FIRST DIVISION
February 18, 2014

No. 1-12-2154
2014 IL App (1st) 122154-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ILLINOIS DEPARTMENT OF CHILDREN & FAMILY SERVICES,	)	Appeal from the Circuit Court of Cook County
Plaintiff-Appellee,	)	
v.	)	No. 11 CH 25444
AMANDA E. MOREN,	)	Honorable Thomas R. Allen,
Defendant-Appellant	)	Judge Presiding.
(Illinois Civil Service Commission,	)	
Defendant.)	)	

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

Held: Where plaintiff sought to discharge defendant for falsification of DCFS case records, Illinois Civil Service Commission's finding that falsification was inadvertent was not against the manifest weight of the evidence.

¶ 1 Plaintiff Illinois Department of Children & Family Services (DCFS) sought to discharge defendant Amanda Moren from employment as a child protection specialist due to, among other things, defendant's alleged falsification of case records and time sheets. After a hearing on the

charges, the Illinois Civil Service Commission determined that the alleged falsifications occurred but were not intentional, and the Commission therefore imposed a 90-day suspension rather than discharge. We confirm.

¶ 2 Defendant is a child protection specialist in DCFS' Rockford office. In October 2008, DCFS received a complaint about defendant's conduct during an investigation into a case that the record refers to as "the O investigation".[1] The Office of the Inspector General (OIG) looked into the complaint and eventually uncovered several problems with defendant's conduct in both the O investigation and other cases. Defendant was eventually charged with a number of violations of DCFS policy. The charges fell into two groups: falsification and failure to follow rules or procedures. The only charges that are at issue in this appeal are two of the falsification charges.[2]

¶ 3 The first charge involved defendant's alleged falsification of time sheets for work performed on May 6, 2008, and May 10, 2008. According to the testimony presented at the evidentiary hearing, during the OIG's investigation into defendant's conduct in the O matter the OIG noticed that the times and hours on the original copies of defendant's time sheets differed from those recorded on the copy retained by supervisors. Defendant's immediate supervisor, Julie Rylatt, explained that in order to receive overtime, an employee must first fill out a triplicate overtime form. The form consisted of a white original that was submitted to a payroll clerk, a yellow copy retained by the employee, and a pink copy retained by the supervisor. Normal practice required that prior to submitting the form to payroll, a supervisor must sign off on the request. Rylatt testified, however, that this procedure was not always followed, and that

[1] "O" is the first letter of the name of the family being investigated. The record has been redacted for confidentiality and privacy reasons.

[2] After an evidentiary hearing, the hearing officer found several charges to be unproven, and the Commission adopted the hearing officer's findings on those issues. DCFS did not seek administrative review of the findings on those charges, so we need not address them here.

sometimes changes to the overtime sheet needed to be made after she had signed the sheet. In that situation, Rylatt would try to collect all three copies before making the change and initialing it.

¶ 4 At the hearing, Rylatt examined overtime slips filled out by defendant for May 6 and May 10. According to the pink supervisor's copy, defendant worked 2 hours of overtime on May 10 between the hours of 3 and 5, and 5 hours of overtime on May 6 between the hours of 5 and 10. But the white original showed defendant as working 12 hours overtime between the hours of 3 and 3 on May 10, and as working 7 hours of overtime between the hours of 5 and 12. Rylatt denied making the changes herself, noting that she had not initialed the changes and that the hours claimed were highly unusual. Rylatt stated that although employees may sometimes be on call at odd hours for an extended period of time, on-call work is not paid through the overtime system.

¶ 5 Taffey Graham, the administrative clerk who was assigned to enter defendant's overtime hours, also testified at the hearing. Graham testified that her normal practice was to not make changes to overtime slips personally. Rather, Graham stated that either an employee would bring her a new slip or would resubmit the old slip with changes initialed by the employee or the supervisor. Graham denied changing the two slips or asking defendant to do so. On cross-examination, however, defendant's counsel confronted Graham with a Daily Staff Attendance Report from 2007, which contained the hours worked by several employees including one named Steve Jackson. Graham conceded that she, not Jackson, had filled in Jackson's hours, including overtime, on both that sheet and another one. Graham stated that she would only do this if the employee was out sick or if she was told to do so by a supervisor.

¶ 6 Defendant also testified about the timekeeping procedures in the Rockford office. Defendant explained that the timekeeping system used by DCFS would not allow employees to enter both "on-call time" and "compensatory time" into the system on the same day. Thus, if employees worked both types of hours on the same day, they would be unable to claim the time worked and would therefore not be properly paid. Defendant stated that Graham addressed this problem by randomly distributing excess hours to other days if an employee happened to work both types of hours in a single day. Defendant claimed that this happened about three times a month and was a common practice in the office, and that Graham would alter timesheets and overtime sheets in order to ensure that the sheets would match the total hours sent to the payroll department. Defendant originally testified that she had not made the changes to the May 10 time sheet, but later in her testimony stated that she had made the changes at Graham's request. Defendant also claimed that she had submitted the May 6 time sheet with changes to Rylatt for approval, and she contended that the pink supervisor's copy did not reflect the change because defendant would ordinarily use the pink sheet to make a copy for her own records and then reattach it to the package later. Defendant stated that she must have forgotten to reattach the pink sheet before she submitted the package to Rylatt.

¶ 7 LaVonne Williams, a friend of defendant's and also a former investigator[3] who had worked on defendant's team, largely corroborated defendant's account of Graham's timekeeping practices. Williams testified that Graham had asked her to change time requests in the past, and she confirmed that Graham often shifted hours worked by employees into other categories.

¶ 8 The second charge against defendant involved alleged falsification of a case record related to the "S investigation". After DCFS received a report on the S family, the S children

[3] Williams was discharged from DCFS at some point before the evidentiary hearing. The reason is unclear but was apparently not related to falsification of records.

were placed into the care of their grandparents, M.S. and K.S. As part of DCFS standard procedure in cases of this sort, children being transferred into protective custody must see a physician for a "Healthworks" screening, which is intended to create a record of any injuries or illnesses present prior to placement with a foster family. Defendant was the assigned investigator in the case. While looking into defendant's conduct in the case, OIG found a case note written by defendant that indicated she had personally transported the S children to the hospital for the examination.[4] The note indicated that defendant had made "In Person" contact with "Other Community Professionals" on May 11, 2008, at 10 p.m., and the narrative portion of the note stated "HEALTHWORKS COMPLETE MINORS DEEMED TO BE HEALTHY." The note stated that the interviewee was "Rockford Memorial Hospital" and the location was "Other". Upon further investigation, however, OIG discovered that the children had never been seen at Rockford Memorial Hospital. Instead, the children's grandmother, M.S., informed OIG that she, not defendant, had taken the children to St. Anthony's for the examination.

¶ 9 At the hearing, M.S. testified that defendant spoke to her on Mother's Day in 2008, and they decided to place the children with M.S. and her husband. Defendant instructed M.S. to take the children to the hospital for the Healthworks examination. M.S. already had dinner plans with the children for that evening and asked whether they could do the examination afterwards. Defendant agreed and M.S. told defendant that she would take the children to St. Anthony's, where defendant would meet them. After dinner, M.S. called defendant, but defendant did not answer and her voicemail box was full. M.S. tried to contact defendant twice more, once at the hospital and once when they left, but with the same result. Defendant never arrived at the

[4] OIG began looking into the S case because it had learned that defendant's driver's license had been suspended on two occasions. OIG wanted to determine whether defendant had transported children in her vehicle during the suspension period contrary to DCFS regulations.

hospital and, according to M.S., defendant never picked up the Healthworks paperwork and never called M.S.

¶ 10 About six months later, OIG interviewed M.S. as part of their investigation. M.S. stated that, about six months after she gave a statement to OIG, defendant and Williams arrived unannounced at her business and asked her to sign a statement that defendant had prepared about the circumstances surrounding the Healthworks examination. M.S. stated that she pointed out some errors in the statement, particularly in the restaurant name and hospital, but defendant assured her that it was simply an unimportant formality. M.S. testified that she felt somewhat intimidated because defendant and Williams were wearing their DCFS badges. M.S. signed the statement as asked but later had second thoughts. About a week later, Williams returned alone and unannounced and asked M.S. to sign a new statement. M.S. refused to sign and Williams left. M.S. did not see defendant again, but she testified that about a week before the hearing Williams had approached her to find out what she planned on testifying to at the hearing. M.S. refused to discuss her planned testimony.

¶ 11 At the hearing, M.S. identified a statement that she had purportedly signed. M.S. claimed that she did not recognize the last paragraph, which stated that defendant had at all times been professional and respectful. The signature was mostly redacted, but M.S. thought that the "S" in the signature was hers. She conceded that the date of the statement was about the time that Williams visited her the second time. M.S. also testified that the statement contained inaccuracies, particularly regarding the restaurant she had dined at, the hospital where defendant had told her to take the children, and the arrangements for picking up the paperwork.

¶ 12 When defendant testified, she acknowledged that the case note was erroneous but contended that it was simply a mistake. Her explanation was complex, but essentially her

defense was that she was tired and not paying attention when she wrote the note. Defendant stated that she had worked 19 straight hours on the day that the note was made and pointed out that the case note was made at 3:59 a.m. She also claimed to suffer from dyslexia, which made data entry difficult. Defendant explained that she likely clicked the wrong box when entering the "contact" field information and had meant to list the hospital as the location for the exam rather than as the interviewee.

¶ 13 At the time she wrote the note, defendant was relying on her memory of what M.S. had agreed to do rather than what M.S. actually did. According to defendant, M.S. had agreed to take the children to Rockford Memorial for the physical, and defendant had in fact spoken with M.S. by phone afterwards. M.S. told her only that the children had been deemed healthy, not where they had been examined. Defendant also arranged to meet M.S. at court the next day in order to collect the paperwork, but the arrangement did not work out and she never received the paperwork.

¶ 14 Defendant stated that she solicited the statements from M.S. because she needed to gather evidence for her defense after she was charged with falsification. Defendant had originally planned to approach M.S. herself, but she was occupied with cases and instead asked Williams for help. Defendant dictated a statement to Williams over the phone based on her memory of events and Williams took the statement to M.S. for signature. Neither defendant nor Williams contacted M.S. prior to preparing the statement. When Williams brought the statement back, however, defendant noticed that the dates were off by a year and that the statement said that M.S. was at Rockford Memorial rather than having been advised to go there. Another coworker prepared a revised statement, which defendant and Williams took to M.S. for signature.

According to defendant and Williams (who corroborated defendant's account), M.S. signed both statements willingly.

¶ 15 After the hearing, the hearing officer issued a written report and proposed findings. The hearing officer found that the falsification charges regarding the timesheets and the S investigation had been proven, and he recommended that defendant be discharged. The Commission, however, did not adopt the hearing officer's recommendations,[5] finding that the charges were only partially proven. Regarding the overtime falsification charge, the Commission found that there was evidence of inconsistent timekeeping procedures in the office. The Commission found both Graham and Rylatt not credible on this point, noting that documentary evidence contradicted their statements regarding timekeeping practices. The Commission also noted that DCFS had not presented sufficient evidence to rebut defendant's and Williams' testimony regarding Graham's informal payroll reconciliation system. Regarding the S investigation charge, the Commission accepted defendant's testimony that the case note falsification had been inadvertent. Moreover, the Commission found that defendant had not solicited a false written statement from M.S. in order to cover up the alleged falsification. The Commission found M.S. not credible and instead credited defendant's and Williams' accounts. Based on these findings, the Commission determined that discharge was not warranted and suspended defendant for 90 days. Two members of the Commission dissented without written explanation.

¶ 16 DCFS filed a complaint for administrative review with the circuit court. The circuit court reversed the Commission's finding and ordered it to adopt the hearing officer's findings of fact and recommendation of discharge. Defendant now appeals.

[5] The findings of an administrative hearing officer are recommendations only and are not binding on the Commission. See 80 Ill. Admin. Code 1.270(a) (West 2010).

¶ 17 On administrative review, we review only the administrative agency's decision rather than the decision of the circuit court. See *Illinois Department of Juvenile Justice v. Illinois Civil Service Commission*, 405 Ill. App. 3d 515, 521 (2010). "In discharge cases, '[t]he scope of review of an administrative agency's decision regarding discharge is generally a two-step process involving first, a manifest-weight standard, and second, a determination of whether the findings of fact provide a sufficient basis for the agency's conclusion that cause for discharge does or does not exist.' " *Id.* (quoting *Department of Human Services v. Porter*, 396 Ill. App. 3d 701, 718 (2009)). Findings of fact by an administrative agency are "held to be *prima facie* true and correct," and our review "is limited to ascertaining whether such findings of fact are against the manifest weight of the evidence." *Id.* at 522. The standard for reviewing the agency's discharge decision is even more deferential. We will not reverse a discharge decision "unless it is arbitrary, unreasonable, or unrelated to the requirements of service." (Internal quotation marks omitted.) *Id.*

¶ 18 On appeal, DCFS argues that the Commission's factual findings regarding the two falsification charges are against the manifest weight of the evidence. Had the Commission accepted the hearing officer's factual findings, DCFS argues, discharge would clearly be warranted. DCFS is only partially correct on the second point, and it is helpful to consider it first because the answer limits the scope of our review.

¶ 19 Assume for the moment that we agree with DCFS that the falsification charges were fully proven. The question then becomes whether the Commission's decision not to discharge defendant is "arbitrary, unreasonable, or unrelated to the requirements of service" based on the facts of the case. DCFS maintains that discharge is clearly warranted because falsification of case records and time sheets evinces a lack of dependability that is inconsistent with the

requirements of a child protection investigator who is trusted to investigate allegations of child abuse. At the evidentiary hearing, however, David Hoover, a DCFS labor-relations administrator, testified about the requirements of service within DFCS and what types of proven charges might warrant discharge. Hoover testified that falsification of case records warranted automatic dismissal regardless of which portion of a case record was falsified. Hoover stated that "we have to rely on the integrity of the investigator to make sure that what they are telling us is true so that we can make rational and educated and correct decisions on how deal with the child and the family ***. If they falsify these kinds of records, then it's impossible for us to trust the worker to give us the correct information because we won't know what's right or wrong, and the risk is that a child can die ***." In contrast, Hoover stated that falsification of time sheets is a much less serious offense. When asked about the likely discipline for a proven violation such as the one defendant was accused of here, Hoover testified that "if it had been a stand alone and we were disciplining on that particular charge alone, then it would probably be a day or two suspension, something around that nature."[6]

¶ 20 Hoover's testimony is significant because it indicates that falsification of time sheets is not a dischargeable offense. Yet on review DCFS is asking us to hold that defendant should be discharged rather than suspended. Even if we were to agree with DCFS that the manifest weight of the evidence supports a finding that the time-sheet falsification charge was proven, discharge is not a reasonable sanction for that charge based on Hoover's testimony. Thus, there is no basis to overturn the Commission's decision to impose suspension rather than discharge so far as it relates to the time-sheet falsification charge.

[6] Notably, Hoover also testified that DCFS does not take into account prior discipline that occurred more than two years in the past when making disciplinary decisions. The record indicates that defendant was disciplined for various reasons at least once, but the discipline occurred long enough ago that it is immaterial to any discharge decision in the present case.

¶ 21 In contrast, Hoover testified that intentional falsification of case records is *per se* dischargeable. Thus, if the Commission's findings that the erroneous case-record entry was inadvertent and that defendant did not solicit a false statement from M.S. are against the manifest weight of the evidence, then discharge is warranted on that charge alone.

¶ 22 After reviewing the record, however, we cannot say that the Commission's findings were against the manifest weight of the evidence. This case turned primarily on credibility determinations, and it is well settled that "[i]t is the responsibility of the administrative agency to weigh the evidence, determine the credibility of witnesses, and resolve conflicts in testimony." *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 329 (2009). Indeed, "[i]f the record contains evidence that supports the agency's determination, it must be affirmed." *Porter*, 396 Ill. App. 3d at 723. Regarding the erroneous case-record entry, the Commission considered evidence that such a mistake was difficult to make accidentally, but it also considered defendant's explanation that she was tired, overworked, and confused when she made the case entry. The Commission chose to credit defendant's testimony. Similarly, the Commission considered competing evidence regarding the circumstances of the two statements the defendant asked M.S. to sign. While M.S. contended that she felt coerced and testified that she had not even signed the second statement, the record contained a statement with a signature that M.S. conceded could be hers. More importantly, defendant and Williams gave a different account than M.S. The Commission chose to credit defendant's version of events and to discount M.S.' testimony.

¶ 23 DCFS emphasizes a number of inconsistencies in defendant's account and urges us to credit M.S.' testimony over that of defendant and Williams. That, however, is something that we cannot do under this standard of review, which allows for reversal only where "all reasonable

and unbiased persons, acting within the limits prescribed by the law and drawing all inferences in support of the finding, would agree that the finding is erroneous and that the opposite conclusion is clearly evident." (Internal quotation marks omitted.) *Id.* at 722. There is adequate evidence in the record to support the Commission's findings of fact, so we must accept the Commission's findings on this point.

¶ 24 Ordinarily, we would now examine the Commission's decision to suspend defendant rather than discharge her. DCFS, however, has based its discharge argument on the assumption that the Commission's findings of fact were erroneous, claiming only that discharge is warranted because defendant intentionally falsified the case record. It does not argue in its brief that discharge is still warranted even if we accept the Commission's findings that the error was inadvertant. As points not argued are forfeit, we need not consider this issue. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 25 Confirmed.