2015 IL App (1st) 140453-U

FIFTH DIVISION
JUNE 26, 2015

No. 1-14-0453

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

DWAYNE WHEELER, Plaintiff-Appellee, v. THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF MAYWOOD, Defendants, TIMOTHY CURRY, Former Chief of Police of the Village of Maywood, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County No. 09 CH 31720 Honorable Peter Flynn, Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices McBride and Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant police board's determination that the plaintiff police officer had violated a municipal residency ordinance was not clearly erroneous. The police board's determination that the police officer should be discharged from the police department was reasonable, not arbitrary, and was related to the requirements of a

Village of Maywood residency ordinance.

¶ 2 Defendant Timothy Curry, Chief of Police of the Village of Maywood (Curry), appeals an order of the circuit court of Cook County reversing the decision of the defendant Board of Fire and Police Commissioners of the Village of Maywood (Board) to discharge plaintiff, Maywood police Sergeant Dwyane Wheeler (Wheeler), from service in the Maywood Police Department (Department).[1] Curry argues the Board's findings that Wheeler violated a Village of Maywood (Village) ordinance regarding his residency, as well as rules and regulations of the Maywood Police Department (Department), were not against the manifest weight of the evidence. Curry also argues the decision to discharge Wheeler was not arbitrary, unreasonable, or unrelated to the needs of the service. For the following reasons, we reverse the judgment of the circuit court and remand the cause to the Board, with leave to reinstate its earlier order of discharge.

¶ 3 BACKGROUND

¶ 4 On July 8, 2009, Curry filed a complaint for disciplinary charges against Wheeler with the Board. The complaint alleged that on July 6, 2007, Wheeler reported to the Village that his residence was 4530 South Woodlawn, Unit 1006, in Chicago, Illinois. In 2009, the Village received documents, attached to the complaint as exhibits, indicating Wheeler's residence was 1010 South 4th Street in St. Charles, Illinois. The complaint also alleged the St. Charles address was approximately 30 miles from the Village's corporate boundaries. The complaint further alleged that on December 12, 2006, Wheeler executed a document acknowledging he was

[1] The Board is not a party to this appeal. Curry's appellate brief represents that Curry is no longer Chief of Police for the Village of Maywood. Wheeler's complaint for administrative review, however, was filed against Curry in his official capacity.

required to live within 15 miles of the Village's corporate boundaries. The complaint charged Wheeler with violating Rule 7 of the Department's rules and regulations, which required employees to obey all applicable federal state and municipal laws and ordinances. The complaint cited section 30.06 of the Maywood Village Code (Village residency ordinance), which provided in part:

> "(A) All new employees, department heads, supervisory and administrative personnel and appointed officers, paid either on an hourly or salaried basis, and all employees, department heads, supervisory and administrative personnel and appointed officers, paid either on an hourly or salaried basis who, on the enactment of this section, shall reside within the corporate boundaries of the Village or within a 15-mile radius of the corporate boundaries of the Village throughout their terms of office, and/or length of employment, but with the express exclusion of those persons supplying services on a limited contractual basis who are actually in the employ of another governmental unit and/or private organization.
>
> (B) This section shall apply only to employees and appointed officers of the Village who reside in the Village on the date of the enactment of this section and to all newly hired employees and appointed officers. All newly hired employees and appointed officers shall be required to establish residency within the Village no later than 1 year after the initial date of their employment and/or appointment, or if the employee's employment or appointment is for a probationary period, then no later than 1 month prior to the expiration of the probationary period. For the purposes of this section and § 30.07, an employee or

officer shall be considered a resident of the Village if his actual permanent and principal home is within the Village and his legal domicile is also in the Village.

(C) Noncompliance with the residency requirements set forth in this section by any officer or employee of the Village shall constitute grounds for immediate dismissal. The Village manager is hereby directed to invoke such penalty of immediate dismissal and to take such other actions as is necessary to accomplish dismissal upon failure to comply with the terms prescribed in division (B) above.

(D) All requirements set forth in the Village of Maywood Personnel Manual, except where they conflict with the terms of this section, continue in full force and effect." Maywood Village Code § 30.06 (amended Nov. 8, 2006).

Subsection D of Section 1.2, Citizenship, Hiring Practice and Residency, of the Village of Maywood Personnel Manual, stated:

"All new and existing employees, department heads, supervisory and administrative personnel paid either on an hourly or salaried basis shall reside within the corporate boundaries of the Village or within a 15-mile radius of the corporate boundaries of the [V]illage, throughout their term and/or length of employment, except those persons providing services on a contractual basis. Any residency changes must be submitted to the Human Resources Department by the employee on the Village residency form and signed by the employee ***."

¶ 5 The complaint also charged Wheeler with violating Rule 22 of the Department's rules and regulations, which required employees to provide the Department with their current address and telephone number and to report any changes in such information within 24 hours. Rule 22

explained that employees may be called back to duty from their regular off-duty time in the event of an emergency. Based on these charges, Curry sought to terminate Wheeler's employment as a Sergeant.

¶ 6 On July 30, 2009, the Board conducted a hearing on Curry's complaint. Wheeler testified that he joined the Department in May 2000, and became a Sergeant in October 2006. He did not recall whether there was a residency requirement when he joined the Department. At the time, he lived in Elmhurst, Illinois, within 15 miles of the Village's corporate boundaries.

¶ 7 Wheeler admitted that when he joined the Department, he executed a document acknowledging he was required to continuously reside in the Village in accordance with the Village residency ordinance, with such residence being the "bona fide residence and domicile" of the signatory. He testified however, that he also believed he could have several residences. On December 12, 2006, Wheeler completed a residency information form, which referred to the requirement that Village employees live within 15 miles of the Village's boundaries. The form indicated that failure to return the form or the inclusion of incorrect information could result in disciplinary action. Wheeler represented his address at that time as 1155 South Lombard in Oak Park, Illinois, which was within 15 miles of the Village boundaries.

¶ 8 Wheeler acknowledged that within six or seven months of completing the residency information form, he sold the house in Oak Park and purchased a house outside the 15-mile limit. On July 6, 2007, Wheeler executed an "employee personnel inventory sheet," which indicated that providing false information could lead to disciplinary action before the Board. He stated his address was 4530 South Woodlawn in Chicago.

¶ 9 According to Wheeler, 4530 South Woodlawn, Unit 1006, is a condominium owned by his brother, although Wheeler did not know whether his sister-in-law also had an interest in the

property. Wheeler did not have a lease or other rental agreement for the property. He paid his brother $450 monthly to rent a room and a closet in the condominium. Wheeler paid the rent with cash, never by check. He paid no property taxes regarding 4530 South Woodlawn.

¶ 10 Wheeler listed his wife as an emergency contact on the employee personnel inventory sheet. On July 6, 2007, Wheeler's wife and children lived at 1010 South 4th Street in St. Charles. Wheeler owned that property, but his wife paid the mortgage on that property by check. When shown property tax bills issued to him for 1010 South 4th Street, Wheeler acknowledged he took a homestead exception for the property.

¶ 11 Wheeler testified he had an intact family. His wife and children, however, never lived with him at 4530 South Woodlawn. Wheeler also testified that, as of July 6, 2007, he spent approximately 60% of his time at 4530 South Woodlawn. On February 6, 2008, Wheeler executed a memorandum indicating his residence was at 4530 South Woodlawn.

¶ 12 On January 26, 2009, Wheeler executed an employee assistance program form indicating his address was 1010 South 4th Street. On May 15, 2009, Wheeler submitted a statement of economic interest to the Cook County Clerk indicating his address was 1010 South 4th Street.

¶ 13 Wheeler also acknowledged he was a member of the Metropolitan Alliance of Police Sergeants, Chapter 486. Wheeler further acknowledged the collective bargaining agreement between that union and the Village dated January 1, 2005, through December 31, 2011, also required Village employees to live within a 15-mile radius from the boundaries of the Village. Wheeler's counsel asserted, however, that the collective bargaining agreement was signed in 2008. An ensuing colloquy including counsel for the parties and a Board member did not resolve the issue of whether the collective bargaining agreement's residency provision would be deemed retroactive to the date it was signed.

¶ 14 Wheeler further testified he purchased the house in St. Charles for his family's safety. According to Wheeler, in late 2005, his mother had been kidnapped at gunpoint and kept in the trunk of a vehicle for three hours. Wheeler testified that he had long ago decided to be aggressive in his work, rather than listen to others who advised him otherwise, resulting in a situation in which he decided to move his family to St. Charles. He noted that with court dates four days out of the week, he would spend his time during the week in the Village and Chicago, and he would see his family on weekends and on days he was off-duty. Wheeler also testified that when he was directed by Village manager Jason Ervin (Ervin) and then-Village police chief Elvia Williams (Williams) to comply with the residency requirement, he put his house on the market, but his house had not sold, despite lowering the asking price for the property.

¶ 15 Ervin testified he became the Village manager in June 2007. He also testified the provision of the Village residency ordinance remained in effect. Ervin further testified that sometime within the prior year, he spoke with Wheeler about the need to be within the 15-mile radius of the Village's boundaries. He acknowledged that in 2008 or 2009, he had conversations "off and on" with Williams regarding the residency requirement in the context of the negotiation of the collective bargaining agreement. According to Ervin, there was a disagreement between the union and the Village regarding two employees living outside the 15-mile radius who were placed on desk duty pending the outcome of the negotiations. Ervin testified that the parties ultimately agreed on an interpretation of the 15-mile requirement that allowed the two employees to be placed back in active service. Ervin was asked whether there were any other police officers who resided beyond the 15-mile limit under the interpretation of that limit agreed to in the labor negotiations. Ervin testified over objection that there may be other such officers, at which point the Board concluded questioning on the issue.

¶ 16 Williams testified she was the police chief for the Village until June 12, 2009. She first conversed with Wheeler regarding his residency during the summer of 2008. According to Williams, Wheeler had acknowledged that he owned a house in St. Charles, but stated he was attempting to sell the home. Wheeler had also informed Williams that a known felon had followed him home and he reported the incident to the Department. Wheeler had further informed Williams that he spent most of his time in Chicago. Williams opined that the residency issue had not interfered with Wheeler's job performance. She described Wheeler as probably one of the Department's best officers. Williams had never filed charges against police officers for violating the residency requirement. Williams additionally testified that Ervin had described Wheeler as somewhat of a liability, but he had not informed her of other reasons he believed Wheeler should be discharged from the Department.

¶ 17 Curry testified he recently had been appointed police chief for the Village. Approximately one month prior to the hearing, Ervin conversed with Curry regarding Wheeler's residency. Ervin raised the possibility of Wheeler resigning, but he did not inform Curry of any reason for Wheeler to resign other than the residency issue. Curry acknowledged that Wheeler was not the only police officer to have violated the residency requirement.

¶ 18 At the conclusion of the parties' cases-in-chief and the presentation of closing arguments, the Board went into closed session to consider the charges against Wheeler. Following the closed session, the Board found Wheeler guilty of the charges in the complaint. The Board also found that Wheeler was "untruthful with respect to certain statements made with respect to his residence." The Board then proceeded to hear evidence in aggravation and mitigation of the charges. Wheeler introduced a group exhibit, which included official letters of commendation, letters of appreciation, awards, job performance evaluations, and letters from Maywood residents

he received during his service in the Department. Curry testified that Wheeler's job performance was better than average. Following closing arguments and a closed session, the Board granted the motion to terminate Wheeler's employment.

¶ 19 On August 17, 2009, the Board entered a written decision and order memorializing its findings. In particular, the Board found Wheeler's declaration that he resided in Chicago was far outweighed by the evidence that his residence was in St. Charles. Thus, the Board also found Wheeler had been untruthful in the July 26, 2007, and February 2, 2008, documents representing that his residence was in Chicago. After considering the evidence of Wheeler's job performance in mitigation of the charges, the Board concluded his violation of the Village's residency ordinance and his untruthfulness in reporting his address to the Department constituted a substantial shortcoming. Accordingly, the Board ordered that Wheeler be discharged from his employment as a member of the Department.

¶ 20 On September 3, 2009, Wheeler filed a complaint for administrative review in the circuit court of Cook County. On September 21, 2009, Curry filed his appearance. On Ocotber 5, 2009, the Board filed its appearance, answer, and the record of proceedings before the Board.

¶ 21 On January 7, 2010, Wheeler filed a memorandum in support of his complaint for administrative review, arguing that: (1) the Board's decision to terminate Wheeler's employment was arbitrary and unreasonable; (2) the Board's finding that Wheeler violated the Village's residency ordinance was legally erroneous; and (3) the Village's residency ordinance, rules and regulations do not require an employee to maintain one permanent, primary residence. On February 3, 2010, the Board filed a response to Wheeler's memorandum; Curry filed his response the next day. Both responses disputed the claims in Wheeler's memorandum. On February 18, 2010, Wheeler filed a reply in support of his complaint for administrative review. On March 8,

2010, the circuit court conducted a hearing on the complaint.

¶ 22 On September 10, 2013, approximately three and one-half years later, the circuit court issued a memorandum opinion and order on Wheeler's complaint. The circuit court ruled the Board's finding that Wheeler violated the Village's residency ordinance was not against the manifest weight of the evidence. The circuit court rejected the argument that the Village authorized Wheeler to live outside the 15-mile radius from the Village's corporate boundaries. The court also rejected Wheeler's argument that he was subjected to disparate treatment. The circuit court, however, found that the finding of Wheeler's untruthfulness was based in significant part on the Board's after-the-fact determination that the condominium in Chicago was not Wheeler's residence. Moreover, in light of the evidence in mitigation of the charges, the circuit court ruled the Board's decision to terminate Wheeler's employment was unreasonably severe. Accordingly, the circuit court vacated the Board's decision and remanded the matter to the Board for the imposition of a penalty less than discharge.

¶ 23 On October 21, 2013, the Board issued a decision determining, "with all due respect to the court," that Wheeler's misconduct was a substantial shortcoming warranting the termination of his employment, adding that a lesser sanction would be likely to encourage others to violate the Village's residency ordinance. On November 18, 2013, the Board filed a motion in the circuit court to have its decision declared final and appealable. On November 20, 2013, Wheeler filed a response to the Board's motion, which also sought a rule to show cause against the defendants for failing to comply with the circuit court's order on remand.

¶ 24 On January 21, 2014, the circuit court entered an order entirely reversing the decisions of the Board. The order states that the circuit court had no desire to "wrangle" with the Board, but

the court could not declare the Board's decision final and appealable.[2] The court also wrote that it was unclear whether the court could issue a rule to show cause against the Board, but could not "simply evade the issue by caving in to the Board's refusal to comply" with the court's order and the case law governing remands.

¶ 25 Curry filed a timely notice of appeal to this court on February 18, 2014.

¶ 26 ANALYSIS

¶ 27 On appeal, Curry argues: (1) the Board's findings were not against the manifest weight of the evidence; and (2) the decision to discharge Wheeler was not arbitrary, unreasonable, or unrelated to the needs of the service. Wheeler asserts an opposite position regarding both issues. "In an appeal from the judgment of an administrative review proceeding, the appellate court reviews the administrative agency's decision, not the trial court's decision." *Hermesdorf v. Wu*, 372 Ill. App. 3d 842, 851 (2007). Given the procedural history of the case, we observe that the Board's initial decision discharging Wheeler and its findings in support of that decision are the essence of the appeal to which we apply the relevant standards of review, and would have been even if the Board had complied with the circuit court's order on remand. See *Kappel v. Police Board of City of Chicago*, 220 Ill. App. 3d 580, 598-99 (1991) (and cases discussed therein).

¶ 28 Generally, "[t]he standard of review of an administrative agency's decision regarding discharge requires a two-part analysis." *Duncan v. City of Highland Board of Police & Fire Commissioners*, 338 Ill. App. 3d 731, 735 (2003) (citing *Kloss v. Board of Fire & Police Commissioners of the Village of Mundelein*, 96 Ill. 2d 252, 257 (1983) and *Department of Mental*

[2] On September 30, 2013, Curry filed a notice of appeal to this court. Wheeler filed a motion to dismiss that appeal on the ground that the remand order was not final and appealable. On October 30, 2013, this court granted the motion to dismiss the appeal.

Health & Developmental Disabilities v. Civil Service Commission, 85 Ill. 2d 547, 550 (1981)). First, we determine whether the administrative agency's finding of guilt was contrary to the manifest weight of the evidence. *Walsh v. Board of Fire & Police Commissioners*, 96 Ill. 2d 101, 105 (1983). Second, we must determine whether the administrative agency's findings of fact provide a sufficient basis for the agency's conclusion that cause for discharge existed. *Id*.

¶ 29 Wheeler, relying on *Reichert v. Board of Fire & Police Commissioners of the City of Collinsville*, 388 Ill. App. 3d 834 (2009), argues this case involves an examination of the legal effect of a given set of facts, and thus presents a mixed question of fact and law subject to the clearly erroneous standard of review. See *id*. at 843. " 'A decision is "clearly erroneous" when the reviewing court is left with the definite and firm conviction that a mistake has been committed.' " *Id*. (quoting *American Federation of State, County & Municipal Employees, Council 31*, 216 Ill. 2d at 577-78). In *Reichert*, the propriety of the decision to discharge the police officer depended upon whether the officer's federal conviction for "Selling of Goods in Commerce at Unreasonably Low Prices Eliminating Competition" rendered his credibility subject to impeachment in the circuit courts of Madison and St. Clair Counties. See *id*. at 843-44. The *Reichert* court determined the officer's federal conviction could not be used to impeach his credibility in the circuit courts of Madison and St. Clair Counties, and therefore concluded the decision was clearly erroneous. *Id*. at 849.

¶ 30 In this case, Wheeler challenges the application of the Village residency ordinance and to that extent raises a mixed question subject to the clearly erroneous standard of review. The remaining issues in this appeal, however, remain subject to the well-established standards set forth in our case law. Given these principles, we address whether the Board erred in finding Wheeler guilty of the charges brought against him, and if not, whether the Board could properly

dismiss Wheeler for cause.

¶ 31 The Findings of Guilt

¶ 32 Curry initially argues that the Board's findings that Wheeler violated the Village residency ordinance and was untruthful were not against the manifest weight of the evidence. Under the manifest weight of the evidence standard, the deference afforded the agency's findings are " 'not boundless.' " *Kouzoukas v. Retirement Board of the Policemen's Annuity & Benefit Fund of the City of Chicago*, 234 Ill. 2d 446, 465 (2009) (quoting *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 507 (2007). Nevertheless, "an administrative agency's findings will be deemed contrary to the manifest weight of the evidence only where the opposite conclusion is clearly apparent." *Hermesdorf*, 372 Ill. App. 3d at 852. Moreover, "[t]he reviewing court starts from the position that the administrative agency's findings of fact are *prima facie* true and correct." *Id*.; see 735 ILCS 5/3-110 (West 2006). "Further, the credibility of the witnesses, the weight to be given to their testimony, and the inferences to be drawn from the evidence are within a board's province." *Valio v. Board of Fire & Police Commissioners of the Village of Itasca*, 311 Ill. App. 3d 321, 329 (2000). "[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 v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532-33 (2006). Yet, as previously noted, the applicability of the Village residency ordinance is a mixed question of law and fact subject to the clearly erroneous standard of review. See *Reichert*, 388 Ill. App. 3d at 843.

¶ 33 The Violation of the Residency Ordinance

¶ 34 Wheeler argues that the unambiguous language of section 30.06(A) of the Village ordinance pertaining to residency does not require employees to maintain a permanent and

principal home within the designated area. Rather, Wheeler maintains, the phrase "permanent and principal home" appears only in section 30.06(B) of the Village residency ordinance. Municipal ordinances are interpreted under the rules of statutory construction and the best evidence of the drafter's intent is the language of the ordinance, which must be given its plain and ordinary meaning. See *Chisem v. McCarthy*, 2014 IL App (1st) 132389, ¶ 16 (citing *City of Marengo v. Pollack*, 335 Ill. App. 3d 981, 986 (2002)). In this case, section 30.06(B) of the Village residency ordinance states that " [f]or the purposes of this section and § 30.07, an employee or officer shall be considered a resident of the Village if his actual permanent and principal home is within the Village and his legal domicile is also in the Village." The use of the word "section" in this instance, particularly in light of the use of the word throughout section 30.06, refers to section 30.06 as a whole, not to subsections thereof. Accordingly, the language defining residency also applies to subsection 30.06(A) of the Village residency ordinance.

¶ 35 Moreover, we note that with respect to residency in general, this court has held that in order to have one's residence in a certain place, an employee must both establish a physical presence there and have the intent to make that location his or her permanent residence. See *Miller v. Police Board of the City of Chicago*, 38 Ill. App. 3d 894, 898 (1976). This court has also ruled that because the person's residence is to be her permanent abode or home, he or she may not have a residence in two places at the same time. See *id*. at 897-98. Our supreme court has determined that the typical reasonable person considering similar residency ordinances and rules would conclude they required employees to establish their principal residence, their domicile, in the municipality. *Fagiano v. Police Board of City of Chicago*, 98 Ill. 2d 277, 285 (1983) (approvingly citing *Miller*). Thus, Wheeler's argument regarding the Village's interpretation of the residency ordinance fails.

¶ 36 Wheeler correctly notes his testimony that he rented a room and closet in his brother's Chicago condominium and spent approximately 60% of his time there. Wheeler also testified, however, that there was no lease or rental agreement for his room and closet. Moreover, there were no checks indicating Wheeler's rent payments to his brother. In addition, it is undisputed that Wheeler's wife and children lived at the property he purchased in St. Charles and never lived with him in Chicago. Wheeler was listed on the tax bills for the house in St. Charles and took a homestead exemption for the same property. Wheeler further completed employment-related forms indicating his address was in St. Charles. Given the record on appeal, we are not left with the definite and firm conviction that a mistake has been committed. Accordingly, the Board's conclusion that Wheeler violated the village residency ordinance is not clearly erroneous.[3]

¶ 37 Untruthfulness

¶ 38 Curry also argues the Board's finding that Wheeler was untruthful in his July 6, 2007, and February 2, 2008, statements, which indicated a Chicago address, were not against the manifest weight of the evidence. The circuit court, in its September 10, 2013, order, rejected this finding on the ground that the finding of untruthfulness was based in significant part on the Board's after-the-fact determination that the condominium in Chicago was not Wheeler's residence. Insofar as the issue again involves the application of the Village residency ordinance, the clearly erroneous standard of review applies. *Reichert*, 388 Ill. App. 3d at 843. As previously noted,

[3] Wheeler also asserts in the alternative that even if he violated the Village residency ordinance, Village officials knew and approved of his residency outside the 15-mile radius. Wheeler cites no legal authority in support of this assertion, thereby forfeiting it on appeal. *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 855 (2007); Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

however, our supreme court has determined that the typical reasonable person considering similar residency ordinances and rules would conclude they required employees to establish their domicile in the municipality. *Fagiano*, 98 Ill. 2d at 285. Given the plain language of the Village residency ordinance, we conclude the Board's determination that Wheeler was untruthful in reporting his address was not clearly erroneous.

¶ 39 Curry also argues, however, that Wheeler thereby violated Rule 28 of the Department's rules and regulations, which provided that Village employees shall not make untruthful statements in verbal or written reports related to official duties. We observe, however, that Curry did not charge Wheeler with violating Rule 28. We also note that the Board found Wheeler was untruthful in the aforementioned statements, but did not refer to Rule 28, let alone make an express finding that Wheeler violated Rule 28. "It is quite established that if an argument, issue, or defense is not presented in an administrative hearing, it is procedurally defaulted and may not be raised for the first time before the circuit court on administrative review." *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 212 (2008). "The rule is based on the demands of orderly procedure and the justice of holding a party to the results of his or her conduct where to do otherwise would surprise the opponent and deprive the opponent of an opportunity to contest an issue in the tribunal that is supposed to decide it." *Id*. at 213.

¶ 40 On appeal, Curry notes that Wheeler was charged with violating Rule 7, which requires employees to obey, laws, regulations, policies, and procedures. Thus, Curry suggests, a violation of Rule 28 could be encompassed in a finding that Wheeler violated Rule 7. Allowing Curry to raise any law, regulation, policy, or procedure after the Board has issued a decision, would not satisfy the demands of orderly procedure and justice. See *id*. Accordingly, we conclude the Board's finding of untruthfulness was not clearly erroneous, but Curry cannot assert for the first

time in administrative review that Wheeler was found guilty of Rule 28.

¶ 41 Cause for Discharge

¶ 42 We next consider whether the findings of fact provide a sufficient basis for the Board's conclusion that cause for a suspension 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.]" (Internal quotation marks omitted.) *Launius v. Board of Fire & Police Commissioners*, 151 Ill. 2d 419, 435 (1992). 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. Accordingly, "[a]s the reviewing court, we may not consider whether we would have imposed a more lenient disciplinary sentence." *Krocka v. Police Board of the City of Chicago*, 327 Ill. App. 3d 36, 48 (2001) (citing *Wilson v. Board of Fire & Police Commissioners*, 205 Ill.App.3d 984, 992 (1990). 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. Police Board of the City of Chicago*, 374 Ill. App. 3d 735, 738 (2007).

¶ 43 Wheeler relies on several cases to argue that his dismissal was improper. He cites *Massingale v. Police Board of the City of Chicago*, 140 Ill. App. 3d 378 (1986), where the dismissed police officer had an unblemished seven-year record and her only infraction was being intoxicated while off duty. The appellate court found her dismissal was unwarranted. *Id*. at 382; see also *Lindeen v. Illinois State Police Merit Board*, 25 Ill. 2d 349, 353 (1962) (single instance of public intoxication did not warrant dismissal in light of captain's service record). In

Christenson v. Board. of Fire & Police Commissioners of the City of Oak Forest, 83 Ill. App. 3d 472 (1980), this court determined a police captain's use of a police vehicle for a personal errand and dishonesty regarding the incident did not warrant the sanction of discharge, where the captain put another officer in charge during the errand, remained in radio contact with the police department, and his presence was not compelled by an emergency. *Id*. at 477. Similarly, in *Kreiser v. Police Board of the City of Chicago*, 69 Ill. 2d 27 (1977), the officer was found to have been driving his own, unlicensed car while on duty and lying to his commanding officer about the incident. The Illinois Supreme Court found these actions too far removed from the officer's duties to warrant dismissal. *Id*. at 30-31.

¶ 44 Illinois courts, however, have also 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. Consequently, even an officer's violation of a single rule has long been held to be a sufficient basis for termination. *Kinter v. Board of Fire & Police Commissioners*, 194 Ill. App. 3d 126, 134 (1990) (and cases cited therein). Wheeler argues that "a finding that an officer violated police department rules, however, does not, standing alone, empower a board to dismiss that officer." *Burgett v. City of Collinsville Board of Fire & Police Commissioners*, 149 Ill. App. 3d 420, 423 (1986). The *Burgett* court, however, was merely stating that the violation of a rule must constitute "cause" to warrant dismissal. See *id*. at 423-24. A municipality or a board of police commissioners has the authority to regard an employee's moving his residence from the municipality as "cause" for discharge. See *Harvey Firemen's Association v. City of Harvey*, 75 Ill. 2d 358, 364-65 (1979) (upholding a municipal civil service residency requirement); see also

Fedanzo v. City of Chicago, 333 Ill. App. 3d 339, 347-48 (2002) (and cases cited therein). Moreover, a board may consider evidence of an officer's good service record in mitigation of an offense, but it is not required to place dispositive weight on such evidence. *Kappel*, 220 Ill. App. 3d at 596. "The Board is not required to suspend, rather than discharge, an officer solely because he has provided numerous years of good service, even where some of those years are subsequent to the misconduct." *Id*.

¶ 45 In this case, Wheeler's violation of the Village residency ordinance could be viewed as a single violation of the law, but it was not a discrete incident of misconduct. Rather, Wheeler engaged in an ongoing violation of the Village residency ordinance for approximately two years. During this prolonged period of time, Wheeler submitted untruthful statements to the Village regarding his residence. Although Wheeler was not charged with violating Rule 28, his untruthfulness was relevant to a determination of whether the discharge in this case was arbitrary or unreasonable, just as Wheeler's job performance could be considered as a mitigating factor. Thus, we conclude that cases such as *Kreiser*, *Lindeen*, *Massingale*, and *Christenson* are distinguishable from this case.

¶ 46 Wheeler also argues that his violation of the Village residency ordinance is unrelated to the requirements of service, noting there was no evidence that it affected his job performance. In this case, however, Wheeler was charged in part with violating Rule 22, which expressly explained that employees were required to submit current addresses because they may be called back to duty from their regular off-duty time in the event of an emergency. The Department was thus concerned with the maximization of police personnel in the event of an emergency, a consideration related to the needs of the service. Wheeler's job performance may not have been affected by his residence in St. Charles, but this does not mean Wheeler would be readily

available to serve the Department in the event of an emergency.

¶ 47 Accordingly, we conclude Wheeler has failed to demonstrate the Board's decision to terminate his employment was arbitrary and unreasonable, or unrelated to the requirements of the Department. The Board's decision states that it considered the evidence of Wheeler's good service record in mitigation of the offense, but the Board was not required to place dispositive weight on such evidence. *Kappel*, 220 Ill. App. 3d at 596.

¶ 48 CONCLUSION

¶ 49 For the foregoing reasons, the decision of the circuit court of Cook County is reversed. We remand the cause to the Board, with leave to reinstate its earlier order of discharge. We observe, however, that the Board is not compelled on remand to reinstate its earlier discharge order, if the Board under its present evaluation chooses instead to let the lesser penalty stand. *Kappel*, 220 Ill. App. 3d at 599.

¶ 50 Circuit Court judgment reversed; cause remanded to the Board with leave to reinstate its prior discharge order.