

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

SHEILA KALINA,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellant,)	
)	
v.)	
)	
)	
COOK COUNTY, ILLINOIS; TOM DART, Sheriff of)	
Cook County, Illinois; COOK COUNTY SHERIFF'S)	No. 19 CH 12690
MERIT BOARD; JOHN J. DALICANDRO, Chairman;)	
BYRON BRAZIER, Vice-Chairman; VINCENT T.)	
WINTERS, Secretary; KIMBERLY PATE GODDEN,)	
Board Member; ELENi P. SIANIS, Board Member;)	
DARREN COLLIER, Board Member; and TERRANCE)	
J. WALSH, Board Member, ¹)	Honorable
)	Pamela McLean Meyerson,
Defendants-Appellees.)	Judge, presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Hoffman and Cunningham concurred in the judgment.

¹ We have substituted the current officers and members of the Cook County Sheriff's Merit Board as parties in place of their predecessors. 735 ILCS 5/2-1008(d) (West 2020).

ORDER

¶ 1 **Held:** Because of the lack of an adequate record, this court cannot meaningfully review the Cook County Sheriff's Merit Board's decision to terminate the plaintiff from her position as a deputy sheriff. Affirmed.

¶ 2 BACKGROUND

¶ 3 Sheila Kalina, a deputy Cook County sheriff, appeals from the order of the circuit court that affirmed the decision to the Cook County Sheriff's Merit Board (Board) to terminate her employment. The Sheriff had alleged that Kalina had committed misconduct in connection with her duties to monitor a detainee lockup at the Markham courthouse, resulting in the sexual assault of a female detainee by two male detainees. We affirm.

¶ 4 FACTS

¶ 5 The Sheriff charged Kalina and three other deputy sheriffs with various infractions of department rules. In summary, the charges against Kalina alleged the following: (1) on May 2, 2017, she was assigned to courtroom 106 at the Markham courthouse, along with Deputy Sheriff Timothy Houlihan; (2) two male prisoners from cell 105 sexually assaulted B.D., a female prisoner in Kalina and Houlihan's custody; (3) Houlihan allowed one of the male prisoners from cell 105 to enter restroom cell 106, while B.D. was in that same restroom cell; (4) Kalina removed a male prisoner from restroom cell 106 and returned him to cell 105; (5) Kalina then allowed a second male prisoner from cell 105 to enter restroom cell 106, while B.D., who had already been sexually assaulted, was in that restroom cell, and that "even a cursory check" of the cell would have revealed B.D.'s presence in that cell; (6) Kalina submitted a false Prisoner Safety Check Sheet asserting that all 15-minute prisoner safety checks were completed for cell 106, even though Kalina did not conduct any of the safety checks; (7) Kalina was grossly negligent in her duties to supervise the prisoners in her custody and properly conduct 15-minute safety checks, particularly resulting in

two male inmates serially sexually assaulting B.D.; and (8) Kalina provided an audio-recorded statement to department investigators that was untruthful in numerous respects. The Sheriff requested that the Board terminate Kalina's employment for these violations.

¶ 6 The three other deputies' cases stemming from the same incident were consolidated with Kalina's case and heard together at a single hearing that was conducted on various days over the course of seven months before one of the Board's members who acted as a hearing officer. The Board issued a separate final administrative order on Kalina's case, and only her case is now before us.

¶ 7 Because of our disposition, we summarize only some of the facts adduced at the Board hearing. The Sheriff's main witness was Eyman Zabadneh, an investigator with the Sheriff's Office of Professional Review (OPR). He testified that he was assigned as the primary investigator of the incident in question, the focus of which was the allegation that deputies placed a female detainee, B.D., in the same holding cell as several male detainees.

¶ 8 Zabadneh testified that he conducted an audio-recorded interview of Kalina, in the presence of her union legal counsel. Immediately before the interview, she had signed a "Notification of Allegations," a "Brady Advisement" form, an "Administrative Investigation" form, and a "Request to Secure Legal Counsel or Union Representation" form. Kalina knew that the interview was being audio recorded.

¶ 9 At this point in Zabadneh's testimony, the Sheriff's attorney sought to mark a disc, referred to as a DVD, containing the audio interviews of all four charged deputies as Exhibit 10. He stated that he wished to play the recordings of certain investigative interviews, including that of Kalina, at the hearing. Kalina's attorney objected, stating it was not necessary to play the interviews in their entirety because "it's going to be made part of the record." After considerable back-and-forth

discussions, the hearing officer ruled that the entire recording could be played, noting, “I’m going to allow counsel to put on the case the way he chooses.” In response to a question from Kalina’s attorney, the hearing officer clarified that the court reporter would not transcribe the audio recording, but simply note in the transcript that the recording “was played.” The hearing officer stated that “Sheriff’s Exhibit 10, when submitted into the record, will contain only audio interviews of the four respondents.” Before playing the audio recording, the Sheriff’s attorney noted that he would skip over the initial portion addressing the deputy’s preliminary advisory rights to the four-minute mark. The transcript then reflects: “(Playing audio).” After a lunch break, the parties discussed receiving copies of the disc identical to the one placed in evidence. The transcript reveals that the interview was at least 14 minutes long.

¶ 10 Zabadneh identified his own and Kalina’s voices on the audio recording and testified that it was a fair and accurate copy of the actual interview. When the parties later reviewed the list of exhibits that had been marked but not yet been formally admitted into evidence, Kalina’s attorney stated he had no objection to admission of the audio recording, and it was admitted into evidence as Sheriff’s Exhibit 10. The administrative record filed with the circuit court and contained in the certified record before this court contains copies of numerous documentary exhibits, but no copy of Exhibit 10 is in the record.

¶ 11 Zabadneh also testified that, as part of his investigation, he had reviewed two terabytes of video recordings of the pertinent areas of the Markham courthouse depicting the actions of the charged deputies. One attorney at the hearing noted that the Sheriff had produced 1,500 hours of video recordings in discovery. One of the video files was played at the hearing. The video replay was paused from time to time to allow counsel to question Zabadneh about which deputies appeared in the video, and for Zabadneh to explain their actions and the chronology of certain

events relating to the movement of deputies and detainees from room to room. Zabadneh specifically identified Kalina, other deputies, and the detainees in the video. At a certain point in Zabadneh's testimony, the hearing officer directed the parties to review numerous marked Sheriff's exhibits *seriatim* to determine if there were any objections to their admission. The hearing officer noted that "we reviewed" the video recording, which had been marked as Sheriff's exhibit 20. When asked, Kalina's attorney did not object to its admission. The hearing officer directed that only a particular file that had been played be placed on a separate disc and submitted for the record. Again, no copy of Exhibit 20 is in the record.

¶ 12 During his testimony, Zabadneh also identified and explained several documentary exhibits. Exhibits 6 and 7 were photographs of the hallway and holding cell area between two of the Markham courtrooms where the incident occurred. There was extensive questioning regarding whether individuals standing in certain areas could see other areas, based on the distances, windows, and lines of sight shown in the hallway photograph. In response to questions, he explained how each deputy had violated various department policies, in part based on his review of the video recordings of the area in question. In particular, he noted that the deputies had a practice of inserting another deputy's initials on certain activity logs, with the result that the log would falsely indicate that one deputy had checked the cell, but in reality, another deputy had done so and simply reported the status of the cell to the other deputy. Copies of exhibits 6 and 7 are in the record, but they are such poor scans of the original photographs that they are essentially useless.

¶ 13 Another of the charged deputies, Deputy Houlihan, testified in his own defense. During his testimony, the video recording was cued up and Houlihan was questioned regarding various events shown on the video. He also testified regarding the photograph of the outside of cell 106 that had been admitted as Exhibit 6. At the conclusion of Houlihan's testimony, the hearing officer asked

Houlihan's attorney to take the portion of the video he used in examining Houlihan, transfer it to a disc, and mark it as "Houlihan Exhibit 3," which would then "be part of the record." Again, no copy of the disc is in the record before us.

¶ 14 On October 25, 2019, the Board issued a unanimous decision exhaustively reciting the evidence. The Board's order indicates, among other things, that exhibit 10, the disc containing the audio interviews of all four respondents, was played for the hearing officer. The order also states that "The Parties agreed to have the recorded statement/interview of Respondent Kalina be admitted in lieu of her live testimony." It also explains that exhibit 20, "the videos of the day in question," showed the lockup area in the basement of the Markham courthouse, and showed the following:

"Deputy Sgt. Lawrence Garrett as well as Respondent Buchanan
*** are conversing and standing and talking in front of detainees
Drake and Tribble. * * * At that point Inv. Zabadneh sees
Respondent Kalina walk into the screen on the bottom left and
accompanied by the victim, [B.D.]. In the video it shows
Respondent Kalina go to a desk and put her head down after the
allegations are made to the sergeant by detainees Drake and
Tribble."

¶ 15 The Board found that Kalina had violated numerous department policies and was "grossly negligent" when she failed to enter the cells every 15 minutes to check for occupancy and to monitor the restroom. The Board also found that Kalina falsely claimed that the 15-minute checks were properly done, filed false reports to that effect, was "untruthful" to OPR investigators

regarding the incident, and failed to properly monitor the detainees under her supervision. The Board concluded that Kalina's failures led to the sexual assault of B.D.

¶ 16 Kalina filed a petition for administrative review in the circuit court of Cook County. After briefing, the circuit court affirmed. The circuit court affirmed the Board's decision, finding there was more than sufficient evidence to affirm the Board's order terminating Kalina. This appeal followed.

¶ 17 ANALYSIS

¶ 18 On appeal, Kalina argues that the circuit court erred in affirming the Board. She contends that there was insufficient evidence to support the Sheriff's charges against her and even if there was, it was insufficient to warrant discharge.

¶ 19 We first note that Kalina's brief contains little meaningful legal analysis. The argument section of the brief (which is improperly labeled "Discussion" rather than "Argument" in violation of Illinois Supreme Court Rule 312(h)(7) (Ill. Sup. Ct. R. 312(h)(7) (eff. Oct. 1, 2020)) sets forth familiar case law regarding the applicable standards of review for administrative hearings, but then devotes the next six pages to an additional recitation of the facts of the case, periodically interspersed with statements that particular evidence did not support the Board's findings. The remainder of the brief begins with an argument regarding Kalina's lack of prior discipline—a tangential issue upon which the record seems to be largely silent. It continues with a one-page argument, citing two due process cases, to the effect that the board improperly relied on hearsay evidence to reach its conclusion by relying on Tribble's and Drake's statements in its written decision. The brief concludes with a two-page section finding fault with the circuit court's analysis, but, again, citing no authority whatsoever for reversal. This court is entitled to be presented with clearly defined issues, citations to pertinent authority and cohesive arguments. *U.S. Bank v.*

Lindsey, 397 Ill. App. 3d 437, 459 (2009). Furthermore, this court “is not merely a repository into which an appellant may ‘dump the burden of argument and research.’ ” *Id.* (quoting *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993)). The rules of procedure concerning appellate briefs are rules, not mere suggestions, and it is within our discretion to strike a brief and dismiss the appeal for failure to comply with those rules. See *Niewold v. Fry*, 306 Ill. App. 3d 735, 737 (1999). Despite these deficiencies, we will proceed with our analysis, noting, of course, that Kalina’s failure to abide by the Illinois Supreme Court rules with respect to citation of authority results in forfeiture of certain claims. *People ex rel. Illinois Dept. of Labor v. E.R.H. Enterprises*, 2013 IL 115106, ¶ 56.

¶ 20 The Board has exclusive authority to remove, demote, suspend more than 30 days, or terminate Cook County Sheriff’s deputies as a disciplinary sanction for violation of the Sheriff’s rules, regulations, and code of conduct. 55 ILCS 5/3-7011, 3-7012 (West 2020). The Administrative Review Law applies to and governs proceedings for review of the Board’s decisions. 55 ILCS 5/3-7012 (West 2020). Under that law, our review extends to all questions of law and fact presented by the entire record. 735 ILCS 5/3-110 (West 2020). We review the decision of the administrative agency, not that of the circuit court. *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 272 (2009).

¶ 21 That brings us to the issue of the state of the record before us. Although the record before us contains a transcript of over 500 pages, and over 20 documentary exhibits, it is missing two crucial items upon which the Board relied on in making its factual findings and legal conclusions: the audio recording of Kalina’s investigative interview and the video recording showing the actions of the deputies and detainees in the corridor containing the detention rooms and adjacent detainee restrooms. The photographs it contains are virtually indecipherable. Experience teaches that “a

picture is worth a thousand words,” and a case like this one illustrates that principle quite well. The case is primarily about how Kalina escorted and moved the detainees among the various rooms in the Markham courthouse corridor, and whether she violated detainee segregation and transportation policies in doing so. Although the hearing officer received testimony on this issue, it was conflicting. We have no doubt that the video and audio recordings helped the hearing officer and the Board resolve those conflicts and provided substantial assistance to it in making its factual findings. Indeed, rather than testify on her own behalf, Kalina apparently relied on her own audio-recorded interview to present her side of the story.

¶ 22 The Board was required to prepare and file a certified record of its proceedings in the circuit court consisting of “the original or a certified copy of the entire record of proceedings under review, including such evidence as may have been heard by it and the findings and decisions made by it.” 735 ILCS 5/3-108 (West 2020). Since the audio and video recordings were admitted into evidence, they should have been made a part of the administrative record, either by the Board’s inclusion of them in the original record or by a party filing an appropriate motion in the circuit court to have the record supplemented.

¶ 23 Although documentary evidence from courts and administrative agencies is easily converted into a PDF format for Illinois courts’ electronic filing systems, the same is not true of items such as courtroom exhibits and audio and video recordings. These items are manually filed with clerks of circuit courts. In fact, recordings are routinely filed manually and transmitted to this court by the clerk of the circuit court in DVD or similar formats, particularly in criminal cases. The procedure is explained in section 3(d)(v) of the Illinois Supreme Court Standards and Requirements for Electronic Filing the Record on Appeal (Revised January 2018):

“Documentary or descriptive exhibits (*i.e.* video or audio recordings, computer media, discs, flash drives, etc.) shall be sent or delivered in original form to the reviewing court. A page shall be inserted in sequential order, identifying the documentary or descriptive exhibit(s) being sent or delivered by the lower court to the reviewing court (*i.e.* ‘Defendant Exhibit #1 – Flash Drive – sent by mail/delivered to the reviewing court’). The package containing the original exhibit shall include a receipt to be signed by the reviewing court clerk upon receipt of the exhibit(s); the receipt shall be returned electronically indicating the date received by the reviewing court clerk.” Illinois Supreme Court, Electronic Filing Standards and Principles § 3(d)(v) (rev’d Jan. 2018), *available at* <http://efile.illinoiscourts.gov/documents/IL-Record-on-Appeal-Standards-v1.2.pdf>.

¶ 24 It is the appellant’s burden to present a sufficiently complete record of the proceedings below, and in the absence of such a record on appeal, we presume that the Board’s order was in conformity with the law and had a sufficient factual basis. *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984); *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶ 30; see also *Burns v. Department of Insurance*, 2013 IL App (1st) 122449, ¶ 15 (applying *Foutch* to an appeal from an administrative hearing). Without these important exhibits which were reviewed by the hearing officer and admitted into evidence, we cannot meaningfully review the Board’s order and must presume that the Board’s order conforms with the law and had a sufficient factual basis. *Burns*, 2013 IL App (1st) 122449, ¶ 15. Any doubts arising from the incompleteness of the record will be

resolved against the appellant. *Foutch*, 99 Ill. 2d at 392. Accordingly, we affirm the Board's order on the basis of the presumption of conformity caused by the lack of an adequate record.

¶ 25

CONCLUSION

¶ 26 Because of the omissions in the record, we cannot review the Board's decision to terminate Kalina. Accordingly, we affirm the circuit court's order, which affirmed the Board.

¶ 27 Affirmed.