2013 IL App (2d) 120431-U
No. 2-12-0431
Order filed February 27, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

TIMOTHY HERMESDORF, Plaintiff-Appellant, v. THE CITY OF NAPERVILLE, THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE CITY OF NAPERVILLE, JOHN H. WU, as former Chief of the Naperville Fire Department, and TERRY W. KLEIN, RAYMOND E. JONES, REBECCA BOYD-OBARSKI, HERMAN B. WHITE, JR., and WALTER J. JOHNSON, Defendants-Appellees.	)	Appeal from the Circuit Court of Du Page County. Nos. 08-MR-1018 10-MR-1703 Honorable Bonnie M. Wheaton, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The Board complied with our mandate from the previous remand of this case. Further, its decision to discharge plaintiff was not arbitrary or unreasonable, as the Board had the authority to make credibility determinations and resolve conflicts in the evidence. Therefore, we affirmed the trial court's order affirming the Board's decision.

¶ 2 This appeal follows our prior remand of this case in *Hermesdorf v. City of Naperville*, 372 Ill. App. 3d 842 (2007). Plaintiff, Timothy Hermesdorf, appeals the trial court's ruling affirming the decision of defendant, the Board of Police and Fire Commissioners of the City of Naperville (Board). The Board found that plaintiff's conduct, which resulted in his dismissal as a firefighter and paramedic, was not causally connected to any alleged psychological or psychiatric disorder. On appeal, plaintiff argues that the Board failed to comply with this court's mandate. In the alternative, he argues that the Board's decision must be vacated because its finding of cause for discharge was arbitrary and unreasonable. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Initial Department Hearing

¶ 5 Plaintiff became employed as a firefighter/paramedic with the Naperville Fire Department (Department) in January 1988. On November 30, 2004, the Department filed disciplinary charges with the Board, seeking plaintiff's termination. The Department alleged that plaintiff verbally and physically abused a female detainee during a call at the Naperville Police Department in the early morning hours of September 19, 2004. The Board conducted a disciplinary hearing on January 27, 2005. *Hermesdorf*, 372 Ill. App. 3d at 844. After hearing from several witnesses, the Board found plaintiff guilty of the alleged misconduct. *Id.* at 847.

¶ 6 The Board then moved on to the penalty hearing of the phase and heard evidence in aggravation and mitigation. Defendant City of Naperville (City) presented evidence in aggravation from fire chief John Wu that defendant was unwilling to accept responsibility for his actions. In mitigation, plaintiff introduced his annual job performance evaluations for the preceding 17 years, which showed " 'above average' " performance. *Id.* at 848. He also introduced commendations

from the City and the Department and many letters of appreciation for his work in developing and teaching continuing education courses. *Id.* Plaintiff further introduced documentation of how he sought medical treatment on the day of the incident. The documents stated that he checked himself into a hospital at about 8 p.m. on September 19, 2004, and was discharged on September 26, 2004, with a diagnosis of depression and bipolar disorder. *Id.* The documents also indicated that plaintiff continued to take medication. *Id.* at 849.

¶ 7 The Board voted unanimously to discharge plaintiff for cause, finding that his conduct was a " 'substantial shortcoming' " warranting discharge. It found that the medical records did not mitigate against its decision to discharge, but rather provided additional support for the decision because they showed that plaintiff had " 'a tendency for explosive behavior.' " *Id.* Plaintiff sought administrative review in the trial court, which affirmed the Board's decision on August 3, 2005.

¶ 8 B. Prior Appeal

¶ 9 Plaintiff subsequently appealed to this court. In our opinion, we stated that an administrative agency's decision to discharge an employee is reviewed under a two-step process. *Id.* at 851. First, we would determine whether the Board's finding of guilt was against the manifest weight of the evidence. Next, we would determine whether the agency's findings of fact provided a sufficient basis for the conclusion that there was cause for discharge. *Id.* at 851-52. Regarding the first step, we held that the Board's finding that plaintiff was guilty of the alleged charges was not against the manifest weight of the evidence. *Id.* at 852.

¶ 10 Regarding the second step, we noted that plaintiff "introduced evidence that *he may have been* suffering from psychiatric conditions at the time of the alleged misconduct." (Emphasis added.) *Id.* at 854. We stated as follows. Under *Walsh v. Board of Fire & Police Commissioners*,

96 Ill. 2d 101 (1983), and *Kloss v. Board of Fire & Police Commissioners*, 96 Ill. 2d 252 (1983), a "discharge for cause is inappropriate where the employee's alleged misconduct was substantially related to or caused by a psychiatric condition." *Hermesdorf*, 372 Ill. App. 3d at 855. In both of these cases, the administrative agencies had evidence that the employees were suffering from psychiatric conditions at the time of the alleged misconduct, and in each case, our supreme court found that the agency failed to determine whether the misconduct was substantially related to or caused by the psychiatric condition. *Id.* Our supreme court held that in such circumstances, justice and fairness required that the cause be remanded to determine whether the misconduct was " 'substantially the result of the psychiatric problems.' " *Id.* (quoting *Walsh*, 96 Ill. 2d at 108). If it was, the proper sanction would be something other than discharge for cause. *Id.*

¶ 11 We continued in our analysis as follows. The Board "was presented with *some evidence* that plaintiff was suffering from psychiatric conditions" when the incident occurred. (Emphasis added.) *Id.* at 856. However, "the Board failed to make any determination as to whether the misconduct was the substantial result of *his psychiatric illnesses*." (Emphasis added.) *Id.* The medical evidence plaintiff introduced was insufficiently developed, in that plaintiff did not present evidence showing a causal connection between his psychiatric conditions and his misconduct. *Id.* at 857. Therefore, a remand of the case for additional proceedings was necessary.

¶ 12 We stated:

> "On remand, the Board shall determine whether plaintiff's misconduct on September 19, 2004, was substantially related to *any psychiatric condition from which he was suffering at that time.* In abiding by this mandate, the Board may, in its discretion, reopen the proofs so that either or both parties may introduce medical evidence to allow the Board to make its

> determination. [Citation.] In the event that the Board determines plaintiff's misconduct was substantially related to *a psychiatric condition*, it shall be the obligation of the Board to fashion a disciplinary sanction consistent with the fairness and justice goals enunciated in *Walsh*, 96 Ill.2d at 108." (Emphasis added.) *Id.*

¶ 13 C. Criminal Proceedings

¶ 14 In connection with the September 19, 2004, incident, plaintiff was charged with two felonies. Plaintiff subsequently entered an agreement whereby the State agreed to reduce the first count of aggravated battery to misdemeanor battery and nol-pros the second count. In exchange, plaintiff pleaded guilty to the reduced battery charge. The trial court entered the conviction on November 1, 2005.

¶ 15 D. Pension Board Proceedings

¶ 16 While plaintiff's first appeal was being decided, the Naperville Board of Trustees of the Firefighters' Pension Fund (Pension Board) voted to grant plaintiff's request for a nonduty disability pension. *Hermesdorf*, 372 Ill. App. 3d at 850. This court took judicial notice of the decision in the prior appeal, though we denied plaintiff's request to consider the evidence introduced during the pension hearing. *Id.*

¶ 17 The pension decision stated as follows, in relevant part. Plaintiff filed a request for a disability pension on November 2, 2004. He initially sought both a line-of-duty disability pension or, alternatively, a nonduty disability pension, though he later withdrew his request for the former. In 2006, the City sought to intervene in the matter based on a financial interest, but the Pension Board denied its motion.

¶ 18 The Pension Board considered records from Dr. Patrick O'Donnell, plaintiff's family physician. These showed that plaintiff complained of depression beginning in February 2001. Plaintiff was given Paxil from then until sometime in late 2002 or 2003, and again in August 2004. The Pension Board also reviewed the medical records from plaintiff's voluntary hospitalization at Provena Mercy from September 19, 2004, to September 26, 2004. Plaintiff was first diagnosed with " '[m]ajor depression, recurrent, severe, without psychotic features,' " but he was later diagnosed as bipolar. The Pension Board further reviewed records from plaintiff's psychologist, Gary Coleman, and his psychiatrist, Dr. Sandeep Gaonkar.

¶ 19 The Pension Board required plaintiff to undergo medical evaluations with three independent, appointed psychiatrists: Dr. Harley G. Rubens, Dr. Lyle H. Rossiter, Jr., and Dr. Richard P. Harris. He also had to submit to an evaluation with a psychologist, Diane S. Goldstein, so that she could provide psychological testing to be reviewed by all three psychiatrists. Psychologist Goldstein found evidence that plaintiff suffered from a long-standing mood disorder, a major depressive disorder, and possibly a borderline personality disorder. She questioned the diagnosis of Bipolar II disorder. Goldstein opined that plaintiff's disorders were treatable with medications and not of a disabling severity.

¶ 20 Dr. Rubens opined that plaintiff suffered from Bipolar II disorder, consistent with plaintiff's previous diagnosis. Dr. Rossiter similarly opined that plaintiff suffered from " 'a bipolar disorder, depressed phase, now in partial remission on medication and psychotherapy.' " Dr. Harris arrived at a different conclusion, opining that plaintiff did not suffer from a specific psychiatric disorder, but rather his main problem was lack of anger management.

¶ 21 The Pension Board concluded that plaintiff proved by a preponderance of the evidence that he was disabled and unable to perform his duties as a firefighter/paramedic.

¶ 22 E. Board Hearing Following Remand - May 2008

¶ 23 Following the remand of this case, the Board conducted a hearing on May 1, 2008. We summarize plaintiff's testimony. In 2001 or 2002 he sought help from his family physician for periods of depression, and he reported this to his supervisor. He sought further treatment after the September 19, 2004, incident and was diagnosed as Bipolar II. The doctor believed his prior diagnosis of depression was incorrect. Since the incident, he had been on medication, and it kept his psychiatric condition under control.

¶ 24 Regarding the incident, plaintiff received a call to treat a female prisoner for an anxiety attack. The officer informed him that the patient was being very difficult and was intoxicated. Plaintiff could hear her screaming from the jail cell. When he went in the cell, the woman was rocking back and forth and would not answer questions. A decision was made to transport the woman to the hospital. When "they" tried to get her into the cot, she fell against the wall. Plaintiff was very depressed at the time and did not recall verbally or physically abusing the woman. He believed that his mental condition caused his conduct that day.

¶ 25 Plaintiff believed that he had suffered from Bipolar II since 2001. It caused him to be overly angry at times. However, he agreed that from 2001 up until the incident, he had never battered a patient or supervisor. Plaintiff also agreed that his upset and depressed state did not cause him to harm the other paramedic working with him during the incident. His depression did cause him to strike his wife once during those years.

¶ 26 Plaintiff agreed that when the City conducted a formal interrogation of him about the incident on November 8, 2004, he did not mention any mental condition. His felony charges were pending at the time, and his attorney had advised him not to volunteer any information unless specifically asked. He may have stated at that time that his reaction was based on fear of the detainee, who was about 120 pounds compared to his 230. Plaintiff also admitted that he pleaded guilty to knowingly committing a battery against the woman.

¶ 27 Lori Hermesdorf, plaintiff's wife, provided the following testimony. In 2004, they were experiencing marital difficulties. In April or May of that year, plaintiff was making retirement plans, and Lori revealed that she had run up $20,000 in credit card debt. Plaintiff became verbally abusive, struck her, and threw things around the house. Also, the couple's son Edward had been experiencing psychological problems since he was a child. A few days before the September 2004 incident, Edward was kicked out of high school. He also falsely reported to the police that Lori pulled a gun on him. Child services removed Edward from the house for a few days while they conducted an investigation. When Lori told plaintiff what had happened, he got into an argument with Edward and shoved him. When the incident with the detainee occurred, plaintiff had been working since 7 a.m. the morning before.

¶ 28 Following Lori's testimony, plaintiff's attorney requested a continuance on the basis that he was unable to have Drs. Gaonkar and Coleman present to testify that day. The Board denied the motion based on prior continuances and the fact that plaintiff had not previously requested subpoenas for the witnesses.

¶ 29 The City called as its witness psychologist Goldstein, who had examined plaintiff in connection with the Pension Board proceedings. Goldstein testified to the following. Her testing

of plaintiff suggested that he was "overendorsing," or overstating, his symptoms. Plaintiff's job performance evaluations suggested that he was well-respected and in control; they did not seem indicative of someone who was bipolar.

¶ 30 When plaintiff met with Goldstein, plaintiff discussed the stressors with Lori and Edward leading up to the incident. He related that when the incident occurred, the woman was first screaming in her cell and flailing her arms. When he entered the cell, she was sitting on a bench. He asked her what was the matter and stooped down to her level. She did not make eye contact, and he was trying to get her attention. He then " 'just snapped' " and grabbed the back of her head. The woman said she needed her Paxil. He said that they did not have any and that they would have to take her to the hospital. Plaintiff put the woman in an arm lock even though she was not physically resisting, and when she said that he was hurting her, he said to be careful because "this" might break her arm. Plaintiff stated that, during this time, things at home were at a " 'boiling point.' " He "snapped" and "lost it"; he had never felt that way before.

¶ 31 After reviewing the reports of the three psychiatrists appointed by the Pension Board, Goldstein found inconsistencies in plaintiff's reporting of: depressive episodes, suicidality, paranoid beliefs, education, family psychological history, and alcohol intake. Goldstein believed that plaintiff's overendorsing or exaggerating was intentional. His motivation could be a "cry for help" or malingering for the purpose of gain.

¶ 32 Goldstein did not believe that plaintiff had a major depressive disorder because he did not report any depressive episodes lasting at least two weeks. She opined to "a reasonable degree of psychological and neuropsychological certainty" that "there was no causal connection between any symptoms [plaintiff] may have been experiencing" and his actions toward the detainee. Goldstein

agreed that Drs. Rubens, Rossiter, and Gaonkar all diagnosed plaintiff with Bipolar II disorder, and that plaintiff had received psychotropic medication. She also acknowledged that she was not a psychiatrist.

¶ 33 The Board issued its written findings and decision on May 27, 2008. The Board found plaintiff not to be credible. It concluded that his misconduct was not causally connected to any alleged psychological or psychiatric disorder, and it affirmed its earlier decision terminating plaintiff's employment.

¶ 34 F. Trial Court Remand and Other Proceedings

¶ 35 Plaintiff sought review of the Board's May 2008 decision in the trial court. He argued that the Board failed to follow this court's mandate, in that the Board relied on the testimony of a psychologist, rather than a psychiatrist, in arriving at its decision. The trial court agreed, finding in an April 29, 2009, order that there was no psychiatric opinion through records or testimony regarding whether plaintiff's misconduct was substantially related to any psychiatric condition he was suffering from at the time. The trial court vacated the Board's decision and remanded the cause for a new hearing.

¶ 36 The Board and City appealed the trial court's order. Plaintiff moved to dismiss the appeals for lack of jurisdiction, and this court granted his motion on August 11, 2009.

¶ 37 On February 9, 2010, the City filed a motion with the Board to dismiss the matter as moot, based on plaintiff receiving a disability retirement pension. The Board granted the motion on March 30, 2010. Soon after, plaintiff filed a petition for rule to show cause in the circuit court. On June 17, 2010, the circuit court denied the rule. However, it vacated the Board's March 2010 decision and ordered it to conduct the previously-mandated hearing.

¶ 38 G. September 2010 Board Hearing

¶ 39 The Board conducted the hearing, which is the subject of the instant appeal, on September 22, 2010.

¶ 40 1. Dr. Sandeep Gaonkar

¶ 41 Dr. Sandeep Gaonkar testified as follows. He was the chairman of the psychiatry department at Provena Mercy Medical Center, where he had been working as a psychiatrist for the past 10 years. He first saw plaintiff on September 28, 2004, and had continued to see him since then. He saw him once every three months for 15 to 30 minutes. Dr. Gaonkar later clarified that his brother, who was also a psychiatrist, saw plaintiff when he was first admitted to the hospital. Dr. Gaonkar prescribed a regime of three psychotropic drugs for plaintiff, and plaintiff continued to take them. Dr. Gaonkar opined that plaintiff was suffering from bipolar disorder on September 19, 2004, and that stress related to the disorder caused his conduct.

¶ 42 In making his diagnosis, Dr. Gaonkar relied on plaintiff's patient history and his own examinations. Dr. Gaonkar agreed that it would have been helpful for diagnosis to have eyewitness statements from the incident, but those were not a part of the hospital record. Dr. Gaonkar agreed that the Diagnostic and Statistical Manual (DSM) was a reference manual containing criteria for the diagnosis of mental disorders. For a diagnosis of Bipolar II, the manual required a major depressive episode, a hypomanic episode, and an irritable expansive mood with three criteria like "distractability," irritability, and "pressurized" speech. The symptoms should persist for four days. Dr. Gaonkar believed that plaintiff met the necessary criteria, considering that the DSM was just a guide. The stressors with plaintiff's wife and son "were significant enough to contribute to the

situation," and Dr. Gaonkar believed that plaintiff would have behaved differently if he were medicated at that time.

¶ 43 2. Dr. Lyle Rossiter

¶ 44 The next witness, Dr. Lyle Rossiter, testified that he had been a psychiatrist since 1963. He was board certified in clinical psychiatry in 1972 and in forensic psychiatry in 1984. Forensic psychiatry dealt with the intersection of psychiatry and law. Dr. Rossiter could not recall if he had ever testified on behalf of an employer in a litigated hearing.

¶ 45 The Pension Board hired Dr. Rossiter to evaluate plaintiff in 2006, and at that time he concluded that plaintiff suffered from bipolar disorder. On direct examination, Dr. Rossiter testified that plaintiff's counsel had not hired him for the purpose of the "current hearing," but on cross-examination he testified that plaintiff hired him. Dr. Rossiter conducted a second evaluation of plaintiff in February 2010. The focus of the evaluation was a little bit different, but Dr. Rossiter's "conclusions were basically the same." Dr. Rossiter opined that plaintiff's bipolar disorder, along with the signs and symptoms associated with that disorder, caused or contributed to plaintiff's behavior on September 19, 2004. His opinion was based on his evaluations of plaintiff, plaintiff's medical and clinical records, and a telephone interview with Lori. Dr. Rossiter's 2006 evaluation of plaintiff was about two hours, and the second evaluation lasted "not quite" two hours.

¶ 46 Dr. Rossiter stated in his report that plaintiff suffered from an "acute decompensation into an irrational state" during the incident. "Acute" meant abrupt or severe and "decompensation" meant breakdown. Plaintiff was in a "dysphoric hypomanic state" at the time, and this condition caused his conduct. "Dysphoric" was the opposite of euphoric, and "hypomania" was "a lessened state of mania." The condition was consistent with a diagnosis of Bipolar II.

¶ 47 Dr. Rossiter agreed that the DSM provided established diagnostic criteria for mental disorders. He further agreed that psychologists are qualified to diagnose mental disorders and that they can rely on the DSM for diagnoses. He also agreed that Minnesota Multiphasic Personality Inventory (a test Goldstein administered) was a well-accepted method for diagnosis.

¶ 48 Dr. Rossiter did not question psychologist Goldstein's qualifications or that she had a reasonable professional basis to make her opinion. However, he disagreed with her analysis and Dr. Harris's analysis because it was very apparent to him that plaintiff was suffering from a bipolar disorder before, during, and after the incident. Dr. Rossiter believed that medications had been very effective in stabilizing his mood, and the success of the medication was entirely consistent with a diagnosis of bipolar disorder. He stated that it would be "malpractice" to prescribe such a regimen of psychotropic drugs to a patient who was not suffering from a psychiatric condition.

¶ 49 Dr. Rossiter did not recall reviewing any police reports regarding the incident. He did not independently seek documents but instead relied on the person hiring him to provide the relevant information. Dr. Rossiter believed that plaintiff's condition affected his work life in at least one incident in 2002, where a supervisor told him to get help for temper outbursts. Dr. Rossiter agreed that plaintiff was not disciplined at that time, and there was no other evidence of the disorder in plaintiff's 17-year work history. Dr. Rossiter testified that plaintiff's behavior on the day in question was both irrational and rational, which could occur during a hypomanic state. He did not have an opinion on whether plaintiff could have stopped his misconduct on that day.

¶ 50 3. Dr. Richard Harris

¶ 51 Plaintiff rested his case-in-chief, and the City called Dr. Richard Harris as a witness. He had been a psychiatrist since 1982. He met with plaintiff in 2006 for 95 minutes and opined to the

Pension Board that plaintiff did not have a psychiatric illness that rendered him unfit for duty. Dr. Harris reviewed testing that psychologist Goldstein had conducted on plaintiff, and it revealed that plaintiff was exaggerating the symptoms that he was reporting. He looked at the report's results rather than the raw data.

¶ 52 Harris's opinion was based to a significant degree on plaintiff's work history, which was objective information that showed that he did very well for 17 years and did not show any evidence of illness, except one incident where he swore at his superior. If plaintiff had a significant illness, it would presumably have revealed itself over time. Plaintiff self-reported depression and anger outbursts, but the objective data did not corroborate his self-report. Moreover, when Dr. Harris met with plaintiff in 2006, he looked and acted very stable, and there wasn't evidence of significant depression or irritability.

¶ 53 Dr. Harris was retained by the City for the purposes of this hearing and met with plaintiff again in August 2010 for 100 minutes. He opined that what happened on September 19, 2004, was not a function of a psychiatric illness. Dr. Harris did not believe that plaintiff had a specific psychiatric illness when he evaluated him for disability, so he likewise did not believe that plaintiff had a psychiatric illness that accounted for his behavior. In particular, he found no evidence of a hypomanic state the night of the incident: there was no evidence that plaintiff was euphoric or talking fast, and plaintiff was responsive to his partner's suggestions that he "cool it" and not sit in the back of the ambulance. When a person is in a hypomanic state, he is not responsive to people around him, whereas plaintiff was able to respond rationally after the incident. Dr. Harris believed that the circumstances in plaintiff's life immediately preceding the situation just caused him to temporarily lose control.

¶ 54 Dr. Harris agreed that the other psychiatrists reporting to the Pension Board disagreed with his conclusion, though he was not aware of their opinions when he first did his report. Dr. Harris disagreed with Dr. Gaonkar's decision to immediately prescribe "very heavy duty medications" to plaintiff without first trying other methods. Dr. Harris did not believe that plaintiff was consistently out of control for a significant period of time to require such medications, especially considering that the medications were interfering with plaintiff's motor abilities.

¶ 55 H. October 2010 Board Ruling

¶ 56 The Board issued its written findings and decision on October 27, 2010, stating as follows. The directive from the appellate court was to determine as a matter of mitigation whether plaintiff was suffering from "a psychiatric/psychological condition" which caused his misconduct. The Board found the opinions of Drs. Harris and Goldstein more credible than the opinions of Drs. Gaonkar and Rossiter.

¶ 57 Dr. Gaonkar based his opinion largely on plaintiff's self-reporting, and he relied on little, if any, objective evidence in reaching his conclusion that plaintiff suffered from Bipolar II. Dr. Gaonkar reported that plaintiff had a history of explosive behavior, but the record indicated no such history other than, shortly before the incident, plaintiff struggling with his son and striking his wife. Over a 17-year period, plaintiff's work history showed only one incident in 2002 where he argued with a supervisor. Dr. Gaonkar saw no evidence of a hypomanic episode in plaintiff and admitted that plaintiff did not meet all of the criteria used to diagnose Bipolar II; he opined that plaintiff exhibited enough symptoms to be classified as having the disease.

¶ 58 Likewise, the Board found Dr. Rossiter's testimony less credible based on his substantial reliance on information provided by plaintiff. Also, Dr. Rossiter disingenuously answered "no"

when asked if he had been hired by plaintiff's counsel but answered "yes" when asked on cross-examination if he had been hired by plaintiff; Dr. Rossiter's 2010 report was addressed to plaintiff's counsel and ended with an offer to discuss the matter further with counsel. Dr. Rossiter's testimony and report also indicated that he thought he was appearing before the Board to support his earlier opinion that plaintiff's psychological disorder was duty-related. Even the Pension Board rejected that opinion when it awarded plaintiff a non-duty disability pension.

¶ 59 Further, Dr. Rossiter could not identify a hypomanic episode in respondent's health history. Instead, like Dr. Gaonkar, he diagnosed Bipolar II without that criterion being present. Dr. Rossiter found a history of depression in respondent based on respondent being depressed in his teenage years when his girlfriend broke up with him; when his parents passed away; during his divorce from his first wife; and during the difficulties with his current wife and son. "Employing some basic common sense, this Board finds it somewhat normal for an individual to be sad or depressed when friends break off relationships, when parent's [*sic*] pass away, [and] when spouses divorce or have marital/family problems."

¶ 60 The Board did not find plaintiff to be a credible witness. Records from Provena Mercy Center referred to Lori stating that plaintiff was not being sincere during his session with the social worker. Plaintiff's work history did not indicate that his performance was adversely affected by bouts of depression. Also, plaintiff "conveniently" could not recall his actions when he came into contact with the female detainee. Plaintiff described her as flailing her arms and stated that he was physically concerned about his own safety, but others present testified that the woman was somewhat subdued when they entered the cell and that she did not present a threat to anyone. The record indicated that plaintiff was taller and heavier than the woman. Also, plaintiff admitted that he had

taught classes on self-defense, and that during his career, he had been involved in situations where intoxicated patients were larger and more intimidating than the woman. Plaintiff further did not raise self-defense or psychological impairment during criminal proceedings but instead pleaded guilty to battering the woman. He stipulated that the evidence would show that he grabbed the woman's hair, yanked her head upright, twisted her arm behind her back and forced her out of her cell, and ultimately pushed her against the wall, where she fell to the ground.

¶ 61 Both Dr. Harris and Goldstein concluded that plaintiff is not and was not suffering from a specific psychiatric disorder. Goldstein opined that plaintiff's history was inconsistent with depression and his test scores were five to six standard deviations from the norm, which brought into question whether he actually suffered from a true bipolar disorder. Dr. Harris and Goldstein opined that plaintiff was over-endorsing, or exaggerating his symptoms, during his evaluation and testing. Dr. Harris thought that this was for the purpose of monetary gain, to ensure that he qualified for a disability pension.

¶ 62 Goldstein pointed out factual inconsistencies plaintiff made. She opined that for a Bipolar II diagnosis, there needed to be severe depression for two weeks or longer, combined with episodes of hypomania. However, there was no evidence that plaintiff had a depressive state for such period of time, and there was no evidence of hypomania. Dr. Goldstein did not find any connection between plaintiff's misconduct and "any symptoms he may have been experiencing."

¶ 63 Dr. Harris believed that the main problem manifested by plaintiff's conduct during the incident was anger and loss of anger control, and it was not the result of a psychiatric illness. Plaintiff's anger management issues were corroborated by Provena Mercy Medical records. Dr. Harris testified that if plaintiff had any significant psychological issues, they would have manifested

themselves over the 17-year period plaintiff worked for the Department. Dr. Harris testified that based on eyewitness accounts, plaintiff did not seem to be significantly impaired both before and after the incident and was able to modify his behavior after his partner told him to stop. He believed that the lack of any evidence of plaintiff having a hypomanic episode was a clear indication that he was not suffering from Bipolar II. He testified that such an episode would last for four or five days, not five minutes. The Board stated, "Like the other two incidents of violence referred to by [plaintiff] (which also occurred at a time when [he] was confronted with situations which infuriated him), he simply responded out of anger."

¶ 64 The Board continued as follows. Plaintiff's attorney stated on the record that plaintiff was not arguing that he was fit to return to duty or even seeking to do so. The record indicated that plaintiff was taking four prescription medications that impacted his ability to perform his duties, and plaintiff readily admitted to an alcohol abuse problem.

¶ 65 The Board concluded:

> "Accordingly, it is the decision of this Board that [plaintiff's] misconduct was not causally connected to any alleged psychological or psychiatric disorder and therefore this Board affirms its earlier decision terminating the employment of [plaintiff]. Even if [plaintiff], in fact, did suffer from manic depression or Bi-Polar II, it is the determination of this Board that his misconduct constituted such a substantial shortcoming that it would be detrimental to the Naperville Fire Department, its members, the public served by the Department (not to mention the City of Naperville), to place him in the position where he could repeat such conduct."

¶ 66 I. Trial Court Review

¶ 67 Plaintiff subsequently filed a complaint for administrative review of the Board's decision. On March 26, 2012, the trial court found that this court's mandate was followed, and it affirmed the Board's decision. Plaintiff timely appealed.

¶ 68 II. ANALYSIS

¶ 69 In administrative review cases, we review the decision of the administrative agency rather than that of the trial court. *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386 (2010). Our review of the agency decision is governed by the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2010)). Our review extends to all questions of law and fact presented by the record, and we must consider the agency's factual findings *prima facie* true and correct. 735 ILCS 5/3-110 (West 2010). Thus, where the parties dispute the agency's factual findings, we apply a manifest weight of the evidence standard. *Provena Covenant Medical Center*, 236 Ill. 2d at 386-87. However, where the dispute is an agency's conclusion on a point of law, we review the agency's decision *de novo*. *Id.* at 387. We review mixed questions of law and fact, which occurs where the dispute pertains to the legal effects of a set of facts, for clear error. *Id.*

¶ 70 A. Whether the Board Complied with Our Mandate

¶ 71 On appeal, plaintiff argues that the Board failed to follow this court's mandate, in that the Board: (1) went beyond the mandate to consider that plaintiff did not have a psychiatric condition in the first instance; (2) repeatedly and improperly considered psychological evaluations and opinions introduced by the City, as opposed to the medical, psychiatric evidence mandated by this court; and (3) ultimately determined that even if plaintiff suffered from Bipolar II disorder, his conduct was still such a substantial shortcoming that he should be discharged. Whether a reviewing

court's mandate has been complied with is a question of law we review *de novo*. See *Fleming v. Moswin*, 2012 IL App (1st) 103475, ¶ 120.

¶ 72 1. Whether the Board could Consider if Plaintiff even had a Psychiatric Condition

¶ 73 Plaintiff argues that in the original hearing, he introduced "clear evidence by records *** of his diagnosis of bipolar disorder and depression." He maintains that on appeal, we observed that he "was suffering from psychiatric conditions" or "psychiatric illnesses" at the time at issue, and we remanded the case solely for the Board to determine whether his psychiatric illnesses were substantially related to his conduct. Plaintiff argues that contrary to this mandate, the Board allowed the City to introduce evidence of whether he even suffered from a diagnosed condition in the first place. Plaintiff argues that the Board thereafter accepted the views of Dr. Harris and psychologist Goldstein that he did not suffer from bipolar disorder, despite the medical evidence already on record, and therefore concluded that his conduct was not related to a mental disorder. According to plaintiff, the Board's decision, resting on a finding that he did not suffer from a psychiatric illness, was outside the mandate and cannot stand.

¶ 74 When a lower tribunal receives a mandate, it must obey the precise and unambiguous directions on remand. See *Fleming*, 2012 IL App (1st) 103475, ¶ 28. Here, plaintiff's argument that we previously found that he definitively suffered from a psychiatric disorder, and required the Board to accept that finding, is without merit. In our opinion, we stated that plaintiff "introduced evidence that *he may have been* suffering from psychiatric conditions at the time of the alleged misconduct" (emphasis added) (*Hermesdorf*, 372 Ill. App. 3d at 854) and that the Board "was presented with *some evidence* that plaintiff was suffering from psychiatric condition" when the incident occurred (emphasis added) (*id.* at 856). It was only in this context that we referred to plaintiff's "psychiatric

illnesses." *Id.* Our specific mandate also makes clear that we were not making a finding that plaintiff had a psychiatric illness, as we directed the Board to determine whether plaintiff's misconduct "was substantially related to *any* psychiatric condition from which he was suffering at that time." *Id.* at 857. We stated that if the Board determined that "plaintiff's misconduct was substantially related to *a psychiatric condition*," it should fashion an appropriate disciplinary sanction. *Id.* In other words, we did not tell the Board to determine whether plaintiff's misconduct resulted from the psychiatric conditions proven by his medical records. Indeed, to have done so would have been the equivalent of making a factual finding about plaintiff's mental health in the first instance, as the Board did not explore this issue in the original hearing. However, we do not make our own factual findings in administrative cases, but rather only review an agency's factual findings under a manifest weight of the evidence standard. See Provena Covenant Medical Center, 236 Ill. 2d at 386-87. Accordingly, on remand the Board was free to make its own findings regarding plaintiff's mental condition.

¶ 75 2. Whether the Board Improperly Relied on Psychological Testimony

¶ 76 Plaintiff notes the differences between psychologists and psychiatrists: a psychiatrist is a physician who can prescribe medication (*In re Dru G.*, 369 Ill. App. 3d 650, 657 (2006)) whereas a psychologist cannot provide medication but instead offers therapy (see *Illinois Psychological Ass'n v. Falk*, 818 F.2d 1337, 1339 (7th Cir. 1987)). Plaintiff argues that the Board's decision is replete with improper "psychological" considerations, such as criticizing him for not claiming that he was "psychologically impaired" in his criminal proceedings and stating that he had not displayed any "psychological disorder" over the years in either his work or personal life. Plaintiff points out that our mandate required the Board to determine if his conduct was the result of "any *psychiatric*

condition from which he was suffering at that time." (Emphasis added.) *Hermesdorf*, 372 Ill. App. 3d at 857. Plaintiff argues that the Board violated this mandate by relying on the testimony of Goldstein, a clinical psychologist. Plaintiff maintains that Goldstein was not qualified to give an opinion on any psychiatric condition in relation to the charged conduct, and she offered psychological opinions contrary to the inquiry we mandated.

¶ 77 Plaintiff further argues that the Board also should not have relied on Dr. Harris, because he admitted to forming his conclusions and opinions based upon his strong reliance on the psychological testing Goldstein performing on plaintiff. Plaintiff argues that, in contrast, his two experts, Drs. Gaonkar and Rossiter, stayed within the mandate's bounds by offering psychiatric opinions that did not rely on Goldstein's psychological evaluations. Plaintiff maintains that these doctors provided the only psychiatric opinion testimony that the Board could properly consider, and since they opined that his psychiatric condition of Bipolar II disorder was substantially related to his conduct on the night in question, the Board's termination decision must be vacated.

¶ 78 The City argues that plaintiff's argument that the Board considered his psychological condition rather than his psychiatric condition is a red herring, as even this court referred to mental illness interchangeably as psychological conditions and psychiatric conditions. See *Hermesdorf*, 372 Ill. App. 3d at 857 ("[W]e conclude that a remand of this case is necessary because the Board did not make the required finding, per *Walsh* and *Kloss*, regarding whether plaintiff's *psychological* conditions were substantially related to his misconduct." (Emphasis added.)). The City argues that the evidence was undisputed that the diagnosis of Bipolar II is guided by the DSM, which is the Diagnostic Statistical Manual of *Mental Disorders*. Therefore, argues the City, a reference to Bipolar II as a psychiatric or a psychological condition is irrelevant.

¶ 79 The City further argues that the three witnesses who testified before the Board were psychiatrists and provided expert testimony about plaintiff's mental condition. The City maintains that plaintiff's claim that Dr. Harris's testimony should be disregarded because he considered the opinion of psychologist Goldstein and her testing results is likewise without merit. The City cites *People v. Swanson*, 335 Ill. App. 3d 117, 125 (2002), where this court held that an expert may rely on reports made by others in formulating an opinion if other experts in the field reasonably rely on such materials.

¶ 80 We agree with the City that plaintiff's argument is without merit. Our use of the phrase "psychiatric condition" in the prior appeal is consistent with the terminology employed by *Walsh*. Here, the Board ultimately heard from three psychiatrists who offered differing opinions regarding whether plaintiff's misconduct was substantially related to a psychiatric condition, and the Board clearly considered the testimony of each of these doctors in arriving at its conclusion. We note that psychologist Goldstein was previously hired by the Pension Board to administer psychological testing on plaintiff for review by the appointed psychiatrists. Thus, Dr. Harris's reliance on these test results does not undermine his opinion, as the Board could determine that such materials were reasonably relied on by experts in the field. See *People v. Thill*, 297 Ill. App. 3d 7, 11 (1998) (trial court has the responsibility to determine whether data upon which expert bases an opinion are of a type that experts in the field reasonably rely upon); see also *People v. Garcia*, 2012 IL App (1st) 103590, ¶ 13 (psychiatrist offered opinion based on records, including psychological testing); *People v. Itani*, 383 Ill. App. 3d 954, 957 (2008) (psychiatrist's "forensic evaluation" of the defendant included reviewing "psychological reports").

¶ 81 We recognize that the Board also considered the opinion of psychologist Goldstein herself. However, the testimony of plaintiff's own expert, Dr. Rossiter, provided the Board with ample basis to do so. All of the psychiatrists agreed that the DSM was the standard reference manual listing the criteria for mental disorders. Dr. Rossiter testified that psychologists are qualified to diagnose mental disorders and that they can rely on the DSM for diagnosis. More specifically, he testified that he did not question psychologist Goldstein's qualifications or that she had a reasonable professional basis to make her opinion. Thus, to the extent that our prior decision required the opinion of psychiatrists, the testimony of the psychiatrists opened the door for the additional consideration of the opinion of psychologist Goldstein. As the Board itself stated:

> "In choosing to recognize the testimony and reports submitted by Dr. Goldstein in this matter, the [Board] notes that even [plaintiff's] witness, Dr. Rossiter, as a board certified psychiatrist, acknowledged that Dr. Goldstein, as a clinical psychologist, has the professional credentials to offer a diagnosis and a professional opinion as [to] the mental health of [plaintiff] and whether or not he suffered from a psychological disorder which caused or resulted in his misconduct as of September 19, 2004."

See also 225 ILCS 15/2 (West 2010) (defining "clinical psychology" as, in relevant part, the "evaluation, classification and treatment of mental, emotional, behavioral or nervous disorders or conditions"). Ironically, plaintiff himself sought to have the May 2008 hearing continued so that he could have his psychologist, Gary Coleman, testify.

¶ 82 Finally, we conclude that the Board's references to "psychological" conditions or disorders in addition to "psychiatric" conditions or disorders does not bring its decision outside of this court's mandate. The testimony before the Board indicated that psychiatrists and psychologists alike refer

to the DSM in diagnosing "mental disorders," so whether a Bipolar II disorder is referred to as a psychiatric disorder or a psychological disorder is apparently a distinction without a difference, at least in this case. As the City points out, even this court used the terms interchangeably in our prior opinion. See also *Kloss*, 96 Ill. 2d at 259 (remanding for the board to consider the "medically related aspects of the basis" for the officer's discharge, including his "potential *psychological* problems" (emphasis added)).

¶ 83 3. Whether the Board Could Order Discharge

¶ 84 Plaintiff recites the provision in our mandate stating, "In the event that the Board determines plaintiff's misconduct was substantially related to a psychiatric condition, it shall be the obligation of the Board to fashion a disciplinary sanction consistent with the fairness and justice goals enunciated in *Walsh*, 96 Ill.2d at 108." *Hermesdorf*, 372 Ill. App. 3d at 857. Plaintiff points out that in *Walsh*, our supreme court stated that where the officer's misconduct was substantially the result of psychiatric problems that led to his medical suspension, the proper sanction would be something other than discharge for cause. *Walsh*, 96 Ill. 2d at 108. Plaintiff then recites the Board's statement:

> "Even if [plaintiff], in fact, did suffer from manic depression or Bi-Polar II, it is the determination of this Board that his misconduct constituted such a substantial shortcoming that it would be detrimental to the Naperville Fire Department, its members, the public served by the Department (not to mention the City of Naperville), to place him in the position where he could repeat such conduct."

¶ 85 Plaintiff argues that the Board effectively affirmed its earlier discharge decision regardless of whether he suffered from a psychiatric or psychological condition that caused or contributed to

the incident. Plaintiff maintains that in doing so, the Board ignored supreme court precedent, providing grounds to vacate its decision.

¶ 86 The City argues that nothing in this court's opinion directed reinstatement or forbade the Board from making the determination that termination was appropriate. The City maintains that the ultimate decision of whether to hire or fire firefighters is the essential statutory function of such boards across the state. The City argues that this case is distinguishable from *Walsh* because there the decision to discharge could have jeopardized the officer's pension rights, whereas here plaintiff's pension was not in jeopardy. See *Walsh*, 96 Ill. 2d at 108 (remanding cause "because the psychiatric evidence presented was so vague and because the board's decision to discharge Sergeant Walsh for cause may jeopardize his pension rights"); *Lynch v. City of Waukegan*, 363 Ill. App. 3d 1078, 1088 (2006) ("*Walsh* instructs us to be solicitous of the rights of a pensioner in instances like this"). The City maintains that the Board also considered the undisputed evidence by three experts that plaintiff's medication rendered him unable to perform the job of a firefighter, and the City further references Dr. Rossiter's testimony that plaintiff reported fearing that he would overreact to patients and doubted his physical ability to work on a long ladder.

¶ 87 We conclude that plaintiff's argument is without merit. The Board clearly found that plaintiff's misconduct was not casually connected to any alleged psychological or psychiatric disorder, and it was on this basis that the Board affirmed its earlier decision to terminate plaintiff's employment. This finding is entirely consistent with our mandate. Although the Board also indicated that even if plaintiff suffered from manic depression or Bipolar II, it would still terminate his employment, this statement amounts to surplusage, similar to dictum. As the Supreme Court has stated, "Dictum settles nothing, even in the court that utters it." *Jama v. Immigration & Customs*

Enforcement, 543 U.S. 335, 351 n.12 (2005). Therefore, we need not address whether the Board could have terminated plaintiff if it had definitively concluded that his conduct was the result of a mental disorder.

¶ 88 B. Whether the Board's Decision was Arbitrary and Unreasonable

¶ 89 Plaintiff next argues that even if the Board followed our mandate, its discharge decision must be vacated. As mentioned in the context of summarizing our prior opinion, we employ a two-step process in reviewing an administrative agency's decision to discharge an employee. *Walsh*, 96 Ill. 2d at 105. We already concluded the first step in our prior appeal, determining that the Board's finding of guilt was not against the manifest weight of the evidence. *Hermesdorf*, 372 Ill. App. 3d at 852. For the second step, we determine whether the agency's factual findings provide a sufficient basis for the agency's conclusion that cause for discharge does or does not exist. *Walsh*, 96 Ill. 2d at 105. "Cause" is defined as " 'some substantial shortcoming which renders [the employee's] continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and something which the law and a sound public opinion recognize as a good cause for his not longer occupying the place.' " *Id.* (quoting *Fantozzi v. Board of Fire & Police Commissioners*, 27 Ill. 2d 357, 360 (1963)). We will overturn an agency's finding of cause for discharge only if it is arbitrary and unreasonable or unrelated to the requirements of the service. *Id.*

¶ 90 Plaintiff argues that the "protracted" proceedings before the Board, and the Board's consistent rulings against him, raise the issue of substantial bias. Plaintiff argues that: on the first remand the Board made its decision on psychological testimony alone, and the circuit court had to remand the cause for a hearing to follow that mandate; defendants thereafter appealed where there was no legal jurisdiction to appeal; the City then moved to dismiss as moot, and the Board granted

the motion; and the circuit court had to intervene again, directing the Board to conduct the mandated hearing.

¶ 91 We note that several of the actions plaintiff refers to were undertaken by the City and/or other defendants, rather than the Board. Moreover, the record does not reveal that defendants engaged in any sanctionable conduct through their motions and appeals, and plaintiff himself has repeatedly exercised his right to administrative review, contributing to the "protracted" proceedings. That the Board has been consistent in its rulings also does not amount to evidence that it has a substantial bias. See *People v. Neumann*, 148 Ill. App. 3d 362 (1986) ("[a]llegedly erroneous findings and rulings by the trial court are insufficient reasons to believe the court has a personal bias or prejudice").

¶ 92 Plaintiff also challenges individual findings of the Board, and we examine these in turn. Plaintiff argues that the Board incorrectly stated that Dr. Gaonkar "saw no evidence of a hypo manic episode which he described as a patient experiencing a period of inflated self-esteem, a sense of grandiosity." Plaintiff argues that Dr. Gaonkar actually testified that plaintiff's hypomanic episode was shown by irritability and agitation on September 19, 2004, and the episode lasted for longer than four days.

¶ 93 Our review of Dr. Gaonkar's testimony shows that on cross-examination, he was not directly responsive to the specific questions asked, making his answers difficult to understand. We do agree with plaintiff that Dr. Gaonkar did testify that plaintiff's hypomanic episode was shown by irritability and agitation. However, Dr. Gaonkar did not testify that the episode lasted for four days. Rather, when asked, "there is nothing really in the record *** that says that this had been going on for four days, correct?", Dr. Gaonkar responded, "Could be longer, yes. There is no – it doesn't say

the time." In the end, Dr. Gaonkar was clear that he believed that plaintiff did not meet all the DSM criteria for Bipolar II but showed enough symptoms to be classified as having the disorder, and the Board recognized this point in its findings.

¶ 94 Plaintiff also argues that the Board discounted Dr. Gaonkar's analysis outright as purportedly being made from self-reporting by plaintiff, without any "objective evidence." Plaintiff argues that Dr. Gaonkar testified that he believed that if plaintiff had been medicated on the day of the incident, the result would have been different.

¶ 95 We conclude that the Board's finding on this issue is not against the manifest weight of the evidence, as Dr. Gaonkar's testimony indicates that he largely relied on plaintiff's self-reporting in making his diagnosis.

¶ 96 Turning to Dr. Rossiter, plaintiff argues that the Board incorrectly stated that Dr. Rossiter's diagnosis relied on plaintiff's self-reporting alone. Plaintiff's assertion is incorrect. While the Board stated that the diagnosis was substantially based on plaintiff's self-reporting, it also acknowledged that Dr. Rossiter interviewed Lori and reviewed other documents, including work-related materials.

¶ 97 Plaintiff further challenges the Board's statement that "Dr. Rossiter could not identify a hypo manic episode occurring in the reported health history of" plaintiff. We note that Dr. Rossiter testified that on September 19, 2004, plaintiff had "at least a hypomanic high" and was in "an irritable dysphoric manic state." Thus, the Board's statement could be based on a difference in terminology, or it could also reasonably be interpreted as noting a lack of hypomanic episode in the years before the incident.

¶ 98 Plaintiff maintains that the Board "fancifully" questioned Dr. Rossiter's credibility because he purportedly answered "no" to the question of whether he had been hired by plaintiff's counsel but

answered "yes" in cross-examination when asked if plaintiff hired him. Plaintiff argues that Dr. Rossiter stated on cross-examination that plaintiff did not retain him for the Pension Board hearing but had hired him for the hearing that day.

¶ 99 The Board's critique of Rossiter on this issue cannot be labeled as entirely fanciful, as it has support in the record. Plaintiff cannot escape the fact that on direct examination, his counsel asked, "Now, Dr. Rossiter, I did not retain you in this case, did I?" Dr. Rossiter answered, "True." This question and response give the appearance of Dr. Rossiter being an independent expert, whereas on cross-examination Dr. Rossiter admitted that plaintiff hired him.

¶ 100 Plaintiff argues that the Board improperly refuted Dr. Rossiter's testimony that plaintiff was suffering from depression over a lengthy period of time. Plaintiff points to the Board's statement that "basic common sense" dictates that it is normal for an individual to be sad or depressed when relationships break apart or family members pass away. Plaintiff argues that "[r]eliance upon 'basic common sense' in the face of clear psychiatric opinion, hardly makes sense."

¶ 101 Although plaintiff faults the Board for not relying on expert testimony, Dr. Harris and psychologist Goldstein also found no evidence of long-term depression in plaintiff's history. The trier of fact may accept one expert opinion over another (*Robrock v. County of Piatt*, 2012 IL App (4th) 110590, ¶ 42), and it may even reject all expert testimony (*Mobile Oil Corp. v. City of Rolling Meadows*, 214 Ill. App. 3d 718, 726 (1991)). Thus, the Board was not required to accept Dr. Rossiter's testimony that plaintiff had a history of a depressive disorder.

¶ 102 Plaintiff points to the Board's statement that he did not raise mental impairment or self-defense at his criminal "trial." Plaintiff maintains that the Board "incredulously" ignored the fact his case was completed by plea bargain, and he never had a trial.

¶ 103 We agree that the Board was inexact in its terminology by referring to a trial, but it clearly recognized the nature of the criminal proceedings. The Board stated that plaintiff pleaded guilty to simple battery, and it recited the factual basis to which he stipulated.

¶ 104 Plaintiff also argues that in questioning his motives and credibility regarding his condition, the Board ignored that on November 2, 2004, before the proceedings were even initiated, he had already requested a disability pension, stating that his conduct during the incident "resulted from [his] disease." Plaintiff argues that the disease, Bipolar II, had already been diagnosed, as established by medical records.

¶ 105 Plaintiff's argument is without merit. Regardless of whether he filed for pension benefits before Board proceedings initiated, he did not claim to be mentally impaired until after the misconduct occurred. Moreover, it is the administrative agency's responsibility to weigh the evidence, determine witness credibility, and resolve conflicting testimony. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 329 (2009). On review, we will not disturb the agency's determinations as to the weight of the evidence and the credibility of witnesses unless the determinations are against the manifest weight of the evidence. *UDI No. 2, LLC v. Department of Public Health*, 2012 IL App (4th) 110691, ¶ 29. Here, the Board heard plaintiff testify and be subject to cross-examination during the May 2008 proceedings. In arriving at its conclusion that plaintiff was not credible, the Board considered his testimony; personnel evaluations; records from his criminal proceedings; hospital records referring to Lori's statement that plaintiff was not being sincere during his session with the social worker; and the opinions of Goldstein and Dr. Harris that plaintiff was exaggerating his symptoms. We have no basis to disturb the Board's credibility assessment.

¶ 106 Last, plaintiff argues that although the Board accepted Dr. Harris's opinion that, if plaintiff had significant mental issues, they would have clearly manifested themselves during his 17-year work history, both Drs. Gaonkar and Rossiter testified that plaintiff had the psychiatric condition for years, and that it would not have necessarily manifested itself in his work record. Plaintiff also argues that the Board improperly concluded that there was a lack of evidence connecting plaintiff's misconduct to any psychiatric disorder, because Drs. Gaonkar and Rossiter testified to the strong connection to the incident in question.

¶ 107 The Board was faced with a classic battle of the experts, and such a battle was for the Board, as the trier of fact, to resolve. See *Davis v. Kraff*, 405 Ill. App. 3d 20, 37 (2010). The Board did not find plaintiff to be credible, and it explained that plaintiff's lack of credibility, *along with* other cited considerations, correspondingly undermined the testimony of Drs. Gaonkar and Rossiter, who relied to a significant degree on plaintiff's self-reporting, both through interviews and through medical records. In contrast, Dr. Harris placed greater weight on what he described as more "objective" information, such as: plaintiff's performance on psychological tests, which he said showed that plaintiff was exaggerating his symptoms; plaintiff's 17-year work history, which he said did not reveal any significant mental illness; and eyewitness statements, which he said showed that plaintiff was able to respond rationally after the incident, which would not have occurred in a hypomanic state. While Drs. Gaonkar and Rossiter testified that plaintiff's mental disorder caused or contributed to his misconduct, Dr. Harris and psychologist Goldstein reached the opposite conclusion.

¶ 108 Based on the conflicting opinions, we cannot say that the Board's ultimate finding, that plaintiff's misconduct was not causally connected to any alleged psychological or psychiatric

disorder, is against the manifest weight of the evidence. Therefore, its decision finding discharge for cause cannot be labeled as arbitrary and unreasonable or unrelated to the Department's needs.

¶ 109 III. CONCLUSION

¶ 110 For the reasons stated, we affirm the judgment of the Du Page County circuit court, which affirmed the Board's decision to discharge plaintiff for cause.

¶ 111 Affirmed.