

No. 1-14-3291

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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DUANE BENNETT,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 13 CH 22884
	)	
GARRY F. McCARTHY, SUPERINTENDENT	)	Honorable
OF POLICE OF THE CHICAGO POLICE	)	Sophia Hall,
DEPARTMENT,	)	Judge Presiding.
	)	
Defendant-Appellee,	)	
	)	
(THE POLICE BOARD OF THE CITY OF	)	
CHICAGO,	)	
	)	
Respondent.)	)	

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PRESIDING JUSTICE MASON delivered the judgment of the court.  
Justices Lavin and Pucinski concurred in the judgment.

**ORDER**

¶ 1 *Held:* The evidence supports police board's finding that a positive drug test resulted from a police sergeant's ingestion of marijuana rather than passive inhalation of secondhand marijuana smoke. The board's decision to discharge the sergeant for cause after his sample specimen tested positive for marijuana was not arbitrary, unreasonable or unrelated to the requirements of service.

¶ 2 In this administrative review proceeding, plaintiff Duane Bennett appeals the City of Chicago Police Board's (1) finding that he knowingly possessed marijuana and (2) decision to discharge him for cause as a Chicago Police Department sergeant. On appeal, Bennett asserts he offered credible evidence establishing that environmental exposures to marijuana smoke and not his knowing possession produced a positive drug test result. Bennett also claims that the Board's sanction of discharge was overly harsh, especially in light of his exemplary service record and evidence of his good character. Finding no merit in Bennett's claims, we affirm.

¶ 3 BACKGROUND

¶ 4 Bennett was a sergeant and served on the Department for 22 years until his discharge. During his employment, Bennett provided a specimen sample for at least a dozen random drug tests. On July 10, 2012, Bennett provided a specimen sample for another random drug test; the sample tested positive for 50 nanograms per milliliter (ng/ml) of multiple marijuana metabolites on a screening test and 33 ng/ml of tetrahydrocannabinol (THC)—marijuana's active ingredient—on a confirmation test. Apart from that random drug test, none of Bennett's prior specimen samples tested positive for drugs. On July 16, 2012, Bennett—not at the Department's direction—provided a different specimen sample for a second drug test, which produced a negative test result for narcotics. On August 21, 2012, Bennett—again not at the Department's direction—provided a sample for a hair follicle test, which tested negative for marijuana and all drugs tested.

¶ 5 During an internal Department investigation, Bennett explained that his positive drug test for marijuana resulted from the following four environmental exposures: (1) investigating the odor of marijuana smoke emanating from his son's bedroom on the morning of the drug test; (2) attending an outdoor concert on June 27, 2012, where individuals were smoking marijuana in close proximity to him; (3) participating in a narcotics investigation within a week of the test

where he stood in a room filled with a strong smell of marijuana smoke; and (4) working for two to three weeks in close proximity to a narcotics locker emitting a strong odor of marijuana.

¶ 6 On January 9, 2013, the Department's Superintendent Garry McCarthy filed charges with the Board against Bennett asserting he violated the following Department rules while off-duty: (1) Rule 1: violation of any law or ordinance (illegally possessing cannabis (720 ILCS 550/4 (West 2012))) on or before July 10, 2012; (2) Rule 2: any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department; and (3) Rule 6: disobedience of an order or directive, whether oral or written. The Superintendent recommended Bennett's discharge because the positive drug test impeded the Department's efforts to achieve its policy and goals and discredited the Department.

¶ 7 The Board conducted a four-day hearing, which included testimony from experts, Bennett and character witnesses on Bennett's behalf. The parties stipulated to the results of the specimen and confirmation tests. The following relevant testimony was adduced at the hearing.

¶ 8 Dawn Hahn, a laboratory operations manager at Quest Diagnostics—a leading provider of clinical and drug testing in the world—testified regarding the results of Bennett's random drug test. Hahn explained that the first test conducted on Bennett's sample specimen was a screening "enzyme immunoassay" test where an antigen labeled with an enzyme is placed in the urine sample. The urine sample changes colors directly proportionate to the amount of drugs present in the urine. The enzyme immunoassay test detects multiple marijuana metabolites, and 50 ng/ml is the lowest level of marijuana metabolites that would produce a positive test result under the Department's guidelines. Because Bennett's sample tested positive for marijuana metabolites on the initial screening test, his sample then underwent confirmation testing. All positive or presumptively positive test results from the initial screening test proceed to a confirmation test.

¶ 9 Hahn further explained that during confirmation testing, another sample is taken from the original specimen bottle and the particular drug (marijuana metabolites here) that tested positive during the screening test is extracted from the sample. An instrument called a gas chromatograph mass spectrometer (GCMS) separates the narcotic from the urine, identifies the narcotic and quantifies the amount. The confirmation test conducted on Bennett's specimen sample tested positive for 33ng/ml of the marijuana metabolite THC. The Department designates 15 ng/ml as the threshold level for a positive test result under the GCMS confirmation test. Hahn stated a 20% margin of error exists regarding the accuracy of the confirmation test results and false positives were not uncommon in testing procedures. The Department rested after Hahn's testimony.

¶ 10 Bennett testified that he had never smoked marijuana, never intentionally ingested marijuana and was surprised by the positive test results. Bennett explained in greater detail the four environmental exposures he believed caused the positive drug test. According to Bennett, at approximately 2:30 a.m. on the morning of the random drug test, he entered his son's bedroom located directly beneath his bedroom where his son and nephew had smoked marijuana. Although Bennett did not see anyone smoking in the bedroom nor was smoke blown directly on him, he was inside the smoky bedroom for approximately 20-30 minutes. An air conditioner and a small window provided ventilation in the bedroom, which measured approximately 10 feet by 12 feet.

¶ 11 Bennett next explained that on June 27, he attended a concert that lasted a couple of hours at an outside venue in Milwaukee, Wisconsin. Bennett stated that people smoked marijuana both in the rows in front and behind him exposing him to a lot of marijuana smoke.

¶ 12 Bennett also recounted that he participated in a narcotics investigation at a tire shop within a week or so of the random drug test. Bennett stood for about half an hour in a back room where he smelled marijuana smoke. The room measured approximately 15 feet by 4 feet.

¶ 13 Bennett further testified that for the 2 or 3 weeks before the random drug test while he served as a watch commander at a district office, a narcotics locker was located outside his office approximately 8 to 10 feet away from his desk. The Department stored inventoried marijuana, unburned, in sealed bags inside the locker. Bennett's office measured approximately 15 feet by 12 feet. The locker emitted such a strong smell of marijuana that the Department put plastic garbage bags over the locker to defuse the odor.

¶ 14 Six days after the random drug test, Bennett visited his primary care physician, who thought that his medications and supplements (diuretic, Acetaminophen, Ibuprofen and a small herbal pack) could have produced a false positive, which prompted Bennett to undergo a second drug test while still at the doctor's office. Bennett's second specimen sample tested negative for marijuana.<sup>1</sup>

¶ 15 Bennett stated that on August 21, 2012, he went to a laboratory and provided a sample for hair follicle testing. The hair sample tested negative for marijuana and all drugs tested.

¶ 16 Bennett called Dr. James O'Donnell to testify as an expert witness on his behalf. Dr. O'Donnell was a licensed pharmacist with an expertise in the area of pharmacology, which is the study of the effect of various drugs on the body and encompasses discovery, identification, analysis, evaluation and testing of drugs. Regarding Bennett's case, Dr. O'Donnell reviewed: (1) the statement Bennett provided during the internal investigation describing his environmental

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<sup>1</sup> The hearing officer did not admit the results of the second drug test into evidence because the chain of custody and procedures used were not established.

exposures to marijuana smoke; (2) the positive urine test results from the July 10 specimen sample (confirmed at 33 ng/ml); (3) the negative hair test result; (4) the negative drug test result from the July 16 test; and (5) the medical review office report concluding the positive test result was not related to medication use. Dr. O'Donnell also interviewed Bennett.

¶ 17 According to Dr. O'Donnell, marijuana contains multiple metabolites and people smoke marijuana because of its active ingredient, THC, which is usually gone from the body within a day and its greatest effect is limited to several hours. But metabolites have a very long "body residence" time. In fact, marijuana metabolites may be detected 7, 14 or even 30 days after exposure because metabolites trapped in a body's fat tissue are eventually filtered into the kidneys and deposited in the bladder. The bladder concentrates the marijuana metabolites resulting in a higher volume of metabolites in the urine than could be detected in a person's blood.

¶ 18 Dr. O'Donnell opined that the four combined environmental exposures produced the positive test result as opposed to active or intentional inhalation. Dr. O'Donnell elaborated that the passive inhalation of marijuana through secondhand smoke has been reported to produce positive drug test results, and he believed the multiple exposures that Bennett reported in a short period of time produced the positive test result. Dr. O'Donnell explained that because the second drug test a few days later was negative, Bennett's urine contained a very low level of marijuana further supporting his conclusion that environmental exposures and not intentional ingestion produced the positive test result. Dr. O'Donnell also explained that the negative hair test result revealed that Bennett was not a chronic user of marijuana, though he recognized that chronic use was not a relevant consideration.

¶ 19 Dr. O'Donnell formed his opinions relying on an article<sup>2</sup> documenting the "Cone" study,<sup>3</sup> which tested the passive inhalation of marijuana smoke. The study tested the effects of passive inhalation from exposure to smoke from (a) 4 marijuana cigarettes for 1 hour a day for 6 consecutive days and (b) 16 marijuana cigarettes for 1 hour a day for 6 consecutive days. The subjects were in a closed room measuring 8.2 feet by 6.8 feet by 8 feet with limited to no ventilation. Dr. O'Donnell explained the study's basic premise was that exposure to secondhand smoke may produce positive test results. Thus, his opinion was that environmental exposure to marijuana smoke produced Bennett's positive test results.

¶ 20 Dr. O'Donnell acknowledged that the study's conditions were much more extreme than any of the four exposures to marijuana smoke that Bennett described. Dr. O'Donnell conceded that nothing in the article supports the conclusion that the environmental exposures described by Bennett could produce 33 ng/ml of THC in his urine, and that the article did not incorporate GCMS data or report the specific level of THC metabolites in the subjects' urine.

¶ 21 Dr. O'Donnell admitted that he did not know specific details regarding Bennett's four environmental exposures. For instance, Dr. O'Donnell did not know the dimensions or ventilation of Bennett's son's bedroom or information about the concert that Bennett went to other than it was in Milwaukee. Moreover, Dr. O'Donnell testified that Bennett did not tell him whether his son and the individuals in the tire shop during the narcotics investigation were actively smoking marijuana. Dr. O'Donnell acknowledged that the marijuana stored in the locker was not burning, but opined that people can inhale marijuana from plants, through the

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<sup>2</sup> Edward J. Cone & Rolley E. Johnson, *Contact Highs and Urinary Cannabinoid Excretion After Passive Exposure to Marijuana Smoke*, 40 *Clinical Pharmacology & Therapeutics* 247 (1986).

<sup>3</sup> The study is named after Edward J. Cone, one of the researchers conducting the study.

vaporization process called volatilization, so marijuana does not have to be burned to have an intoxicating effect.

¶ 22 Dr. Shirley Conibear testified as the Department's rebuttal expert witness. Dr. Conibear is a certified medical review officer, a designation for physicians who interpret drug tests, urine drug screens, hair drug screens and report on the test results. Dr. Conibear reviews approximately 50 positive test results a year for the Department, and more than half of the positive tests do not result from illicit exposure to marijuana, but from the use of legally prescribed drugs. In her experience, most of the positive test results measure marijuana metabolites at an amount less than 50 ng/ml. Thus, she did not consider 33 ng/ml of a marijuana metabolite to be an unusually small amount.

¶ 23 To prepare for her testimony, Dr. Conibear reviewed: (1) the internal investigation report incorporating Bennett's asserted environmental exposures; (2) Dr. O'Donnell's written report expressing his opinion that environmental exposures produced the positive test result; (3) Bennett's list of medications; (4) the Department's drug test results; and (5) the results of the separate drug test and hair test arranged by Bennett. Dr. Conibear did not personally interview Bennett explaining that such an interview was not required by the Department's procedures.

¶ 24 Regarding the Cone study, Dr. Conibear explained that the subjects were confined to a small room with no ventilation into which a machine injected sidestream marijuana smoke. According to Dr. Conibear, the subjects in the study tolerated smoke exposure from 4 marijuana cigarettes, but smoke from 16 marijuana cigarettes was thick and irritating to the subjects' eyes requiring them to wear goggles. Dr. Conibear explained that the environmental exposures in the Cone study differed from Bennett's exposures because the study was conducted in a smaller room with longer exposure to smoke and worse ventilation.

¶ 25 Dr. Conibear referenced another article<sup>4</sup> written six months later by the same authors regarding the same study. Unlike the article relied on by Dr. O'Donnell, this article provided quantitative data about the subjects' drug screening tests. Dr. Conibear stated that the maximum level of marijuana metabolites measured by GCMS in the subjects' urine from smoke exposure to four marijuana cigarettes in a room measuring 6 feet by 7 feet by 8 feet was 6 ng/ml. Dr. Conibear acknowledged that the THC level in marijuana today was higher than the level in the marijuana used in the study, but no evidence was presented at the hearing regarding the effect, if any, that higher THC levels would have on the results of urine testing.

¶ 26 Dr. Conibear disagreed with Dr. O'Donnell's opinion regarding the relevance of the negative drug test because that second test occurred too long after the first test and well outside the expected excretion time. Dr. Conibear also disagreed with Dr. O'Donnell's opinion that the odor of unburned marijuana contains THC based on her review of an article<sup>5</sup> analyzing the conversion of non-volatilized oils in marijuana plants through the process of burning and concluding that unburned marijuana does not contain any THC. Thus, the unburned marijuana stored in the narcotics locker would not have contributed to the positive drug test results.

¶ 27 Dr. Conibear opined to a reasonable degree of medical certainty that none of the environmental exposures described by Bennett produced the positive drug test result because the exposures took place too long before the drug screening test or were not intense enough to account for the amount of marijuana detected in his urine. Even assuming a 20% margin of

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<sup>4</sup> Edward J. Cone, Rolley E. Johnson, William D. Darwin and David Yousefnejad, *Passive Inhalation of Marijuana Smoke: Urinalysis and Room Air Levels of Delta-9 – Tetrahydrocannabinol*, 11 *Journal of Analytical Toxicology*, 89 (1987).

<sup>5</sup> Samir A. Ross & Mahmoud Elsohly, *The Volative Oil Composition of Fresh and Air-Dried Buds of Cannabis sativa*, 59 *Journal of Natural Product* 49 (1996).

error, Dr. Conibear explained that Bennett's drug test would nonetheless be positive because his test result of 33 ng/ml was more than double the Department's threshold level of 15 ng/ml.

¶ 28 Dr. Conibear agreed that THC may be measured in the urine of an individual exposed to secondhand marijuana smoke and conceded that research suggests if exposure to marijuana is large enough, environmental exposures may possibly result in a drug test exceeding 33 ng/ml. But she stated that for environmental exposure alone to produce test results achieving even the threshold level of 15 ng/ml, it would require extreme conditions that were highly unlikely to occur. Dr. Conibear acknowledged that one subject in the study tested positive for 87 ng/ml, but she explained that level resulted from exposure to smoke from 16 marijuana cigarettes for an hour a day on the fourth consecutive day. Dr. Conibear elaborated that according to the study, exposure to smoke from 16 marijuana cigarettes for 1 hour a day for 6 days would be equivalent to actively smoking 1 or 2 marijuana cigarettes. Dr. Conibear also noted that the highest level of marijuana metabolites detected in the subjects exposed to smoke from four marijuana cigarettes was 12 ng/ml.

¶ 29 Regarding the hair test, Dr. Conibear agreed with Dr. O'Donnell that the negative result demonstrated a lack of persistent and prolonged use of marijuana, but she explained that marijuana use a few times during the hair testing period would not produce a positive test result. Thus, Dr. Conibear opined that the negative hair test result had no relevance to the Department's drug tests.

¶ 30 Finally, Bennett's wife, fellow officers and friends testified regarding his good character, strong record as a police officer and no known marijuana use.

¶ 31 After the hearing concluded, the Board unanimously ruled to discharge Bennett for cause finding him guilty of possessing marijuana on or before July 10, 2012, as evidenced by his

specimen sample that contained marijuana metabolites. The Board expressly stated that it did not find Bennett's defense regarding environmental exposures to marijuana credible and that Dr. O'Donnell's testimony supporting Bennett's defense was unconvincing. The Board further credited Dr. Conibear's testimony and found it convincing and sufficient to rebut Bennett's defense. The Board decided that discharge was the appropriate sanction because drug use increased the risk that an officer would not perform his job functions appropriately, increased the risk of becoming involved with individuals or enterprises that engage in illegal activities and directly contradicted the very laws that an officer was sworn to uphold.

¶ 32 Bennett filed a complaint in the trial court for administrative review of the Board's decision to discharge him for cause. The trial court held that the Board's decision to accept Dr. Conibear's testimony over Dr. O'Donnell's testimony was not against the manifest weight of the evidence and the Board's decision that discharge was an appropriate sanction was not arbitrary or unreasonable. Bennett timely appealed.

¶ 33 ANALYSIS

¶ 34 A. Review of the Board's Guilty Finding

¶ 35 Bennett claims that the Board's finding that he possessed marijuana was against the manifest weight of the evidence because the Board failed to articulate the reasons why Dr. Conibear testified more credibly than Dr. O'Donnell. Bennett asserts that Dr. Conibear's testimony was impeached on the following issues: (1) misrepresentations of the findings discussed in the medical literature she relied on; (2) failure to consider three of the four environmental exposures; (3) failure to consider the negative hair test result; (4) failure to consider that the THC levels in the marijuana used in the study were 600 times lower than the THC levels in marijuana today. In contrast to Dr. Conibear's testimony, Bennett asserts Dr.

O'Donnell testified credibly that marijuana metabolites may test positive for up to 30 days after environmental exposures depending on where the metabolites were stored in the body, which supports Dr. O'Donnell's opinion that environmental exposures produced Bennett's positive test results.

¶ 36 Because Bennett brings this appeal under Administrative Review Law (735 ILCS 5/3-101, *et seq.* (West 2014)), we review the administrative agency's decision and not the trial court's decision. *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386 (2010); *Outcom, Inc. v. Illinois Department of Transportation*, 233 Ill. 2d 324, 337 (2009). When reviewing an administrative agency's decision, it is not our function to reweigh evidence, substitute our judgment for that of the agency or make an independent determination of facts. *Provena Covenant Medical Center*, 236 Ill. 2d at 386; *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998). Moreover, evaluating the credibility of witnesses and resolving conflicts in the evidence falls within the province of the administrative agency. *Haynes v. Police Board of the City of Chicago*, 293 Ill. App. 3d 508, 511-12 (1997). The same rules regarding the weight and credibility of witnesses are also used to judge expert testimony. *Jones v. Police Board of City of Chicago*, 297 Ill. App. 3d 922, 933 (1998).

¶ 37 An administrative agency's factual findings are deemed *prima facie* true and correct and our review is limited to ascertaining whether the agency's findings of fact are contrary to the manifest weight of the evidence. *Id.* An administrative agency's factual findings are contrary to the manifest weight of the evidence where the opposite conclusion is clearly evident. *Id.* Because we must review the Board's findings of fact relating to its decision that Bennett violated Department rules, the manifest weight of the evidence standard of review applies. As such, if there is evidence in the record to support the agency's factual determinations, especially with

regard to credibility determinations, the agency's findings must be affirmed. *Haynes*, 293 Ill. App. 3d at 512.

¶ 38 Bennett's claim resonates as a classic "battle of the experts" argument because he asserts his expert was more credible than the Department's expert. *Hillard v. Bagnola*, 297 Ill. App. 3d 906, 916 (1998). But as stated, an administrative agency is charged with the responsibility of assessing witness credibility and we cannot reverse that determination unless an opposite finding is clearly evident.

¶ 39 Here, the record amply supports the Board's finding that Dr. Conibear's testimony was more credible than Dr. O'Donnell's testimony. Dr. Conibear explained that secondhand smoke would not have likely produced a positive test result in Bennett's case because: (1) one of the asserted environmental exposures occurred too far in advance of the drug test (the outdoor concert nearly two weeks before the test); (2) the asserted environmental exposures were not sufficiently strong enough to account for the amount of marijuana metabolites tested in his urine (the exposures in his son's room and the room in the tire shop both involving an odor of marijuana, but no reported smoke present); (3) the unburned marijuana stored in the narcotics locker did not emit THC; and (4) the negative hair test result only revealed that Bennett did not regularly use marijuana during the test period. Dr. Conibear also explained that Bennett's test result would still be positive even after taking into account a 20% margin of error. Dr. Conibear disagreed with Dr. O'Donnell regarding the significance of the second, negative drug test explaining that Bennett's specimen sample used for that test was taken beyond the expected excretion time.

¶ 40 Dr. Conibear also discredited Dr. O'Donnell's reliance on the Cone study. Dr. Conibear stated that according to the study, the maximum level of a marijuana metabolite measured by GCMS in a subject's urine after exposure to four marijuana cigarettes for an hour per day in a

poorly ventilated room for six consecutive days was 12 ng/ml. Bennett's test results exceeded those of study participants exposed to far more concentrated and prolonged secondhand marijuana smoke, which supports the conclusion that his positive test result measuring 33 ng/ml was likely not due to claimed environmental exposure. Moreover, according to Dr. Conibear, Bennett's asserted consistent exposure for two to three weeks to the marijuana stored in the locker would not have contributed to the positive test results because that unburned marijuana did not emit any THC.

¶ 41 Dr. O'Donnell conceded that the conditions in the study were much more extreme than the environmental exposures that Bennett described. Moreover, Dr. O'Donnell acknowledged that he lacked specific information regarding Bennett's environmental exposure defenses, *e.g.*, the dimensions and ventilation of his son's bedroom. More specifically, Dr. O'Donnell did not know whether Bennett's son and the individuals at the tire shop during the narcotics investigation were actively smoking marijuana even though the entire premise of the Cone study was direct exposure to sidestream smoke. Nothing in the record contradicts the Board's finding that Dr. O'Donnell's testimony was not convincing to support Bennett's environmental exposure defense.

¶ 42 By the same token, the Board's finding that Dr. Conibear testified credibly was not arbitrary because she sufficiently explained that Bennett's asserted environmental exposures to marijuana smoke lacked the level of intensity and concentrated time frame to produce his positive test results. Although Bennett asserts that Dr. Conibear's testimony was impeached on several grounds, none of his arguments provide a basis for reversing the Board's credibility assessment of Dr. Conibear. Similarly, Bennett argues that the Board erroneously failed to specifically articulate why it found Dr. Conibear more credible than Dr. O'Donnell, but our review of the Board's factual findings was not impeded in any way given the completeness of the record. Bennett also relied on the claimed increased concentration of THC in marijuana today in

comparison to the marijuana used in the Cone study conducted in 1984, but there is no evidence that the exposures reported by Bennett, even to marijuana containing higher levels of THC, would have produced a positive test result. Consequently, the Board's finding that Bennett possessed marijuana on or before July 10, 2012, was not against the manifest weight of the evidence.

¶ 43 B. Review of the Board's Discharge Decision

¶ 44 Bennett also claims that the Board's decision to discharge him for cause was excessive, arbitrary and unreasonable. Bennett asserts that the Board erroneously failed to afford sufficient weight to Bennett's mitigation evidence, including his years of service, exemplary service record and the testimony of his character witnesses. Bennett reiterates that the Board's conclusion that he deliberately and intentionally used marijuana prior to his random drug test lacks support in the record and the corresponding disciplinary action of discharge was not only unwarranted but excessive.

¶ 45 Our review of an agency's decision to discharge an individual entails two determinations: (1) whether the agency's finding of guilt is against the manifest weight of the evidence and (2) whether the findings of fact support the agency's conclusion that cause for discharge does or does not exist. *Walsh v. Board of Fire & Police Commissioners of Village of Orland Park*, 96 Ill. 2d 101, 105 (1983). The term "cause" in the context of discharge is 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 not longer occupying the place.' " *Id.* (quoting *Fantozzi v. Board of Fire & Police Commissioners*, 27 Ill. 2d 357, 360 (1963)). The Board's finding of "cause" should be given deference because "it is best able to determine the

effect of the officer's conduct on the proper operation of the Department." *Grames v. Illinois State Police*, 254 Ill. App. 3d 191, 205 (1993).

¶ 46 A reviewing court may not reverse an agency's choice of sanction on the ground that the court would have imposed a more lenient sanction had it initially determined what discipline would be appropriate or that a different penalty would be more appropriate based on mitigating circumstances. *Launias*, 151 Ill. at 435 (quoting *Sutton v. Civil Service Commission*, 91 Ill. 2d 404, 411 (1982)); *Krocka v. Police Board of City of Chicago*, 327 Ill. App. 3d 36, 49 (2001). Indeed, "consideration of the relative severity of discharge goes beyond the scope of our review." *Bultas v. Board of Fire & Police Commissioners of City of Berwyn*, 171 Ill. App. 3d 189, 197 (1988). Instead, we must affirm an agency's finding of cause to discharge an employee unless the decision was arbitrary, unreasonable or unrelated to the requirements of service. *Walsh*, 96 Ill. 2d at 105. As stated above, the Board's finding of guilt that Bennett used or consumed marijuana was not against the manifest weight of the evidence. Thus, only the second step remains for our consideration.

¶ 47 Here, the Board explained the ramifications of an officer using marijuana that included an increased risk that the officer would: (1) not have the physical stamina and psychological stability to properly perform his job and (2) become involved with a person or enterprise engaged in the illegal sale, delivery, manufacture, purchase, or possession of drugs. The Board decided that these increased risks associated with Bennett's possession of marijuana constituted a substantial shortcoming rendering his continued employment detrimental to the discipline and efficiency of the service and was something the law recognized as good cause for his discharge.

¶ 48 Although other random drug tests produced negative test results for illegal substances and Bennett's service had otherwise been exemplary, the fact still remains that his most recent random drug test was positive for an illegal substance. The Board determined that the positive

drug test resulting from his illegal possession of marijuana violated multiple Department rules. The Department's officers must uphold the law and departmental rules while providing for the safety and well-being of the community. *Grames*, 254 Ill. App. 3d at 205. Violating a single rule may be a sufficient basis to terminate an officer's employment. *Roman v. Cook County Sheriff's Merit Board*, 2014 IL App (1st) 123308, ¶ 145. Certainly, an officer's possession of a controlled substance may reasonably undermine the Department's interests. *Grames*, 254 Ill. App. 3d at 205. Consequently, the Board's finding of "cause" to discharge Bennett—an officer found guilty of possessing an illegal substance—was not unreasonable, arbitrary or unrelated to the requirements of service. See *Martin v. Thompson*, 195 Ill. App. 3d 43, 50 (1990) ("Because the police department cannot condone the illegal use of drugs by its employees, the ultimate sanction of discharge is neither arbitrary nor unreasonable.")

¶ 49

#### CONCLUSION

¶ 50

For the reasons stated, we conclude that the Board did not err in finding that Bennett illegally possessed marijuana on or before July 10, 2012, as reflected in his positive drug test results. Because illegally possessing and consuming marijuana conflicts with an officer's ability to perform his duties and goes against the law he is sworn to uphold, the Board's decision to discharge him from employment was not unreasonable, arbitrary or unrelated to the requirements of service. The record supports the Board's finding of guilt and "cause" to discharge Bennett.

¶ 51

Affirmed.