No. 1-10-0347

FIFTH DIVISION
January 14, 2011

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CITY OF CHICAGO and THOMAS BYRNE, Commissioner of the Department of Transportation,	)	Appeal from the Circuit Court of Cook County.
Petitioners-Appellees,	)	No. 08CH1139
v.	)	
JOSEPH ANNUNZIO and the CITY OF CHICAGO HUMAN RESOURCES BOARD,	)	The Honorable LeRoy K. Martin, Jr., Judge Presiding.
Respondents-Appellants.	)	

PRESIDING JUSTICE JAMES FITZGERALD SMITH delivered the judgment of the court.

Justices Joseph Gordon and Howse concurred in the judgment.

ORDER

HELD: The initial finding of the City of Chicago's Human Resources Board that the City failed to prove the "most egregious" allegations against respondent was against the manifest weight of the evidence; the sanction of discharge was not arbitrary and unreasonable; affirmed.

Respondent-Appellant Joseph Annunzio was discharged from his position as a field

supervisor with the City of Chicago Department of Transportation (CDOT) after an investigation determined that he violated personnel rules. Respondent appeals.

Background

Respondent was employed by the City from 1992 to 2007. From 1999 to 2006, he held the career service position of a field supervisor for CDOT's division of infrastructure. As a field supervisor, respondent was responsible for supervising eight field service specialists charged with enforcing permit compliance for construction along the public way. The job of the field service specialists is to drive through designated areas of the city looking for work being done in violation of relevant ordinances or outside the scope of a permit. Field service specialists are sometimes referred to as inspectors.

In 2006, respondent was promoted to assistant project director, a non-career service position. As assistant project director, respondent supervised approximately 20 employees who were responsible for enforcing permit compliance. At the time of his discharge, respondent held both the career service position of field supervisor and the non-career service position of assistant project manager.

From 2003 through November 2006, respondent worked out of an office on Ogden Avenue along with approximately 50 other employees. He then moved to an office located on La Salle Street.

In June 2006, Patty Young, a field specialist and union steward, submitted a letter of complaint regarding respondent to CDOT acting commissioner Cheri Heramb. The letter

claimed respondent had:

> "an 'untouchable' attitude, which is display[ed] through his constant racist, sexist, rude, and unprofessional attitude. Here are a few examples, at the office located at 2350 Ogden, he has referred to two women as 'Bitches', sometimes he refers to the Black employees as 'Niggers' * * * [and he calls other minorities in the office] the 'Foreigners that I don't like."

Young also described an occasion where respondent, at work, put a red table cloth over his head and acted as though he were the "Grand Wister" of the Ku Klux Klan.

The Young letter prompted an investigation by the office of the City's Inspector General, led by investigator Bethany Drucker. As part of the investigation, Drucker interviewed 19 witnesses.

In November 2006, while the investigation was pending, 28 inspectors at the Ogden office signed a petition refusing to continue to work with respondent and urging his removal from the office.

In April 2007, as a result of the IG investigation, the City charged respondent with: (1) making racist, derogatory, and/or disparaging remarks in the workplace about women, blacks, and/or immigrants; (2) placing a red tablecloth on his head and referring to himself as "imperial wizard" and/or "grand dragon" and/or "grand wizard" and/or "red dragon," titles commonly associated with Ku Klux Klan leadership; and/or (3) verbally abusing and/or being discourteous to coworkers and/or employees under his supervision. The actions charged violated the

following subsections of Personnel Rule XVIII, Section I:

> "(23) Discourteous treatment, including verbal abuse, of any other City employee or member of the public.
>
> (33) Interfering with others on the job.
>
> (39) Incompetence or inefficiency in the performance of the duties of the position.
>
> (42) Discrimination against an employee or applicant because of race, color, religion, sex, disability (including, but not limited to HIV-status), national origin, age over 40, or sexual preference.
>
> (50) Conduct unbecoming an officer or public employee."

Pursuant to these charges, acting commissioner Heramb discharged respondent in May 2007. Respondent appealed his discharge to the Board.[1]

A hearing was held before the Board in July and August 2007. At the hearing, Carl Arnsby, an African-American field service specialist, testified that he once heard respondent argue with another employee, loudly using profanity. After the argument, respondent walked past Arnsby's desk and "just hollered out, 'I just can't stand these mother fucking ass foreigners.' " Arnsby signed the aforementioned petition in November 2006 refusing to continue to work

[1]Respondent was on leave of absence from his position as field supervisor, a career-service position, while he served in the non-career service position of assistant project director. Because there is no right of appeal from a dismissal of a non-career service position, respondent appeals only his discharge from the career service position.

with respondent because he "was beginning to hear these things out of [respondent's] mouth."

Gloria McDowell testified that she had worked in the Ogden office for the past three or four years as a senior data entry operator. Her desk was approximately six feet from respondent's office. McDowell testified that she heard respondent make verbally abusive statements and witnessed his discourteous treatment towards employees three or four times per week. She testified that, in May 2006, she had a conversation with respondent regarding changes he had made on an employee's time sheet. During this conversation, respondent's body language and tone were "aggressive." On another occasion, McDowell observed Young and respondent walking down the hall together. After they separated and Young had walked away, McDowell heard respondent say "fucking bitch." McDowell signed the aforementioned petition because she felt respondent was racist and should be removed from the Ogden office.

Danuta Szymulanski, who was born in Poland and speaks accented English, testified that she works as a field service specialist and that respondent was her supervisor from 2000 to 2006. During that time, she would say "good morning" to respondent and he would respond by saying "good morning" in a different accent. More than once, Szymulanski heard respondent refer to Echeazu, a Nigerian-born employee, as "mambo bambo" or "fucking mambo bambo" when relaying something Echeazu needed employees to do. Syzmulanski also heard respondent refer to individuals as "foreigners."

Szymulanski also testified that respondent overrode her direct supervisor's approval of three hours of vacation pay in May 2006. Szymulanski was eventually paid for the three hours following an investigation. She also testified that changes in City operating procedures increased

the pressure on field service specialists to write more citations. She signed the aforementioned petition because, in addition to the incidents she described, she felt respondent was unprofessional because he screamed and yelled at employees when he was unable to answer their questions.

Szymulanski's husband, Rene Pietrzyk, also a field service specialist who worked with respondent, testified that he had heard respondent use "dirty words" to describe CDOT employees, including referring to African American women as "black bitches" and referring to Echeazu as "mambo" and "gorilla." Pietrzyk also signed the petition.

Field specialist Ken Barhoume testified that respondent was his supervisor for three years. During that time, he heard respondent call Celeste Reynolds, an African American employee, a "nigger." He heard respondent use profanity in the office on numerous occasions, heard respondent yell at Szymulanski and saw him bang his head on the table when she asked him questions at meetings. He also heard respondent refer to employees as "foreigners" and say "fucking foreigners" as he walked away from the desk of an employee of Indian descent.

Acting field supervisor Michael Vargas testified that respondent was his supervisor for approximately six or seven years. During that time, respondent raised his voice with employees, including Vargas. Vargas described respondent as a very particular manager who pushed people to make sure that things got accomplished. He testified that there was animosity in the office when respondent was present. Vargas signed the petition.

Field specialist Michael Stefani worked under respondent on various occasions over the course of eight years. Stefani testified that respondent offended him and made him feel

demoralized, intimidated, and belittled. He said respondent raised his voice "a lot." On a "routine basis," Stefani heard respondent make derogatory remarks about Echeazu in front of other employees. These remarks included referring to Echeazu as a "that fucking nigger," and as "mambo," which respondent used "almost as a nickname." Stefani once heard respondent say "the angry Mambo was fucking Mambo."

Stefani had been reprimanded by respondent in 2004 for being unreachable on the radio and again for not having his GPS equipment with him while working. Stefani's subsequent field supervisor also reprimanded him in 2005 and again in 2006. Stefani testified that he signed the petition "out of frustration" regarding respondent, because there was such tension and stress in the office that work was sometimes "unbearable." Stefani denied that respondent's enforcement of CDOT's policies was the cause of stress or difficulty in the office.

Young, who is African-American, testified that she worked in the Ogden office for five years. She was the union steward and, as such, handled the grievance process and pre-disciplinary meetings. Respondent was not her supervisor. She said respondent behaved disrespectfully toward employees "all the time." She described an incident in which respondent saw some inspectors at their desks doing paperwork and talking with one another. Respondent screamed, "[g]et the fuck out of this office. Get the fuck out." She said respondent was "[j]ust screaming at the top of his lungs hollering." When the inspectors attempted to explain to him that they were doing their required paperwork, respondent replied, "I don't give a fuck what you're doing. Get the fuck out of this office now."

Young tried to talk to respondent about this incident and respondent said, "I don't like

them fucking foreigners." He told her to "mind your own fucking business" and told her to leave the office. Young testified that, as she left his office, respondent lunged at her. Young filed a Violence in the Workplace report and she sent a letter to the union. During the investigation, respondent admitted that he raised his voice, but not that he used vulgarity or made derogatory comments. Young's Violence in the Workplace report was determined to be unfounded.

Young also testified that respondent regularly referred to employees as "fucking foreigners" or "the foreigners" regularly. He rarely referred to the foreign-born employees by name. Young also described several incidents where respondent called female employees "bitches."

Young testified that she witnessed respondent disrespecting Echeazu approximately 10 times a month for 5 years. These incidents included referring to Echeazu as "magilla gorilla," and making animal noises while scratching like a gorilla. She also saw respondent put a red tablecloth on his head and run in and then out of Echeazu's office, saying he was the "grand dragon" or "grand wizard." She did not know if Echeazu saw this, as his back was to the door.

Chandler, an African-American field supervisor, also witnessed the tablecloth incident. She described respondent as darting in and out of Echeazu's office, saying "woo-woo-woo" and laughing. She said respondent told her that he was the "imperial wizard." Chandler associated his statement with the Ku Klux Klan.

Chandler testified that she observed respondent treating employees inappropriately on five or six occasions. These occasions included imitating the manner of speaking and gait of employee Sayed Hussein, who is of Indian descent and is "an older gentleman," while Hussein

was not present; imitating in front of Chandler how respondent thought African Americans spoke; saying "[h]ow much is that gorilla in the window?" and then doing a dance while they stood outside Echeazu's office; and imitating inspector Jai Chi, who is Korean, by pulling his eyes back and talking in an accent when Chi was not present.

Chandler testified that respondent reprimanded her for insubordination on one occasion because she was responding to emails from commissioners after he directed her to go out in the field. Chandler signed the petition because morale was low and inspectors told her they could not tolerate working with respondent any longer.

Trice, another field supervisor, testified that he entered Echeazu's office as Echeazu was asking respondent to leave. Respondent mocked Echeazu by acting like he did not understand him, behaving like a gorilla and scratching himself, and making gorilla sounds. Echeazu did not respond. Trice also heard respondent mumble "dumb bitch" to employee Perez, who did not respond. He heard respondent say similar things to other women, as well. He also heard respondent yell to Young in 2005 to "stay the fuck out of his office." Trice signed the petition because respondent was the source of "a lot of havoc."

Field service specialist James Cullen testified as a character witness for respondent. He began working with respondent in 2005. Although Cullen saw respondent nearly every day, he denied ever having heard respondent direct profanity or racial slurs towards office employees. Cullen testified that other field service specialists reacted with animosity toward various new changes in operating procedures and blamed respondent for the changes. Cullen testified that he had heard Chandler refer to respondent as an "asshole" and say "he's responsible for us having to

go out in the field all the time[.]" According to Cullen, respondent could be difficult to work for because he insisted that employees address problems he found with their work.

CDOT employee James Bolster also testified as a character witness for respondent. Bolster's office was approximately 30 feet from respondent's office, and they saw one another nearly everyday from 2004 to 2007. During that time, he never witnessed respondent scream, yell, use profanity, or use racial or ethnic slurs.

Field service specialist Pedro Mayoral also testified as a character witness of behalf of respondent. Mayoral began working with respondent and 2003. He denied having heard respondent use racial or ethnic slurs, profanity, or vulgarity.

Respondent testified, admitting that he raised his voice from time to time at employees in his supervision. He also admitted to cursing, but denied having cursed at a particular person. He admitted to referring to some employees as "foreigners," but denied ever calling anyone a "fucking foreigner." He denied mimicking or making fun of an employee's accent, though he admitted expressing concern about understanding employees' accents. Respondent denied the red tablecloth incident, denied making gorilla sounds outside of Echeazu's office, denied referring to Echeazu as "mambo" or any other derogatory term, and denied using the terms "blue eyed soul brother," "nigger," or "bitch" at work. Respondent admitted to ending meetings after employees asked questions of him.

Respondent testified that, beginning in October 2005, the City began implementing accountability measures for field specialists to assess and increase the productivity and uniformity of their work. Respondent was responsible, in part, for enforcing these measures, and

employees were not happy about the measures.

Morano, whose office was the LaSalle office, supervised the Ogden office beginning in March 2006, and had regular contact with respondent. He testified that policy changes with goals of greater accountability and productivity were put in place prior to March 2006. Respondent was one of four field supervisors in the Ogden office who had to demand more out of their field staff. The field specialists were resistant to change and uncooperative.

Deputy commissioner Morano promoted respondent to assistant project director in September 2006 because respondent had good organizational skills, productivity, and follow-through. Morano admitted telling IG investigator Drucker that respondent was overly aggressive in the completion of his work, "high strung," and "overbearing."

IG investigator Drucker testified that Morano told her that "aggressive" means "lack of people skills." When she asked Morano if somebody with a lack of people skills should be in a supervisory position, Morano said "no." Drucker testified that Morano told her he had instructed respondent "to tone it down in the past, referring to his vocal behavior and attitude," and that respondent's aggressive behavior lowered office morale.

The hearing officer issued her report on September 7, 2007, recommending that the Board uphold respondent's discharge. She specified in her report that the City had proven by a preponderance of the evidence that respondent violated various personnel rules when he:

> "made racist, derogatory and/or disparaging remarks in the workplace with respect to persons in the workplace with respect to race, color, religion, sex, disability, national origin, and persons

> over the age of 40. Further, he was verbally abusive and discourteous to coworkers and employees under his supervision."

Thereafter, the Board issued its findings and decision, reversing the discharge and ordering that respondent be sanctioned with a seven-month time-served suspension. The Board found that respondent had on several occasions referred to employees as "niggers," "was loud and used profanity," particularly "shit," "damn," and "fuck;" referred to Young as "a fucking bitch;" to an African American male as a "fucking mambo bambo;" [o]n occasion" used the words "Black bitch" or "White bitch" in the workplace; and referred to Echeazu as "Mambo Gorilla." The Board also found that respondent "was overly aggressive in the completion of his work" and was "high strung and overbearing and lacked people skills." The Board found that the City had proven by a preponderance that:

> "[Respondent] made some racist, derogatory and/or disparaging remarks in the workplace. Further he was verbally abusive and discourteous to co-workers and employers [*sic*]."
>
> These actions violated Personnel Rule XVIII, Section 1, subparagraphs 23, 33, 39, 42, and 50:
>
> (23) Discourteous treatment, including verbal abuse, of any other City employee or member of the public;
>
> (33) Interfering with others on the job;
>
> (39) Incompetence or inefficiency in the performance of the duties of the position

> (42) Discrimination against an employee or applicant because of race, color, religion, sex, disability (including, but not limited to HIV-status), national origin, age over 40, or sexual preference.
>
> (50) Conduct was unbecoming a City of Chicago employee."

Nonetheless, the Board determined:

> "[h]owever, the subject of the alleged statements or conduct which were most egregious did not testify. The Board finds that the City did not prove by the preponderance of the evidence that [respondent] made those statements."

The City filed a petition for writ of certiorari in the circuit court, arguing that the Board's finding that the City had not proved the most egregious statements or conduct was contrary to the manifest weight of the evidence and that the penalty of a time-served suspension was arbitrary and capricious. The circuit court then reversed the Board's reinstatement of respondent. In so doing, the court noted that it could not single out, and the Board had failed to identify, which of the "equally reprehensible" acts or statements were "most egregious." It found the final paragraph of the Board's finding of fact which referred to respondent's "most egregious" conduct to be against the manifest weight of the evidence. The court found cause for discharge. It reversed the sanction, but did not remand the case to the Board, and stated that the order was final and appealable.

Respondent filed a notice of appeal on August 1, 2008. On September 16, 2008, the Board ordered that respondent be discharged. In March 2009, this court, on the City's motion,

summarily remanded the matter to the circuit court with directions to enter an order remanding the matter to the Board "for the limited purpose of determining [respondent's] sanction." The circuit court, in July 2009, reinstated the matter and remanded the case to the Board in an order that reiterated that the remand was "for the limited purpose of determining [respondent's] sanction."

Respondent filed a letter with the Board requesting the opportunity to appear before the Board or a hearing officer to present additional evidence and argument on the appropriate penalty. The City opposed that request, arguing that both this court and the circuit court had remanded the matter for the limited purpose of reconsidering the sanction based upon the record. The Board denied respondent's request, stating that it was upholding its "Findings and Decisions previously issued" which ordered respondent's discharge.

In September 2009, respondent filed a motion in the circuit court to remand the case for a hearing on the sanction. Respondent noted that the Board had reaffirmed its September 2008 order, but the order had been entered after respondent had filed his first notice of appeal. As a result, argued respondent, the Board lacked jurisdiction to enter it. In October 2009, the circuit court remanded the matter to the Board again for determination of the penalty, "consistent with this court's order of July 8, 2008 and without reference to the Board's order of September 16, 2008." The circuit court also denied respondent's request that the Board be ordered to allow him to present additional evidence and argument.

In November 2009, the Board entered an order upholding respondent's discharge. In January 2010, the circuit court entered a final order on the City's petition for writ of certiorari,

affirming the Board's discharge order. Respondent appeals.

Analysis

Respondent first contends that the Board was correct in its November 13, 2007, decision that the City had not proven the "most egregious" statements or conduct and that the circuit court erred in disturbing those findings. We disagree.

On administrative review, this court reviews the administrative agency's decision, not the circuit court's. See *Daniels v. Police Bd.*, 338 Ill. App. 3d 851, 858 (2003). The standard of review of an agency decision challenged by a writ of certiorari are the same as those under the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2008)); *Finnerty v. Personnel Board*, 303 Ill. App. 3d 1, 8 (1999). Judicial review of an administrative decision to discharge an employee requires a two-step approach. See *Walsh v. Board of Fire & Police Commissioners*, 96 Ill. 2d 101, 105 (1983); *Yeksigian v. City of Chicago*, 231 Ill. App. 3d 307, 310 (1992). First, we must determine whether the agency's findings of fact and decision were against the manifest weight of the evidence. See *Walsh*, 96 Ill. 2d at 105; *Yeksigian*, 231 Ill. App. 3d at 310. Second, we must determine whether those findings sufficiently support the agency's conclusion that cause for discharge or dismissal existed. See *Walsh*, 96 Ill. 2d at 105; *Yeksigian*, 231 Ill. App. 3d at 310.

Applying these principles to the instant case, we conclude that the Board's finding that the City did not prove the "most egregious" allegations against respondent was against the manifest weight of the evidence. The Board found that respondent made racist, derogatory,

and/or disparaging remarks in the workplace regarding women, African-Americans, and immigrants. It found that respondent was verbally abusive and discourteous to coworkers and employees under his supervision. It found that respondent referred to employees as "niggers," and he referred to an African-American male as a "fucking Mambo Bambo" and "Mambo Gorilla." Respondent also referred to women as "White bitch," "Black bitch," or "fucking bitch," and stated that he "could not stand these motherfucking foreigners." On appeal, respondent does not dispute the findings of violations based on these statements and this conduct.[2]

Both the hearing officer and the Board found that respondent violated City of Chicago Personnel Rule XVIII, Section 1, subparagraphs (23), (33), (39), (42), and (50), by making "racist, derogatory, and/or disparaging remarks in the workplace," and being "verbally abusive and discourteous to co-workers and employees." Nonetheless, the Board limited its finding by stating:

> "However, the subject of the alleged statements or conduct which were most egregious did not testify. The Board finds that the City did not prove by the preponderance of the evidence that [respondent] made those statements."

Although it included the above statement in its decision, the Board failed to enumerate to which of respondent's statements and/or conduct it was referring. Upon review of the record, it is

[2]Respondent states in his appellate brief that "[t]here was ample evidence in the record to support the decision of the Chicago Human Resources Board."

unclear which of respondent's numerous derogatory, racist, disparaging, and discourteous behaviors is more "egregious" than others.

On review, we compared the charges to the findings and noted that respondent was charged with: (1) use of racist, derogatory, and/or disparaging remarks; (2) the red tablecloth incident; (3) verbally abusive and discourteous behavior towards co-workers and employees. In its decision, the Board specifically found that respondent used racist, derogatory and/or disparaging remarks and that he was verbally abusive and discourteous, but it did not mention the red tablecloth incident in which respondent allegedly put a red tablecloth over his head, ran into an African-American's office, and referred to himself by names associated with the Ku Klux Klan. The Board, however, did not specify that this was the conduct and/or statements that it found "most egregious," and it is not our position to guess what was in the minds of the Board members.

Moreover, the Board's finding that the unnamed "most egregious" conduct or statement was not proved because the subject of the statements or conduct did not testify is legally erroneous. Even if some of respondent's conduct could be labeled the "most egregious," the fact that the subjects of these statements or conduct did not testify is inapposite. In addressing this issue, we note that this court does not defer to administrative findings that involve a question of law. See *Robbins v. Board of Trustees*, 177 Ill. 2d 533, 538 (1997). Rather, this court reviews questions of law *de novo*. See *North Avenue Properties, L.L.C. v. Zoning Board of Appeals*, 312 Ill App. 3d 182, 185 (2000).

Here, the record is full of evidence that respondent repeatedly made racist, derogatory,

and disparaging remarks about both co-workers and employees. Respondent often did these things behind the subject's back, as the person was walking away, or when the person could not see or hear him. The fact that these employees and co-workers did not know of the conduct and could not testify is irrelevant because others who did hear the statements and who did observe the conduct did testify. While it might be useful to hear testimony from the person to whom the conduct or statements were directed, we are aware of no authority, nor does respondent cite to any, for the proposition that such testimony is necessary to prove the conduct or statements. Accordingly, the final paragraph of the Board's findings of fact which references respondent's "most egregious" statements and conduct is against the manifest weight of the evidence.

The Sanction

Next, respondent contends that the sanction of discharge was arbitrary and unreasonable, and that the original sanction of a time-served seven month suspension should be reinstated. We disagree.

On review, we examine "whether the findings of fact provide a sufficient basis for the agency's conclusion that cause for discharge does or does not exist." *Department of Mental Health and Developmental Disabilities v. Civil Service Commission*, 85 Ill. 2d 547, 551 (1981). An agency's determination that a public employee's termination was warranted will be upheld if there is cause for discharge. *Siwek v. Police Board*, 374 Ill. App. 3d 735, 737 (2007). "Cause" is defined as "some substantial shortcoming which renders the employee's continuance in office in some way detrimental to the discipline and efficiency of the service and which the law and sound

public opinion recognize as good cause for his no longer holding the position." *Department of Mental Health and Developmental Disabilities*, 85 Ill. 2d at 551, quoting *Kreiser v. Police Board*, 40 Ill. App. 3d 436, 441 (1976), aff'd 69 Ill. 2d 27 (1977). The existence of cause is a question for the agency to determine. See *Department of Mental Health and Developmental Disabilities*, 85 Ill. 2d at 551-52. An "agency's decision as to cause will not be reversed unless it is arbitrary, unreasonable, or unrelated to the requirements of service." *Department of Mental Health and Developmental Disabilities*, 85 Ill. 2d at 552.

Applying these principles to the instant case, we conclude that the Board's decision was not arbitrary, capricious, or unrelated to the requirements of service. To the contrary, based on the record before us, and considering only the conduct that the Board found to have been sufficiently proved, sufficient cause existed to support plaintiff's termination. The Board found that respondent repeatedly made racist, derogatory, and disparaging remarks to co-workers and those he supervised. He was verbally abusive and discourteous, high-strung, overbearing, and lacked people skills. An employee may rightfully be discharged when he violates a standard of behavior that an employer has a right to expect. See *Manning v. Department of Employment Security*, 365 Ill. App. 3d 553, 558-59 (2006). The Board's decision to discharge plaintiff for his ongoing, intentional conduct was neither arbitrary nor unreasonable.

We note that, after the circuit court concluded that the "most egregious" finding was against the manifest weight of the evidence, it should have remanded the matter to the Board for reconsideration of the sanction. Instead, the court ordered respondent's discharge. Respondent argues that, due to this error, the Board's initial decision to order a time-served seven month

suspension should be reinstated. We disagree. Although the circuit court lacked authority to impose a sanction once it concluded that the Board's finding regarding the "most egregious" conduct was against the manifest weight of the evidence, this court addressed that error by remanding the cause to the Board for reconsideration of the sanction. Nothing in the remand orders from either this court or the circuit court constrained the Board's discretion with respect to an appropriate sanction.

Respondent also argues that he was denied due process when the Board did not provide him with the opportunity to present arguments and evidence on remand for determination of his sanction. We disagree. A sanction is based upon findings of fact. See *Walsh*, 96 Ill. 2d at 105; *Marzano v. Cook County Sheriff's Merit Board*, 396 Ill. App. 3d 442, 446 (2009) ("the second step in our analysis is to determine if the Board's findings of fact provide a sufficient basis for its conclusion that cause for discharge exists"). Here, when this cause was remanded to the Board for imposition of a sanction, the findings of fact had already been made. The Board appropriately based its determination of sanction on the existing findings of fact.

Conclusion

For the foregoing reasons, we affirm the Board's decision, as well as the judgment of the circuit court of Cook County, and uphold respondent's termination.

Affirmed.