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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

THOMAS J. DART, in his official capacity as Cook County Sheriff,	)	Appeal from the Circuit Court of Cook County.
	)	
Plaintiff-Appellee,	)	No. 15 CH 8936
	)	
v.	)	Honorable Kathleen G. Kennedy, Judge, presiding.
	)	
KELVIN BARNES and THE COOK COUNTY SHERIFF'S MERIT BOARD,	)	
	)	
Defendants (Kelvin Barnes, Defendant-Appellant <sup>1</sup> ).	)	

PRESIDING JUSTICE COBBS delivered the judgment of the court.  
Justices Fitzgerald Smith and Lavin concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant was improperly reinstated to service as a correctional officer where the Cook County Sheriff's Merit Board made findings contrary to the manifest weight of the evidence.

<sup>1</sup>We refer to the parties based on the alignment of the parties in the circuit court where the action for review was first filed. Thus, Kelvin Barnes is the defendant-appellant and the Sheriff is the plaintiff-appellee despite the designations the parties listed on their briefs.

¶ 2 Defendant, Kelvin Barnes, was reinstated as a correctional officer after the Cook County Sheriff's Merit Board (the Board) concluded that the misconduct allegations by Thomas J. Dart, the Cook County Sheriff (the Sheriff), were not proven by a preponderance of the evidence. The Sheriff appealed the decision to the circuit court pursuant to section 3-101 of the Administrative Review Act, 735 ILCS 5/3-101 (West 2014), naming the Board, each board member, and defendant as parties to the complaint. The Board and its members did not participate in the review.

¶ 3 The circuit court held that the evidence did not support the Board's findings and reversed the decision to reinstate defendant as a correctional officer. On appeal, defendant argues that the circuit court improperly substituted its judgment for the Board's findings and asks this court to find that the Board's decision was not against the manifest weight of the evidence. For the reasons that follow, we affirm the circuit court's judgment.

¶ 4 I. BACKGROUND

¶ 5 A. The Complaint

¶ 6 Defendant began his employment with the Sheriff's Office as a correctional officer in October 2007. In April 2014, the Sheriff's Office filed a complaint alleging that defendant had committed numerous rule violations warranting termination of his employment. The complaint was amended on October 10, 2014, and defendant was charged with violating numerous rules and regulations regarding standards of professional and ethical conduct; truthfulness in reporting; truthfulness during internal or external investigations; and compliance with all general orders, special orders, directives, and rules and regulations of the

Cook County Sheriff's Office.<sup>2</sup> The allegations revolved around the actions of defendant and another correctional officer on August 3, 2012.

¶ 7 On August 3, 2012, defendant and Officer Antoinette Bertucci were working the overnight shift at their respective divisions of the Department of Corrections. Shortly before 1:30 a.m., the two took their lunch break and went to La Fiesta Restaurant together. After entering the restaurant and placing their orders, Bertucci exited the restaurant. Upon exiting, she encountered Raul Morales in the doorway. After the encounter, Bertucci continued on her way out to the parking lot. Morales entered the restaurant and approached Jose Castro, a patron seated inside.

¶ 8 Morales and Castro spoke with one another; however, the brief encounter ended when Castro stood up from his seat and struck Morales in the face. Castro's punch caused Morales to fall backwards and lose consciousness. Bertucci and defendant reacted to the situation by detaining Castro and Morales. Castro was asked to remain in the restaurant, but was not handcuffed. Morales, who was lying on the floor, was handcuffed and left there until he regained consciousness. The Chicago Police were called to the scene and Morales was arrested.

¶ 9 Morales was subsequently charged with aggravated battery of a peace officer. He spent five weeks in jail until the charges were dismissed pursuant to the State's motion for *nolle prosequi*. Morales later filed a civil lawsuit alleging he was falsely arrested. Morales reached a settlement out of court; however, the civil suit was later cited as cause to launch an internal

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<sup>2</sup>Specifically, the complaint alleged violations of the following: Illinois Criminal Statute 720 ILCS 5/33-3(b) (Official Misconduct); Rules and Regulations of the Cook County Sheriff Department of Corrections General Order 3.8, §§ I and III, par. A1 and A5; General Order 4.1 (III)(A)(5), (A)(17), (A)(18); Cook County Sheriff's Office Sheriff's Order 11.2.20.00 (II), (VI)(D)(25), (H)(4), (I)(1); and Cook County Sheriff's Department Merit Board Rules and Regulations Art. X, ¶ B, § 1, 2, 3.

investigation by the Sheriff's Office of Professional Review (OPR).<sup>3</sup> OPR investigator Tia Parks was assigned to the case and sustained the allegations of misconduct against defendant. The Sheriff's complaint before the Board followed.

¶ 10 The Sheriff alleged that defendant authored a false report about the August 3rd incident for the Department of Corrections and offered false statements during the investigations into the incident by the Chicago Police Department, the Cook County State's Attorney's Office, and OPR. Further, the complaint raised concerns about defendant's professionalism alleging that his actions in handling the incident and during the subsequent investigations reflected negatively on the Department. The Board conducted a hearing on the charges and the following evidence was presented.

¶ 11 B. The Hearing

¶ 12 At the hearing, the incident report which defendant had submitted to the Department of Corrections was admitted into evidence. In his report, defendant stated that Morales appeared intoxicated when he grabbed Bertucci's shirt and shoved her in an aggressive manner into the restaurant's glass door. Bertucci walked away from Morales. Morales then "started a fight" with Castro. Castro defended himself and struck Morales once in the face, knocking him to the floor. Defendant and Bertucci intervened and detained Morales before calling 911. The police arrived, took defendant's and Bertucci's statements, and arrested Morales.

¶ 13 Chicago Police officer, Ray Aguilar, testified that he and his partner responded to a battery-in-progress call around 1:55 a.m. on August 3, 2012. When Aguilar arrived, Morales did not appear to need medical attention. Aguilar proceeded to speak with Castro, Bertucci,

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<sup>3</sup>Both Bertucci and defendant were investigated by OPR. Their hearings before the Board were combined. However, we do not include all the facts pertaining to Bertucci's case because they are not relevant to our review.

and defendant. Castro did not wish to press charges against Morales for assault and left shortly after speaking with Aguilar. However, Bertucci wanted to press charges and claimed that she and defendant tried to intervene on Castro's behalf during Morales's assault. Morales became angry and struck Bertucci with a closed fist in the upper right shoulder before continuing towards Castro. Aguilar further testified that he spoke to defendant, who corroborated Bertucci's statement. After filing his reports, Aguilar transferred the case to the detective division.

¶ 14 Chicago Police detective, Dolores Myles, testified that she met with Bertucci and defendant at the police station shortly after the incident. She spoke with Bertucci first, and then defendant. They sat in the station's officer workspace rather than a formal interview room. Bertucci's statement was substantially similar to what was included in Aguilar's initial case report. Defendant confirmed Bertucci's statements. Myles later contacted the State's Attorney's felony review division for approval to charge Morales with aggravated battery to a peace officer.

¶ 15 Cortland Campbell, an investigator for the State's Attorney, testified that he and an assistant state's attorney interviewed defendant in December 2012. Defendant's statement to the State's Attorney was consistent with his incident report. He added details such as, he heard Bertucci tell Morales to get his hands off her, which prompted defendant to turn around and he saw Bertucci leaving the restaurant. Further, defendant described the fight between Morales and Castro as starting with a verbal altercation. Defendant also specified that he handcuffed Morales before he and Bertucci called the Department of Corrections and the police.

¶ 16 Defendant's interview statement, recorded by Investigator Parks and signed by defendant, was also entered into evidence. The statement contained additional details concerning the incident such as that defendant heard the glass door shake and Bertucci say "Get off of me!" Defendant also stated he turned and saw Bertucci removing Morales's hands from the front of her shirt before leaving the restaurant. Defendant additionally stated he turned his head toward Morales and Castro because they were talking loudly and he heard Morales say, "You're gonna let her push me off like that? \*\*\* You are supposed to be my people." Morales was standing over Castro and defendant believed he saw Morales poke Castro with the brim of his hat before Castro stood up.

¶ 17 Defendant's statement also described his conduct in detaining Morales. He believed that Morales had been the initiator of the incident, thus he was concerned that Morales would regain consciousness and continue fighting with Castro. In order to prevent another incident, he handcuffed Morales who was initially laying face-up on the floor with one arm underneath his body. The procedure in the Department of Corrections dictated handcuffing a person behind their back. In order to handcuff him, defendant used Morales's shoulder to roll him over and secured both of Morales's hands behind his back.

¶ 18 Additionally in the statement, he denied any report that he told the Chicago Police about Morales punching Bertucci or lunging at Castro. He only recounted that the Chicago Police spoke with him and Bertucci about Morales's gang affiliation. Defendant was also afforded the opportunity to review and verify his incident report and his statement to the State's Attorney's investigators during the interview. After acknowledging that the documents were his statements, he explained to Parks that any discrepancies in the earlier statements were mistakes and he misspoke at the time.

¶ 19 Parks testified that, prior to interviewing defendant, she reviewed his incident report, the Chicago Police reports, and the State's Attorney's investigative report as well as having watched the restaurant's surveillance videotape.<sup>4</sup> Parks further testified and described what she saw on the surveillance videotape as follows. Bertucci reached out to pull the restaurant's door open and ran into Morales, who was pushing the door to enter with his left hand. The two then stood in the doorway for about a minute looking at each other before Bertucci used her right hand to try and move Morales's hand from the door so she could exit. Morales moved his left hand back toward the door and he may have come into contact with Bertucci's "shirt area," but it did not appear like shoving or "socking" occurred. The glass door was not shaking. Bertucci then grabbed Morales's hand and moved it away.

¶ 20 Parks further testified that the video footage depicted defendant at the restaurant counter looking "dead on" at the restaurant employee at the time that Castro punched Morales. Defendant did not turn around until after Morales was punched. Bertucci was outside the restaurant but she reentered shortly after Castro struck Morales and handed her handcuffs to defendant. Neither Bertucci nor defendant checked Morales's vitals before handcuffing him. Defendant took Morales by the arm to "pick[] him up bodily" and "flip[] him over onto his stomach". After handcuffing Morales, defendant stood up and left Morales lying on the floor for more than 15 minutes. Defendant and Bertucci did not separate Morales from the crowd and allowed restaurant patrons to step over his prone body as well as a restaurant employee to mop the floor around him.

¶ 21 Parks testified extensively about the discrepancies she uncovered during her investigation noting that some of the matters defendant had reported to the Department of Corrections, the

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<sup>4</sup>The surveillance videotape was not included as part of the record on appeal.

Chicago Police, the State's attorney, and in his interview with her were inconsistent with the surveillance videotape. Based on her investigation, Parks concluded that the misconduct allegations against defendant should be sustained. Her supervisor signed off on the investigation results and the case was submitted to the unit director and the executive director who agreed with the findings.

¶ 22 Defendant testified that he heard Bertucci tell someone "Take your hands off me." He turned around and saw Bertucci moving Morales's hands. He then overheard Morales and Castro talking about Bertucci. According to defendant, Morales "took offense that [Bertucci] was able to get away from him" and was trying to get Castro involved in the situation. Castro responded that he just wanted to get his food and go home. Morales called Castro a "vulgar name." Although defendant did not turn around, he was aware of the men out of his peripheral vision. He saw that Morales "got in" Castro's face and it looked like Morales brushed against Castro either with the brim of his hat or his shirtsleeve before Castro punched Morales. Defendant clarified he did not see the punch, but he saw Castro stand up.

¶ 23 Later in his testimony, defendant stated that he believed Morales to be a security threat. Defendant stood over Morales, grabbed his arm and rolled him over to handcuff his hands behind his back. He further testified that he had left his equipment in his vehicle. Thus, he had used Bertucci's handcuffs to restrain Morales. Defendant admitted he did not immediately check for vitals when handcuffing Morales, but stated he did eventually check on Morales's well-being. Defendant and Bertucci did not search Morales or Castro for weapons. Defendant further testified that Castro stood over Morales after he was knocked out to say something to him. Afterwards, Castro was allowed to move about the restaurant but defendant stood in front of the door to prevent him from leaving. Defendant also admitted



they left Morales lying on the floor and did not attempt to separate him from customers that were coming in and out of the restaurant. He estimated that Morales was unconscious for 10 to 15 minutes and that after waiting for the police, he called 9-1-1 again due to what he felt was a delayed response. Once Morales regained consciousness, defendant sat Morales up on a chair.

¶ 24 On direct examination, when asked about the truth and accuracy of the statements in his incident report, defendant answered, "[i]t was a rushed statement, but the majority of it is true." He went on to state that neither Officer Aguilar, Aguilar's partner, nor Detective Myles questioned him about the incident during the course of their investigation. Defendant stated he only talked to the officers to confirm that he had handcuffed Morales. He then stood in the vicinity while the officers spoke with Bertucci. He later drove Bertucci to speak with Detective Myles and, again, was nearby but he was not asked any questions. Defendant stated he only talked to Myles to ask an unrelated question. He also testified that he told the State's Attorney he had seen Morales punch Bertucci. He later realized he had misspoke and corrected his statement for the State's Attorney to reflect that he only saw Morales removing his hands from Bertucci's shirt after he turned around. Defendant further insisted in his testimony that he had asked Parks to make a correction to his typed statement, even though he signed off on the prepared statement without the correction.

¶ 25 Bertucci also testified. According to her, she ran into Morales in the restaurant's entryway, where he "made a couple comments" to her before grabbing her shirt and striking her in the chest. She did not recall whether the strike caused her to stumble into and rattle the door. She reacted by brushing aside his hand and moving past him to exit the restaurant. She additionally testified that her radio was malfunctioning and no one responded when she

attempted to call in a report of the encounter. Further, she saw Morales leaning over Castro before Castro struck Morales. Bertucci confirmed that she handed her handcuffs to defendant, but she did not watch him handcuff Morales. She instead went to call the Department of Corrections and the Chicago police.

¶ 26

### C. The Board's Findings

¶ 27

The Board issued a written order on May 7, 2015, reinstating defendant as a correctional officer. In a brief recitation of the facts, the Board mentioned that defendant witnessed a confrontation between Morales and Bertucci in the doorway and that Bertucci and defendant handcuffed Morales after he was knocked unconscious by Castro. The Board found that defendant was interviewed only by OPR. Thus, the Board determined that defendant had not violated any rules by giving a false statement to the Chicago Police or the State's Attorney because it found no interviews had occurred. The Board did, however, acknowledge that defendant had submitted a written report to the Department of Corrections which it used as a "baseline for inconsistency." In comparing defendant's written report and his later statements to OPR, the Board found that "no material inconsistencies" existed which would support the complaint for termination.

¶ 28

Additionally, the Board found that questions about Bertucci and defendant's treatment of Morales, and their actions at the restaurant while waiting for the Chicago Police, were not relevant to the issues in the Sheriff's complaint because they were "judgment calls." The Board also noted that the surveillance videotape "did not demonstrate that [defendant] acted in a less than professional manner." After making its findings, the Board concluded that defendant had not violated General Order 4.1 II A-18, General Order 3.8 Section III A-5, and

the Cook County Sheriff's Merit Board Rules and Regulations, Article X, paragraph B, section (3).<sup>5</sup>

¶ 29

## II. ANALYSIS

¶ 30

Initially, we note that defendant devotes the majority of argument on appeal addressing alleged errors by the circuit court. We will not focus on the actions of the circuit court because this case is before us on administrative review. Thus, we review only the decision of the administrative agency. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006).

¶ 31

### A. The Standard of Review

¶ 32

The applicable standard of review, and the extent of deference we afford the administrative agency's decision, depends upon whether the question presented is a question of law, a question of fact, or a mixed question of law and fact. *Marconi*, 225 Ill. 2d at 532. We review questions of law *de novo*, questions of fact under the manifest weight of the evidence standard, and a mixed question of law and fact under the clearly erroneous standard. *Marconi*, 225 Ill. 2d at 532. Here, the Sheriff challenges the Board's determination that defendant did not violate any of the rules and regulations applicable to correctional officers. There is no dispute over the interpretation of the applicable rules and regulations. Therefore, the Sheriff's challenge presents a question of fact and we review whether the Board's factual determinations were against the manifest weight of the evidence.

¶ 33

The Board's findings of fact are considered *prima facie* true and are not to be overturned unless they are against the manifest weight of the evidence. *Launius v. Board of Fire & Police Commissioners*, 151 Ill. 2d 419, 427 (1992). A finding is against the manifest weight

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<sup>5</sup>Although the amended complaint cited a number of rules that were violated by defendant's actions, the Board did not specifically address each rule in its order.

of the evidence if “the opposite conclusion is clearly evident” or the finding is “unreasonable, arbitrary, and not based upon any of the evidence.” *Lyon v. Department of Children & Family Services*, 209 Ill. 2d 264, 271 (2004) (quoting *Snelson v. Kamm*, 204 Ill. 2d 1, 35 (2003)). It is not our function on administrative review to reweigh evidence or to make an independent determination of the facts. *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386–87 (2010). If there is evidence contained in the administrative record that supports the agency's decision, this court should affirm the agency decision. *Robbins v. Board of Trustees of the Carbondale Police Pension Fund*, 177 Ill. 2d 533, 538 (1997).

¶ 34 We further note that, under any standard of review, a plaintiff to an administrative proceeding bears the burden of proof and relief will be denied if he or she fails to sustain that burden. *Marconi*, 225 Ill. 2d at 532-33. In this appeal—despite the fact that defendant sought review before this court—the Sheriff bears the burden of proof because he is the plaintiff that initially sought administrative review.

¶ 35 The Sheriff sought to terminate defendant's employment as a correctional officer due to his actions on August 3, 2012, and throughout the resulting investigations. In order to justify termination, the Sheriff had to prove by a preponderance of the evidence that there was cause for discharge. 55 ILCS 5/3-7012 (West 2012). On appeal, the Sheriff argues that the evidence clearly showed that defendant submitted a false report, made false statements to the investigating agencies, and acted unprofessionally both in his treatment of Morales and his conduct after the incident, each of which is a sufficient cause for discharge. See *e.g.*, *Nelmark v. Board of Fire & Police Commissioners*, 159 Ill. App. 3d 751, 758-59 (1987) (filing a false report is a sufficient cause for discharge); *Valio v. Board of Fire & Police Commissioners of*

*the Village of Itasca*, 311 Ill. App. 3d 321, 330 (2000) (lying during a departmental investigation is a sufficient cause for discharge); *Village of Oak Lawn v. Human Rights Commission*, 133 Ill. App. 3d 221, 224 (1985) (actions that show a lack of trustworthiness and integrity are grounds for termination). He contends that the Board incorrectly determined that defendant's actions did not violate the cited rules and regulations. With these precepts in mind, we turn to the evidence adduced and the Board's findings based on that evidence.

¶ 36

## B. Agency Interviews

¶ 37

### 1. The Chicago Police

¶ 38

The Sheriff argues that the evidence does not support the Board's finding that defendant was never interviewed by the Chicago Police. Defendant replies that the Board correctly resolved the conflicting evidence in his favor in finding that he was not interviewed. Defendant testified that he only briefly spoke to the responding officers at the scene and to Detective Myles in passing without giving a statement about the incident. However, defendant's testimony contradicts his own incident report in which he wrote, "[a]t the scene, CPD Officers Corbett #4134 and Aguilar #7375 arrived and took statements from both [defendant] and Ofc. Bertucci." He is also contradicted by Officer Aguilar and Detective Myles who testified that they each interviewed defendant in relation to the August 3rd incident. Even though Bertucci's statements were the focus of the police reports, both witnesses testified that defendant gave a corroborating statement during their investigation. Further, in his statement to OPR, defendant claims that his conversation with the police extended to discussions of Morales's gang affiliations, further contradicting himself.

¶ 39

This issue of whether defendant was interviewed by the Chicago Police turns on the resolution of the conflicting testimony. Defendant's credibility was impaired by the record

which contained his own contradictory statements. Defendant attempted to explain his apparent contradictions by stating that his written incident report was rushed. However, that does not explain his statements to OPR. On the other hand, Aguilar and Myles were credible witnesses with no apparent motivation to lie about taking defendant's statement. Although their accounts of the incident contradicted defendant and Bertucci's testimony, they only related what they had been told. There was no reason given to suspect that the Chicago Police had fabricated the story of Bertucci and defendant's intervention in order to proceed with a felony charge against Morales. Thus, we find from examination of the record that defendant's testimony was thoroughly discredited and the Board's acceptance of his testimony was contrary to the manifest weight of the evidence.

¶ 40

## 2. The State's Attorney

¶ 41

Second, the record is clear that defendant was interviewed by the State's Attorney's office and the Board's finding to the contrary is incorrect. Campbell, an investigator for the State's Attorney's office, testified that he sat in on defendant's interview conducted by an assistant state's attorney. Defendant, himself, testified that he gave a statement to the State's Attorney. Defendant also verified, as part of his interview with OPR, the copy of his statement to the State's Attorney's office. Although a copy of the statement was not admitted into evidence at the hearing, there was no basis for the Board to find that there was no evidence or testimony that defendant was interviewed by the State's Attorney's office. Thus, the Board's finding that defendant was not interviewed by the State's Attorney office is against the manifest weight of the evidence.

¶ 42

## 3. The Department of Corrections

¶ 43

Lastly, the Sheriff contends that the Board failed to discuss how it determined that defendant did not offer any false statements to the Department of Corrections. The Board

simply stated that it found no evidence or testimony that defendant was interviewed by the Department of Corrections. Although it is technically true that defendant was not interviewed, defendant had submitted a written report to the Department of Corrections which the Board acknowledged. However, the Board appeared to have overlooked the allegations that defendant had offered false statements in his written report. Even if he was not "interviewed," the statements contained in his written report should have been subject to the Board's review. Thus, we highlight it as a concern because the Board continued under the premise that defendant had not supplied any statement and it did not engage in a thorough examination of whether defendant supplied false statements in his written report. The Board's failure to examine defendant's incident report for false statements contributes to additional concerns which we discuss later.

¶ 44

The Board found that “[defendant] was not interviewed by the Chicago Police Department, nor was there any evidence or testimony that he was interviewed by the Cook County State’s Attorney’s Office or the Cook County Department of Corrections.” We acknowledge that the Board's factual findings are deemed “*prima facie* true and correct” and should not be disturbed on appeal unless they are against the manifest weight of the evidence. *Marconi*, 225 Ill. 2d at 534 (quoting 735 ILCS 5/3–110 (West 2002)). Nevertheless, we also recognize that the deference we afford the Board's decision is not without limitations. See *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 507 (2007) (“[e]ven under the manifest weight standard \* \* \* the deference we afford the administrative agency's decision is not boundless.”); see also *Bowlin v. Murphysboro Firefighters Pension Board of Trustees*, 368 Ill. App. 3d 205, 210–12 (2006) (“our review cannot amount to a rubber stamp of the proceedings below merely because the Board heard witnesses, reviewed records, and made the requisite findings”). After reviewing all the evidence, we find that the Board's

factual determinations—in regards to the defendant's interviews with the Chicago Police and the State's Attorney—were contrary to the manifest weight of the evidence.

¶ 45

### C. Baseline for Comparison

¶ 46

The Sheriff contends that the Board improperly used defendant's incident report as a "baseline for inconsistency" for comparison with his statement given to OPR. The Board found that OPR was the only agency that interviewed defendant. In evaluating defendant's statement to OPR, the Board compared defendant's written report with his interview and found that "no material inconsistencies" existed which would support the complaint for termination. Given the fact that the complaint alleged defendant's incident report contained false statements, we agree with the Sheriff that the Board's decision to utilize the report as a "baseline" was inappropriate. Furthermore, defendant openly admitted during the hearing that his report may have contained inaccuracies. In spite of defendant's admission, the Board chose this method to evaluate the veracity of defendant's statement to OPR.

¶ 47

We note that defendant's incident report is very brief, consisting of a single paragraph covering only the basic details. Defendant's statement to OPR, given over a year after the incident occurred, is at least three times as long and provides substantially more detail about what defendant heard during the incident as well as the manner in which he conducted himself and his justifications for doing so. Additionally, defendant was given the opportunity to review his incident report and revise his statement before signing off on the final typed statement which documented his interview with OPR. The fact that there were "no material inconsistencies" between these two documents does not inspire us to conclude that all of the statements provided in these documents were truthful.

¶ 48

The Sheriff insists that the available surveillance videotape should have been used as the baseline for comparison with defendant's statements. Videotapes may be received as a "silent



witness" or as a witness which speaks for itself. *People v. Taylor*, 2011 IL 110067, ¶ 32 (quoting Jordan S. Gruber, Foundation for Contemporaneous Videotape Evidence, in 16 Am. Jur. Proof of Facts 3d 493, § 4, at 508 (1992)). Objects such as a video camera when operating properly neither have, nor lack, credibility or trustworthiness. *People v. Tharpe-Williams*, 286 Ill. App. 3d 605, 609 (1997). In the record, there are no challenges to the use of the videotape at the hearing and the parties stipulated to the videotape's foundation. Thus, there was no reason that the videotape could not have been considered as a baseline for comparison.

¶ 49 Although the surveillance videotape was not included as part of the record, it was available to the Board at the time of the hearing. The Board clearly reviewed the contents of the surveillance videotape as evinced by its later finding that the videotape showed defendant acted as his profession would require under the circumstances. Nonetheless, the Board apparently ignored the videotape when evaluating whether defendant had given an honest account of the incident in his report and statements. The Board is not required to explain the reasoning behind its decisions. See *Fraternal Order of Police, Chicago Lodge No. 7 v. Illinois Labor Relations Board, Local Panel*, 2011 IL App (1st) 103215, ¶ 26 (no requirement to delineate every aspect of decision-making, if agency's reasoning is discernible). However, we can discern no rational reason for the Board's reliance on a report, which was challenged for its veracity and admitted to be rushed and inaccurate, as the baseline against which other statements were measured where a videotape which captured the entire event was available. Therefore, we find that the Board's reliance on the incident report was erroneous.

¶ 50 Our supreme court's reasoning in *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485 (2007), is instructive. In *Wade*, the court held that the City of North Chicago Police Pension Board's decision was against the manifest weight of the evidence where it assigned greater weight to a doctor's opinion as to the plaintiff's disability over the opinions of other expert witnesses. *Id.* at 507-508. The Court found that the doctor had "failed to consider or to base his opinion on relevant, material evidence that was key under the circumstances of th[e] case." *Id.* at 507. Finding that the doctor's opinion was not credible, the Court determined that the Pension Board's reliance on that opinion was erroneous, and thus, against the manifest weight of the evidence. Likewise, we find that the Board here erred in relying on defendant's incident report rather than on the videotape. Thus, like the Court in *Wade* we find that the Board's findings were against the manifest weight of the evidence.

¶ 51 D. False Statements and Professionalism

¶ 52 Thus far we have found that the Board failed to consider all of the evidence presented and made factual determinations contrary to the manifest weight of the evidence. We have not made any final determinations as to whether defendant made false statements warranting his termination. Such a determination would require that we review what was depicted on the videotape, which we are not equipped to do. Therefore, we reverse the Board's decision and remand for further proceedings consistent with our order.

¶ 53 Furthermore, because our findings above are sufficient to reverse and remand this matter, we do not discuss the Board's conclusion that defendant acted professionally in handling the incident. However, we note that the Board also erred in concluding that questions about defendant's handling of Morales in the restaurant were irrelevant to the issues raised. Even if the Board considered defendant's actions to simply be a matter of making a judgment call,

defendant made an official statement to OPR about how he conducted himself while detaining Morales. Therefore, the Board must consider whether his statements honestly depicted his actions on that night and it cannot simply declare that the questions raised during the hearing were irrelevant.

¶ 54

### III. CONCLUSION

¶ 55

For the reasons stated, we affirm the circuit court's judgment reversing the Board and remand for the Board to reconsider whether, in light of the videotape and all other credible evidence, defendant's incident report and interviews with the Chicago Police, the State's Attorney, and OPR contained any false statements which would warrant defendant's termination.

¶ 56

Affirmed.