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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

ALLEN YOUNG,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 14 CH 17551
)	
ILLINOIS STATE POLICE, FIREMAN)	Honorable
SERVICES BUREAU: LEO SCHMITZ)	Kathleen Kennedy,
DIRECTOR, ILLINOIS STATE POLICE and)	Judge Presiding.
ILLINOIS CONCEALED CARRY LICENSE)	
REVIEW BOARD,)	
)	
Defendants-Appellants.)	

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

ORDER

- ¶ 1 *Held:* The decision of the Illinois Concealed Carry License Review Board denying plaintiff a conceal-carry license was not clearly erroneous in light of his previous arrests and alleged involvement in a domestic and simple battery dispute.
- ¶ 2 The instant appeal arises from judicial review of a final administrative decision of the Illinois State Police (ISP) and the Illinois Concealed Carry License Review Board (Board) (hereinafter, collectively referred to as defendants) denying plaintiff Allen Young a conceal-

carry license under the Firearm Concealed Carry Act (Act). 430 ILCS 66/1 *et seq.* (West 2012). Defendants denied plaintiff a conceal-carry license following a determination by the Board that plaintiff posed a danger to himself or others, or posed a threat to public safety. 430 ILCS 66/10 (West 2012). Plaintiff appealed this decision to the circuit court. The court overturned the Board's decision and ordered defendants to issue plaintiff a conceal-carry license. On appeal from this ruling, defendants contend the Board's decision denying plaintiff's application for a conceal-carry license was not clearly erroneous in light of his prior conviction for unlawful possession of a firearm, lack of remorse for this conviction, and subsequent firearm-related arrest history. Alternatively, defendants contend the circuit court erred when it ordered defendants to issue plaintiff a license on remand without allowing the Board to hold a new hearing. For the following reasons, we reverse the ruling of the circuit court.

¶ 3

BACKGROUND

¶ 4 On May 2, 2014, plaintiff Allen Young applied for a conceal-carry license. On September 9, 2014, the Board notified him by letter that the Chicago Police Department (CPD) had objected to his application due to his prior arrests on (1) June 30, 2005, for "an unregistered firearm," (2) February 19, 2000, for unlawful possession of a firearm, and (3) September 16, 2010, for committing "domestic battery upon [his] then pregnant girlfriend" as well as simple battery upon an individual who attempted to intervene in the altercation.¹ The letter stated that a majority of the Board had made a preliminary decision to sustain the objection and requested additional information from plaintiff in order to "reach an informed decision" concerning his application.

¹ The Firearm Concealed Carry Act allows any law enforcement agency to object to an application for a conceal-carry license upon reasonable suspicion that the applicant poses a danger to himself, herself or others, or a threat to public safety. 430 ILCS 66/15(a) (West 2012). Any objections must be sent to the Board for review. *Id.* Among other requirements, the Act requires that an applicant for a conceal-carry license be determined by the Board not to "pose a danger to himself, herself, or others, or a threat to public safety" if a law enforcement agency has notified the Board of any objection to the application on this basis. 430 ILCS 66/10(a)(4), 20(e) (West 2012).

¶ 5 In response, plaintiff notified the Board, *inter alia*, that: (1) he "was not aware of, never received a court to appear [*sic*], or was placed under arrest" for the domestic or simple battery charges, (2) he was convicted of unlawful possession of a firearm in 2000 after Chicago police found a gun in his cousin's car and his cousin told the police the gun belonged to plaintiff as he was closest in proximity to the gun, (3) he successfully completed conditional discharge for this conviction, (4) he "ha[d] a criminal trespass to land in March 2009," but the case was dismissed, and (5) the charges arising from the 2005 unlawful possession of a firearm offense were dismissed as he possessed a valid Firearm Owner's Identification card at the time of the arrest. Plaintiff attached certified copies of the disposition for each of the above offenses verifying the accuracy of his statements. He also attached a copy of his criminal history demonstrating he was never arrested for or convicted of battery.

¶ 6 The administrative record, filed under seal by defendants², contains two objections to plaintiff's application on the basis that the respective law enforcement agency had reasonable suspicion that plaintiff posed a danger to himself, others, or posed a threat to public safety. The CPD's objection stated that plaintiff "pushed the victim/pregnant girlfriend to the ground. An acquaintance/friend stepped in to assist and [plaintiff] punched her in the face causing a laceration." It also stated detectives suspended the investigation, but does not offer an explanation for the suspension. This objection was supported by a CPD case incident report which reflects that the matter did not result in plaintiff's arrest. The second objection, submitted by the Cook County Sheriff's Office, stated plaintiff had been arrested for "Unregistered Firearm on 6/30/05 and Unlawful Possession of [a] Firearm on 2/19/00." The sheriff's office supported its objection by submitting a copy of plaintiff's criminal history report.

² Board decisions and voting records are kept confidential and all materials considered by the Board are exempt from inspection, except upon court order. 430 ILCS 66/20(d) (West 2012).

¶ 7 On September 30, 2014, "[a]fter reviewing the evidence received," the Board determined, by a preponderance of the evidence, that plaintiff posed a danger to himself or others, or a threat to public safety. Thus, law enforcements' objections were sustained and the ISP was directed to deny plaintiff's application for a conceal-carry license. Plaintiff appealed this decision to the circuit court.

¶ 8 Following a hearing on the matter, the circuit court overturned the Board's decision and issued an order requiring defendants to issue plaintiff a conceal-carry license, "so long as Plaintiff meets all other requirements for licensure." The court concluded that "two significant inaccuracies *** taint[ed] the review process to such an extent that the Board's decision [was] against the manifest weight of the evidence," including (1) that the record clearly demonstrated that the sheriff's office, not the CPD, objected to plaintiff's application on the basis of his prior arrests, and (2) that the Board misstated plaintiff's criminal history as plaintiff was not arrested for domestic or simple battery. In so finding, the court reasoned that "although the report describes serious misconduct, allegations are legally distinguishable from and not entitled to receive the same weight as arrest."

¶ 9 Defendants filed a motion to clarify, or alternatively, reconsider the circuit court's ruling. The court denied defendants' motion to reconsider its ruling and granted the motion to clarify. The subsequent order issued by the circuit court clarifying its original order mandated that defendants issue plaintiff a conceal-carry license. In its ruling on the motion, the court stated, in relevant part, that further proceedings were not required as the "remaining facts of record are insufficient to affirm and the record as a whole permits only one resolution of the case, remand with instructions to issue a conceal-carry license to the Plaintiff." This court stayed the circuit court's order pending appeal.

¶ 10

ANALYSIS

¶ 11 Defendants contend that the Board's decision denying plaintiff a conceal-carry license was not clearly erroneous in light of his conviction for unlawful possession of a firearm, his lack of remorse for this conviction, and subsequent firearm-related arrest. Defendants argue the circuit court's ruling that two "significant inaccuracies" occurred is erroneous as the record establishes that (1) the CPD, in fact, objected to plaintiff's application, and (2) plaintiff corrected the Board's initial misstatement regarding his alleged arrest for domestic and simple battery when he responded to the Board's request for additional information and notified the Board he had not been arrested. Alternatively, defendants contend the circuit court erred by ordering defendants to issue plaintiff a conceal-carry license without first allowing the Board to conduct a rehearing as the record arguably supports the Board's initial conclusion.

¶ 12 The Firearm Concealed Carry Act subjects all final decisions of the Concealed Carry Licensing Review Board to judicial review under the provisions of the Administrative Review Law. 430 ILCS 66/87(b) (West 2012). Under the Administrative Review Law, this court's role is to review the administrative decision rather than that of the circuit court. *Wortham v. City of Chicago Department of Administrative Hearings*, 2015 IL App (1st) 131735, ¶ 13. "An agency's ruling on a mixed question of law and fact – a question in which the historical facts are admitted, the rule of law is undisputed, and the only question is whether the facts satisfy a statutory standard with which the agency has expertise – will not be disturbed unless clearly erroneous." *Id.* Under the clearly erroneous standard of review, we afford some deference to the agency's experience and expertise. *Id.* We must accept the agency's finding unless, after reviewing the record, we are left with the "definite and firm conviction" that the agency made a mistake. *AFM Messenger Service. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001). Upon

administrative review, the court should not reweigh the evidence or substitute its judgment for that of the agency. *Livingston v. Department of Employment Security*, 375 Ill. App. 3d 710, 715 (2007).

¶ 13 In the instant case, defendants essentially argue that the facts of the case support the Board's original conclusion that plaintiff poses a danger to himself or others, or a threat to public safety. Although plaintiff challenges the Board's reliance on the records supporting law enforcement's objections, he does not dispute their existence. Therefore, we review the Board's decision under the clearly erroneous standard.

¶ 14 Section 15 of the Act sets forth the protocol for which objections to conceal-carry applications may be made by law enforcement agencies. Section 15(a) provides generally that any law enforcement agency may submit an objection to a license applicant based upon a reasonable suspicion that the applicant is a danger to himself or herself or others, or a threat to public safety. See 430 ILCS 66/15(a) (West 2012). In considering an objection of a law enforcement agency, the Board is required to review the materials received with the objection from the law enforcement agency and may request additional information from the law enforcement agency or from the applicant. 430 ILCS 66/20(e) (West 2012). If the Board determines by a preponderance of the evidence that the applicant poses a danger to himself or herself or others, or is a threat to public safety, the Board must affirm the objection of the law enforcement agency and notify the Department of the State Police (Department) that the applicant is ineligible for a license. 430 ILCS 66/20(g) (West 2012).

¶ 15 We believe that there is ample evidence in the record to support the Board's initial conclusion that plaintiff poses a danger to himself, others, or a threat to public safety. The information at the Board's disposal when making the decision to deny plaintiff's application for a

conceal-carry license included two objections from law enforcement agencies as well as information submitted by plaintiff. The first objection was submitted by the CPD based upon a suspended investigation in which plaintiff was allegedly involved in a domestic dispute. The case incident report alleged plaintiff pushed his pregnant girlfriend and hit a friend in the face causing a laceration. The second objection, submitted by the Cook County Sheriff's Office, was based upon plaintiff's prior arrests for possession of an unregistered firearm in 2005 and unlawful possession of a firearm in 2000. 720 ILCS 5/24-3.1 (West 2000) (prohibiting minors from possessing firearms). Plaintiff's criminal history also indicates he pled guilty and was convicted of the 2000 possession offense and sentenced to a term of conditional discharge. In response to the objections, plaintiff submitted a letter and attached his criminal history report. In the letter, plaintiff admits to an additional arrest for criminal trespass, denies any knowledge of the domestic dispute, and explains that his conviction for unlawful possession of a firearm was due to his proximity to the weapon found in his cousin's vehicle.

¶ 16 In this appeal, plaintiff challenges the propriety of the Board's reliance on the reported objections. Citing section 15 of the Act, he argues, at length, that he does not have any gang affiliations and further, that "all cases against him are not gang related or associated with a gang." In considering plaintiff's argument, we have reviewed the text of section 15 in its entirety. A fair reading reveals that plaintiff, in an effort to support his position, has conflated sections 15(a) and (b) of the Act. As set forth above, section 15(a) grants law enforcement agencies discretion to submit objections based upon a reasonable suspicion of an applicant's danger to himself or others. See 430 ILCS 66/15(a). Section 15(b), on the other hand, mandates that the Department file objections for applicants with five (5) or more arrests for any reason, within the seven (7) years preceding the date of application, or for any applicant who has three

(3) or more arrests within the seven (7) years preceding the date of application for any combination of gang-related offenses. 430 ILCS 66/15(b) (West 2012).

¶ 17 Clear from a review of the record, is that law enforcements' objections to plaintiff's application were pursuant to section 15(a) and not section 15(b). In its September 9, 2014, letter to plaintiff, defendants reference only section 15(a) as the basis for law enforcements' objections. Nothing in the letter either references section 15(b), indicates that the objections were submitted by the Department based on the number or date of any arrests, or that the arrests were gang-related. The law enforcement agency in this case exercised its discretion under section 15(a) of the Act to object to plaintiff's licensure based on a reasonable suspicion of danger or harm. Plaintiff's reliance on section 15(b) of the Act is unavailing.

¶ 18 Plaintiff does not dispute that his criminal background contains multiple arrests, including two arrests (resulting in one conviction) for firearm-related offenses. He argues however, that defendants are relying on old criminal records and an erroneous simple and domestic battery for which he was neither arrested, charged, nor convicted. He additionally notes that these criminal records were sealed by the State's Attorney and state and municipal law enforcement departments without objection. Thus, he argues the records fail to demonstrate that he is a danger to himself, to others or to public safety.

¶ 19 Although the age of the offenses would have relevance for application of section 15(b) of the Act, it does not in this case. There is nothing in the record to indicate that law enforcements' objections were based on any section in the Act other than 15(a). Additionally, we find nothing in the Act which would preclude law enforcements' submission, or the Board's review, of records retained under seal. Moreover, section 35 of the Act, which governs investigations of applicants, provides that the Department shall conduct a background check, which shall include, *inter alia*,

"all available state and local criminal history record information files, including records of juvenile adjudications." 430 ILCS 66/35(2) (West 2012.) Thus, neither the age nor the nature of the reported objections supports plaintiff's argument in favor of licensure and the materials considered were properly before the Board.

¶ 20 Further, the record reveals that plaintiff was investigated as the offender involved in a domestic and simple battery dispute. Initially, we note that any misstatement made by the Board during its preliminary determination of plaintiff's application, regarding the final disposition of this reported incident, was refuted by plaintiff and supported with appropriate documentation prior to the Board's final decision. Additionally, although plaintiff denies involvement in or knowledge of the domestic dispute, we will not reweigh the evidence or substitute our judgment for that of the Board in this matter. *Livingston*, 375 Ill. App. 3d at 715. Finally, nothing in section 15(a) requires that an objection be based upon an arrest. In fact, section 1231.70 of the Illinois Administrative Code allows the Board to consider information outside an applicant's general criminal background when determining eligibility for a conceal-carry license. See 20 Ill. Admin. Code 1231.70(b) (West 2012) ("Law enforcement officials may submit objections outside of the criminal history background check" as long as certain procedural requirements are followed and the information was not obtained through LEADS). Based upon our review of the record, we find that the Board's consideration of plaintiff's involvement in this incident was proper and also supports its initial conclusion that plaintiff posed a danger to himself, others, or a threat to public safety.

¶ 21 As additional support for the Board's denial of plaintiff's application, defendants posit that plaintiff's offered excuse for the 2000 firearm possession conviction indicates a lack of remorse. We perceive plaintiff's excuse more in the nature of failing to take responsibility for

the offense. In any case, we agree with defendants that plaintiff's post-conviction posture serves to support the Board's decision.

¶ 22 Based upon our review of the applicable statute and the facts presented, we are unable to conclude that the Board's denial of plaintiff's application was clearly erroneous.

CONCLUSION

¶ 23 For the foregoing reasons, we reverse the judgment of the circuit court of Cook County.

¶ 24 Reversed.