2014 IL App (1st) 130270-U

FOURTH DIVISION
August 28, 2014

No. 1-13-0270 & 1-13-0277 cons.

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KIMBERLY MARSHALL, Plaintiff-Appellee, v. GARRY F. MCCARTHY, Superintendent of Police of Chicago, Defendant-Appellant, THE POLICE BOARD OF THE CITY OF CHICAGO, Defendant.	)	Appeal from the Circuit Court of Cook County. 09 L 51839 The Honorable Franklin U. Valderrama Judge, presiding.

JUSTICE LAVIN delivered the judgment of the court.
Justices Fitzgerald Smith and Epstein concurred in the judgment.

ORDER

¶ 1 *Held*: The Police Board of the City of Chicago properly discharged plaintiff from her position as a police officer.

¶ 2 These appeals arise from the discharge of plaintiff Kimberly Marshall from the Chicago Police Department (CPD). Defendant, Superintendent Gary F. McCarthy, appeals from an order

of the circuit court reversing the Board's determination, and remanding the case for the Board to impose a lesser sanction. Plaintiff, however, appeals the Board's subsequent decision suspending her from duty for five-years as excessive.

¶ 3 BACKGROUND

¶ 4 On May 31, 2005, plaintiff, a CPD officer from 1990 to 2005, suspected that her teenage son, Hoyle Marshall, had taken her missing vehicle joyriding. When an acquaintance informed plaintiff that her vehicle had been involved in a car accident outside 9311 S. Burnside Avenue in Chicago, although off-duty, she went to the scene of the accident. Shortly thereafter, CPD Officers Joey Buckley and Jennifer Elliott arrived on the scene and an altercation ensued resulting in plaintiff's arrest.

¶ ? The State charged plaintiff with one count of obstruction of justice and two counts of battery for which the trial court found her guilty. Although the conviction was subsequently vacated, the Office of Professional Standards (OPS) investigated plaintiff's behavior. On February 20, 2008, defendant filed charges with the Board alleging plaintiff had violated six CPD Rules of Conduct (Rules), including:

> Rule 1: Violation of any law or ordinance.
>
> Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
>
> Rule 6: Disobedience of an order or directive, whether written or oral.
>
> Rule 8: Disrespect to or maltreatment of any person, while on or off duty.
>
> Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
>
> Rule 14: Making a false report, written or oral.

¶ ? In October 2009, the Board held a three-day departmental hearing. Officer Buckley testified that when he and Officer Elliott arrived on the scene, he recognized plaintiff in her vehicle with Hoyle. Officers Buckley and Elliott interviewed witnesses, who confirmed that Hoyle had been driving. Hoyle also admitted to driving the vehicle without a license, consequently, Officer Buckley placed Hoyle under arrest. Plaintiff then blocked Officer Buckley's path to his squad car and said, "You ain't locking my motherfucking son up; I'll kick your ass." This interference led Officer Buckley to call for a supervisor. As Officer Buckley placed Hoyle in the driver's side rear seat, plaintiff opened the passenger side rear door and told Hoyle to get out. Officer Elliott then tried to close the door, but plaintiff hit her in the chest and the two eventually struggled to the ground. When Officer Buckley intervened, plaintiff bit him on the wrist, and during the struggle, she used his radio to make a "10-1, officer down" call requesting immediate assistance. Officers Buckley and Elliott eventually handcuffed plaintiff and placed her under arrest. Officer Elliott substantially corroborated the above testimony.

¶ ? Numerous law enforcement officials testified at the hearing. Their combined testimony revealed the following. Sergeant James Kubik was dispatched to the scene in response to Officer Buckley's call for a supervisor along with dozens of CPD officers who responded to the "10-1, officer down" call. Officers Smith and Kuber transported plaintiff to the Sixth District station. Lieutenant Thomas McNicholas attempted to talk to plaintiff at the station, but she refused his advances. In addition, Officers Kataka Page and Earl Digby transported Hoyle to the station and processed the arrest of both plaintiff and Hoyle. The CPD eventually transferred plaintiff to Little Company of Mary Hospital for a "knot" on the forehead, but no other injuries were reported.

¶ ? Plaintiff testified that when she arrived at the scene, a witness informed her that Hoyle had not been driving her vehicle. She then followed Officer Buckley to his squad car, identifying herself as a fellow CPD officer, and asked him to call a supervisor. When plaintiff requested to ride with Hoyle to the station, she saw a flash of light and felt the wind knocked out of her. She found herself on the ground struggling with Officers Buckley and Elliott, and thus, used Officer Buckley's radio to call for help. Officer Buckley choked her, punched her, and continued to beat her until other CPD officers arrived. In her testimony, plaintiff denied interfering with the arrest, hitting Officer Elliott, and using profanity.

¶ ? Plaintiff further testified that several months after the incident, witnesses told her that Officer Buckley had hit her with a baton which he denied in his testimony. Cynthia Smith, an acquaintance of plaintiff, testified that she saw Officer Buckley choke plaintiff, punch her, and hit her on top of the head with a black stick. Jewel Walsh, another acquaintance of plaintiff, testified that she saw Officer Buckley hit plaintiff. Officers Elliott and Nordena, however, testified that they did not see Buckley with a baton, and Officers Smith and Kuber also testified that plaintiff did not inform them that she had been hit with a baton.

¶ ? On November 19, 2009, the Board concluded that plaintiff violated all six Rules based on her interference with an arrest, battery of two fellow police officers, misuse of a police radio to place a "10-1 officer down" call, use of profanity, and lies during OPS's investigation of the incident. Following the ruling, plaintiff filed a complaint for administrative review. In her complaint, plaintiff did not challenge the guilty finding, only the discharge order. The circuit court reversed the discharge decision and remanded for an alternative sanction. On November 15, 2012, the Board suspended plaintiff for five-years, while noting, it believed discharge was the appropriate sanction. Both plaintiff and defendant filed notices of appeal.

¶ ? ANALYSIS

¶ ? Defendant contends that the Board reasonably found cause to discharge plaintiff given the serious nature of her conduct and the detrimental effect it had on the integrity of the CPD. Contrarily, plaintiff contends that the Board's decision to discharge her, as well as the subsequent five-year suspension, was an unduly harsh and severe penalty in light of her years of employment and minimal disciplinary history. In an appeal from the judgment of an administrative review proceeding, this court reviews the decision of the administrative agency and not the decision of the circuit court. *Krocka v. Police Board of Chicago,* 327 Ill. App. 3d 36, 46 (2001). Where, as here, the circuit court remanded the matter to the Board to impose a lesser penalty than the original penalty of discharge, we can review the Board's original decision to discharge. *Williams v. Illinois Civil Service Comm'n*, 2012 IL App (1st) 101344, ¶ 9. The scope of review of an administrative agency's decision regarding discharge, requires a two-step analysis. *Department of Mental Health & Developmental Disabilities v. Civil Service Comm'n,* 85 Ill. 2d 547, 550 (1981). First, the court must determine whether the administrative agency's findings of fact are against the manifest weight of the evidence. *Id.* Second, the court must determine if the findings of fact provide a sufficient basis for the Board's conclusion that cause for discharge exists. *Crowley v. Board of Education of City of Chicago*, 2014 IL App (1st) 130727, ¶ 29. Because the Board is in the best position to determine the effect of an officer's conduct on the operations of the department, its determination of cause is given considerable deference. *Robbins v. Department of State Police Merit Board*, 2014 IL App (4th) 130041, ¶ 39. Thus, we may not consider whether we would have imposed a more lenient sentence. *Krocka*, 327 Ill. App. 3d at 48. Accordingly, the Board's decision is to be overturned only if it is arbitrary and unreasonable, or unrelated to the requirements of the service. *Siwek v. The Police Board of the City of Chicago*, 374 Ill. App. 3d 735, 738 (2007).

¶ ? Initially, we note that plaintiff's brief suffers from several deficiencies and fails to comply with the requirements of Illinois Supreme Court Rule 341(i) (eff. Feb. 6, 2013) (appellee's brief shall conform to the requirements of Rule 341(h), "which shall contain the contentions of the appellant and the reasons therefore, with citation of the authorities and the pages of the record relied on"). Specifically, plaintiff fails to provide citations to evidence in the record to support her contentions. See *First National Bank of LaGrange v. Lowrey,* 375 Ill. App. 3d 181, 208 (2007). This court is entitled to clearly defined issues, cohesive legal arguments and citations to relevant authority. *County Mutual Insurance Co. v. Styck's Body Shop, Inc.,* 396 Ill. App. 3d 241, 254-255 (2009). Accordingly, plaintiff has forfeited these contentions on appeal. See *TruServ Corp. v. Ernest & Young, LLP,* 376 Ill. App. 3d 218, 227 (2007).

¶ ? Setting forfeiture aside, we also observe that plaintiff sought judicial review of the Board's discharge order, but did not challenge its guilty findings. Thus, we need not consider whether the Board's findings were against the manifest weight of the evidence, only whether there was sufficient "cause" for discharge. See *People ex rel Hartigan v. Illinois Commerce Comm'n,* 117 Ill. 2d 120, 131 (1987) (arguments not raised in the circuit court on administrative review are waived).

¶ ? We now consider whether the findings of fact provide a sufficient basis for the agency's conclusion that cause for discharge exists. "Cause" has been defined as "some substantial shortcoming which renders the employee's continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and something which the law and a sound public opinion recognize as a good cause for his discharge." *Launius v. Board of Fire & Police Commissioners,* 151 Ill. 2d 419, 435 (1992). In addition, the off-duty conduct of law enforcement officers can serve as cause for discharge. *Davenport v. Board of Fire & Police*

Commissioners, 2 Ill. App. 3d 864, 870 (1972). Illinois courts have recognized that "police departments, as paramilitary organizations, require disciplined officers to function effectively, and have accordingly held that the promotion of discipline through sanctions for disobedience of rules, regulations and orders is neither inappropriate nor unrelated to the needs of a police force." *Siwek,* 374 Ill. App. 3d at 738. An officer's violation of a single rule has long been held to be a sufficient basis for termination. *Kinter v. Board of Fire and Police Commissioners*, 194 Ill. App. 3d 126, 134 (1990).

¶ ? Here, competent evidence supported the Board's finding that sufficient cause for discharge existed because plaintiff's demonstrably obstreperous conduct not only violated six department rules, but multiple State laws as well. Plaintiff committed battery and obstruction of justice by biting Officer Buckley, striking Officer Elliott, and interfering with the arrest of her son. See 720 ILCS 5/12-3(a) (West (2012)); 720 ILCS 5/31-1(a) (West (2012)). She disrespected her fellow officers at the scene with her aggressive behavior and use of profanity. In addition, she falsely claimed to OPS that she told the arresting officers, transporting officers and watch commander that Officer Buckley hit her with his baton. No other officer corroborated her testimony and the Board clearly did not find her explanation of events credible. See *Edwards v. Addison Fire Protection District Firefighters' Pension Fund*, 2013 IL App (2d) 121262, ¶34. (the Board, as the finder of fact, makes credibility determinations and assigns weight to testimony and other evidence; we do not weigh the evidence or substitute our judgment for that of the Board). Furthermore, there is no question that such disregard of the Rules and the law is detrimental to the discipline and efficiency of the CPD, and we cannot say that the Board acted unreasonably. See *Krocka*, 327 Ill. App. 3d at 48 (“it is apparent that a police officer who

does not abide by the laws that he has a duty to enforce will impair the discipline and efficiency of the police force").

¶ ? Moreover, plaintiff's overall conduct directly related to her service as a CPD officer. Plaintiff impeded the CPD's public resources by using Officer Buckley's radio to make a fictitious "10-1, officer down" call, which resulted in dozens of officers unnecessarily responding to the scene where numerous members of the public were present. See *Remus v. Sheahan*, 387 Ill. App. 3d 899, 904 (2009) (a law-enforcement officer is in a unique position of public trust and responsibility, thus he must at all times, exercise sound judgment and uphold his responsibilities to the public and the department). In addition, the Board found that discharge had a greater deterrent effect on other CPD officers. See *Kappel v. Police Board of Chicago,* 220 Ill. App. 3d 580, 594 (1991) (it is important to effectively deter similar acts of misconduct by other officers to maintain the public's confidence in the department). Thus, it was not unreasonable for the Board to find that discharge was warranted to protect the CPD's morale interdepartmentally and with the public at large.

¶ ? We also reject plaintiff's contention that discharge was too harsh in light of her "years of employment" and "minimum disciplinary history." While the Board may consider such evidence, it is not dispositive, and here, the Board did weigh her disciplinary history in its decision. See *Id.* at 596 (the Board was not required to suspend, rather than discharge, an officer solely because he had provided numerous years of good service). Furthermore, plaintiff's reliance on cases where the Board found discharge unwarranted is misplaced, as this argument is only persuasive where an agency has given different treatment to two respondents in identical situations. See *Launius,*151 Ill. 2d at 442 (the fact that different individuals had been disciplined disparately was not a basis for concluding that the Board's disciplinary decision was

unreasonable; such conclusions were only appropriate when individuals received different discipline in a single, identical, "completely related" case); *Cf. Massingale v. Police Board of Chicago*, 140 Ill. App. 3d 378 (1986) (where the reviewing court found discharge unreasonable when the plaintiff violated one departmental rule by driving while intoxicated); *Kreiser v. Police Board of Chicago,* 69 Ill. 2d 27 (1977) (where the reviewing court found the officer's infractions unrelated to service when he failed to log out for lunch, drove his personal vehicle while on duty, and did not possess a front license plate or city sticker); *Kirsch v. Rochford,* 55 Ill. App. 3d 1042 (1977) (where the reviewing court found discharge unreasonable when an officer, although intoxicated and causing a disturbance, cooperated with authorities). Accordingly, based on the record as a whole, we cannot say that the Board's decision to discharge plaintiff was arbitrary, unreasonable, or unrelated to the requirements of service.

¶ ? CONCLUSION

¶ ? Based on the foregoing, we reverse the decision of the circuit court of Cook County and reinstate the Board's original decision discharging plaintiff from the CPD.

¶ ? Reversed.