

No. 1-16-3232

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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SHERECE HOLLAND,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 16 CH 114
	)	
CITY OF CHICAGO POLICE BOARD and THE	)	
SUPERINTENDENT OF POLICE OF THE CHICAGO	)	
POLICE DEPARTMENT,	)	The Honorable
	)	Franklin U. Valderrama,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE PIERCE delivered the judgment of the court.  
Presiding Justice Hyman and Justice Mason concurred in the judgment.

### ORDER

¶ 1 *Held:* The decision of the Police Board is affirmed where its factual findings were not against the manifest weight of the evidence, and its imposition of a two-year suspension was not arbitrary, unreasonable, or unrelated to the requirements of service.

¶ 2 Plaintiff appeals from the circuit court's judgment affirming the City of Chicago Police Board's final administrative decision. The board found that the Superintendent proved by a preponderance of the evidence that she violated the police department's rules and regulations and imposed a two-year suspension. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On May 8, 2014, Chicago police officer Sherece Holland discovered that her personal

vehicle had been vandalized while the vehicle was in a parking lot across the street from the 8th District Police Station. Officer Holland reported the incident and a criminal offense case report was generated. Sergeant Patrick Fleming was assigned to investigate. During the course of his investigation, Sergeant Fleming interviewed Officer Holland, and gave her a direct order in the presence of another police officer to provide the name of the person who allegedly witnessed the damage to Officer Holland's vehicle. Officer Holland refused. The Bureau of Internal Affairs took over the investigation. Internal Affairs subsequently interviewed Officer Holland on three separate occasions.

¶ 5 On April 14, 2015, the Superintendent of the Chicago Police Department filed charges against Officer Holland alleging that she had violated three Chicago police department Rules of Conduct. Specifically, Officer Holland was charged with violating Rule 2 which prohibits "[a]ny action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;" Rule 6, which prohibits "[d]isobedience of an order or directive, whether written or oral;" and Rule 14, which prohibits "[m]aking a false report, written or oral."

¶ 6 The Superintendent asserted three counts against Officer Holland. Count I alleged that on or about June 19, 2014, Officer Holland told Sergeant Fleming that she knew of a witness to the damage to her vehicle or words to that effect, but that on September 11, 2014, she told Internal Affairs that she was not aware of a witness who observed the damage to her vehicle, in violation of Rules 2, 6, and 14. Count II alleged that on or about June 22, 2014, Officer Holland refused a direct order from Sergeant Fleming to disclose the name of the witness to the damage to Officer Holland's vehicle, in violation of Rules 2 and 14. Count III alleged that on or about September 11, 2014, Officer Holland made a false statement to Internal Affairs when she denied that she

understood that she was refusing a direct order from Sergeant Fleming to provide the name of the witness to the damage to her vehicle, and denied making a statement that she would face disciplinary action for refusing the direct order, or words to that effect, in violation of Rule 2.

¶ 7 On August 18, 2015, the City of Chicago Police Board held a hearing on the Superintendent's charges. The following evidence was presented to the hearing officer.

¶ 8 Officer Holland testified that on May 8, 2014, she was given a verbal reprimand by her supervisors for allegedly not responding to an incident at Bogan High School. After she completed her shift around 10:00 p.m. on May 8, Officer Holland returned to the 8th District Police Station and discovered that her personal vehicle had been vandalized while it was parked in a parking lot across the street.<sup>1</sup> Her vehicle had been keyed, tobacco had been spit on it, and the word "coward" had been written in the dust on her back window. Officer Holland spoke with a fellow Chicago police officer Lisa Davis about the damage to her vehicle. According to Officer Holland, Officer Davis heard Officer John Catanzara call Officer Holland a coward.<sup>2</sup> On May 9, Officer Holland reported the damage to her car to Lieutenant Dowd and Sergeant Taglioli. On June 22, Sergeant Patrick Fleming interviewed her in the parking lot and observed the damage to her car. She told Sergeant Fleming that she did not know who damaged her car, and she did not tell him that another officer witnessed someone damaging her car. Also on June 22, Sergeant Fleming and Lieutenant Vucko interviewed Officer Holland in the watch commander's office, and she denied knowing who damaged her car. She did not tell Sergeant Fleming that she was told by a third-party witness that the witness observed Officer Catanzara damage her car.

¶ 9 Sergeant Fleming testified that he was assigned to handle the investigation on May 28.

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<sup>1</sup>It is not clear from the record what time the incident at Bogan High School occurred, or what time Officer Holland was verbally reprimanded.

<sup>2</sup>It is not clear from the record where Officer David allegedly heard Officer Catanzara make these statements.

He interviewed Officer Holland for the first time on June 19 in the police station's parking lot and she showed him the damage to her vehicle. Officer Holland told him that she did not see who caused the damage. She told him "there was a witness that observed somebody do it," and that Officer Catanzara was the person that the witness saw. Officer Holland did not provide the name of the witness who observed Officer Catanzara damage the vehicle. Sergeant Fleming asked Officer Holland for the witness's name, but she told him that she would only provide it to Internal Affairs. On June 22, Sergeant Fleming and Lieutenant Vucko met with Officer Holland. Sergeant Fleming explained that in order to complete a thorough investigation, Officer Holland needed to provide him with the name of the witness. Officer Holland stated that she would only provide the name of the witness to Internal Affairs. Sergeant Fleming then gave Officer Holland a direct order to provide the name of the witness who observed Officer Catanzara damage her vehicle, and Officer Holland again stated that she would only provide the name to Internal Affairs. Sergeant Fleming ended the interview and "called [the Independent Police Review Authority] and did an initiation log naming Officer Holland as an accused to not following a direct order." On cross-examination, Sergeant Fleming testified that he took brief notes during his interviews with Officer Holland about the questions and answers, but that the notes were not specific. He also admitted that he did not recall the exact questions and answers from the interviews.

¶ 10 Lieutenant Vucko testified that in June 2014 his duties included keeping track of case report numbers. Sergeant Fleming approached Lieutenant Vucko after the June 19 interview with Officer Holland and wanted to conduct a more formal interview. That interview took place on June 22. Sergeant Fleming asked Officer Holland if she would reveal the witness who observed the damage being done to her vehicle, and Officer Holland said "she didn't want to tell Sergeant

Fleming who it was, and she didn't want to deal with him with this issue." Lieutenant Vucko informed Officer Holland that she had a duty to cooperate, but Officer Holland "stated that she still didn't want to." Sergeant Fleming then gave Officer Holland a direct order to provide the name of the witness, and Officer Holland refused, acknowledging that "there would be some negative repercussions," and that she might get in trouble for not responding. Lieutenant Vucko did not take any notes during the interview and did not recall the exact words that Sergeant Fleming or Officer Holland used during the interview.

¶ 11 The transcripts of Officer Holland's three interviews with Internal Affairs were admitted into evidence by stipulation. Sergeant Christ Tsoukalas conducted an interview on July 28, 2014, in which Officer Holland stated that she did not observe anyone damage her vehicle. Sergeant Tsoukalas asked, "Who observed the department member cause the damage to your personal vehicle?" Officer Holland responded, "Lisa Davis, but I don't know if she saw it or not but she was there when Sergeant Martin and [Officer] Catanzara \*\*\* were making a big scene at Bogan [High School] about me passing a job at Bogan [High School]." She was asked, "Is the witness to the damage to your personal vehicle a [d]epartment [m]ember?" Officer Holland responded, "Yes she is a police officer." She stated that she did not know if Officer Davis saw anyone cause damage to her vehicle.

¶ 12 The second Internal Affairs interview took place on September 11, 2014, which was also conducted by Sergeant Tsoukalas. Officer Holland denied telling Sergeant Fleming that someone witnessed another officer damaging her personal vehicle. She stated that she told Sergeant Fleming that she did not see who damaged her vehicle and did not tell him that she knew who damaged her vehicle. She denied that Sergeant Fleming asked her to identify the person who witnessed another officer damaging her vehicle. She stated that she did not disclose the name of

the purported witness after being ordered to do so by Sergeant Fleming because she “had no knowledge of a witness who seen [*sic*] anyone who damaged my vehicle.” She denied telling Sergeant Fleming that she would “probably get a [case report] number for” refusing his direct order.

¶ 13 The third Internal Affairs interview took place on October 8, 2014, and concerned allegations of misconduct related to the Internal Affairs interview from September 11, 2014. Specifically, Sergeant Tsoukalas was investigating whether Officer Holland made a false report regarding the existence of a witness to the damage to her vehicle, and whether she understood that she was refusing a direct order from Sergeant Fleming to disclose the identity of the witness. Officer Holland reiterated that she never claimed that Officer Davis witnessed the damage to her vehicle, but that Officer Holland and Officer Davis had spoken about the damage to her vehicle and suspected Officer Catanzara. Officer Holland apologized for any confusion in her July 28 and September 11 statements regarding whether Officer Davis was actually a witness to the damage.

¶ 14 Following the hearing, the Police Board issued a written decision finding Officer Holland guilty of all charges. The Police Board unanimously found that the Superintendent proved by a preponderance of the evidence that Officer Holland violated Rule 6, and the board found by a vote of eight to one that the Superintendent proved by a preponderance of the evidence that Officer Holland violated Rules 2 and 14. Specifically, the board found that the Superintendent proved that Officer Holland violated Rules 2, 6, and 14 by (1) telling Sergeant Fleming that she had a witness who observed another person damaging her vehicle or words to that effect, (2) refusing a direct order from Sergeant Fleming to provide the name of that witness, (3) denying in her September 11 statement to Internal Affairs that Sergeant Fleming asked her if

she understood that she was refusing a direct order and denying that she stated that she would probably get a case report for refusing the direct order, or words to that effect. The Police Board found that Sergeant Fleming gave credible testimony that Officer Holland (1) said that she had a witness who saw Officer Catanzara damage her car, (2) refused to provide the name of that witness to Sergeant Fleming, and (3) said that she would only provide the name of the witness to Internal Affairs. The Police Board found that Sergeant Fleming and Lieutenant Vucko gave credible testimony that Officer Holland refused a direct order to provide the name of the witness, and that she made a statement that she would probably face discipline for refusing the direct order.

¶ 15 The Police Board voted five to four in favor of suspending Officer Holland for two years. Three board members dissented from the two-year suspension. In their view, Officer Holland should be terminated for providing false information and for her insubordination, since if she “should ever return to active duty as a Chicago Police Officer her effectiveness is, at a minimum, impaired.”

¶ 16 One member of the Police Board dissented from the Police Board’s decision regarding Rules 2 and 14, and from the two-year suspension. With respect to Rule 2, the dissenting board member found that Officer Holland did not “materially and intentionally [misrepresent] her knowledge regarding a witness to the damage to her vehicle.” Furthermore, the “lack of a contemporaneous written record” of the conversation between Officer Holland and Sergeant Fleming meant that the Superintendent could not prove by a preponderance of the evidence that Officer Holland lied to Sergeant Tsoukalas about whether she could identify a witness to the damage to her car. With respect to Rule 14, the dissenting board member found that Officer Holland’s statements to Sergeant Fleming did not contradict her statements to Sergeant

Tsoukalas. The dissenting board member further wrote that there was evidence in the record that Sergeant Fleming did not follow police department protocol in his investigation of Officer Holland's case. Finally, the dissenting board member dissented from the board's two-year suspension, finding that a violation of Rule 6 in relation to an internal investigation warranted a lesser penalty.

¶ 17 Officer Holland filed a timely petition for administrative review in the circuit court. On November 9, 2016, the circuit court entered a written order affirming the Police Board's decision in all respects. Officer Holland then filed this timely appeal.

¶ 18 ANALYSIS

¶ 19 On appeal, Officer Holland argues that (1) the Police Board's findings of fact are against the manifest weight of the evidence, and (2) the two-year suspension imposed by the board is excessive, arbitrary, and unreasonable. We address these arguments in turn.

¶ 20 First, Officer Holland argues that the Police Board's findings of fact are against the manifest weight of the evidence. She contends that Sergeant Fleming's testimony did not establish that Officer Holland told him that she had a witness who observed the damage to her car. She argues that without a contemporaneous written record of the conversation between Officer Holland and Sergeant Fleming, the Superintendent could not prove that Officer Holland contradicted herself in statements to Sergeant Tsoukalas. Officer Holland further argues that neither Sergeant Fleming nor Lieutenant Vucko established that she understood that she was refusing a direct order or that she stated that she would probably receive disciplinary action for doing so because there was no written record of the interview and neither could recall exactly what Officer Holland said. She contends that there is no evidence in the record to "support that Sergeant Fleming and Lieutenant Vucko are credible as to the specific statements Officer



Holland made.” Finally, she argues that she could not have complied with a direct order to divulge the name of the witness to the damage to her car because no eyewitness actually existed.

¶ 21 When a party appeals the judgment of the circuit court on administrative review, we review the decision of the administrative agency, not the judgment of the circuit court. *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386 (2010). Our standard of review depends on whether the question is one of fact, law, or a mixed question of fact and law. *Kouzoukas v. Retirement Board of the Policemen’s Annuity & Benefit Fund*, 234 Ill. 2d 446, 463 (2009). Here, Officer Holland challenges only the factual findings of the Police Board. The findings and conclusions of the administrative agency on a question of fact are *prima facie* true and correct, (735 ILCS 5/3-1110 (West 2014)), and we review those factual findings under the manifest weight of the evidence standard. *Provena*, 236 Ill. 2d at 386-87. “An administrative agency’s factual determinations are against the manifest weight of the evidence if the opposite conclusion is clearly evident.” *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008). It is not our role to reweigh the evidence or make an independent determination of the facts. *Kouzoukas*, 234 Ill. 2d at 463. “The fact that an opposite conclusion might be reasonable or that this court might have reached a different conclusion is not sufficient to set aside the agency’s decision.” *Caliendo v. Martin*, 250 Ill. App. 3d 409, 416 (1993).

¶ 22 We find that the Police Board’s findings of fact are not against the manifest weight of the evidence. The Police Board, as the finder of fact, was in the best position to make credibility determinations and weigh the evidence before it. The Police Board heard testimony from Sergeant Fleming and Lieutenant Vucko and found their testimony to be credible. Specifically, the Police Board credited Sergeant Fleming’s testimony that Officer Holland told him on June 19 that there was a witness to the damage to her vehicle and that she refused to provide the name of

the witness. Sergeant Fleming also testified that Officer Holland repeatedly refused to provide the name of the witness, and indicated that she would only provide that information to Internal Affairs. Both Sergeant Fleming and Lieutenant Vucko testified that Officer Holland refused to obey a direct order to divulge the name of the witness who saw the damage to Officer Holland's vehicle, and that she made statements to the effect that she would probably face disciplinary action for doing so. It was within the province of the Police Board to make credibility determinations, which it did. Based on that testimony, the Police Board could conclude that the Superintendent proved by a preponderance of the evidence that Officer Holland told Sergeant Fleming that there was a witness who observed the damage to her car, refused to follow a direct order to provide the name of that person, and then provided a conflicting statement to Internal Affairs that she was not aware of any witness.

¶ 23 Officer Holland asks us to set aside the Police Board's findings of fact because Sergeant Fleming and Lieutenant Vucko did not take any contemporaneous notes memorializing the exact questions they asked and Officer Holland's exact answers to those questions, and therefore there was no evidence that their testimony was credible. Both Sergeant Fleming and Lieutenant Vucko acknowledged that they did not take notes of their interviews with Officer Holland and that they did not recall the exact phrasing of the questions asked and answers given. This was something the hearing officer and board could consider when making credibility determinations. But Officer Holland's argument goes to the weight to be afforded by the trier of fact to Sergeant Fleming and Lieutenant Vucko's testimony. Officer Holland gave testimony that contradicted Sergeant Fleming and Lieutenant Vucko's version of events. As the finder of fact, the Police Board was tasked with making credibility determinations and weighing the testimony and other

evidence, which it did when it found that Sergeant Fleming and Lieutenant Vucko presented credible testimony.

¶ 24 The Police Board found that the credible testimony before it was that Officer Holland told Sergeant Fleming that she knew of a witness to the damage to her vehicle, that she refused to provide the name of that witness, and then told Internal Affairs that there was no witness. While Officer Holland presented her own plausible version of events, she has not demonstrated that the Police Board's findings, when viewed in the light most favorable to the board, are against the manifest weight of the evidence. On review, we do not make our own credibility determinations, reweigh the evidence, or substitute our judgment for that of the Police Board's. See *Chisem v. McCarthy*, 2014 IL App (1st) 132389, ¶ 21; see also *Edwards v. Addison Fire Protection District Firefighters' Pension Fund*, 2013 IL App (2d) 121262, ¶ 34. We therefore affirm the Police Board's decision finding Officer Holland guilty of the charged offenses.

¶ 25 Next, Officer Holland argues that there is insufficient evidence to support the two-year suspension imposed by the board, and that the punishment was excessive, arbitrary, and unreasonable. She argues that the board's guilty findings "were based on incompetent and insufficient evidence and were not based on any evidence or objective criteria." She further contends that a two-year suspension is extremely harsh given that the allegations did not "involve civilians or compromise the safety of the community."

¶ 26 In reviewing a Police Board's decision regarding discharge or suspension, we must determine whether the board's findings of fact provide a sufficient basis for a conclusion that cause for discharge or suspension exists. *Chisem*, 2014 IL App (1st) 132389, ¶ 20. "Cause" has been defined as "some substantial shortcoming which renders [the employee's] continuance in [her] 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 [her] [discharge.]’ ” *Id.* ¶ 23. The board is in the best position to determine the effect of an officer’s conduct on the operations of the department, and its determination of cause is given considerable deference. *Id.* ¶ 20. The Police Board’s decision may only be overturned if it is arbitrary and unreasonable, or unrelated to the requirements of service. *Id.* We also bear in mind that we have long held that a single violation of a single department rule may be sufficient grounds for discharge. *Caliendo*, 250 Ill. App. 3d at 418.

¶ 27 Here, we find no basis to disturb the Police Board’s imposition of a two-year suspension. We have already addressed Officer Holland’s primary argument that the evidence was insufficient to support the Police Board’s decision. In its written decision, the board found that Officer Holland “clearly disobeyed Sergeant Fleming’s direct order when she refused to disclose the name of the witness to events he was investigating,” and then “made matters worse by making false statements during her interview with Internal Affairs.” The board found that “[Officer Holland’s] misconduct is serious, and warrants a severe penalty, for her insubordination impairs the effective operation of the Department, and her false statements call into question her trustworthiness.” The board considered the nature of the case, the circumstances surrounding the investigation, that Officer Holland had served the department for nearly 20 years, and that she had no disciplinary history. The Police Board’s written order clearly reflects that there was good cause for imposing a suspension. In light of those findings, we cannot say that a two-year suspension is arbitrary and unreasonable, or unrelated to the requirements of service.

¶ 28 Finally, Officer Holland’s argument that the two-year suspension is “extremely harsh” does not provide a basis for overturning the suspension. “It is only our purview to consider

whether the Board's punishment was unreasonable given the circumstances, not whether we would have imposed a more lenient sentence." *Chisem*, 2014 IL App (1st) 132389, ¶ 25.

¶ 29

#### CONCLUSION

¶ 30 For the foregoing reasons, we affirm the decision of the Police Board.

¶ 31 Affirmed.