accordingly, the Board ordered Oesterlin separated from his employment.

¶ 13 On October 11, 2012, Oesterlin filed a complaint in the circuit court under Section 3-7001 of the Cook County Sheriff's Merit Board Act (the Act)(735 ILCS 5/3-7001 (West 2012)) seeking review of the Board's decision. The trial court upheld the Merit Board's findings, but remanded the case to the Board for clarification of its reasons for imposing termination as opposed to a lesser penalty.

¶ 14 On remand, the Board stated that termination of Oesterlin was appropriate due to: 1) his improper LEADS searches of his personal information and vanity license plates, which could lead to the Sheriff's Office losing its certification to use LEADS, and 2) his dishonest statements to investigators from the Sheriff's department and the Board itself. More specifically, the Board stated that Oesterlin's violations were a clear detriment to the Sheriff's Office, which could have resulted in the Office losing its certification to use the LEADS system. Additionally, at both the investigative level and before the Merit Board, once confronted with the alleged violations, Oesterlin's testimony was not credible. The Board reasoned that the Sheriff has a vested interest in its personnel responding truthfully during investigations and that the Department cannot function properly if sworn officers are not truthful in their responses to internal investigations.

¶ 15 Following remand, on April 17, 2014, the trial court affirmed the Board's decision and this appeal followed.

¶ 16 On appeal, Oesterlin contends that the Board's finding that he was guilty of misusing the LEADS system and of lying to investigators and the Board was contrary to the manifest weight of the evidence. He argues that, in any event, those acts were insufficient to warrant his discharge.

¶ 17 ANALYSIS

¶ 18 The Board's Finding of Guilt

¶ 19 Oesterlin contends that the Board's finding of guilty for his abuse of the LEADS system was against the manifest weight of the evidence. He argues that the evidence in the record shows that he did not run his personal information in the LEADS system for any personal benefit, in contravention of the general order governing use of the LEADS system, but did so in order to test whether the system was working. He maintains that the purpose in running his personal information is evident from his training with the CPD, which permitted testing in this manner. Further, Oesterlin argues that Sturt's testimony that he trains employees not to enter their personal information is irrelevant because Sturt never trained Oesterlin and could not know how Oesterlin was trained.

¶ 20 Defendants respond that the record supports the Board's decision. They offer that Sturt's testimony, which the Board found credible, was that Oesterlin would have seen the Sheriff's training video which warns users against entering their personal information. Moreover, Moore, who the Board also found credible, testified that Oesterlin was warned against abusing the system in June 2007, following his searches for eleven vanity license plates. Finally, they stress there was no need to test the system because either the LEADS system would show a yellow screen or be unresponsive if the system was not working.

¶ 21 We begin our analysis with these settled principles to guide us. Our review is focused on the decision of the administrative agency rather than that of the trial court. [Citations.]. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006). We review an administrative agency's decision to discharge an employee in two parts. First, we review whether the finding of guilt was against the manifest weight of the evidence. *Malinowski v. Cook County Sheriff's Merit Board*, 395 Ill. App. 3d 317, 322-23 (2009). Second, we review whether the employee's actions were a sufficient cause for discharge, or alternatively, the

punishment was arbitrary and unreasonable or unrelated to the requirements of service. *Marzano v. Cook County Sheriff's Merit Board*, 396 Ill. App. 3d 442, 446 (2009).

¶ 22 A decision is only against the manifest weight of the evidence if an opposite conclusion is clearly evident. *Magett v. Cook County Sheriff's Merit Board*, 282 Ill. App. 3d 282, 287 (1996). The findings of fact of an administrative agency on questions of fact are held to be *prima facie* true and correct. *O'Grady v. Cook County Sheriff's Merit Board,* 260 Ill. App. 3d 529, 536 (1994). Significantly, reversal is not justified merely because the reviewing court would have ruled differently. *Magett*, 282 Ill. App. 3d at 287.

¶ 23 The flaw in most of Oesterlin's arguments is that it requires that we reweigh the evidence in his favor. We are constrained in our review, and as we have stated, we must affirm the agency's decision unless an opposite conclusion is clearly evident. Even if were persuaded that Oesterlin's several searches were for test purposes, and we are not, given the deferential standard of our review, we would nonetheless find the evidence more than sufficient for the Board to have concluded, as it did, that the searches were for Oesterlin's personal benefit.

¶ 24 We agree that if Oesterlin ran his personal information merely to test the system, and that if testing in this manner was authorized, such use would not be for personal purposes and would not violate the Sheriff's general order. However, Oesterlin points to nothing in the Sheriff's policies on LEADS system usage which would permit testing by such means. Further, other than Oersterlin's testimony, nothing in the record supports that the searches were for test purposes and the Board rejected Oesterlin's testimony as not credible. There is, however, sufficient testimony to support the Board's conclusion that the searches were for personal reasons. Notably, Sturt testified that it would be self-evident when the system wasn't working, as the system would fail to respond or a yellow screen would appear. It is unclear what purpose "testing" the system by

running Oesterlin's own information would accomplish given that one could simply enter appropriate search information to determine the system's functionality.

¶ 25 Moreover, Sturt testified that one of the questions on the Sheriff's LEADS certification test was whether one could run personal information on the system and the answer is that one is not allowed to do so. Additionally, Sturt testified that although he did not train Oesterlin personally, Oesterlin would have been shown the training video instructing users of the LEADS system not to input their personal information. Oesterlin does not deny having viewed the training video.

¶ 26 Oesterlin argues that the Board's findings of credibility in favor of the Sheriff's witnesses and against him are against the manifest weight of the evidence. He argues that the Board's statement that he had a "computer-like memory of dates and times but claims he has absolutely no recollection of the events that are the subject of this inquiry" is unsupported by the evidence. In support of his argument, he offers that the only dates that he remembered during his testimony were those of significant life events, and the only things he could not remember were whether he ran vanity plates in June of 2007 and the subsequent counseling session. He also argues that there is no basis for the Board's credibility finding against him on the decision on remand.

¶ 27 As we noted earlier, we are constrained in our review. A reviewing court cannot reweigh an administrative agency's determination of the evidence or the credibility of witnesses. *S.W. v. Department of Children and Family Services*, 276 Ill. App. 3d 672 (1995) (citing *Doe v. Department of Children and Family Services*, 265 Ill. App. 3d 907, 911 (1994)). "[C]onflicts in testimony revolve around the credibility of the witnesses and are to be resolved by the agency that heard the evidence and observed the witnesses." *Keen v. Police Board of City of Chicago*, 73 Ill. App. 3d 65 (1979) (citing *Mobley v. Conlisk*, 59 Ill. App. 3d, 1031, 1040 (1978)). The record shows that Oesterlin was able to recall numerous exact or approximate dates. He recalled his

start and end dates of employment with both CPD and the Sheriff, the approximate date of when he took his sergeant's exam, and approximately when he received his LEADS certification. However, when questioned on whether he ran vanity license plates through the LEADS system in 2007 and about his subsequent meeting with superiors, Oesterlin "had no such recollection." The Board had the opportunity to observe the witnesses' demeanor. We do not enjoy that same benefit, thus, we defer to the Board's determination of the witnesses' credibility.

¶ 28 Oesterlin also argues that he was never counseled that he should not run his personal information through the LEADS system and that his only alleged counseling for running eleven vanity license plates in 2007 could not have taken place. He points out that Moore's memo to Debartolo was dated June 22, 2007, and according to Moore, Oesterlin was counseled a "couple days" later. However, June 24 was a Sunday, and Oesterlin was regularly off on Sundays and Mondays. Further, Oesterlin argues, the lack of a counseling form and his favorable performance reviews show that the counseling never took place. Defendants respond that the term a "couple" is a colloquialism, not always meant to mean two, but several.

¶ 29 The Board's finding that Oesterlin was counseled on his improper use of the LEADS system was not against the manifest weight of the evidence. There are numerous ways to explain the apparent discrepancy between Moore's testimony that the counseling took place a "couple days" after the searches and Moore's work schedule. We agree with defendants, the term a "couple days" is not always intended to mean literally two. Moreover, Moore could have been referring to a couple of working days after the incident, not days in the calendar. We do not find Moore's reference to a "couple days" to be so lacking in preciseness as to debunk his entire testimony.

¶ 30 Additionally, the Board found Moore's testimony that he counseled Oesterlin on his LEADS usage credible. Further, we do not find Moore and DeBartolo's failure to fill out a

counseling form or Oesterlin's 2007 favorable performance reviews to necessarily rebut the possibility that Oesterlin was counseled for the 2007 infractions. Even so, the 2007 performance reviews cannot nullify Oesterlin's 2008 search indiscretions and his lack of forthrightness during the investigation, which also formed the basis of the Board's findings.

¶ 31 Noting that LEADS search requests are received over the radio and from other sources, Oesterlin posits that his 2007 vanity plate searches could possibly have been for official business. We note that discovery was made available to Oesterlin in this matter. He points to nothing disclosed in that discovery, or included in the record before us, to support this supposition. Moreover, even had Oesterlin offered testimony to this effect, his testimony would be inconsistent with Moore's testimony that Oesterlin was reprimanded for these searches, which the Board found credible.

¶ 32 Oesterlin additionally argues that even had he been counseled for running vanity plates, that occurrence would not have put him on notice that inputting his personal information in the LEADS system was impermissible. It should have, and even if did not, General Order 2600, did. Furthermore, having been previously admonished concerning his misuse of the system and, subsequently ignoring those warnings and inputting his personal data into the system, rendered Oesterlin's conduct even more egregious.

¶ 33 Citing to General Order 2600, Oesterlin additionally argues that the Sheriff failed to prove an essential element of the violation by a preponderance of the evidence. He notes that the general order only prohibits use of the system for "private benefit of oneself or the benefit of another." He argues that no evidence was presented that Oesterlin personally benefitted from the subject searches and thus, no violation.

¶ 34 It is not the role of the reviewing court to weigh the evidence to determine where the preponderance lies. *Sheehan v. Board of Fire and Police Commissioners of City of Des Plaines,*

158 Ill. App. 3d 275, 287 (1987). We note nonetheless, that whatever personal benefit Oesterlin may have realized from engaging in the unauthorized searches, however minor, may never be known. Neither is such knowledge critical to a finding of Oesterlin's wrongdoing. General Order 2600 prohibits use of the System for any unauthorized inquiry. As we read it, the absence of a LEADS inquiry for an authorized purpose, alone, constitutes a violation, regardless of any personal gain.

¶ 35 On the record before us, we do not find that the Board's findings are against the manifest of the evidence.

¶ 36 Sufficient Cause for Discharge

¶ 37 Oesterlin next challenges the Board's discipline of termination as unjustified because his purpose for entering his personal information was to determine whether the LEADS system was working.

¶ 38 A discharge is appropriate if there exists "some substantial shortcoming which renders continuance in 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 no longer occupying the position." *Fantozzi v. Board of Fire and Police Commissioners*, 27 Ill. 2d 357, 360 (1963). An administrative agency's decision that there is sufficient cause for termination should be given substantial deference. *O'Grady*, 260 Ill. App. 3d at 536 (citing *Department of Mental Health and Developmental Disabilities*, 96 Ill. 2d 101, 105 (1983)). We note that even the violation of a single rule may constitute a sufficient basis for discharge. *Cruz v. Cook County Sheriff's Merit Board*, 394 Ill. App. 3d 337, 342 (2009) (citing *Siwek v. Police Board*, 374 Ill. App. 3d 735, 738 (2007)).

¶ 39 Oesterlin's argument to the effect that he was merely testing the LEADS system relates to whether he was guilty at all, not whether his punishment fit the crime. As we previously noted,

the Board's termination decision was based on both the vanity plates and personal information misuses, as well as Oesterlin's dishonesty during the investigation. In any case, we reiterate that there is sufficient evidence for the Board to have concluded that Oesterlin violated the Sheriff's General Orders.

¶ 40 More relevant to his challenge of the discipline are his claims of error with respect to discovery. Oesterlin contends that the Board erred in denying two of his several discovery requests. At a July 14, 2011 hearing, the hearing officer heard argument regarding Oesterlin's outstanding discovery requests. With respect to discovery request number 9, the hearings officer confirmed on the record that Oesterlin was seeking an anonymous, statistical compilation of sworn and non-sworn members of the Cook County Sheriff Court Services Department who have been counseled, warned, suspended or otherwise disciplined in any manner for allegedly running personal data in the LEADS system since June 3, 2001. In response to the hearing officer's inquiry regarding the basis for the request, Oesterlin stated that the request was based on the Supreme Court's case in *Launius v. Board of Fire & Police Commissioners*, 151 Ill. 2d 419 (1992), which addressed the issue of disparate discipline in administrative cases. Prior to denying the request, the hearing officer acknowledged that the *Launius* case addressed disparate sentencing, and commented that Oesterlin had not yet been found guilty of anything. Further, the hearing officer noted that the parties would later present evidence in mitigation and aggravation.

¶ 41 Oesterlin's discovery request number 14, which was also denied, sought copies of any and all memoranda, emails, letters and the like sent between or among or received by any combination of the following: Undersheriff Whittler, Deputy Chief Heffernan, First Assistant Connelly, Civil Division Chief McArdle and/or any OPR – any agent of OPR between January 1 of 2009 and December 31, 2010, that contains within it any of the following words or phrases:

Wayne, Wayne Oesterlin, Wayne T. Oesterlin, or any other personal identifiers or phrases used to refer to Deputy Wayne Oesterlin. Oesterlin informed the hearings officer that the basis for this request was because of a belief that Oesterlin's case was in retaliation for certain police filings which Oesterlin made against First Assistant Deputy Chief Connelly. In denying the request, the hearings officer commented that the request related to Oersterlin's "retaliatory discharge complaint down the road."

¶ 42 Oesterlin maintains that the denial of discovery prevented him from accessing information in line with the selective enforcement and disparate treatment evidence noted in *Fox v. Illinois Civil Service Commission*, 66 Ill. App. 3d 381 (1979)

¶ 43 [1]. Defendants respond that administrative agencies have considerable latitude in making discovery decisions and the Board's denial of the request here was not an abuse of discretion.

¶ 44 The purpose of pretrial discovery is to aid the party in preparation and presentation of his case or defense, assuring the truth and to eliminate as far as possible surprise, so that judgment will rest upon the merits and not upon skillful maneuvering of counsel. *Wegman v. Department of Registration and Education*, 61 Ill. App. 3d 352, 356 (1978). Presumably, the need for discovery at the administrative level is the same, so as to require disclosure by the agency of evidence in its possession which might be helpful to an accused. *Id.* Although an administrative body possesses broad discretion in conducting its hearings, its discretion must be exercised judicially and not arbitrarily. *Id.*

¶ 45 The applicable standard of review for rulings on discovery issues is the abuse of discretion standard. *Illinois Environmental Protection Agency v. Illinois Pollution Control*

[1] In *Fox v. Illinois Civil Service Commission*, 66 Ill. App. 3d 381 (1979), the appellate court affirmed the circuit court's reversal of the Illinois Civil Service Commission's discharge of Pearl Fox where Fox presented numerous witnesses who testified that the conduct which was the subject of the discipline was trivial, commonplace among employees, and that no investigations or disciplinary actions were taken against any employees, except Fox. *Id.*

Board, 386 Ill. App. 3d 375, 390 (2008) (citing *Wisniewski v. Kownacki*, *221* Ill. 2d 453, 457 (2006)). When reviewing a denial of a request for discovery, a court should not substitute its determination of relevancy and reasonableness for that of the administrative agency, but reverse only when the denial was so prejudicial and erroneous that a party was deprived of due process of law. See *Wiseman v. Elward*, 5 Ill. App. 3d 249, 255 (1972).

¶ 46 Here, in response to Oersterlin's discovery request number 9, the hearing officer denied the request as not relevant on the issue of guilt. With respect to discovery request number 14, the hearing officer determined that the request related to Oesterlin's future retaliatory discharge claims. We find no abuse of discretion in the hearing officer's denials. Compliance with either of the two requests would not have aided Oesterlin either in his trial preparation or in presenting his defense.

¶ 47 We note additionally that in *Launius*, 151 Ill. 2d at 442, our supreme court, in rejecting the appellate court's finding of disparate discipline in that case, noted that "[a]n administrative tribunal's finding of "cause" for discharge may be considered arbitrary and unreasonable when it is compared to the discipline imposed in a completely related case." (Emphasis added.) *Id.* However, cause for discharge can be found regardless of whether other employees have been disciplined differently. *Id*.; see also *Sheehan*, 158 Ill. App. 3d at 290. Further, we note, even if these disciplinary proceedings against Oersterlin were instituted as some form of retaliation, that would not alter the fact that there were violations.

¶ 48 The Board, in addition to finding Oesterlin guilty of misusing the LEADS system, also found that Oesterlin was untruthful to investigators and the Board itself. This conduct alone supports a finding of discharge, even if the misuse of the LEADS system itself was insufficient. Actions that show a lack of trustworthiness and integrity are adequate grounds for terminating a law enforcement officer. See *Village of Oak Lawn v. Human Rights Commission*, 133 Ill. App.

3d 221, 224 (1985). The Board had just and sufficient cause to terminate Oesterlin and we will not substitute our judgment.

¶ 49 CONCLUSION

¶ 50 For the reasons stated, we affirm the decision of the circuit court of Cook County.

¶ 51 Affirmed.