2015 IL App (1st) 142472-U

No. 1-14-2472

October 9, 2015

FIFTH DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

NEREIDA AVILES, Plaintiff-Appellant, v. AVIS LAVELLE, Commissioner of the Personnel Board of the Chicago Park District; ROUHY J. SHALABI, Chairman of the Personnel Board of the Chicago Park District; MICHAEL SIMPKINS, Secretary of the Personnel Board of the Chicago Park District; and the PERSONNEL BOARD of the CHICAGO PARK DISTRICT, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 13 CH 8554 The Honorable David B. Atkins, Judge presiding.

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

O R D E R

¶ 1 *Held*: The decision of the Chicago Park District Personnel Board to terminate plaintiff is affirmed where its findings of fact were not against the manifest weight of the evidence and its decision to terminate her was not arbitrary, unreasonable, or unrelated to the requirements of service.

¶ 3 Plaintiff, Nereida Aviles, seeks review of a final decision of the Personnel Board of the Chicago Park District (CPD) upholding her termination from her position as a CPD park supervisor. On appeal, plaintiff argues (1) the CPD violated her due process rights by failing to follow its Disciplinary Guidelines Policy (Guidelines Policy) and to provide proper notice for her appeal hearing, and (2) the CPD's decision to terminate her was clearly erroneous and its factual findings were against the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 4 I. BACKGROUND

¶ 5 Plaintiff was a park supervisor at the CPD for six years. In September 2010, the CPD held a corrective action meeting (CAM) concerning allegations that plaintiff violated several provisions of CPD's Code of Conduct (Code). In October 2010, the CPD terminated plaintiff for cause based on three sections of the Code. Specifically, plaintiff was terminated for failing to follow directives, failing to comply with CPD's policies and procedures, and failing to satisfactorily perform her job duties.

¶ 6 Plaintiff appealed her termination, and an appeal hearing commenced in January 2011. Matt Marino, chief programming officer for the CPD, testified that Heartland Alliance supplied the CPD with work trainees through the Put Illinois to Work program during the summer of 2010. Heartland workers had to be supervised, were only permitted to do landscape and maintenance work, and were not to interact with children or patrons, as they had not been trained to do so.

¶ 7 Marino testified that he went to the lagoon area of Humboldt Park on August 5, 2010. While there, he observed a "young woman with her head down" leaning against the door, apparently sleeping, while a young boy ran back and forth across the cement deck leading to the

lagoon. Marino and Dan Hibbler[1] entered the boathouse and discovered that the woman had a mat on the floor and was apparently sleeping while three other children were "just kind of running around in the room" and a man was standing on the other side of the room. The children were CPD day-campers. The woman told Marino and Hibbler that she was part of the Put Illinois to Work program. She was not wearing her assigned shirt and explained that a park staff member gave her the shirt she was wearing. The man "pretty much didn't know anything." Marino was concerned that the children were not supervised and that the Put Illinois to Work workers were not trained or supposed to be working with children.

¶ 8 Marino testified that plaintiff approached and said the two workers were at the boathouse because the park was short-staffed. Cynthia Rosario, the area manager, also approached. Marino explained to Rosario that Put Illinois to Work participants had to go through the Heartland Alliance and the CPD orientation. Rosario said she had conveyed that information to plaintiff, and plaintiff said, "Yeah, I know, but I have been working them all summer and I only had a couple days left, so I was going to let them finish out."

¶ 9 Marino explained that allowing the Put Illinois to Work employees to supervise and work with day-campers violated CPD policies. In his view, allowing the trainees to supervise the children near the sailing center and lagoon presented a substantial risk of serious injury to the children. A first-year recreation leader, which is the least senior position in the CPD allowed to work with children, undergoes 14 hours of training.

¶ 10 Cynthia Rosario testified that she was the area manager for the Central Region and had managed plaintiff for five years. In the summer of 2010, the CPD worked with Heartland Alliance to hire staff for various park locations; however, no Heartland Alliance employees were assigned to Humboldt Park. Heartland Alliance workers helped "maintain the building" and

[1]In his opening statement, counsel for the CPD identified Hibbler as the CPD director of programming.

acted "as attendants." They were not allowed to interact with children. Rosario discussed the limitations on Heartland Alliance employees' activities in plaintiff's presence during meetings in the spring and summer of 2010. In addition, she forwarded to plaintiff an e-mail from the human resources director that stated as follows. "It was brought to my attention that other agencies have hired Heartland trainees and have sent them to some other parks to work with the kids. We have no such arrangement in place for Heartland trainees to work with kids at our parks, so please get in contact with each of your park and playground supervisors to make sure that this is not happening at any of our locations."

¶ 11 Rosario testified that she first learned that non-CPD staff members were watching day-campers when she went to the Humboldt Park boathouse on August 5, 2010. Plaintiff acknowledged to Rosario that non-CPD employees had been watching the children. Plaintiff later told her that someone from a University of Illinois-Chicago organization sent the Heartland workers to her. At no time did Rosario approve the practice of allowing non-CPD employees to supervise children, nor did plaintiff request Rosario's permission to do so. Allowing the Heartland employees to work with children violated CPD's policies. Further, Rosario opined that allowing the Heartland employees to supervise children at or near the boathouse presented a substantial risk of serious injury of those children, as the children were in a sailing program near the boathouse in the lagoon, a high-risk area. Rosario did not recall seeing a policy in CPD's policy manual regarding Heartland employees.

¶ 12 Rosario also testified as to plaintiff's other disciplinary issues. Plaintiff had two unexcused absences in September 2009, as well as other unexcused absences. Rosario explained that she denied plaintiff's leave request for the September dates because plaintiff did not submit her request before she took the vacation days. After the September 2009 absences, Rosario gave

plaintiff a written reprimand form, which plaintiff signed. Plaintiff also failed to timely submit her weekly financial statements, which were due every Monday, on multiple occasions. Rosario identified a June 29, 2010, email from Catherine Schick, the finance manager for the Central Region in which Schick told plaintiff her financials were missing for the prior week and needed to be submitted by June 30 at the downtown office. Rosario also identified another email, sent by Schick to plaintiff on July 7, 2010, in which Schick stated she had received Humboldt's financials that day and that future financials were required to be submitted by Monday. According to Rosario, plaintiff also submitted her financials late on other occasions.

¶ 13 Rosario further testified that plaintiff regularly failed to timely deposit receipts or money received at the park. Rosario identified a series of emails between plaintiff and Schick regarding late deposits and missing "CHA vouchers," which were a component of the financials. According to Rosario, plaintiff's failure to timely deposit receipts violated CPD policies, and plaintiff was aware of those policies and procedures prior to May 2010. On August 6, 2010, Rosario submitted a narrative to Michelle Gage, CPD's human resources manager, regarding plaintiff's failure to follow directives. In the narrative, Rosario detailed various incidents of misconduct beginning on April 30, 2010. Rosario also testified that plaintiff submitted timesheets with "a whole slew of issues." Those issues included incorrect time calculations and missing overtime authorizations. She identified an email from Schick to plaintiff regarding the issues and concerns with plaintiff's timesheets.

¶ 14 Rosario acknowledged that plaintiff had no prior corrective action meeting (CAM). Rosario denied that plaintiff was the only person doing financials and handling deposits at Humboldt Park, and she testified Humboldt Park was adequately staffed in August 2010. The park had five full-time employees, including plaintiff, three of whom could be left alone with

children. The park also had one part-time staff member and about 10 part-time seasonal staff members. The seasonal staff members could not be left alone with children. Over 100 children were enrolled in the day camp. Rosario denied being aware that the Puerto Rican Cultural Center was involved with the two high-school students. She knew that plaintiff's computer was not operational for part of the summer; however, plaintiff could have used other computers in the park, including the one in the activity instructor's office and the one in Rosario's office. Plaintiff had keys to both offices. In addition, Garfield Park had three computers that plaintiff could have used.

¶ 15 Michelle Gage, human resources manager for the CPD's Central Region as well as various departments in the administrative building, testified that plaintiff failed to request leave before taking vacation days in September 2009. She also took leave in August 2010 without preapproval from Rosario. Taking unapproved time off violated CPD policies and procedures. Plaintiff also violated CPD policies and procedures when she failed to submit her financial documents in a timely fashion, failed to have overtime preapproved, and submitted incomplete or incorrect timesheets. Gage met with plaintiff and a union representative in September or October 2009 regarding a timesheet and payment issue in which plaintiff told a seasonal employee who had worked overtime hours to sign his timesheet as if he did not work those hours. According to Gage, this caused "a huge issue." Gage told plaintiff her actions were a "huge violation" and that she had to make sure the timesheets were accurately and timely submitted. They also discussed "the implication that if this occurred again, what could possibly happen" and that plaintiff could have been terminated. The meeting was not a CAM.

¶ 16 Gage further testified that all park volunteers had to be approved by the Legislative and Community Affairs Department. According to Gage, plaintiff's actions on August 5 regarding

the two volunteers "[a]bsolutely" violated the CPD policies and presented a substantial risk to the children who were being supervised. Gage was contacted regarding plaintiff's "overall performance issues" on or around August 6. Prior to that date, however, she had "been advised" on numerous occasions about issues Rosario was having with plaintiff. With respect to overtime, Gage explained that a park supervisor should be able to anticipate the need for overtime and seek approval for those hours, as the supervisor creates the schedule and "should clearly know what the needs are going to be." In the event of a surprise situation, a supervisor was supposed to call the area manager, region manager, or human resources manager.

¶ 17 Plaintiff testified that she was a park supervisor at Humboldt Park for six and a half years. She worked with three full-time staff members, one part-time recreation leader, and two full-time attendants at Humboldt Park. Plaintiff was the only person to handle the financials there. She told Rosario her financials that were due on June 28, 2010, would be one day late, as June 28 was the first day of camp. As to her late financials in July, plaintiff testified that she delivered her late financials downtown on Wednesday, but the person she was delivering them to was at Garfield. She explained that all park meetings that week were pushed back due to the 4th of July holiday.

¶ 18 When asked about the overtime she authorized for the weeks of July 15 and July 21, plaintiff explained that she "had a lot of events" during those weeks and a lot of rentals, some of which she received "at the last minute." She said that sometimes Rosario would not return calls for two days. In addition, sometimes area managers were not told until "the last minute" about an event. Rosario handled the staff scheduling for one area of the park called "Little Cubs Field." At times, Rosario told plaintiff she had to send her staff to other facilities after plaintiff had already completed scheduling for the week. The employee would be moved immediately.

¶ 19 Plaintiff testified that Rosario told her in late April or the beginning of May that volunteers would be working for the CPD. However, Rosario did not know to which parks the volunteers would be assigned. Rosario did not say anything else to plaintiff about the volunteers after the meeting. When asked how plaintiff obtained the two workers at the boathouse, plaintiff explained that a man she knew, Saul Melendez, worked with the Puerto Rican Cultural Center and told her "I'm going to bring these kids to help you out. They're already background-checked and fingerprinted." He also told her, "They've been working in other parks before and they can work in any park." The Puerto Rican Cultural Center had a partnership with Humboldt Park for at least five years and it would not have been unusual for the organization to be working with Humboldt Park. Rosario visited Humboldt Park at least once a week and would have been able to notice the two individuals at the boathouse, as they wore volunteer shirts.

¶ 20 Plaintiff denied being aware before the boathouse incident that the two volunteers were unsupervised with children. She explained that the camp director, Nellie Roman, was responsible for making assignments and told her that one of the recreation leaders went home early. Plaintiff said if she had known, she would have stayed in the park with the other children or vice-versa.

¶ 21 Plaintiff further testified that she felt that Humboldt Park was understaffed in that sometimes she had to help her staff out "to make sure we get the stuff done." On the days of her unexcused absences, plaintiff mistakenly requested vacation time instead of sick time or "F-time." Rosario sent plaintiff emails regarding her concerns with plaintiff but never attempted to hold a meeting, nor did plaintiff receive any additional training. Plaintiff had no input on the number of campers that Humboldt Park accepted each year.

¶ 22 Plaintiff denied being aware that Heartland trainees were not supposed to work with children, although she acknowledged she received the email on August 2, 2010, advising her to

that effect. When she received the email, she knew the trainees were working in the day camp. She was the person who assigned them to the day camp. After receiving the email, she did not move the two trainees out of the camp because she "wasn't aware" and had problems with her computer at the time and when she borrowed the computer upstairs she was "busy with the campers" and "wasn't aware [she] would have to pull them." She said this "was [her] mistake." She did not do anything to verify that the teenagers were approved volunteers, such as checking their volunteer badges or confirming with Community Affairs that they were approved. The students told her they were background checked and fingerprint checked and they worked in other parks. However, she had no knowledge of their qualifications, nor did she do anything to check their qualifications. Plaintiff told her staff that the volunteers had to be supervised. She was the one who assigned the volunteers to work with Roman. Plaintiff recommended to Rosario that Roman be disciplined.

¶ 23 The hearing officer admitted into evidence, *inter alia*, the Code. The Code specifies that compliance with it is required by employees and that violating the Code "shall result in disciplinary action which could result in termination of employment." The Code also states that it does not limit the grounds for suspension or termination of employment and that "[a]ny failure to carry our [*sic*] one's job in a competent, efficient, and courteous manner or any misconduct toward the public, fellow employees, subordinates, or superiors may be disciplined by suspension or discharge."

¶ 24 Section I(C) of the Code requires an employee to "obey the orders of his/her supervisor or other employee in the line of supervision properly given in the course of employment." Section I(H) of the Code requires an employee to comply with CPD's policies and procedures and the written policies of her department or unit. Section VIII(D) of the Code states that "[a]n

employee is required and expected to satisfactorily perform the duties of his/her job under penalty of disciplinary action."

¶ 25 The Personnel Board's Guidelines for Discipline (Disciplinary Guidelines) categorize misconduct as Group A, Group B, and Group C misconduct. "Group A" misconduct includes "violation of an applicable safety directive, order, memorandum, regulation or law which violation has resulted in injury to an employee or other person or which presented a substantial risk of serious injury to an employee or other person." A table of penalties provides that termination is appropriate, absent a mitigating circumstance, for a first offense of Group A misconduct. For Group B misconduct, a suspension is usually sufficient for a first offense, although termination may be appropriate in certain cases. Finally, for Group C misconduct, the punishment for a first offense is an oral or written reprimand or a one to ten day suspension, while a third offense warrants suspension or termination. Group C misconduct includes misconduct other than that identified as Group A or Group B misconduct. The Disciplinary Guidelines state that the table "represents the Personnel Board's policy on the disciplinary sanctions deemed appropriate for the specified acts of misconduct" and "[n]othing in this policy prohibits the Personnel Board from imposing disciplinary action which varies from these guidelines."

¶ 26 The hearing officer also admitted into evidence a July 22, 2010, email from Rosario to plaintiff detailing several problems with employees' timesheets. In addition, it admitted a narrative written by Rosario on August 6, 2010, "regarding [plaintiff's] unprofessional conduct, lack of customer service, and insubordination." According to the report, on one date, an employee complained that plaintiff raised her voice at the employee in front of day-campers and refused to discuss the matter in her office. On another date, plaintiff modified an employee's

schedule without consulting Rosario. The report also described an incident in which a patron called to request a refund after plaintiff rescheduled a class and failed to provide notification. According to the patron, plaintiff failed to communicate or demonstrate professionalism when the patron tried to speak with her regarding the request.

¶ 27 Following the hearing, the hearing officer issued its written findings and recommendations. The officer found that plaintiff violated (1) section I(C) of the CPD Code of Conduct when she failed to follow directives, (2) section I(H) of the CPD Code with regard to financials, scheduling, timesheets, and work assignments, and (3) both section I(C) and I(H) of the Code by allowing unauthorized people to supervise minor park patrons. Further, the hearing officer found plaintiff violated section VIII(D) by failing to satisfactorily perform her job duties as a supervisor.

¶ 28 Specifically, as to the charges regarding the Heartland Trainees, the officer found the email sent by the director of human resources, which plaintiff acknowledged receiving, "clearly showed that [plaintiff] was aware of the fact that Heartland Trainees were working only as Attendants and Junior Laborers with the Park District." Furthermore, the hearing officer noted that Rosario testified she had regular meetings with park supervisors, at which plaintiff was present, discussing the limitations on Heartland workers. Marino and Rosario both testified the Heartland workers were not allowed to work with children, and Marino, Rosario, and Gage all testified allowing them to do so violated CPD policies and presented a substantial risk of injury to the children. The officer found that plaintiff admitted she knew the limitations on Heartland workers but that she used them because she was short-staffed, and she said she was going to "let them finish out" the summer given that only a few days of summer remained. Plaintiff admitted not removing the workers from the day camp "was her mistake."

¶ 29 The hearing officer rejected plaintiff's argument that her actions were justified because the workers were from the Puerto Rican Cultural Center, reasoning that (1) no evidence was presented, aside from plaintiff's testimony, that the two workers were actually from the Puerto Rican Cultural Center and (2) even if they were, plaintiff still failed to independently verify that the two workers were approved CPD volunteers. The officer noted Gage's testimony that all park supervisors knew all volunteers had to be approved by the Legislative and Community Affairs Department. The hearing officer further found that plaintiff's claims that she was short staffed and that Nellie Roman assigned the Heartland trainees to work with the children were "nothing more than her attempts to shift the blame on circumstances or someone else which are also unpersuasive." The officer also noted that plaintiff contradicted herself on cross-examination by stating that the workers came to her and she assigned them to the day camp. In sum, the hearing officer found it was "abundantly clear from the evidence presented" that the Heartland trainees should not have been working with the day-campers, and plaintiff's admitted mistake in allowing them to do so violated section I(C) and I(H) of the Code.

¶ 30 As to the charges regarding the financials, scheduling, timesheets, and work assignments, the hearing officer found the CPD had presented "undisputed evidence by way of credible live testimony and exhibits" that plaintiff violated CPD's Code. The officer noted that Rosario and Gage testified consistently that plaintiff took two unapproved vacation days, which violated CPD's leave request policy, and failed to timely submit financials. The officer pointed out Rosario's testimony that plaintiff submitted her financials late on June 29, 2010, and July 7, 2010. The hearing officer also noted Rosario's testimony regarding late deposits, overtime, and problems with staff members' timesheets. The officer found CPD's documentary evidence supported Rosario's and Gage's testimony. The officer further found that plaintiff's failures could

not be excused by her testimony that she was short-staffed or that "something last minute came up," as Gage testified park supervisors were responsible for understanding the operational needs of the parks and scheduling staff accordingly. In addition, Gage testified that if something unexpected occurred, the park supervisor was to contact the area manager or the region manager or the human resources manager.

¶ 31 The hearing officer also found that the CPD proved plaintiff violated the Code by failing to satisfactorily perform her job duties as a park supervisor, which violated sections I(C), I(H), and VIII(D) of the Code. The officer noted that Rosario's narrative detailed numerous examples of plaintiff's unprofessional conduct, lack of customer service, and insubordination, thereby showing plaintiff failed to satisfactorily perform her job duties as a park supervisor at Humboldt Park. Finally, the officer pointed out Gage's testimony that plaintiff had instructed a seasonal employee to sign his time sheet as if he did not work overtime.

¶ 32 In sum, the hearing officer found the CPD established that plaintiff violated sections I(C), I(H), and VIII(D) of the Code. Based on its findings, the officer recommended that plaintiff's termination be affirmed.

¶ 33 In April 2011, plaintiff filed exceptions to the hearing officer's recommended decision, asserting, among other things, that "the Hearing Process suffered from a complete lack of due process" and the CPD failed to comply with its "own rules, regulations, and policies." Plaintiff asserted that she received a certified letter on November 12, 2010, informing her that the appeal hearing would take place on December 7, 2010. Later, she received a call from the union representative that the date needed to be changed. Plaintiff's attorney called her on November 11 to inform her that the matter "could go forward" on December 23, but he would call the CPD to confirm. On January 5, 2011, plaintiff's attorney called to inform her that the CPD had called and

the appeal hearing would go forward the following day, January 6, 2011. Plaintiff asserted she "was not afforded an opportunity to prepare adequately nor to summon any witnesses she may have wanted to testify on her behalf." She pointed out that the rules required that she be given five days' notice before a hearing. Plaintiff also argued that CPD did not follow its own guidelines, policies, and procedures regarding the disciplining of employees, and her discipline should have been progressive according to the agreement between the labor union and the CPD.

¶ 34 The CPD filed a response to plaintiff's exceptions. Following a hearing, the CPD Personnel Board informed plaintiff in March 2013 that the Board had voted to uphold the hearing officer's decision to terminate plaintiff.

¶ 35 Thereafter, plaintiff filed a complaint for administrative review, alleging the Personnel Board's decision "was arbitrary, capricious, and unlawful" and "[t]he procedural rulings, findings of fact, and conclusions of law made by every adjudicator and finder of fact ant [*sic*] every level of the appeal process were arbitrary and capricious, and against the manifest weight of the evidence." Plaintiff also argued that her termination exceeded the Personnel Board's "lawful authority and discretion under the factual circumstances of this case." After the CPD filed an answer, plaintiff filed a motion for judgment on the pleadings.

¶ 36 According to the trial court's memorandum opinion and order, an oral argument was held on plaintiff's motion, at which the CPD tendered a case not previously briefed. The court accepted the case over plaintiff's objection, allowing time for the parties to submit supplemental briefing on the case. After the parties submitted additional briefs, the court denied plaintiff's motion for judgment on the pleadings and affirmed CPD's administrative decision. This appeal followed.

¶ 37 II. ANALYSIS

¶ 38 On appeal, plaintiff asserts that (1) the CPD violated her due process rights by failing to follow its Guidelines Policy and failing to provide proper notice for her appeal hearing, and (2) the CPD's decision to terminate her was clearly erroneous and its factual findings were against the manifest weight of the evidence.

¶ 39 Before addressing plaintiff's assertions, we note that in her reply brief, plaintiff has argued that defendants' brief should be stricken for failing to comply with portions of Illinois Supreme Court Rule 341 (eff. Feb. 6, 2013). However, even if we were to find defendants did indeed violate Rule 341(h) or 341(i), none of the purported errors to which plaintiff has pointed to are so significant "as to hinder or preclude review" of the case. *Budzileni v. Department of Human Rights*, 392 Ill. App. 3d 422, 440 (2009). Accordingly, we will not strike defendants' brief and will instead turn to the merits of the appeal.

¶ 40 A. Whether CPD Violated Plaintiff's Due Process Rights

¶ 41 Plaintiff first argues that the CPD violated her due process rights by failing to adhere to its own disciplinary guidelines. Specifically, she maintains that under CPD's progressive discipline policy, she could not be terminated after only receiving one oral reprimand. Plaintiff also asserts the CPD violated her due process rights by failing to provide adequate notice of the appeal hearing. Defendants respond that plaintiff waived her due process arguments by failing to raise them during any step of the administrative proceedings or in her complaint for administrative review. Defendants further contend that even if plaintiff had not waived her arguments, they lack merit.

¶ 42 Arguments not raised during administrative proceedings are deemed procedurally defaulted and may not be raised for the first time in the trial court. *Provena Covenant Medical*

Center v. Department of Revenue, 236 Ill. 2d 368, 386 (2010); *Cooper v. Department of Children and Family Services*, 234 Ill. App. 3d 474, 485-86 (1992) ("Generally, a failure to assert a particular argument during the proceedings before an administrative agency results in waiver of the point, and the argument may not be considered on appeal."). Plaintiff did not raise the issue regarding progressive discipline at her appeal hearing. Nonetheless, she did argue in her exceptions that the CPD failed to comply with the progressive discipline scheme mandated by her Collective Bargaining Agreement and failed to "follow its own guidelines, policies, and procedures regarding the disciplining of employees and the imposition of the ultimate penalty of discharge." Thus, although her arguments concerning due process were vague, we find she sufficiently preserved the issue regarding progressive discipline during the administrative proceedings. Further, in her complaint for administrative review, plaintiff argued her termination exceeded "Defendants' lawful authority and discretion under the factual circumstances of this case." To the extent this statement can be construed as encompassing plaintiff's progressive discipline argument, we decline to apply the doctrine of forfeiture.

¶ 43 Forfeiture aside, plaintiff's argument is meritless. First, with respect to the charges premised on plaintiff allowing untrained volunteers to supervise children, the CPD argued at the hearing that such behavior posed a "substantial risk of serious harm." Per the Disciplinary Guidelines, actions posing a substantial risk of serious injury constitute "Group A" misconduct, for which the recommended discipline is termination. Furthermore, although the Disciplinary Guidelines provide a table of penalties setting forth recommended progressive discipline for Group B and Group C misconduct, the Guidelines also explicitly state that nothing in the Personnel Board's disciplinary policy "prohibits the Personnel Board from imposing disciplinary action which varies from these guidelines." Thus, the CPD was clearly entitled to terminate

plaintiff for any of her charges without taking progressive disciplinary steps, and it did not violate her due process rights by doing so.

¶ 44 For this reason, we find unpersuasive plaintiff's reliance on *McElroy v. Cook County*, 281 Ill. App. 3d 1038 (1996) and *Brown v. Chicago Park District*, 296 Ill. App. 3d 867 (1998). In *McElroy*, the policy at issue required that a disciplinary action form be completed for all steps of disciplinary action, and no form was completed for the respondent's purported infractions. *McElroy*, 296 Ill. App. 3d at 1042-43. In *Brown*, the appellate court concluded that the CPD's policies required the supervisor to provide a written basis for requesting a fitness-for-duty test. *Brown*, 296 Ill. App. 3d at 876. By contrast, here, the CPD's Disciplinary Guidelines and Code did not preclude the CPD from terminating plaintiff even though she did not receive a written reprimand or other progressive discipline beforehand. Accordingly, we find no due process violation.[2]

¶ 45 As to the issue of notice, plaintiff not only failed to raise the issue at her appeal hearing but also affirmatively stipulated that proper notice had been given. Under the doctrine of invited error, a party may not request to proceed in one manner and later claim on appeal that the course of action was erroneous. *Crittenden v. Cook County Commission on Human Rights*, 2012 IL App (1st) 112437, ¶ 61. Furthermore, it is disingenuous for plaintiff to claim that she was prejudiced by the "one day" of notice that she allegedly received where the undisputed evidence shows that she was informed on November 11, 2010, that the hearing was to take place on December 7, 2010. Thus, plaintiff had close to a month of notice of the original hearing date and then was given even more time to prepare when the hearing was continued to January 6, 2011.

[2]In making her due process arguments, plaintiff also repeatedly mentions the collective bargaining agreement into which the CPD purportedly entered. However, that agreement is not included in the record.

¶ 46 Plaintiff also raises a series of arguments concerning purported errors by the trial court, such as allowing the CPD's counsel to introduce *Cooper*, which it had not cited in its brief. However, when reviewing a complaint for administrative review, we review the agency's decision, not the circuit court's decision. *Walker v. Dart*, 2015 IL App (1st) 140087, ¶ 34. Accordingly, we need not consider the propriety of the trial court's actions.

¶ 47 In sum, we conclude the CPD did not violate plaintiff's due process rights.

¶ 48 B. Whether The CPD's Termination Decision Should be Reversed

¶ 49 Plaintiff next argues that the CPD's decision to terminate her was clearly erroneous and its factual findings were against the manifest weight of the evidence.

¶ 50 In considering a complaint for administrative review, we review the agency's decision, not the trial court's decision. *Id.*[3] The deference we employ depends on the nature of the question presented. *Id.* ¶ 36. An agency's factual findings are deemed *prima facie* true and correct and will be reversed only where they are against the manifest weight of the evidence. *McElwain v. Office of Illinois Secretary of State*, 2015 IL 117170, ¶ 11. Factual determinations are against the manifest weight of the evidence only "where the opposite conclusion is clearly evident." *James v. Board of Education of City of Chicago*, 2015 IL App (1st) 141481, ¶ 12 (quoting *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998)). By contrast, we employ a *de novo* standard when considering an agency's conclusion on a question of law. *James*, 2015 IL App (1st) 141481, ¶ 12. Finally, we review mixed questions of law and fact under the clearly erroneous standard of review. *Id.*

[3]We note that plaintiff filed a motion for judgment on the pleadings in the circuit court, and the circuit court's memorandum opinion and order stated it was denying plaintiff's motion for judgment on the pleadings. As the circuit court stated in its order, however, plaintiff's motion had "the practical effect of operating like a motion for administrative review." Thus, the circuit court treated it as such, and the parties on appeal also treat plaintiff's case as a petition for administrative review. We likewise review plaintiff's case pursuant to the Administrative Review Law (735 ILCS 5/3-101 *et. seq.*(West 2012)).

¶ 51 We employ a two-step analysis in reviewing an administrative agency's decision to discharge an employee. *Crowley v. Board of Education of City of Chicago*, 2014 IL App (1st) 130727, ¶ 29. First, we determine whether the findings of fact are contrary to the manifest weight of the evidence. *Id.* Next, we consider whether the factual findings provide a sufficient basis for the agency's conclusion that cause for discharge exists. *Id.* We will overturn an agency's finding of "cause" for discharge only where "it is arbitrary and unreasonable or unrelated to the requirements of the service." *Id.* [4]

1. *The CPD's Factual Findings*

a. The CPD's Findings Regarding The Heartland Trainees

¶ 52 Plaintiff first disputes the CPD's finding that she failed to comply with CPD's policies and procedures by allowing unauthorized individuals to supervise the minor children.[5] Plaintiff argues her actions did not present a substantial risk of serious injury where the CPD failed to provide adequate staffing and the teenage volunteers were from one of the CPD's long-term partner organizations. She notes that Saul Melendez of the Puerto Rican Cultural Center assured her that the two trainees were background-checked and fingerprinted. In addition, plaintiff points to her testimony that she did not know the Heartland trainees were with the children, unsupervised, until after the incident and that she did not receive the email regarding the Heartland trainees until three days before the incident. She claims the CPD failed to submit evidence of any clear policies for the supervision of the Heartland trainees. Plaintiff also

[4]In their briefs, the parties both discuss whether the CPD's termination decision was "clearly erroneous." However, when reviewing the CPD's decision that cause for plaintiff's termination existed, the standard we apply is whether the CPD's decision was arbitrary, unreasonable, or unrelated to the requirements of service. *Crowley*, 2014 IL App (1st) 130727, ¶ 29.

[5]The Personnel Board did not explicitly state it was adopting the hearing officer's findings of fact. However, it stated that it had "voted to uphold the recommended decision of the Hearing Officer to affirm" plaintiff's termination, and it made no contrary findings of fact. Thus, we conclude the Board implicitly adopted the hearing officer's findings of fact. Plaintiff has not argued otherwise.

characterizes a number of the hearing officer's findings as "questionable," and she maintains the CPD failed to consider the alternative risks of harm that would have resulted if the Heartland trainees had not supervised the children.

¶ 53 Having reviewed the record, we conclude the Board's finding that plaintiff failed to comply with CPD policies was not against the manifest weight of the evidence. Marino and Rosario both testified that Heartland trainees were not allowed to supervise children. Rosario testified that she discussed the limitations on Heartland trainees' activities at meetings that plaintiff attended in the spring and summer of 2010 and that she forwarded an email regarding those limitations to plaintiff. Plaintiff acknowledged receiving the email on August 2 and further acknowledged that as of August 2, she knew the trainees could not work with children. She also admitted she took no steps to remove the volunteers from camp, and "that was [her] mistake." In addition, although plaintiff testified that Melendez told her the volunteers had been "background-checked and fingerprinted," she acknowledged she did nothing to verify the volunteers were approved, such as checking their volunteer badges or confirming their approval with the Community Affairs department. Gage testified that the Legislative and Community Affairs Department had to approve all park volunteers. Based on the foregoing, the CPD's finding that plaintiff failed to comply with CPD policies was not against the manifest weight of the evidence.[6]

¶ 54 Although plaintiff argues that her actions were justified in that the park was short-staffed, the hearing officer heard plaintiff's testimony regarding her justification and found it to be unpersuasive. "[I]t is not a court's function on administrative review to reweigh evidence or to make an independent determination of the facts." (Internal quotation marks omitted.) *Provena*

[6]The CPD also found that plaintiff failed to obey the orders of her supervisor by allowing the Heartland Trainees to supervise the minor patrons. As plaintiff does not challenge that finding, we need not address it.

Covenant Medical Center, 236 Ill. 2d at 386. In addition, we reject plaintiff's contention that the hearing officer relied on a number of "questionable findings" in making its decision. First, although plaintiff challenges the hearing officer's finding that she said she was going to "let [the Heartland trainees] finish out," we note that Marino testified plaintiff made such a statement. Plaintiff also argues the hearing officer should not have relied on Marino's opinion that "to think that [learning and maintenance] qualifies you to watch kids… is a scary proposition." However, the hearing officer included Marino's statement only in its summation of Marino's testimony, not in its findings of fact. Finally, plaintiff challenges the hearing officer's finding that Gage said "all park supervisors are aware that before anyone can be a volunteer, they must be approved by the Legislative and Community Affairs Department." Plaintiff argues that other than Gage's testimony, the hearing officer failed to consider any evidence regarding of which policies all park supervisors were aware. However, plaintiff has not cited to any testimony in the record in which she claimed she was not aware of the requirement that volunteers be approved by the Legislative and Community Affairs Department. When asked on cross-examination whether she checked with Community Affairs to see whether the two volunteers were approved, plaintiff stated only, "I didn't."

¶ 55 In sum, the record reflects that the hearing officer thoroughly considered the witnesses' testimony and the exhibits presented, and its findings are clearly supported by the evidence.

¶ 56 b. The CPD's Findings Regarding The Financial Statements, Timesheet Submissions, Overtime Work Assignments, and Late Deposits

¶ 57 Plaintiff next argues that the CPD's findings regarding her financial statements, timesheet submissions, overtime work assignments, and late deposits were against the manifest weight of the evidence and clearly erroneous. We disagree.

¶ 58 Rosario testified that plaintiff failed to timely submit financial statements on multiple occasions, and she identified emails sent to plaintiff regarding two instances in which plaintiff submitted her financials late. Rosario likewise testified that plaintiff regularly failed to timely deposit receipts or money received at the park, which violated CPD policies. She also testified that plaintiff's timesheets had "a whole slew of issues" and that plaintiff had two unexcused absences in September 2009, as well as other unexcused absences. Gage testified consistently with Rosario that plaintiff failed to timely submit her financial documents, submitted incomplete or incorrect timesheets, failed to have overtime approved, and took unapproved vacation time. Based on the foregoing, the CPD's findings that plaintiff violated the CPD's Code were not against the manifest weight of the evidence.

¶ 59 Plaintiff offers several excuses for her failure to submit the financials, such as that she had a new cash register and the CPD did not provide her with additional help. Similarly, she offers excuses for her unauthorized vacation days and the six hours of overtime she allowed in July 2010. However, the hearing officer considered plaintiff's explanations and rejected them, stating her "failures cannot be excused by simply pushing the blame on her circumstances." It is not our function to reweigh the evidence. *Provena*, 236 Ill. 2d at 386. Plaintiff's argument that she was not reprimanded for late deposits is also belied by the record, as Rosario identified a series of emails between plaintiff and Schick regarding the late deposits and Rosario wrote in her narrative that the finance department was "continuously emailing their concerns to [plaintiff] regarding deficiencies in her paperwork." Plaintiff also argues that the hearing officer improperly stated she had a written reprimand for unauthorized vacation days, when that reprimand was reduced to an oral reprimand. However, plaintiff fails to explain the significance of the reduction of her written reprimand where the Disciplinary Guidelines set forth recommended progressive

discipline but also explicitly state that they do not limit the grounds for termination. Consequently, the CPD's findings were not against the manifest weight of the evidence.

c. The CPD's Findings That Plaintiff Failed To Satisfactorily Perform Her Job Duties And That She Was Insubordinate

¶ 60 Plaintiff next argues that the CPD's findings that she failed to satisfactorily perform her job duties and that she was insubordinate were clearly erroneous and against the manifest weight of the evidence. We disagree.

¶ 61 The hearing officer correctly noted that Rosario's narrative detailed "numerous examples of [plaintiff's] unprofessional conduct, lack of customer service, and insubordination." For example, Rosario said she received (1) multiple phone calls from upset parents reporting that plaintiff was rude and gave inaccurate information regarding baseball camp, (2) an email from a patron reporting that plaintiff failed to notify her that a class was rescheduled and acted unprofessionally when discussing a refund request, and (3) email responses from plaintiff on various occasions in which plaintiff's tone and comments were inappropriate. The narrative also detailed that on one occasion, plaintiff ordered an employee to remain at Humboldt Park without telling Rosario, even though she and Rosario had previously agreed that the employee should be transferred to another park. In light of the foregoing, the CPD clearly presented sufficient evidence that plaintiff failed to satisfactorily perform her job duties as a supervisor and that she failed to follow directives.

¶ 62 Plaintiff argues that she received high praise from the community on her job performance, citing to letters from various community members that she attached to her exceptions. She also points to an oral reprimand she gave to Roman on August 9, contending it shows she satisfactorily performed her duties as a supervisor. However, plaintiff's cited examples of instances in which she satisfactorily performed her job do not negate the numerous instances

detailed in Rosario's narrative in which she failed to do so. Plaintiff also disputes two of the specific complaints from community members that were addressed in the hearing officer's decision. She contends that Rosario did not bring the emails from either patron to her attention, and she offers explanations for why Rosario did not do so and what she would have told Rosario if she had. However, plaintiff has not cited any evidence in the record to support her arguments regarding why Rosario did not show her the baseball camp email and how she would have responded if Rosario had shown her the other email. Furthermore, even if plaintiff's actions with respect to the two customers were justified or appropriate, the narrative still contains numerous other examples of plaintiff's failure to perform her job duties.

¶ 63 Plaintiff also offers explanations for her decision to direct the employee to remain at Humboldt Park instead of going to another park. Regardless of her reasons for moving the employee, however, Rosario's narrative establishes plaintiff failed to consult with her before doing so. Thus, plaintiff clearly disobeyed Rosario's orders. Plaintiff also argues that Rosario often sent staff members to other parks, despite the schedule, thereby violating "the same procedures and policies that she now asserts that Plaintiff violated." Yet, plaintiff's argument regarding Rosario's behavior overlooks that Rosario was plaintiff's manager, not the other way around. In addition, plaintiff contends Rosario treated her differently than other supervisors. However, we find such an argument unpersuasive in light of the fact that the sole evidence plaintiff presents in support of her claim is an email she sent, after Rosario notified her that one of her absences would be marked unexcused based on her failure to obtain prior approval, in which she stated, "I know that for the other Supervisor[s] you sign the leave Request after they took the date." Finally, neither plaintiff's argument regarding the "Cub Field" emails or the emails regarding the baseball diamond convince us that reversal is warranted. The hearing officer

heard plaintiff's testimony that Rosario agreed to handle the scheduling at Cubs Field and had the opportunity to consider Rosario's narrative, and it is not our function to reweigh the evidence or make an independent determination regarding the facts. *Provena*, 236 Ill. 2d at 386. In sum, we cannot find that the CPD's factual findings were against the manifest weight of the evidence.

¶ 64 2. *The CPD's Termination Decision*

¶ 65 Finally, we conclude the CPD's determination that cause for plaintiff's discharge existed was not "arbitrary and unreasonable or unrelated to the requirements of the service." *Crowley*, 2014 IL App (1st) 130727, ¶ 29. The Code expressly provides that compliance with the Code is mandatory and that it does not limit the grounds for termination of employment. It further states that "[a]ny failure to carry our [*sic*] one's job in a competent, efficient, and courteous manner or any misconduct toward the public, fellow employees, subordinates, or superiors may be disciplined by suspension or discharge." Furthermore, the Disciplinary Guidelines provide that the recommended punishment for Group A misconduct is termination, absent mitigating circumstances. Group A misconduct includes the violation of any directive that resulted in a substantial risk of serious injury to an employee or other person. Marino and Rosario each testified that plaintiff's actions caused a substantial risk of serious injury to the day-campers. Accordingly, the CPD had cause for the discharge of plaintiff based on her actions regarding the Heartland Trainees alone. Furthermore, although progressive discipline is recommended for Group B and Group C misconduct, the Disciplinary Guidelines provide that the Personnel Board is not prohibited "from imposing disciplinary action which varies from these guidelines." Given the volume of evidence in this case documenting numerous instances of misconduct on plaintiff's part, the CPD's determination that termination was warranted was not arbitrary, unreasonable, or unrelated to the requirements of service.

¶ 66 III. CONCLUSION

¶ 67 For the reasons stated, we affirm the trial court's judgment affirming the Personnel Board's decision to terminate plaintiff.

¶ 68 Affirmed.