

No. 1-11-2804

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(3)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JEROME ROBERTSON,)	Appeal from the
)	Circuit Court of
Plaintiff-Cross-Appellant,)	Cook County.
)	
v.)	
)	
CIVIL SERVICE COMMISSION, STATE OF ILLINOIS;)	
and DEPARTMENT OF CORRECTIONS, STATE OF)	
ILLINOIS,)	
)	
Defendants-Cross-Appellees.)	
)	10 CH 49631
DEPARTMENT OF CORRECTIONS, STATE OF)	10 CH 49892
ILLINOIS,)	
)	
Plaintiff-Appellant,)	
)	
v.)	
)	
CIVIL SERVICE COMMISSION, STATE OF ILLINOIS;)	
and JEROME ROBERTSON,)	Honorable
)	Leroy K. Martin, Jr.,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE NEVILLE delivered the judgment of the court.
Justices Steele and Sterba concurred in the judgment.

IDOC began an internal investigation to determine whether Robertson had violated IDOC's rules. A.C. Kinard, of IDOC's Internal Investigations Unit, interviewed Robertson in November 2009.

¶ 6 On June 18, 2010, IDOC discharged Robertson from his employment. IDOC found that Robertson violated its rules in four ways: (1) he knowingly socialized with a released offender; (2) he used state equipment and databases for personal purposes; (3) he released confidential information about a released offender; and (4) he impeded IDOC's investigation by giving Kinard misleading and false information during the investigation. Robertson sought a hearing on the charges.

¶ 7 At the hearing, the administrative law judge (ALJ) for the Commission received into evidence Robertson's employment records, which showed that Robertson started working for IDOC in 1998. The file included several highly positive performance reviews and some awards. The record showed only one disciplinary incident, which led to a four day suspension in 2001.

¶ 8 Robertson testified that he met Bell sometime late in 2008 or early in 2009. They met socially a few times over the following months. On October 2, 2009, Bell came to Robertson's home and told Robertson that her landlord had evicted her from her home. Robertson allowed Bell to spend the night in his home. The next day she became angry after she received a phone call. When Robertson asked her to leave, she pushed him and scratched him. After he called the police, she left.

¶ 9 Robertson testified that he told Coleman what he knew about Bell. Coleman asked

for more information because he could not find any records about Bell when he searched the police department's database. Robertson testified that he went to his car to retrieve a list he made of people he knew with August birthdays. He read Bell's birthday to Coleman off his sheet. The information helped Coleman locate further information about Bell.

¶ 10 Robertson testified that before October 3, 2009, he did not know that Bell had committed any crimes. Robertson said he told Kinard he did not remember whether he had accessed OTS on October 3. In court, Robertson acknowledged that records showed he used the state's laptop to access OTS on October 3, but he said he used the database only to look at his files in preparation for work the next day.

¶ 11 IDOC records showed that on October 3, 2009, between 3:43 and 3:50 p.m., Robertson used OTS to look at the name search, inmate review, sentence inquiry, ID search, and social inquiry screens. When Robertson reported to work the next day, he first accessed the caseload screen.

¶ 12 Coleman testified that after Robertson returned from his car, he gave Coleman Bell's social security number. Kinard testified that Robertson told him he had not accessed OTS on October 3, and he did not give Coleman Bell's social security number.

¶ 13 The ALJ found that IDOC failed to prove that Robertson knew Bell was a parolee prior to October 3, 2009, so it did not show that he knowingly associated with a parolee. But the ALJ found that Robertson used the state computer and its OTS to find Bell's social security number, which he then relayed to Coleman. Thus, Robertson violated the rule that prohibited IDOC employees from using OTS for personal purposes, and he violated rules

restricting communication of confidential information about parolees. Finally, the ALJ found that Robertson lied to Kinard when he denied that he used the OTS to obtain information about Bell and that he relayed that information to Coleman. The ALJ concluded that IDOC proved three of the four charges against Robertson.

¶ 14 The ALJ then considered the appropriate discipline to impose. He said:

"With respect *** to Charges 2 and 3 ***. The 'personal' use here was Robertson assisting a law enforcement officer to locate his assailant *** and to aid in her apprehension. *** The confidential information released in this case was to a law enforcement officer, someone who was authorized to obtain this very same information, just not via the OTS system that Robertson used to obtain it. ***

* * *

*** However, the Charge 4 violation is more indicative of a knowing course of action to deceive the agency ***. A State agency has legitimate grounds for discharging an employee when the facts show that the employee acted dishonestly. ***

*** Robertson's performance record is just short of impeccable. ***

*** For the reasons set forth previously, Charges [2] and [3] standing alone would be insufficient to support Robertson's discharge. Discharge would have to be supported by Charge 4, and standing

alone it would be sufficient to do so. But it does not stand alone. It must be weighed *** to determine if this shortcoming is so substantial that Robertson's continued employment as a Senior Parole Agent is no longer warranted. Given the unique circumstances that led to the investigation in the first place***, discharge is not warranted in this matter."

¶ 15 The Commission adopted the ALJ's decision. Robertson and IDOC both filed complaints for administrative review. The circuit court affirmed the Commission's decision. IDOC now appeals.

¶ 16 ANALYSIS

¶ 17 Although Robertson filed a notice of cross-appeal, he filed no brief in this court. We dismiss the cross-appeal. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 130 (1976). We consider the case on the basis of IDOC's brief alone. See *Talandis Construction*, 63 Ill. 2d at 133.

¶ 18 We review the Commission's decision, not the trial court's judgment. *Illinois Department of Revenue v. Civil Service Comm'n*, 357 Ill. App. 3d 352, 361 (2005). Usually, we review the Commission's disciplinary decisions in two separate steps. *Illinois Department of Human Services v. Porter*, 396 Ill. App. 3d 701, 718 (2009). First, we must determine whether the manifest weight of the evidence contradicts the Commission's findings of fact. *Porter*, 396 Ill. App. 3d at 718. Second, we must determine whether the Commission's decision to impose the discipline it imposed is "arbitrary, unreasonable, or

unrelated to the requirements of service." *Department of Mental Health & Developmental Disabilities v. Civil Service Comm'n*, 85 Ill.2d 547, 552 (1981).

¶ 19 IDOC does not dispute the Commission's findings of fact. The Commission found that Robertson violated department rules by using OTS for the personal purpose of getting information about Bell, and he conveyed that confidential information to Officer Coleman. Robertson then lied to Kinard about his use of OTS and what he said to Coleman. The Commission held that the three infractions warranted a 90-day suspension, and not discharge. We must decide whether the Commission, in imposing this sanction, acted arbitrarily and imposed a sanction unrelated to the requirements of service.

¶ 20 IDOC argues first that the Commission's decision shows that the Commission improperly considered Robertson's work history. In support, IDOC cites the Illinois Administrative Code, which provides:

"a) Cause for discharge consists of some substantial shortcoming that renders the employee's continuance in his or her position in some way detrimental to the discipline and efficiency of the service and that the law and sound public opinion recognize as good cause for the employee no longer holding the position.

b) In determining the appropriate level of discipline, the Commission shall consider the employee's performance record, including disciplinary history, and the employee's length of continuous service, unless the offense would warrant immediate discharge in accordance

with subsection (a)." 80 Ill. Adm. Code 1.170 (2012).

¶ 21 Here, the Commission adopted the ALJ's decision. The ALJ said, "Discharge would have to be supported by Charge 4, and standing alone it would be sufficient to do so." IDOC interprets the remark as the Commission's holding that the proof concerning charge 4 required discharge, regardless of the employee's work history, under section 1.170(b).

¶ 22 We disagree with IDOC's interpretation of the order. The ALJ contrasted the finding on charge 4 with the findings on charges 2 and 3. The ALJ found that Robertson violated IDOC rules by using OTS to find information about Bell and by relaying that confidential information to Coleman. But Robertson used OTS to help police, and he relayed the confidential information only to a police officer who had a right to find that information. Thus, the infractions noted in charges 2 and 3 could not justify discharge. In view of the mitigating circumstances, a minimal penalty would sufficiently remind Robertson of the regulations he violated.

¶ 23 The ALJ contrasted those minor infractions with the serious misconduct Robertson committed when he lied to Kinard and thereby obstructed the investigation into Robertson's behavior. In line with past decisions emphasizing the need for honesty from employees under investigation (see *Valio v. Board of Fire & Police Commissioners*, 311 Ill. App. 3d 321, 331 (2000)), the ALJ held that the misconduct could subject Robertson to discharge. See *Porter*, 396 Ill. App. 3d at 726. The ALJ and the Commission did not find that the misconduct warranted discharge regardless of circumstances and past work history. See *Porter*, 396 Ill. App. 3d at 726-27. In line with precedent and the directive in section

1.170(b) of the Administrative Code, the Commission took Robertson's past work history into account when it chose the penalty to impose on him. See *Ruffin v. Department of Transportation*, 101 Ill. App. 3d 728, 734 (1981); *Illinois Department of Juvenile Justice v. Illinois Civil Service Comm'n*, 405 Ill. App. 3d 515, 525 (2010). The Commission did not violate section 1.170 by taking Robertson's work history into account for its disciplinary decision.

¶ 24 IDOC relies on several cases in which agencies affirmed the discharges of employees, and the appellate court affirmed the agencies' decisions. See *Ruffin*, 101 Ill. App. 3d at 733-34; *Valio*, 311 Ill. App. 3d at 330-31; *Rodriguez v. Weis*, 408 Ill. App. 3d 663, 671 (2011). The decisions emphasize the need for deference to the agency, because the agency "is in the best position to determine the effect of an officer's conduct on the department." *Sangirardi v. Village of Stickney*, 342 Ill. App. 3d 1, 18 (2003), quoted in *Rodriguez*, 408 Ill. App. 3d at 671; see also *Ruffin*, 101 Ill. App. 3d at 733.

¶ 25 Here, Robertson lied to cover up minor infractions IDOC discovered after Robertson reported that Bell attacked him. He did not lie about his conduct of his official duties. See *Ruffin*, 101 Ill. App. 3d at 732-33; *Valio*, 311 Ill. App. 3d at 329-30; *Kupkowski v. Board of Fire & Police Comm'rs*, 71 Ill. App. 3d 316, 324-25 (1979). His lie did not affect department operations. See *Rodriguez*, 408 Ill. App. 3d at 671. He did not use his position to conceal crimes or aid criminals seeking to escape punishment. See *Remus v. Sheahan*, 387 Ill. App. 3d 899, 905 (2009). Any law enforcement officer, even one not granted the extraordinary power to arrest members of the general public, should always act with exemplary honesty.

See *Rodriguez*, 408 Ill. App. 3d at 671. However, we cannot say that the Commission acted arbitrarily or disregarded the requirements of service when it held that the lie here warranted a 90-day suspension and not discharge, in light of Robertson's 11 years of service with mostly excellent performance evaluations and with only one short suspension. Accordingly, we affirm the trial court's judgment affirming the Commission's decision.

¶ 26 Affirmed.