

SECOND DIVISION
June 7, 2016

No. 1-14-2690

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

YOLANDA VELEZ,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 13 CH 9444
)	
THOMAS J. DART, SHERIFF OF COOK COUNTY,)	
and THE COOK COUNTY SHERIFF'S MERIT)	
BOARD,)	Honorable
)	Franklin Ulyses Valderrama,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Neville and Simon concurred in the judgment.

O R D E R

¶ 1 *Held:* Board's decision to terminate plaintiff from her employment as a deputy sheriff affirmed because it was not against the manifest weight of the evidence, and the termination was not arbitrary and unreasonable.

¶ 2 Plaintiff Yolanda Velez appeals from an order of the circuit court of Cook County affirming the decision of the Cook County Sheriff's Merit Board (Board) to terminate her employment as a deputy sheriff. On appeal, plaintiff contends that the Board's decision was against the manifest weight of the evidence, and the termination was excessive, arbitrary and unreasonable.

¶ 3 The record shows that plaintiff began working as a deputy sheriff for the Cook County Sheriff's Office in 1993, and was assigned to the Court Services Division, Juvenile Court. In June 2012, the Sheriff of Cook County (Sheriff) filed a complaint with the Board seeking plaintiff's discharge. The Sheriff alleged that plaintiff knowingly falsified records by submitting false free and reduced price meal applications to the Chicago Public Schools (CPS) in order to receive free or reduced price meals for her three children who attended CPS. The Sheriff alleged that plaintiff deliberately underreported her income and willfully failed to report her husband's income on applications for free and reduced price meals that she submitted to the CPS meal program. The Sheriff further alleged that plaintiff submitted an application for free or reduced price meals to CPS for the 2005 to 2006 school year, reported her annual income \$22,682 less than her actual income, and did not list her husband as a household member. The Sheriff alleged that for the 2006 to 2007 school year, plaintiff again submitted an application for free or reduced price meals to CPS, reported her income \$35,428 less than her actual income, and did not list her husband as a household member nor his annual income of \$67,941. For the 2007 to 2008 school year, plaintiff submitted a meal program application to CPS, reported her income \$28,773 less than her actual income, and did not list her husband as a household member or his income of

\$73,401. For the 2008 to 2009 school year, on the CPS meal program application plaintiff reported her income \$33,509 less than her actual income and did not list her husband as a household member or his annual income of \$73,359. For the 2009 to 2010 school year, plaintiff reported her income \$36,002 less than her actual income, and did not list her husband as a household member or his annual income of \$72,869. The Sheriff further alleged that on December 13, 2011, plaintiff falsely reported to investigators of the Cook County Sheriff's Office of Professional Review that she applied for the free lunch program for her children for the 2009 to 2010 school year and the application was denied.

¶ 4 The Sheriff alleged that plaintiff violated the following General Orders:

"General Order 3401.1

V. Responsibility

It is the responsibility of every member of the C.S.D. [Court Services Department (hereinafter department)] to conform to the rules of conduct.

VI. Rules and Regulations for All Sworn Officers and Civil Members

A. Compliance with Laws and Ordinances

1. Members will uphold the Constitution of the United States and the State of Illinois, obey all federal, state, and local laws in which jurisdiction the member is present and comply with court decisions and orders of courts having jurisdiction.

B. Conduct on Duty and Off-Duty

1. Members will conduct themselves on and off-duty in such a manner to reflect favorably on the department. Members, whether on or off-duty, will not engage in conduct which discredits the integrity of the Department, its employees or the member, or which impairs the operations of the department. Such actions will constitute conduct unbecoming of an officer.
2. Members will maintain a level of moral conduct in their personal and business affairs that is in keeping with the highest standards of the law enforcement profession. Members will not participate in any incident involving moral turpitude that impairs their ability to perform as law enforcement officers or causes the Department to be brought in disrepute.

C. Conduct Towards Superiors, Associates and Subordinates

3. Members are required to truthfully answer questions by, or render material and relevant statements to, competent authority in a department personnel investigation when said member:
 - a. is not the subject of the investigation; or
 - b. is the subject of the investigation, but the allegation does not indicate that a recommendation for demotion, suspension of more than 29 days or discharge from the department is probable; and/or

- c. is the subject of the investigation and has been advised of his/her statutory administrative rights if the allegation indicates that recommendation for demotion, suspension of more than 29 days or discharge from the Department is probable.

L. Investigations (Conduct Concerning)

- 2. Members will not obstruct any investigation by destroying, altering, concealing or disguising real evidence, or by planting false evidence or furnishing false information to lawful authority."

¶ 5 The Sheriff also alleged that plaintiff violated General Order 7000.1:

"VI. Authority and Responsibility

C. Individual Responsibility

- 1. Each CSD member will perform his/her duties and assume the obligations of his/her rank in the investigation of complaints or allegations of misconduct against any member of the Department.
- 2. Each member will cooperate fully with the personnel of IAD [Internal Affairs Division] or any other authorized individual conducting such investigation."

¶ 6 Finally, the Sheriff alleged that plaintiff violated Cook County Sheriff's Department Merit Board Rules and Regulations:

"Article X, Paragraph B

No Police Officer of the Cook County Sheriff's Police Department,
Correctional Officer of the Cook County Department of Corrections or any
Deputy Sheriff of the Cook County Sheriff's Court Services Department will:

1. violate any law or statute of any State or of the United States of America.
2. violate any ordinance of a County or Municipal Government.
3. violate any of the General Orders, special orders, directives, or rules and regulations of the Cook County Sheriff's Office."

¶ 7 In her answer, plaintiff responded that she did not knowingly falsify records by submitting false free and reduced price meal applications to CPS to receive free or reduced price meals for her children from 2005 through 2010. Plaintiff denied that she deliberately under-reported her income and willfully failed to report her husband's income on applications for free and reduced price meals that she submitted to CPS. She admitted that she submitted applications for free or reduced price meals for the school years from 2005 through 2010 but claimed she did not have enough information to admit or deny the remainder of the Sheriff's allegations regarding those applications, her reported income, her household members and her husband's income. She denied that she falsely reported to investigators from the Sheriff's Office of Professional Review that she applied for the free lunch program for her children for the 2009 to 2010 school year and that the application was denied. Finally, plaintiff denied that she violated the General Orders and Rules and Regulations as alleged.

¶ 8 At the December 2012 hearing, the parties stipulated that Ozzie Skinderi was an investigator with the Chicago Board of Education, Office of the Inspector General and would testify that in 2010 and 2011, plaintiff falsified applications for free or reduced-price student meals for her children through the CPS free and reduced-price meals service program. For the 2005 to 2006 school year, plaintiff underreported her income on the CPS meals application by \$22,682, and did not list her boyfriend, now husband, as a household member. In the 2006 to 2007 school year, she underreported her income by \$35,428 and did not list her then boyfriend as a household member nor list his annual income of \$67,941. For the 2007 to 2008 school year, plaintiff underreported her income by \$28,773, and did not list her then boyfriend as a household member nor his annual income of \$73,401. For the 2008 to 2009 school year, she underreported her income by \$33,509 and did not list her then boyfriend as a member of the household or his annual income of \$73,359. Finally, for the 2009 to 2010 school year, plaintiff underreported her income by \$36,002 and did not list her then boyfriend as a household member and his annual income of \$72,869.

¶ 9 Plaintiff presented three witnesses and testified on her own behalf. Juvenile justice commissioner, Patrick Nelson, testified that his duties included making recommendations about affairs concerning incarcerated juveniles. He was in the juvenile court system daily, and knew plaintiff for nine years there, seeing her on a weekly basis. Nelson characterized plaintiff's work as very honest, professional, and upright. He further noted that she was always on time, and that he found her training was "top scale." Plaintiff's reputation in the Cook County Sheriff's Department was very professional and "total business."

¶ 10 Hilda Vega testified that she was a deputy sheriff in the administrative office located at juvenile courts. She testified that she had known plaintiff through work for 19 years. Vega testified that plaintiff was very honest, dedicated and compassionate. She was "somebody that [Vega] would want with [her] in case of a situation," such as a fight or altercation in the courtroom. Vega testified that compared to other deputies, plaintiff "excel[led] very highly," and was very dependable, dedicated and trustworthy. Vega stated that everyone at work loved plaintiff. She further testified that she had no reservations about working with plaintiff.

¶ 11 Carlos Delgado testified that he was a lieutenant at the Chicago Fire Department and knew plaintiff for 27 years, first from the neighborhood and then from her husband. Delgado was the godfather to plaintiff's youngest son. He was at every occasion for plaintiff's children. Delgado noted that plaintiff and her husband spent a number of years during which they lived apart. Delgado testified that he did not trust anyone to care for his children but would trust plaintiff and had in the past, and that she was a good mother. The community considered plaintiff a reliable person, and someone they could count on. Delgado had responded to incidents at the juvenile court system and would always ask for plaintiff and was told she was a good worker and dependable. Delgado testified that if the Board continued to employ plaintiff, he would not have any reservations conducting work with her.

¶ 12 Plaintiff testified that she had three children, and married Wilson Fantauzzi in July 2011. She had known him since grammar school, and he was the father of her children. They had a difficult relationship and had problems when they had their first two children and did not reside together. They began residing together in late 2010. From the early 1990's to 2010, Fantauzzi

would "visit on and off," and would spend the night, "every now and then." Fantauzzi gave his children a "couple of dollars here and there," but did not financially support plaintiff.

¶ 13 Plaintiff testified that her three children attended CPS from kindergarten through high school. Her children began attending CPS in 1994. For the 2005 to 2006 school year, she filled out the free or reduced-price CPS meal program application. She listed a dollar amount in the application reflective of her then annual income. Plaintiff noted there was a discrepancy between the income she listed in the application and her annual income because she wrote down an estimate. She explained that she provided an "estimate" because she knew her children would never qualify for free lunches since she worked. She did not believe anyone ever paid attention to the application and never received anything indicating that her children received free lunches. Plaintiff also noted there were discrepancies between the income she wrote down in the applications from 2005 to 2010 than her actual income, but explained that she wrote down a "ballpark figure for each year." Plaintiff testified that the failure to list the correct income was a mistake on her part. If someone had brought it to her attention that she was not filling the application out correctly or misunderstanding it, she would have been more careful, looked at her paychecks, and been more complete. As far as she knew, her children never received free or reduced-price lunches from CPS. She never received any documentation from CPS indicating that her children were eligible for the meal program, and her children never told her that they were receiving free or reduced-price lunches. She gave her children money every day for lunches. Plaintiff also noted that her paychecks were directly deposited into her checking account.

¶ 14 Plaintiff further testified that she signed the 2005 to 2006 CPS meal application which stated that she certified that all of the above information was correct and true and that all income was reported, that she understood that this information was being given for the receipt of federal funds, that school officials may verify the information on the application and that deliberate misrepresentation of the information may subject her to prosecution under applicable state and federal laws.

¶ 15 Plaintiff testified that during the 2005 to 2006 and 2006 to 2007 school years she made around \$50,000. For the 2007 to 2008 school year she made around \$54,000. For the 2008 to 2009 school year she made around \$50,000. Then, for the 2009 to 2010 school year she made a little more than \$50,000. During those years, Fantauzzi did not live with her. Plaintiff, however, further testified that Fantauzzi probably "used [her] address," and was on the mortgage, but did not help pay on the mortgage. Plaintiff also testified that Fantauzzi bought the house 13 years ago and lived there now. He lived at the house originally from 1999 to 2000, but then stopped living there until recently.

¶ 16 Plaintiff testified that she filled out an employee information sheet from the Sheriff's Office on May 5, 2006, listing Fantauzzi as her emergency contact and "paramour." She also listed his address as her address. However, it was her testimony that he did not live with her during that time, and that he was living with his sister.

¶ 17 Plaintiff explained that the application for free or reduced-price CPS meals was sent in a packet at the beginning of every school year and must be filled out and submitted on the first day of school.

¶ 18 Following the hearing, the Board found that investigator Skenderi of the Office of the Inspector General, Chicago Board of Education investigated plaintiff in 2010 and 2011 for falsifying free or reduced price meal applications for her children through the CPS reduced free and reduced-priced meal service program. Skenderi found that plaintiff reduced her actual income \$22,682 in the 2005 to 2006 school year, \$35,428 in the 2006 to 2007 school year, \$28,773 in the 2007 to 2008 school year, \$33,509 in the 2008 to 2009 school year, and \$36,002 in the 2009 to 2010 school year. She also did not report her boyfriend/now husband's membership in the household or his annual income despite him being the biological father of plaintiff's children. The Board also noted that the applications contained language stating that all of the above information is true and correct and that all income is reported. Each application was signed and dated by plaintiff.

¶ 19 The Board further found that from the 2006 to 2007 school year, plaintiff lowered her reported income further from what she initially reported in 2005 to 2006 school year which changed her eligibility determination from approved for reduced-price meals to approved for free meals and that she continued to report the lesser amount of income up and through the 2009 to 2010 school year, which caused her eligibility determination to remain at approved for free meals.

¶ 20 The Board further noted that plaintiff admitted that she underreported her income on the applications for the CPS lunch program. She maintained that her now husband, Fantauzzi only stayed at her house on occasion even though his name was on the mortgage and he used the address whenever he had to report his address. She maintained that she paid the mortgage and he

did not help her during the time period she filed applications with the CPS meal program.

Plaintiff listed Fantauzzi as an emergency contact person for her and listed his home address as her address in the records of the Cook County Sheriff's Office. She claimed that to her knowledge her children did not receive free meals at CPS as she gave them money for lunch every day.

¶ 21 The Board found:

"by a preponderance of the evidence through the testimony of the witnesses and the supporting evidence that the [plaintiff] engaged in conduct unbecoming of an officer, conduct that reflected negatively upon her position as a Deputy Sheriff for the Cook County Sheriff, and that the [plaintiff] furnished false income information to the CPS. The Board further [found] the [plaintiff] to be less than credible in her testimony, all in violation of standing General Orders."

¶ 22 The Board concluded that:

"Based on the evidence presented and after assessing the credibility of the witnesses and the weight to be given the evidence in the record, the Board finds that [plaintiff] did violate General Orders 3401.1, Section V and VI, A1, B1-2, C3c, L2; General Orders 7001, Section VI, C1-2; and Article X, Paragraph B of the Rules of the Cook County Sheriff's Merit Board."

The Board ordered that plaintiff be terminated from employment with the Cook County Sheriff's Office effective June 15, 2012.

¶ 23 Plaintiff filed a complaint for administrative review in the circuit court of Cook County. The court found, in relevant part, that the findings of the Board were not against the manifest weight of the evidence and the decision to terminate was not arbitrary, unreasonable or unrelated to the requirements of service.

¶ 24 On appeal, plaintiff contends that the Board's decision was against the manifest weight of the evidence because the Board erred in finding that she submitted false reports and thereby engaged in conduct unbecoming of an officer, engaged in conduct that reflected negatively on her position as a deputy sheriff, and furnished false income information to CPS. She maintains that she made a mistake.

¶ 25 In an administrative review case, we review the decision of the agency and not that of the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006). We are limited to considering the evidence submitted in the administrative hearing and may not hear additional evidence for or against the agency's decision. *Id.* at 532. We review an agency's purely factual determinations under the manifest weight standard of review. *Id.* at 534. Under this standard, we take the agency's findings of fact as *prima facie* true and correct and will reverse a factual finding only if, after reviewing the evidence, we find an opposite conclusion is clearly evident. *Id.* The mere fact that an opposite conclusion is reasonable or that the reviewing court might have ruled differently will not justify reversal of the administrative findings; if the record contains any evidence to support the agency's decision, it should be affirmed. *Magett v. Cook County Sheriff's Merit Bd.*, 282 Ill. App. 3d 282, 287 (1996).

¶ 26 Here, plaintiff initially argues she did not violate any state or federal statute. However, no state or federal statute was cited in the complaint and the Board did not make a finding that she violated any statute. We thus need not decide if her actions violated state or federal law.

¶ 27 Plaintiff further maintains that the Sheriff presented a narrow and extremely limited case offering *no* evidence that proved she made a false report to investigators, and that the Board was silent as to which specific general orders or rules it found plaintiff guilty of violating. The record rebuts this argument because it is very clear that the Board found certain General Orders and Rules and Regulations violated based on its conclusions of fact and law.

¶ 28 Specifically, the Board found that plaintiff violated General Order 3401.1 Section VI B.1, B.2. where she furnished false income information to CPS when she underreported her income, and failed to list all her household members, and based on its finding concluded that her conduct was unbecoming of an officer and reflected negatively upon her position as a deputy sheriff. The Board further found plaintiff violated General Order 3401.1 Section VI C.3.c. where her testimony was less than credible where she was underreporting her income by as much as \$35,000. The Board concluded plaintiff violated General Order 3401.1 Section L. 2., *i.e.*, obstructed the investigation by furnishing false information to lawful authority, where she was less than credible at the hearing. The Board concluded that plaintiff violated General Order 7000.1 Section VI, C1-2 where it found plaintiff less than credible at the hearing which was an investigation of her conduct.

¶ 29 Although the Sheriff did not present any witnesses to rebut plaintiff, positive direct testimony may be discounted by the inherent improbability of the testimony itself. *Sweilem v.*

Illinois Dept. of Revenue, 372 Ill. App. 3d 475, 485 (2007). A witness' testimony is inherently improbable if it is contradictory of the laws of nature or universal human experience, so as to be incredible and beyond the limits of human belief, or if facts stated by the witness demonstrate the falsity of the testimony. *Id.* Here, the Board noted that plaintiff falsified the meal applications to CPS where she underreported her income between \$22,000 to \$36,000, from 2005 to 2010. The Board could conclude that a large discrepancy between her actual income and the income she reported on her free meal or reduced-price applications to CPS was not a simple mathematical mistake, as claimed by plaintiff, but rather, that she intentionally falsified the documentation which indicated that she was not truthfully reporting her income. Accordingly, we find that the Board's findings that plaintiff was less than credible, engaged in conduct unbecoming and that reflected negatively on her position as a deputy sheriff, and furnished false income and information to CPS were not against the manifest weight of the evidence.

¶ 30 In reaching this conclusion, we find plaintiff's reliance on *Taylor v. Cook County Sheriff's Merit Bd.*, 316 Ill. App. 3d 574 (2000), misplaced. In *Taylor*, 316 Ill. App. 3d at 575, the Sheriff alleged that the plaintiff falsified an official report in violation of General Order 4.1, par. III, section A-18, particularly, that plaintiff made a false official report where he lied regarding his criminal history on his employment applications. In *Taylor*, this court concluded the Board proceeded under the incorrect General Order and improperly construed an employment application as an official report. *Id.* 589-90. This court remanded without prejudice to finding a violation of the correct General Order. Here, by contrast, the Board found plaintiff violated different General Orders and we find it did not use the incorrect General Orders in reaching it

conclusion. For the reasons stated, we find that the Board's findings were not against the manifest weight of the evidence.

¶ 31 Plaintiff next contends that her termination was excessive, arbitrary and unreasonable because the record demonstrates that the Board failed to grant sufficient weight to her mitigation evidence regarding her honesty, character and reputation. She contends that her mitigating witnesses freely chose to appear before the Board and offer testimony regarding her character, and, further, she had an unblemished disciplinary record. She also continues to maintain that the record is absent any evidence establishing that she falsified the applications.

¶ 32 The second step in the analysis is to determine if the Board's findings of fact provide a sufficient basis for its conclusion that cause for discharge exists. *Walsh v. Board of Fire & Police Commissioners*, 96 Ill. 2d 101, 105 (1983). Cause is defined as some substantial shortcoming which renders the employee's continued 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 place. *Id.* The Board, not the reviewing court, is in the best position to determine the effect of an employee's conduct on the Department. *Marzano v. Cook County Sheriff's Merit Bd.*, 396 Ill. App. 3d 442, 446 (2009). Considerable deference must be afforded to an administrative finding of cause for discharge and it is not overturned unless it is arbitrary and unreasonable or unrelated to the requirements of the service. *Walsh*, 96 Ill. 2d at 105.

¶ 33 Plaintiff's discharge was predicated on numerous falsifications of free or reduced-price CPS meal applications from 2005 to 2010, and her less than credible testimony at the hearing

regarding those falsifications, which refuted the mitigation evidence. This court has previously held that the filing of a false report constitutes cause for discharge. *Nelmark v. Board of Fire & Police Commissioners*, 159 Ill. App. 3d 751, 758-59 (1987) (plaintiff, a fireman, filed a false medical report), citing *Thanasouras v. Police Board*, 33 Ill. App. 3d 1012 (1975) (police officer, when questioned by his commanding officer as to whether he refused to answer questions at a Federal grand jury inquiry, stated that the only question he refused to answer was not specific to his police officer duties, when in fact he had taken the fifth amendment on all questions). In addition, plaintiff's veracity is related to her duties as a deputy sheriff as it brought disrepute on the Court Services Department and discredited its integrity, and was unbecoming conduct of a deputy sheriff. See generally *Remus v. Sheahan*, 387 Ill. App. 3d 899, 904 (2009) (a law-enforcement officer is in a unique position of public trust and responsibility, thus she must at all times, off-duty or on duty, exercise sound judgment and uphold her responsibilities to the public and the department). In view of the findings of the Board, we cannot say that the Board acted either unreasonably or arbitrarily when it determined that discharge was the appropriate sanction for plaintiff's actions. *Nelmark*, 159 Ill. App. 3d at 759.

¶ 34 In light of the foregoing, we affirm the judgment of the trial court affirming the Board's decision to discharge plaintiff.

¶ 35 Affirmed.