2011 IL App (2d) 101273-U
No. 2-10-1273
Order filed November 4, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WAYMON VELA,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 10-MR-950
	)	
THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF WINTHROP HARBOR, TIMOTHY BOOTH, MICHAEL RUCHTI, and DANA McCARTHY, as Commission Members, and JOEL BRUMLICK, as Chief of Police of the Village of Winthrop Harbor,	)	Honorable
	)	Margaret J. Mullen,
Defendants-Appellees.	)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Schostok and Hudson concurred in the judgment.

ORDER

Held: The police and fire board did not err in finding that police officer did not follow department procedures or state law when he conducted a strip search of a suspect without obtaining written permission from a supervisor and without reporting the search. The board did not err in finding cause to discharge the officer where the officer's actions were serious and where his disciplinary history showed repeated instances of failing to follow procedures. Judgment affirmed.

¶ 1 In this administrative review proceeding, plaintiff, Waymon Vela, appeals the trial court's judgment affirming the decision of defendant, the Board of Fire and Police Commissioners of the Village of Winthrop Harbor (Board), which discharged plaintiff for cause from his position as a police officer with the Village of Winthrop Harbor Police Department (department) after plaintiff violated various rules and laws by improperly conducting a strip search on a subject and failing to report it. On appeal, plaintiff argues that the: (1) Board's factual findings, including its finding of guilt, were erroneous; and (2) Board erred in finding that there was cause to discharge him. For the following reasons, we affirm.

¶ 2 I. BACKGROUND

¶ 3 On February 18, 2010, defendant Joel Brumlik, the Chief of Police of Winthrop Harbor Police Department, filed formal disciplinary charges with the Board, charging plaintiff with misconduct. 65 ILCS 5/10-2.1-17 (West 2010). Brumlik alleged that, during the arrest of a subject who was suspected of the commission of a felony, plaintiff conducted a strip search of the individual (who was in the lockup area of the police department) without: (1) probable cause to conduct the search; (2) obtaining proper authorization from a department supervisor as required by the department's controlling General Order 4-6 and the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/100-1 *et seq.* (West 2010)); (3) properly documenting his actions during the strip search; and (4) completing the processing of the subject (where he left the department to go to court for his secondary employment). Brumlik argued that the foregoing constituted cause for terminating plaintiff's employment. See 65 ILCS 5/10-1-18 (West 2010) (police officer may not be discharged without cause upon written charges and after an opportunity to be heard in his or her own defense).

¶ 4 The department's General Order 4-6, which addresses arrests, searches, and seizures, states with respect to the criteria for body searches: "Do not strip search or make a body cavity search of

any person unless that person is arrested or detained for a felony offense and there is probable cause to believe that the person is concealing a weapon, evidence of a crime, or contraband. Consider the nature of the charge, prior arrest history, and other factors such as information received from an informant." The order also provides that: "Only the *shift supervisor (command)* can authorize a strip search and a body cavity search." (Emphasis added.) Further, the order states that an officer must include in his or her report the: "[a]uthorization of the shift supervisor;" the specific factors justifying the search; certain personal information (*i.e.*, name of person searched and of the employees conducting the search); and the circumstances of the search (*i.e.*, time, date, and place and the results of the search).

¶ 5 Section 103-1(f) of the Code provides, in relevant part, that every officer conducting a strip search must "[o]btain the written permission of *the police commander or an agent thereof* designated for the purpose of authorizing a strip search" and prepare a report of the strip search that includes: the foregoing written authorization; the name of the person searched, the names of the persons conducting the search; and the time, date, and place of the search. (Emphasis added.) 725 ILCS 5/103-1(f) (West 2010). Also, a copy of the report must be provided to the person searched. *Id.*

¶ 6 A. Plaintiff

¶ 7 The Board conducted hearings in March and April 2010. Plaintiff testified that he is a police officer for the Village of Winthrop Harbor, where he has worked for 15 years, and also works for the Village of Round Lake Park and United Security.

¶ 8 At 1:03 p.m. on January 12, 2010, plaintiff was dispatched to the Harbor Motel. Plaintiff arrived at the motel at 1:05 p.m. and met with the complainant. The complainant stated that the suspect, her former boyfriend, had called her numerous times to ask her to purchase crack cocaine

and smoke it with him; however, she was a recovering crack addict and was upset because she had recently been released from jail. Plaintiff suggested that the complainant arrange a drug purchase. She told plaintiff that she had a "code" to contact the suspect; she would twice call him and hang up and, then, the suspect would call her back. Plaintiff listened with the complainant when the suspect returned her call, and he recognized the suspect's voice from prior incidents. The complainant requested "ice cream," which is code for crack cocaine. The complainant described the suspect's truck for plaintiff and told him that the suspect usually hides the crack underneath the truck's dashboard. (In his report, plaintiff did not mention the foregoing testimony concerning the drug transaction.)

¶ 9 Officer Peter Bisciglia subsequently arrived as a backup. The officers, who had been joined by Detective Chris Willets, effected a stop of the suspect's vehicle. When plaintiff arrived at the location of the suspect's truck, he observed Willets conducting a pat down of the suspect behind the vehicle. Plaintiff observed that the suspect's pant's zipper was unzipped (another fact plaintiff did not mention in his report), and Bisciglia informed plaintiff that the suspect had made furtive movements while in his truck and when he exited the vehicle. Plaintiff recited to the suspect his *Miranda* rights and told him that he had overheard his conversation with the complainant and asked where the cocaine was located. The suspect denied having any cocaine. The suspect consented to a search of his person and vehicle, and he was subsequently placed in plaintiff's squad car. The officers located in the truck by the suspect's seat two pill bottles that did not bear the suspect's name. Also, there was a baggie inside one of the bottles, and one of the bottles stated that the contents caused drowsiness.

¶ 10 At the station, the sworn officers on duty were plaintiff, Willets, and Officer Bisciglia. Plaintiff directed the suspect through the first door, the sally port, and took off and put away his duty

weapon. He then directed the suspect into the booking room/hall. There was a video camera in that room.[1] Plaintiff instructed the suspect to stand against the wall, removed his handcuffs, and then searched his pockets for safety purposes. Next, plaintiff placed the suspect in a cell. The suspect refused to give a urine sample. Plaintiff told the suspect that he was going to conduct a strip search. Plaintiff testified that this was "because of the circumstances with his zipper down, the pill bottles that I found on him and his–in his possession and of the other circumstances I dealt with [the suspect]," including safety and security. Because the suspect was going to be charged with a felony, "I knew he was going to stay the night and we had directive orders–new directive orders that if somebody is going to stay over a long period of time, we have to put them in an orange jumpsuit." Plaintiff further explained that:

> "When we put somebody in custody and they–we make them take off their clothes and put them in there because we didn't want them having–because there's so many different places they can hide things–you know, in belts, in some of the loose articles. Like, for instance, if they had like sweat pants. There's like the rope. They can hide things in there, too–and plus the rope, you don't want them to have a rope in there because they may hurt themselves and we did not want that."

Plaintiff ordered the suspect to take off his clothes, and plaintiff searched each article of clothing. The suspect then put on the jumpsuit. Plaintiff did not find any contraband in the suspect's clothing. Plaintiff conducted the search such that the video camera taped only plaintiff instructing the suspect; the suspect was not within the camera's range.

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[1]Plaintiff's testimony about his and Officer Bisciglia's booking of the suspect is consistent with a DVD of the event that was admitted into evidence.

¶ 11 Plaintiff locked the suspect in the cell. Thereafter, Officer Bisciglia finished booking the suspect (*i.e.*, fingerprinting, taking photos, documenting the items taken from the suspect, processing evidence), and charging the suspect. Plaintiff did not complete booking the suspect because he was due in court at 3 p.m. for his other employer–Round Lake Park. His shift ended at 2:30 p.m.

¶ 12 At the end of his report, plaintiff noted that the reader should refer to Officer Bisciglia's report, which, presumably, would have documented the remainder of the booking. Plaintiff left the station after 2:30 p.m. Before he left, he spent about 10 minutes refueling his squad car and removing from it some equipment. His report states that the case was completed at 2:48 p.m. Plaintiff testified that his shift that day was from 6:30 a.m. to 2:30 p.m.

¶ 13 Reviewing his report of the suspect's arrest, plaintiff stated it was an accurate summary of the "high points" of the incident. However, he conceded that his report does not mention the strip search. When asked if he contacted a supervisor prior to conducting the search, plaintiff responded that *he* was the supervisor on the scene because he was the highest ranking officer on duty at that time. Plaintiff testified that he is familiar with the department's strip search policy and conceded that the policy (*i.e.*, General Order 4-6) does not refer to the highest ranking officer, but to a "shift supervisor (command)." On January 12, 2010, plaintiff was, in his view, in charge of the shift and the highest ranking officer. He did not attempt to notify any sergeant, deputy chief, or the chief because of the extenuating circumstances that were present, because the foregoing individuals were not on duty, and for the suspect's safety. Plaintiff conceded that he carried with him a cell phone that day and that he had the chief's and deputy chief's cell phone numbers. Plaintiff also conceded that General Order 4-6 does not refer to officer safety, but he explained that safety was only one of the reasons he searched the suspect.

¶ 14 Plaintiff was questioned concerning his report's statements supporting probable cause for the strip search. He noted that he had prior contacts with the suspect, including arrests involving drugs, disorderly conduct, domestic battery, and violation of an order of protection. Also, Bisciglia had informed plaintiff that the suspect's zipper was unzipped when he exited the truck and that he had made furtive movements while in the vehicle and while exiting it. During the search, the officers located two pill bottles, one of which stated that it caused drowsiness and did not bear the suspect's name. However, plaintiff conceded that he did not mention in his written report that he knew the suspect from previous arrests. Even though he used it to form part of the basis for his probable cause determination, plaintiff excluded this information because it was documented elsewhere. He also did not mention in the report that the pill bottles contained warnings that the contents caused drowsiness. When asked if the department directive to place certain arrestees in orange jump suits also includes strip searches, plaintiff responded that he did not recall.

¶ 15 Plaintiff further testified that he is familiar with the state law (*i.e.*, section 103-1 of the Code) governing strip searches and its requirement that there be a written report of every strip search. He is also aware that the law states that "the police commander" must give written permission for a strip search. Plaintiff stated that he was the "high ranking officer. I was the command on that shift." Plaintiff testified that the rank of "Commander" did not exist at the department. The ranks that existed were Chief, Deputy Chief, Sergeant, and Patrol Officer.

¶ 16 Plaintiff further testified that Sergeant Carini typically begins his shift at 3:30 p.m. He was unaware if Carini was due to work on the day of the incident. Plaintiff did not attempt to call Carini.

¶ 17 Addressing respondent's exhibit No. 6, plaintiff testified that it was a September 17, 2009, document he signed agreeing to a reduction in his rank from sergeant to patrol officer. He signed it because he believed he would lose his job if he did not do so. He received the advice of union

counsel before he executed the document, the same counsel he discharged in the present matter. Also, at the time he signed the document, there was a possibility that charges would be filed against him for a disciplinary reason.

¶ 18 B. Deputy Chief Tim Borowski

¶ 19 Tim Borowski, the department's deputy chief, testified that he oversees department operations, including patrol and investigations. Borowski stated that plaintiff had worked for the department 1 1/2 years longer than he has and that plaintiff also has more seniority than Willets.

¶ 20 Borowski reviewed plaintiff's report of the January 12, 2010, incident and, about one week after the incident, spoke to plaintiff and Willets about it. (On the day of the incident, Borowski was in the hospital with his wife following the delivery of their child.) At the meeting, of which Borowski did not prepare a written report, they discussed the initial complaint, probable cause for the strip search, and plaintiff's failure to include the strip search in his report. According to Borowski, plaintiff stated that he believed he had probable cause for the strip search and explained that he did not notify his supervisor of the search because he did not have enough time. Plaintiff stated that he knew he should have included the strip search in his report, but he did not. Plaintiff also acknowledged his familiarity with the department's strip search policy. Borowski did not inform plaintiff that he could add mention of the strip search to his report or in a supplemental report, and plaintiff did not offer to complete a supplemental report. In Borowski's view, plaintiff's report did not contain any facts that were used in support of a decision to conduct a strip search. After this conversation, Borowski informed Chief Brumlik of the matter and Brumlik authorized an internal affairs investigation that ultimately led to Brumlik filing charges against plaintiff.

¶ 21 Borowski testified that the term "shift supervisor (command)" as used in General Order 4-6 means the rank of sergeant or above. The department has three sergeants. During the January 12,

2010, incident, there were no sergeants on duty and Borowski was not on duty. However, Chief Brumlick was scheduled to be on duty, although Borowski was unaware if he was at the station. Borowski, Brumlick, and all sergeants carry department-issued cell phones. Borowski receives "[a] lot" of calls on his cell phone when he is off duty from officers asking about procedural issues. Strip searches are not a common occurrence at the police department. On the day of the incident, Sergeant Carini came on duty for the second shift, which is from 3:30 to 11:30 p.m.

¶ 22 C. Detective Chris Willets

¶ 23 Detective Chris Willets testified that, on January 12, 2010, he was on duty (from 7:30 a.m. to 3:30 p.m.), working in plain clothes in an unmarked squad car. At this time, the other sworn officers who were on duty were himself, Bisciglia, and plaintiff. When Willets came on duty that day at 7:30 a.m., there was no sergeant on duty. Willets believed that a sergeant came on duty at 3:30 p.m.

¶ 24 Addressing the incident, Willets testified that plaintiff called him and instructed Willets to meet Bisciglia at the Harbor Hotel to assist with a possible drug transaction. Willets met Bisciglia at the hotel parking lot, and Bisciglia informed him that they were waiting for a cocaine trafficking suspect's vehicle to arrive. The suspect was allegedly bringing a $5 portion of cocaine to the female complainant. Willets spotted the suspect's truck and pulled over the suspect in a parking lot two blocks north of the hotel. After the stop was executed, Willets and plaintiff searched the suspect's vehicle; they found no cocaine. Addressing the suspect's actions, Willets testified that the suspect made furtive movements after he stopped his pickup truck. Specifically, he "appeared to be dipping his body down and moving his hands, moving his shoulders." Willets was unable to see the suspect's hands. Plaintiff was not in a position to view the furtive movements. Willets overheard Bisciglia at one point state that the suspect's pants zipper was unzipped. Two prescription

containers were found in the truck; one contained pills in it and was labeled with a name other than the suspect's name.

¶ 25 During the stop, plaintiff mentioned that he would be conducting a strip search of the suspect. Willets testified: "I told [plaintiff] not–I said if it was me, I would talk to the chief or deputy chief and get permission first." Willets testified that an officer was required to get a supervisor's permission before conducting a strip search. Willets did not contact a supervisor. His understanding was that a supervisor was a person of rank. Both the chief and deputy chief have cell phones, and Willets has called them when they have been off duty. According to Willets, plaintiff told him that he was not required to contact a supervisor. He did not explain why, and Willets did not ask him. The suspect was arrested, handcuffed, and taken into custody.

¶ 26 Willets further testified that, outside the booking room/hall, he told Bisciglia that, if there was going to be a strip search, he would recommend that Bisciglia not participate. Willets believed that "there wasn't a felony seizure prior to the subject being in our custody." After his conversation with Bisciglia, Willets had no further role in the arrest. He did not prepare any report of the incident and could not recall if he left the station at this time.

¶ 27 Willets explained that the Lake County Metropolitan Enforcement Group (MEG) is a task force that focuses on gang and narcotic activity. He was assigned to that unit from 2002 to 2007; plaintiff was assigned to it prior to Willets' assignment for about 5 1/2 years. Willets further testified that plaintiff has been in the department longer than himself by three or four years; also, Bisciglia has been in the department for less time than plaintiff.

¶ 28 D. Officer Peter Bisciglia

¶ 29 Officer Peter Bisciglia testified that, on January 12, 2010, he was on duty, working the first (*i.e.*, 7:30 a.m. to 3:30 p.m.) shift (as did plaintiff and Willets) when he was called to assist plaintiff

at the Harbor Motel. Plaintiff was the senior officer working at that time. After Willets stopped the suspect's vehicle, Bisciglia exited his squad car and approached the suspect. Willets informed Bisciglia that he observed the driver making furtive movements; specifically, he observed the driver leaning down toward the middle of the truck. Bisciglia further testified that he conducted a consensual pat down of the suspect, but did not locate any cocaine; also, a search of the suspect's vehicle did not reveal any evidence of cocaine. However, Willets found a pill bottle that contained about 30 small round pills and an empty baggie. The baggie aroused Bisciglia's suspicion because that is a common way drug dealers package drugs for resale.

¶ 30 According to Bisciglia, after the suspect was handcuffed, plaintiff informed him that he was going to conduct a strip search. Plaintiff drove the suspect to the police station. After Bisciglia arrived at the station, he went to the booking room and assisted plaintiff in taking inventory of the suspect's belongings. The officers did not locate any narcotics or contraband following a search of the belongings.

¶ 31 Addressing the strip search, Bisciglia testified that he did not speak to plaintiff about it and was not in the room where it was conducted (plaintiff was the only police officer conducting the strip search); however, he heard plaintiff instructing the suspect to remove his clothing. During the search, Bisciglia spoke to Willets, who stated that a supervisor needed to approve the search and that "it should not be occurring." Bisciglia did not contact a supervisor. After the search, the suspect put on an orange jumpsuit and was placed into a cell.

¶ 32 When plaintiff's shift was over, he left the police station; it was 2:30 p.m. Bisciglia remained at the station, working on the arrest. Bisciglia completed his participation in the case by preparing a report of the traffic stop. Bisciglia did not mention the strip search in his report; he believed it was plaintiff's responsibility to document the search. He explained that it is common for

an assisting officer to remain at work to "help [the] other out to avoid someone having to stay for overtime" due to budgetary constraints. It was also common for the assisting officer to process fingerprints and photographs while the arresting officer would write out the tickets. In this case, plaintiff did not write out the ticket or prepare a report at that time. He left the station to attend court for a case related to his part-time job with Round Lake Park.

¶ 33 Bisciglia ultimately determined that the pills in the bottle located in the suspect's vehicle were used to treat hypertension and that the substance, atenolol, was not a scheduled narcotic. Subsequently, at Deputy Chief Borowski's direction, Bisciglia contacted the Lake County State's Attorney's office and requested that the case–which charged the suspect with attempt possession of a controlled substance–be dismissed because the suspect did not possess a scheduled narcotic.

¶ 34 E. Chief Joel Brumlik

¶ 35 Joel Brumlik, the department police chief, addressed the overtime e-mails he authored (dated August 30, and September 24, 2009). Brumlik testified that their purpose was to notify the department of the need to limit overtime due to the village's budgetary constraints. He denied that the e-mails were meant to regulate the overtime necessary to complete arrests. Brumlik confirmed that plaintiff has been paid for overtime since the memos were circulated.

¶ 36 Brumlik next addressed the department's rank structure. The department has an appointed chief and deputy chief. There are also police-commission-appointed sergeants and police officers and part-time police officers. Addressing the supervisory command positions, Brumlik stated that those are the positions above police officer, *i.e.*, sergeant up to chief of police. When he is away from the station, Brumlik routinely, *i.e.*, two to three times per day, receives telephone calls from police officers or dispatch, asking questions or seeking direction. In the past, plaintiff has called Brumlik, seeking direction. There have been no lawsuits filed against the village as a result of

plaintiff's January 12, 2010, strip search, and Brumlik did not seek criminal prosecution of plaintiff for official misconduct or arrest plaintiff.

¶ 37 Respondent rested. The Board granted plaintiff's motion for a directed finding, determining that there was probable cause to conduct the search.

¶ 38 Deputy Chief Borowski was called again and testified on plaintiff's behalf as follows. Viewing respondent's exhibit No. 7, the dispatcher's contact sheet, Borowski testified that the document stated that the call was cleared by plaintiff at 2:48 p.m. Borowski read into the record Brumlik's July 4, 2009, e-mail directive concerning jump suits. It read, in relevant part: "Effective immediately, all prisoners that [*sic*] will be kept in any of our cells for an extended period of time will be issued the orange jumpsuit[s] that are in the lockers and a clean blanket."

¶ 39 Borowski further testified that the department's strip search policy was distinct from the orange jumpsuit policy; the jumpsuit policy applied to individuals charged with either a misdemeanor or a felony, whereas the strip search policy requires that the suspect have committed a felony. Several videotapes of the suspect's booking were played for the commission. Plaintiff rested.

¶ 40 The Board found there was cause for discipline. The Board then proceeded to the penalty phase of the hearing. In aggravation, respondent recalled Deputy Chief Borowski. Borowski testified that he has known plaintiff for 14 years and has been his immediate supervisor for 5 years. He has assessed plaintiff's performance and testified that there have been disciplinary issues with, as well as positive aspects to, plaintiff's job performance. In September 2009, Borowski became aware that plaintiff had removed himself from the rank of sergeant and returned to the rank of patrolman. When plaintiff returned to duty in November 2009, Borowski spoke to him about staying focused on the job and avoiding disciplinary issues. Borowski had concerns about plaintiff's ability

to follow department rules; he explained this to plaintiff, along with his concerns about the village's potential liability. Plaintiff stated that he understood.

¶ 41 Subsequently in November 2009, Borowski reviewed a complaint against plaintiff arising out of a car burglary. Plaintiff had notified the victim, whose car was broken into, that the evidence technician would come to the scene. Plaintiff's shift ended, and he left. About two hours later, the victim called the department, stating that the evidence technician never arrived and that the victim was late for work. When Borowski discussed the incident with plaintiff, plaintiff stated that he forgot to contact the technician. The incident was "written up."

¶ 42 Also in November 2009, plaintiff arrested a suspect for DUI. He did not complete the required paperwork or relay information to the other shift officers, which resulted in a telephone call by the officers to Borowski asking for instructions. The officers stated that plaintiff had just left the department and that there was a prisoner in custody and a vehicle had been seized. Neither the seizure paperwork nor a police report had been prepared. Borowski called plaintiff, who later returned to the station.

¶ 43 Addressing another incident, Borowski testified that plaintiff falsified his time card by noting that he had worked two hours of overtime. Yet another incident involved a formal complaint from a village resident, who stated the plaintiff responded to a rescue call and that the resident felt threatened, talked down to, and that his home's construction was criticized. All of these incidents resulted in plaintiff's rank being reduced from sergeant to patrolman and in written reprimands.

¶ 44 Borowski testified that the November 2009 incidents were similar to plaintiff's historical violations. Plaintiff never contested the November 2009 reprimands. Borowski testified that plaintiff's ability to continue to serve as an officer was highly diminished due to liability issues and his repeated failure to follow policy and procedures. However, Borowski conceded that, in the past

five years, no lawsuits had been filed against the village or department as a result of plaintiff's actions.

¶ 45 Next, Chief Brumlik was recalled to testify in aggravation. He stated that he has known plaintiff since 1997. Between 1997 and 2003, Brumlik spent time and made efforts to correct plaintiff's behavior. Brumlik had Borowski prepare from department personnel records a summary of plaintiff's disciplinary history with the department beginning in 2003. According to Brumlik, from 2003 to the present, he disciplined plaintiff "numerous times," including a three-day suspension (he had authority to suspend plaintiff for up to five days). The discipline included a reduction in rank in September 2009. He has utilized performance improvement plans and additional training in an effort to correct the problems with plaintiff's performance. When asked if the foregoing efforts have been effective, Brumlik responded: "[plaintiff] has been extremely receptive and cooperative with us but I have to say that it continues and continues and continues. The same behavior. The same patterns." He testified that the impact of plaintiff's conduct on the department has been "debilitating" and increased the possibility of lawsuits against it. Brumlik requested that plaintiff be terminated because there is a "deficit" in his ability to serve the department and the village's citizens.

¶ 46 Brumlik conceded that, in a performance evaluation for the period December 2008 to August 2009, he rated plaintiff as a valued performer. However, in the same evaluation, Brumlik rated plaintiff's knowledge of the law as needing improvement. Also, in 2005, Brumlik presented plaintiff with an Officer of the Year award (out of 10 department officers) for his achievement in teaching youth about drug abuse.

¶ 47 In mitigation, plaintiff testified as to various awards he has received for his service in the department, the State police (for his work with a narcotics and gang unit), and the MEG (for his undercover work with a gang unit).

¶ 48 Addressing the incident that resulted in the citizen complaining about his performance, plaintiff explained that he responded to a 911-call where the elderly citizen who had mental health issues complained about "somebody" in her chest. Plaintiff had on several previous occasions been called to the residence, and the calls resulted in the elderly resident being transported to the hospital. He called for rescue and looked for the woman's son, who had locked himself in his bedroom. When the son came out, plaintiff told him that the house was old and had thin walls and asked why he did not hear his mother downstairs damaging the home's contents. Plaintiff also told the son that, if he did not take care of his mother, plaintiff could obtain assistance.

¶ 49 Addressing the incident on November 15, 2009, when plaintiff left the station without preparing a report of a seized vehicle and while a prisoner was in custody, plaintiff stated that he had to return to the station (from Walmart) because he had forgotten about a recently-implemented procedure concerning vehicle seizures. Addressing another incident on that date (for falsifying his time card), plaintiff explained that he had accidentally noted on his computer that he was in court; plaintiff claimed he was actually working at the station at the time in question.

¶ 50 Next, plaintiff addressed the incident involving the evidence technician and explained that he "forgot" to ensure the evidence technician went to the scene because he (plaintiff) had to respond to multiple calls concerning car burglaries that morning. Plaintiff left the MEG unit after five years because he was "burnt out." It was taking time from his family. Plaintiff's son has health issues; he has undergone three brain surgeries. Plaintiff conceded that his son's issues might have distracted him from the performance of his duties.

¶ 51 When asked why he did not write a rebuttal to the multiple written reprimands he received, plaintiff replied: "Because I didn't know I could. I mean I've always been threatened that I was going to get fired over this if I continued to do this kind of stuff."

¶ 52 After counsels' arguments, the Board voted to discharge plaintiff for cause. The Board found that plaintiff failed to comply with the department's General Order 4-6 and section 103-1 of the Code as to the conduct of strip searches. The Board determined that General Order 4-6 requires that a command supervisor, which it found to be a sergeant or higher rank, can authorize a department member to conduct a strip search and requires the individual conducting the search to file a report naming the supervisor who authorized the search; a list of facts relied upon for probable cause to conduct the search, and certain other details. Further, the Board found that section103-2 of the Code requires preparation of a detailed report of a strip search. It also requires that the person conducting the search obtain written authorization of a "commander" within the department to conduct the search and requires a written report. The Board determined that plaintiff made no effort to contact a supervisor to obtain authority to conduct a strip search and that all "ranking members" of the department carried department-issued cell phones to department personnel when needed. The Board also determined that plaintiff violated department policy and the Code by failing to mention the search in the incident report.[2]

¶ 53 As to the proper discipline, the Board further found that there was a trend in plaintiff's evaluations wherein he was "advised to pay closer attention to detail in preparation of reports and specifically reminded of his need to both properly enforce and apply the law." The Board noted that

[2]As to Brumlik's allegations that plaintiff left his shift without properly completing the processing of the suspect, the Board granted plaintiff's motion for a directed finding on the issue.

the department's summary of discipline listed 15 separate incidents since 2003 that resulted in plaintiff receiving written reprimands, suspensions, and a voluntary reduction in rank. It also found that, recently, plaintiff's performance had "worsened significantly." Accordingly, the Board determined that the guilt finding warranted plaintiff's discharge from the department.

¶ 54 On June 3, 2010, plaintiff filed a complaint for administrative review in the trial court. On November 30, 2010, the trial court affirmed the Board's decision. Plaintiff appeals.

¶ 55 II. ANALYSIS

¶ 56 In reviewing a final administrative decision under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2002)), our role is to review the agency's decision, not the trial court's determination. *Du Page County Airport Authority v. Department of Revenue*, 358 Ill. App. 3d 476, 481 (2005). The standard of review applicable to an agency's decision depends on the type of question presented. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 390 (2001). An agency's findings of fact will be upheld unless against the manifest weight of the evidence, *i.e.*, unless the opposite conclusion is clearly evident. *Du Page County Airport Authority*, 358 Ill. App. 3d at 482. On the other hand, an agency's rulings on questions of law are reviewed *de novo*. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998). Mixed questions of law and fact, in which the facts and law are undisputed and the only issue is whether the facts satisfy the settled statutory standard, receive review under the clearly-erroneous standard. *Du Page County Airport Authority*, 358 Ill. App. 3d at 482.

¶ 57 In reviewing an administrative agency's decision to discharge an employee, we apply a two-step process. *Walsh v. Board of Fire & Police Commissioners*, 96 Ill. 2d 101, 105 (1983). First, we must determine whether the agency's findings of fact, such as a finding of guilt, are against the

manifest weight of the evidence. *Id.* Second, we must determine if the agency's findings of fact provide a sufficient basis for its determination that there was cause for discharge. *Id.*

¶ 58 A. Factual Findings

¶ 59 1. Reduction in Rank

¶ 60 As to the first step, plaintiff argues that he was the sergeant on duty on January 12, 2010, and, therefore, could authorize the strip search. He relies on the agreement for reduction in rank that was referred to at the hearing and argues that it was a nullity because only the Board (not the chief) may appoint officers and sergeants and that there is no demotion provision in the relevant law. He claims, therefore, that Chief Brumlik did not have authority to demote him.

¶ 61 We decline to address this argument. The Board did not address or make findings concerning the validity of the agreement because that issue was not before it. At the hearing, the Board declined to address the document's validity, but allowed plaintiff to submit an offer of proof for the limited purpose of assessing plaintiff's belief that he considered himself a sergeant. During this portion of the hearing, plaintiff testified that he signed the document to avoid losing his job and that he signed it under advice of counsel. Significantly, earlier in his testimony, plaintiff was asked what position he held with the department. He replied that he was a "[p]olice officer" and made no reference to being a sergeant.

¶ 62 2. Seniority

¶ 63 Next, plaintiff argues that he was the "shift supervisor (command)" and/or the police commander or his agent on duty and, therefore, had the power to authorize the strip search. He bases his argument in part on his seniority in the department. Plaintiff notes that Deputy Chief Borowski testified that plaintiff had been with the department longer than Borowski; that Borowski was on leave on the day of the search; and Borowski testified that there were no sergeants on duty

during the shift. Plaintiff also relies on Willets' testimony that plaintiff had worked for the department longer than Willets; that the only sworn officers on duty during the incident were himself, Bisciglia, and plaintiff; and that there were no sergeants on duty at that time. Plaintiff next points to Bisciglia's testimony that the persons on duty during the incident were himself, plaintiff, Willets, and a dispatcher. Plaintiff also relies on the fact that the word "command" is not capitalized. He urges a general interpretation of the term, such as a person in charge (as opposed to a specific rank). Plaintiff notes that the only sworn ranks in the department were chief, deputy chief, sergeant, and patrol officer. He reasons that he was not only the shift supervisor due to his seniority, but also in command or charge of the shift. We reject his argument.

¶ 64 First, we reject plaintiff's argument that, by virtue of his seniority, he met the qualifications for "the shift supervisor (command)" or "the police commander or an agent thereof designated for the purpose of authorizing a strip search." The term "commander" is defined as: "one in an official position of command or control: as a: COMMANDING OFFICER b: the presiding officer of a society or organization." Webster's Ninth New Collegiate Dictionary 264 (1988). The term "supervisor" is defined as: "one that supervises; *esp* : an administrative officer in charge of a business, government, or school unit or operation." *Id.* at 1185. Both definitions reflect that the person who is the shift supervisor or command(er) supervisor holds that position in an official capacity, not merely based on length of service.

¶ 65 The evidence presented at the hearing supports this conclusion. Addressing the supervisory command positions, Brumlik stated that those are the positions above police officer, *i.e.*, sergeant up to chief of police. Borowski testified that the term "shift supervisor (command)," as used in General Order 4-6, means the rank of sergeant or above. Also according to Borowski, plaintiff stated that he believed he had probable cause to conduct the strip search and explained that he did

not notify his supervisor *because he did not have enough time*. Willets testified that his understanding was that a supervisor was a person of rank. He also stated that plaintiff told him that he was not required to contact a supervisor. Willets also noted that both Brumlik and Borowski have cell phones and that Willets has called them while they were off duty to secure permission or notify them of some incident involving police procedures. Finally, plaintiff conceded that the department's strip search policy does not refer to the highest ranking officer, but to a "shift supervisor (command)."

¶ 66 Finally, we note that, regardless of plaintiff's position, plaintiff did not follow applicable procedures. Specifically, General Order 4-6 states that "[o]nly the shift supervisor (command) can authorize a strip search and a body cavity search." Section 103-1(f) of the Code provides, in relevant part, that every officer conducting a strip search must "[o]btain the written permission of the police commander or an agent thereof designated for the purpose of authorizing a strip search" and prepare a report of the strip search that includes, *inter alia*, the foregoing written authorization. 725 ILCS 5/103-1(f) (West 2010). As defendants note, there is no dispute that plaintiff never obtained written permission for the strip search (nor did he complete a written report thereof) and, so, that provision of the Code was never complied with and the Board's finding that plaintiff violated section 103-1 was not against the manifest weight of the evidence.

¶ 67 3. Orange Jump Suit Order

¶ 68 Turning to plaintiff's next argument, he asserts that Chief Brumlik's July 4, 2009, order concerning the issuance of orange jump suits to all prisoners who were to be kept in cells for an extended period constituted written permission to conduct the January 12, 2010, strip search.

¶ 69 The order, sent via e-mail to all department members, stated:

> "Effective immediately, all prisoners [who] will be kept in any of our cells for an extended period, will be issued the orange jumpsuit that [is] in the locker and a clean blanket. Clothing will be placed in property and returned on release or taken with to the county jail. Cells will be checked and cleaned upon release of anyone from each and every holding cell."

¶ 70 Plaintiff contends that the foregoing constitutes authorization to conduct a strip search. He relies on the definition of a strip search contained in General Order 4-6: "Removal or rearrangement of some or all clothing to permit an inspection of genitals, buttocks, anus, breasts, or undergarments." Plaintiff also argues that the jump suit ensures that incoming prisoners do not bring contraband into the cell and, by searching an incoming suspect, one reduces the chances of this occurring. He points to his testimony that he conducted the search because he suspected the suspect had contraband and for the suspect's safety.

¶ 71 We reject plaintiff's claim because the definition of strip search in the General Order makes explicit that the purpose of the search is to "permit the inspection" of certain body areas, whereas Brumlik's order pertains to general concerns about safety, prisoner comfort, and maintenance of a clean jail facility. The hearing testimony was consistent our interpretation. Although plaintiff testified that he could not recall if the jump suit directive included strip searches, Borowski testified that the department's strip search policy was a process separate from that involving the orange jumpsuit policy; the jumpsuit policy applied to individuals charged with either a misdemeanor or a felony. However, the department's General Order 4-6 states with respect to the criteria for body searches: "Do not strip search or make a body cavity search of any person unless that person is arrested or detained for a *felony* offense and there is probable cause to believe that the person is

concealing a weapon, evidence of a crime, or contraband." Thus, the evidence reflects that the jump suit policy does not authorize strip searches.

¶ 72 4. Substantial Compliance

¶ 73 Next, plaintiff argues that he substantially complied with the General Order and the Code and that his actions or inactions constituted a mere technical violation. See *Hale v. Hellstrom*, 101 Ill. App. 3d 1127, 1130 (1981) (findings of wrongdoing support a suspension only when they demonstrate substantial misconduct or incapacity). We reject this claim. Plaintiff's misconduct went beyond a mere technical violation. Plaintiff conducted a strip search without following department procedures and in violation of the Code. He did not seek oral or written permission for the strip search and did not mention it in his report. Plaintiff engaged in an act that potentially could have exposed the department to liability for violations of the suspect's constitutional rights.

¶ 74 5. Reporting of the Search

¶ 75 Plaintiff argues next that he properly reported the search, noting that: (1) the DVD of the strip search constituted his report; (2) he complied by stating in his report of the incident that: "He was processed according to WHPD procedures"; or (3) out of necessity, he did not fully comply with applicable rules and statute (although he substantially complied). Again, we reject plaintiff's claims.

¶ 76 We rejected plaintiff's third argument above and do not again address it here. As to the DVD, we note that the department's General Order 4-6 states that an officer must include in her or her report the authority to search; the "[a]uthorization of the shift supervisor"; and the factors justifying the search, along with personal information (*i.e.*, name of person searched and of the employees conducting the search) and the circumstances of the search (*i.e.*, time, date, and place and the results of the search). The Code requires that a report be prepared and that it include: the written authorization for the search, the name of the subject searched, the name of the person conducting

the search, and the time, date, and place of the search. Also, a copy of the report must be provided to the person who was searched. 725 ILCS 5/103-1 (West 2010). The DVD, which depicts the suspect's booking, clearly does not, at a minimum, contain any authorization for the search or the factors justifying the search. Further, no evidence was presented showing that a copy of the report or DVD was provided to the suspect.

¶ 77 We also reject plaintiff's claim that his inclusion in his report of the phrase "He was processed according to WHPD procedures" constitutes compliance with the department's and the Code's reporting requirements. He notes that he testified that the procedures to which he was referring were the booking, photo, fingerprint, charges, and jump suit procedures. He argues that the wording, combined with the DVD, satisfied the reporting requirements. We disagree because, at a minimum, these items do not contain or evidence any authorization for the strip search or show that a copy of the report or DVD were provided to the suspect.

¶ 78 B. Discharge

¶ 79 Next, plaintiff argues that the Board erred in discharging him from his employment with the department, where he had received positive job evaluations and many awards and letters of appreciation. Addressing his disciplinary history, plaintiff calls the court's attention to the explanations he gave at the hearing. In plaintiff's view, there was no evidence that he intentionally violated General Order 4-6 or the Code.

¶ 80 The Board is charged with the duty to determine whether there is a cause for the discharge of one of its officers. *Nation*, 40 Ill. App. 3d at 387. The Board's decision will stand even if a court considers another sanction more appropriate. See *Kappel*, 220 Ill. App. 3d at 590. This is because the Board is in the best position to determine the effect of the officer's conduct on the proper operation of the department. *Kappel*, 220 Ill. App. 3d at 590. The Board's finding of "cause" is to

be respected by the court, and it should only be overturned if it is arbitrary and unreasonable or unrelated to the requirements of the service. See *Launius*, 151 Ill. 2d at 435; *Sutton v. Civil Service Comm'n*, 91 Ill. 2d 404, 411 (1982). Stated differently, during the review of an administrative agency's decisions, a court may not reverse a finding of cause unless the finding is so unrelated to the requirements of service or is so trivial that it is unreasonable or arbitrary. See *Flynn v. Board of Fire & Police Commissioners of the City of Harrisburg*, 33 Ill. App. 3d 394, 399 (1975).

¶ 81 According to the Illinois Municipal Code (Municipal Code), a police officer may not be discharged without cause. See 65 ILCS 5/10-1-18 (West 1992). Though the term "cause" is not defined in the Municipal Code, it has been judicially construed to mean "some substantial shortcoming" that renders the employee's continuance in office in some way detrimental to the discipline and efficiency of the service and that the law and sound public opinion recognize as a good cause for the employee no longer holding his or her position. See *Launius v. Board of Fire & Police Commissioners of the City of Des Plaines*, 151 Ill. 2d 419, 435 (1992). Even a "single instance of misconduct can constitute cause for discharge where the misconduct is serious." *Hermesdorf v. Wu*, 372 Ill. App. 3d 842, 853 (2007) (citing cases).

¶ 82 In this case, the Board's finding of cause for discharge was supported by the evidence. Plaintiff conducted a strip search of a suspect without obtaining permission to do so and without properly reporting the search. These acts constituted violations of the department's General Order and the Code. Notwithstanding that the Board found that there was probable cause to conduct the strip search, proper procedures in executing the search had to be followed. If not, they had the potential of, for example, exposing the department to a lawsuit. See, *e.g.*, *People v. Seymour*, 84 Ill. 2d 24, 39 (1981) (strip searches amount to a "severe intrusion into one's privacy"). This misconduct was serious. Further, it was not an isolated event. Plaintiff's disciplinary record reflects that he had

a history of failing to follow procedures. In 2003, plaintiff was suspended for three days for missing three court dates. Plaintiff's disciplinary history contains five instances of misconduct in 2007. These included untruthfulness and not handling an illegal burning complaint (verbal and written reprimand); writing a citation to a resident who did not violate the law (written reprimand); falsifying traffic offenses and being untruthful (five-day suspension); false/incorrect statement in police report (verbal and written warning); and harassment of an employee (meeting). In 2008, plaintiff received two written reprimands. The first one was for speaking and treating a complainant in a threatening manner, and the second was for wearing his uniform and weapon at his children's school. In 2009, plaintiff was disciplined for: improper application of the laws for ordering another officer to cite a citizen (written reprimand and meeting where plaintiff was warned that further complaints could lead to his termination or demotion); misconduct and harassment for wanting a violator to be let go (written reprimand); multiple policy and code of conduct violations (placed on administrative leave and demoted himself to patrolman from sergeant); mishandling of a call concerning an evidence technician (written reprimand); not completing reports (written reprimand and warned about leaving the department before completing his required work); falsifying information on timecard (written reprimand); and complaint following rescue call (meeting where plaintiff was warned that future violations could result in termination and written reprimand). Finally, the present incident was documented for 2010 (plaintiff placed on indefinite administrative leave).

¶ 83 The foregoing also reflects that department personnel repeatedly warned plaintiff that future disciplinary issues could result in the termination of his employment. The strip search incident shows that he did not heed their advice to follow procedures and the law. Finally, the cases upon which plaintiff relies are clearly distinguishable. See *Collins v. Board of Fire & Police*

Commissioners of the City of Genoa, 84 Ill. App. 3d 516, 522 (1980) (complained of incidents, including forging a signature on an arrest card, were not viewed by police officials at the time they occurred as severe enough to warrant disciplinary actions at time they took place); *Christenson v. Board of Fire & Police Commissioners of the City of Oak Forest*, 83 Ill. App. 3d 472, 478 (1980) (dishonesty involved a single incident where the officer attended to personal business while on duty and lied about it).

¶ 84 III. CONCLUSION

¶ 85 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 86 Affirmed.