

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Sheryl Cappetta,

Plaintiff,

v.

Cook County Merit Board, James Nally,
Byron Brazier, John Dalicandro, Brian
Riordan, Vincent Winters, Jennifer Bae,
Tom Dart, Toni Preckwinkle, and
County of Cook.

Defendants.

Case No. 2015 CH 7422
Calendar 2
Courtroom 2601

Judge Raymond W. Mitchell

ORDER

This case is before the Court on Plaintiff Sheryl Cappetta's petition for administrative review of the Cook County Merit Board's administrative decision of April 8, 2015.¹

I.

On April 21, 2014, the Sheriff filed a disciplinary complaint before the Merit Board, seeking to terminate Plaintiff for seventeen unauthorized absences. Hearing was conducted in front of Merit Board on December 2, 2014, and evidence was presented. On April 8, 2015, the Merit Board found Plaintiff's unauthorized absences violated Sheriff's Order 11.4.1.1, and Article X, paragraph B of the Merit Board's Rules and Regulations. (R. 724, 721). The Merit Board determined that termination was an appropriate penalty. (R. 740-741).

Plaintiff sought review of the Merit Board's decision under the Administrative Review Law. In its Order of April 16, 2018, this Court found the Merit Board decision void under *Taylor v. Dart*, and remanded the case for further proceedings in front of the Merit Board. 2016 IL App (1st) 143684, ¶ 45. The Sheriff moved to reconsider the Court's Order in response to the *Cruz v. Dart* and *Lopez v. Dart* decisions. 2019 IL App (1st) 170915, ¶ 39; 2018 IL App (1st) 170733, ¶ 64. On February 19, 2019, the Sheriff's motion to reconsider was granted by agreement of the parties. The matter was recalled to this Court for administrative review.

¹ Defendant Cook County joins the Sheriff's brief.

II.

Under the Administrative Review Law, judicial review of an agency decision extends to “all questions of law and fact presented by the entire record before the court.” 735 ILCS 5/3-110. The standard of review depends upon whether the issue presented is one of fact, law, or a mixed question of law and fact.” *AFM Messenger Service, Inc. v. Dept’f of Employment Security*, 198 Ill. 2d 380, 390 (2001). An agency’s factual findings are considered to be *prima facie* correct and are only reversed if against the manifest weight of the evidence. 735 ILCS 5/3-110. *Lyon v. Dep’t of Children & Family Servs.*, 209 Ill. 2d 264, 271 (2004). Questions of law are reviewed *de novo*. *AFM Messenger Serv. Inc.*, 198 Ill. 2d at 390. A mixed question of law and fact asks the legal effect of a given set of facts and is reviewed under a “clearly erroneous” standard. *City of Belvidere v. Illinois State Labor Rels. Board*, 181 Ill. 2d 191, 205 (1998).

The reviewing court’s review of an agency’s decision to terminate an employee is a two-step process. *Lopez*, 2018 IL App (1st) 170733, ¶ 68. First, a court must determine whether the agency’s findings of fact are contrary to the manifest weight of the evidence.” *Id.* “The second step in [the court’s] analysis is to determine if the Merit Board’s findings of fact provide a sufficient basis for its conclusion that cause for discharge exists.” *Id.*

Discovery Rulings. As an initial matter, Plaintiff argues that the Merit Board abused its discretion in denying Plaintiff’s motion to dismiss the complaint or to alternatively continue the hearing due to missing documents in discovery. A reviewing court reviews discovery rulings of an agency under an abuse of discretion standard. See *Montgomery v. Department of Registration & Education*, 146 Ill. App. 3d 222, 226, 496 N.E.2d 1100, 1103 (1st Dist. 1986). Further, courts have determined that, “there is no absolute right to a continuance in an administrative proceeding, the agency possessing broad discretion in determining whether to allow a delay in the proceedings.” *Wegmann v. Department of Registration & Education*, 61 Ill. App. 3d 352, 357, 377 N.E.2d 1297, 1302 (1st Dist. 1978).

After an ongoing discovery dispute between the parties, the hearing officer ordered the Sheriff to provide “all documents within its possession or a response that it has done a complete search and cannot locate any further documents, that were requested by Monday November 24, 2014.” (R. 132). Plaintiff brought a motion to dismiss or stay the proceedings before the commissioner on the basis that Defendants did not produce all documents in response to Plaintiff’s discovery requests. (R. 311-328). The motion was argued at the December 2, 2014 hearing and denied by the hearing officer. (R. 328). The hearing officer determined that although the Sheriff could not locate various documents, the Sheriff carried the burden of proof and would be permitted to present its case without the documents. (R. 326).

The hearing officer further considered that if Plaintiff provided contradictory testimony and documents that showed discrepancy, a negative inference would attach to the missing document. (R. 326-327). The hearing officer's denial of the motion to dismiss and continue the proceedings did not amount to an abuse of discretion.

FMLA Violations. Plaintiff next argues that the Cook County FMLA policy provides an independent basis to overturn the Merit Board's decision because it violates federal law. Plaintiff argues that her FMLA approval granted October 17, 2012, improperly denied Plaintiff the ability to take FMLA leave in hourly increments. Plaintiff argues the exclusion of intermittent leave from her FMLA benefits resulted in tardies that contributed to her termination. This case is before the Court on a one-count complaint for administrative review, rather than a challenge to the Cook County FMLA policy. Further, the federal regulations interpreting the FMLA, in which Plaintiff relies, do not establish an absolute right to intermittent leave. *See* 29 CFR § 825.203. Instead, the regulations demonstrate that intermittent leave is only available under certain circumstances such as when "medically necessary to care for a seriously ill family member, or because of the employee's serious health condition." *Id.* The evidence presented before the Merit Board plainly established that Plaintiff was not permitted intermittent leave in the October 7, 2012 grant of FMLA benefits.² Accordingly, the alleged FMLA policy provides no basis to overturn the Merit Board's decision

Merit Board's Factual Findings. The Merit Board heard testimony from numerous witness including six witnesses from the Sheriff's human resources department, deputy sergeants involved in discipline for attendance violations, the chief of the civil division for the Cook County Sheriff's Office and an investigator for OPR. (R. 725). Among the detailed testimony the Merit Board considered was the testimony of Sharon Little, director of the Sheriff's human resources department, who testified to seventeen unauthorized absences of Plaintiff. Little testified that the basis for the unauthorized absences involved numerous tardies, call-ins without time off, absences without calling in, and unauthorized FMLA. The Merit Board also considered the testimony of sergeant Callahan and general council Heffernan who provided numerous counseling sessions to Plaintiff to address Plaintiffs' absences. There, Plaintiff was apprised of progressive discipline for continuing absences.

The Merit Board also considered the testimony of Plaintiff, who did not offer any other witnesses in her defense. Plaintiff's testimony called into question the

² This complaint for administrative review is not itself a challenge to the grant or denial of any FMLA benefit received by Plaintiff. The Court addresses the FMLA arguments only to the extent relevant to the Merit Board's termination decision. The Court does not address whether intermittent leave should have been included in Plaintiff's grant of FMLA benefits on October 17, 2012.

accuracy of the records demonstrating the unauthorized absences and tardies. Plaintiff testified that she called in and received approvals for FMLA leave for various absences. However, Plaintiff also admitted there were times she was absent that were not authorized. The hearing officer determined that Plaintiff's testimony "was completely non credible" and analyzed that Plaintiff's case "consisted of her own self-serving statements about others possible mistakes however had no witnesses or documentation to support her position." (R. 740). This court will not disturb the Merit Board's credibility determinations. *See Lopez* 2018 IL App (1st) 170733, ¶ 72. The Merit Board's determination that Plaintiff violated the Sheriff's Orders and the Merit Board rules as a result of seventeen unauthorized absences is supported by the record.

Merit Board's Termination Decision. Plaintiff contends that the Merit Board's factual findings do not form a sufficient basis for its conclusion that cause for discharge exists. Illinois courts define cause as "some substantial shortcoming that renders the employee's continued employment in some way detrimental to the discipline and efficiency of the service..." *Lopez*, 2018 IL App (1st) 170733, ¶ 75. Courts provide considerable deference to an agency's finding of cause for discharge as the Merit Board "is in the best position to determine the effect of an employee's conduct on the department". *Marzano v. Cook County Sheriff's Merit Board*, 396 Ill. App. 3d 442, 446 (1st Dist. 2009). Here, the Merit Board's finding that cause for discharge exists was determined in the context of seventeen unauthorized absences. In addition, the Merit Board made the express finding that employees, like Plaintiff, who do not show up on time or at all raise "additional, stress, safety concerns and costs." (R. 740). The Court will not disturb the Merit Board's determination that cause for discharge exists.

III.

Therefore, it is hereby ORDERED

- (1) The Cook County Merit Board's administrative decision of April 8, 2015 is affirmed. Judgment is entered in favor of Defendants.
- (2) This is a final order that disposes of the case in its entirety.
- (3) The ruling date of May 24, 2019, is stricken.

Judge Raymond W. Mitchell

ENTERED,

MAY 23 2019

Circuit Court - 1992

Judge Raymond W. Mitchell, No. 1992

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

Jeffrey Ferrell,

Plaintiff,

v.

Thomas J. Dart and the Cook County
Sheriff's Merit Board,

Defendants.

Case No. 15 CH 8336

Calendar 2
Courtroom 2601

Judge Raymond W. Mitchell

ORDER

This case is before the Court on Plaintiff Jeffrey Ferrell's complaint for administrative review of the Cook County Sheriff's Merit Board's administrative decision on May 14, 2015 pursuant to 735 ILCS 5/3-101.

I.

Plaintiff Jeffrey Ferrell is a Sheriff's correctional officer who was terminated by decision of the Cook County Sheriff's Merit Board on May 14, 2015. Defendants are Sheriff of Cook County Thomas J. Dart and the Cook County Sheriff's Merit Board. On January 12, 2012 Ferrell was escorting inmate Kevin Robinson back to his cell. Robinson was handcuffed and was being moved in a bent over, face down position, with his arms outstretched behind him by Ferrell. Ferrell was the only officer in physical contact with Robinson, though a number of other officers were present. As the officers and Robinson were waiting for an elevator, Ferrell kned him, causing Robinson to utter an "oof", heard in the video submitted for evidence. Though Ferrell initially signed a memorandum denying kneeling Robinson, he subsequently admitted to kneeling Robinson. Ferrell argued that Robinson was 'resisting' by using his body as 'dead weight' and being uncooperative. Ferrell also stated that prior to the incident (not shown in the video), Robinson had punched him. The Merit Board found Ferrell's testimony was "not credible" and that his use of force was unreasonable. The Merit Board terminated his employment on May 14, 2015.

Ferrell sought administrative review of the decision under the Administrative Review Law, 735 ILCS 5/3-101. On March 29, 2018 this Court issued an order voiding the Merit Board decision. On February 25, 2019, the Defendants filed a motion to reconsider the March 29, 2018 Order, citing new caselaw, which was granted. Plaintiff now submits a brief in support of

administrative review to overturn the Merit Board's decision pursuant to 735 ILCS 5/3-101.

II.

Under the Administrative Review Law, judicial review of an agency decision extends to "all questions of law and fact presented by the entire record before the court." 735 ILCS 5/3-110. The standard of review depends upon whether the issue presented is one of fact, law, or a mixed question of law and fact." *AFM Messenger Service, Inc. v. Dept'f of Employment Security*, 198 Ill. 2d 380, 390 (2001). An agency's factual findings are considered to be *prima facie* correct and are only reversed if against the manifest weight of the evidence. 735 ILCS 5/3-110. *Lyon v. Dep't of Children & Family Servs.*, 209 Ill. 2d 264, 271 (2004). Questions of law are reviewed de novo. *AFM Messenger Serv. Inc.*, 198 Ill. 2d at 390. A mixed question of law and fact asks the legal effect of a given set of facts and is reviewed under a "clearly erroneous" standard. *City of Belvidere v. Illinois State Labor Rels. Board*, 181 Ill. 2d 191, 205 (1998).

The reviewing court's review of an agency's decision to terminate an employee is a two-step process. *Lopez v. Dart*, 2018 IL App (1st) 170733 ¶ 68. First, a court must determine whether the agency's findings of fact are contrary to the manifest weight of the evidence. *Id.* The second step in the court's analysis is to determine if the Merit Board's findings of fact provide a sufficient basis for its conclusion that cause for discharge exists. *Id.*

Merit Board's Factual Findings. The Merit Board heard testimony from Ferrell; officers Christian Vazquez and Lawrence O'Rourke (both present during the incident) and; Office of Professional Responsibility investigators John Kerlin and Miriam Rentas. In a December 2013 interview with investigator Kerlin, Ferrell signed a memo which denied that he had kneed Robinson. (R. 59-61). Ferrell has since admitted to kneeling Robinson. (R. 73). Vazquez testified that he did not see the knee strike. (R. 25-26). O'Rourke likewise denied seeing the knee-strike when it occurred but agreed that it occurred when shown the video of the incident. (R. 40). Ferrell admitted there were "at least four other officers present" when he kneed Robinson. (R. 102). Ferrell testified that Robinson was "resisting" by weighing himself down and that "the attempt was to strike the knee to his chest to gain better control and to get him to comply (R. 76, 78).

Kerlin testified that it was his opinion that Ferrell had used excessive force against Robinson and that he lied in the investigation to the OPR. (R. 118-122). With this testimonial and the video evidence, the Merit Board found that Ferrell had used excessive force when he kneed Robinson. "Conflicts in testimony [...] are to be resolved by the agency who heard the evidence and observed the witnesses." *Lopez v. Dart*, 2018 IL App (1st) 170733. Here, the Merit Board's findings of fact turned on witness testimony, credibility, and the video evidence with the conclusion

being that Ferrell used unreasonable force on Robinson. The Merit Board's factual findings are not against the manifest weight of the evidence.

Merit Board's Termination Decision. Ferrell further contends that the Merit Board's factual findings do not merit his termination and that his termination was arbitrary and unreasonable. In reviewing an administrative decision, courts consider whether, "findings of fact provide a sufficient basis for its conclusion that cause for discharge exists." *Marzano v. Cook County Sheriff's Merit Board*, 396 Ill. App. 3d 442, 446 (1st Dist. 2009). With the Illinois Supreme Court defining cause' 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 no longer occupying the place." *Id.* The Merit Board is in "the best position to determine the effect of an employee's conduct on the department." *Id.*

Here the findings of fact are that Ferrell used unreasonable force against a restrained suspect and that he lied to investigators. The fact that Vazquez and O'Rourke were likewise not terminated is immaterial because the Merit Board found that only Ferrell used unreasonable force on Robinson. Given the Merit Board's stated reasons for wanting to protect the public at large, their termination of Ferrell was not unreasonable nor arbitrary.

III.

Therefore, it is hereby ORDERED:

- (1) The Cook County Sheriff's Merit Board's final administrative decision on May 14, 2015, is affirmed, and judgment is entered in favor of Respondents Thomas J. Dart and Cook County Sheriff's Merit Board.
- (2) The ruling date of August 2, 2019 is stricken.
- (3) This is a final order that disposes of the case in its entirety.

ENTERED,

Judge Raymond W. Mitchell

JUL 29 2013

Judge Raymond W. Mitchell, No. 1992
Circuit Court - 1992

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

CESAR VALDEZ,

Plaintiff,

v.

COOK COUNTY SHERIFF'S
MERIT BOARD, *et al.*,

Defendants.

Case No. 15 CH 5443

Judge Celia Gamrath

Calendar 6

FINAL MEMORANDUM OPINION AND ORDER

This matter came to be heard on Plaintiff Cesar Valdez's Complaint for Administrative Review to reverse the March 5, 2015 decision of the Sheriff's Merit Board terminating his employment. For the following reasons, the court affirms the decision.

I. BACKGROUND

Plaintiff Cesar Valdez is a former Deputy Sheriff with the Cook County Sheriff's Department. On December 24, 2012, Valdez was working his assigned shift at the Juvenile Detention Center when an incident occurred with Deputy Rush. Rush testified that on December 24, 2012, around 3:30 P.M., she was working in the Juvenile Court and was in the break room when Valdez asked her to come over for a minute. After she declined, Valdez persisted, so Rush joined him in the hallway. Once she reached Valdez, Valdez grabbed her hands and wished her Merry Christmas.

Rush stated she kept her head back due to the smell of alcohol on Valdez's breath. According to Rush, Valdez dropped Rush's hands and grabbed her face, pulling her into him, and covered his mouth over Rush's mouth. Rush said she pushed Valdez back and asked him, "What are you doing?" Valdez grabbed Rush's wrists again and told her to give him a holiday kiss.

Deputy Stefana Castillo was working at the Juvenile Court when she witnessed Valdez "kind of pulling" at Rush while Rush was saying "Stop, stop." She heard Valdez say, "All I want is a kiss" and Rush said, "No, Cesar stop." Castillo asked Rush if she was okay and Rush

responded, "I got this." Castillo then went into the security office where Deputy Poe and Deputy Ibaraz were also present.

A couple of minutes later, Valdez and Rush walked in, and Castillo observed that Valdez was still pulling on Rush and asking for a kiss. Castillo and Poe stated they at first thought the interaction between Rush and Valdez was just horseplay because they were laughing. However, after a couple minutes, something started to seem wrong. Deputy Poe heard Rush tell Valdez to let her go and she had to go to the bathroom, but Valdez did not let her go. Poe described Rush as being in distress, at which point Poe stepped in between them so Valdez would let Rush go.

Rush then left the room and around 3:40 P.M. Sergeant Garcia, who supervises the deputies, stated that Rush "ran up to the desk" and appeared distraught and was crying. He said he was worried and allowed Rush to sign out and go home. Rush stated that after returning from the Christmas holiday she told her commanding officer Lt. Donald Dulaney about the incident with Valdez. On January 17, 2013, Rush submitted an employee accident report to Sergeant Banks stating, "her arm was forcefully pulled by a coworker." In June of 2013, Rush reported Valdez to the Office of Professional Review ("OPR"), which triggered the investigation.

Tia Parks led the OPR investigation of Valdez. Parks interviewed all of the witnesses and took statements from Valdez and Rush. Parks stated, while parts of Rush's statement were not substantiated by evidence (*i.e.* the alcohol on Valdez's breath, if he ripped out her braids, if he actually kissed her), most of Rush's statement was substantiated by credible evidence from Castillo and Poe. In addition, Parks stated, Valdez admitted grabbing hold of Rush and impeding her forward movement, despite hearing her tell him to let her go. Valdez admitted not releasing Rush until Poe got in between them. He explained that Rush was a big strong woman and he just wanted to see if he could hold her.

II. PROCEDURAL BACKGROUND

The OPR investigation was completed on December 31, 2013. On March 13, 2014, the Sheriff filed a disciplinary complaint before the Merit Board against Valdez seeking to have the Merit Board terminate Valdez for sexually harassing Rush. On June 30, 2014, the Merit Board conducted an evidentiary hearing, and on March 5, 2015, issued a decision terminating Valdez. The Merit Board concluded that Valdez violated Sheriff's Order 11.2.20.0, which requires officers to maintain professional behavior on duty and to not engage in discrimination or harassment, and Sheriff's Order 11.4.5.0, which prohibits sexual harassment in the workplace.

In 2015, Valdez appealed his termination seeking review of the Merit Board decision. On January 25, 2018, after *Taylor v. Dart*, this court remanded the matter to the Merit Board for a new hearing. However, following later decisions in *Lopez v. Dart* and *Cruz v. Dart*, the parties agreed to recall this matter from the Merit Board to this court. On March 15, 2019, the court entered an Agreed Order vacating the January 25, 2018 remand order and recalled the case for administrative review of the 2015 Merit Board decision terminating Valdez.

III. LEGAL STANDARD

Illinois circuit courts have authority under the Administrative Review Law (“ARL”) to review administrative decisions where specifically provided by statute. *Ill. St. Treasurer v. Ill. Workers’ Compensation Comm’n*, 2015 IL 117418, ¶ 14. This court has jurisdiction of Valdez’s Complaint under the rules and regulations of the Cook County Sheriff’s Merit Board, 55 ILCS 5/3-7012, and the provisions of the ARL, 735 ILCS 5/3-101. The ARL allows for review of all factual and legal bases derived from the administrative record, *Ill. Troopers Lodge No. 41 v. ILRB*, 2018 IL App (1st) 171382, ¶ 36, based on evidence confined to the administrative record, 735 ILCS 5/3-110.

The standard of review on administrative review depends on the questions presented: of fact, of law, or those inseparable of fact and law. *Marconi v. Chicago Heights Police Pension Bd.*, 225 Ill. 2d 497, 532 (2006). Questions of law are reviewed de novo, while rulings on fact are reversible only where the findings are against the manifest weight of the evidence, such that an opposite conclusion is clearly evidenced. *Id.* at 532; *Younge v. Bd. of Educ. of City of Chicago*, 338 Ill. App. 3d 522, 530 (1st Dist. 2003). Unless specious, the administrative findings of fact shall be held as true and accurate. 735 ILCS 5/3-110. Further, “mixed question[s] of law and fact [are] reviewed under the clearly erroneous standard.” *Id.*

IV. ANALYSIS

Valdez challenges the Merit Board’s decision to terminate his employment on three grounds: (1) the burden was on the Sheriff to prove the charges against Valdez and, because the Merit Board failed to meet that burden, the finding of guilt is not supported by the evidence; (2) discharge is too harsh in light of Valdez’s disciplinary history; and (3) the Merit Board was not lawfully constituted at the time of the hearing.

The Merit Board responds by saying: (1) The Merit Board made its decision after assessing the credibility of the witnesses and on the basis of the evidence presented at the June 2014 hearing; (2) the Merit Board concluded that Valdez should be terminated for violating a zero tolerance sexual harassment policy; and (3) the *de facto* officer doctrine applies to validate the Merit Board's decision irrespective of any irregularity in the Board's composition. For the following reasons, the court agrees with the Merit Board and affirms its decision.

A. The decision is supported by the evidence and the Merit Board's assessment of the credibility of witnesses.

First, Valdez argues that the evidence is against the manifest weight of the evidence. However, there is ample evidence and testimony in the record, including admissions by Valdez, that support the Merit Board's findings.

Because the Merit Board is an administrative agency, its findings of fact on review are deemed prima facie true and correct. 735 ILCS 5/3-110. "When reviewing the findings of an administrative agency, a court should inquire whether the findings are against the manifest weight of the evidence. It is not the court's function to resolve factual inconsistencies. Nor is it the court's duty to weigh the evidence and then determine where the preponderance of the evidence lies." *Launius v. Bd. Of Fire & Police Comm'rs.*, 151 Ill. 2d 419, 427-428 (1992), quoting *Collura v. Board of Police Commissioners*, 113 Ill. 2d 361, 372-73 (1986).

"A decision is contrary to the manifest weight of the evidence only when, after reviewing the evidence in a light most favorable to the administrative agency, the court determines that no rational trier of fact could have agreed with the agency's decision because an opposite conclusion is clearly evidence." *Bultas v. Bd. of Fire & Police Comm'rs*, 171 Ill. App. 3d 189, 193 (1988) (internal citations omitted). "If the record contains any evidence supporting the administrative agency's decision, the decision must be sustained on review." *Id.*

Valdez claims the incident that occurred was not sexual harassment, but was merely teasing or horseplay between co-workers. Valdez points to the testimony of Castillo and Poe who witnessed part of the incident. Both Deputies stated they initially thought Valdez and Rush were joking around because they were both laughing. However, they both later said toward the end of the interaction they believed something was amiss and could tell Rush was in distress and uncomfortable.

Valdez also claims Rush's testimony was less than credible because of conflicting testimony regarding the smell of alcohol on Valdez's breath, pulling on her ponytail and braids, alleged shout out to Castillo, and intervention by Poe. Despite conflicting testimony, the court does not find the Merit Board's decision against the manifest weight of the evidence.

In *Bultas*, the court held that, "conflicting testimony alone provides no basis for reversing the administrative decision reached below." *Bultas*, 171 Ill. App. 3d at 195. "It is not the function of the trial court or the appellate court in review of administrative proceedings to reweigh the evidence or assess credibility of witnesses." *Id.*

Here, the Merit Board credited the testimony of Rush and eyewitnesses Poe, Castillo, and Garcia as providing ample evidence to support its findings. Furthermore, Valdez has not provided evidence in which this court could determine that no rational trier of fact would have agreed with the Board's decision to terminate him. Ultimately, the credibility of the witnesses, along with Valdez's statement to Investigator Parks, led to the Merit Board's decision to terminate Valdez's employment based on allegations of sexual harassment and shortcomings in his conduct as an officer. Because the record contains sufficient evidence supporting the findings of the Merit Board, its decision is affirmed.

B. The sanction of discharge was not arbitrary, unreasonable, or unrelated to the requirements of service.

Valdez argues, even if this court agrees with the Merit Board's findings, the sanction of discharge is too harsh in light of his disciplinary history.

"The agency's decision to discharge may not be reversed unless it is found to be unreasonable, arbitrary, or unrelated to the requirements of service." *Gunia v. Cook Cnty. Sheriff's Merit Bd.*, 211 Ill. App. 3d 761, 773 (1991), quoting *Walsh v. Board of Fire & Police Commissioners*, 96 Ill. 2d 101 (1983). "In reaching this determination, courts are assisted by the general guideline that the conduct must constitute some substantial shortcoming which renders the continued employment a detriment to the discipline and efficiency of the service." *Id.* This court will defer to the Merit Board's "experience and expertise in determining what sanction is appropriate to protect the public interest." *Roman v. Cook County Sheriff's Merit Board*, 2014 IL App (1st) 123308, ¶143. The burden is on Valdez to show his termination was unwarranted, arbitrary, unreasonable, or unrelated to the requirements of service. *See Id.* at ¶144.

Valdez contends he has never been accused of sexual harassment before and based on his disciplinary history, which only includes minor disciplines, there is no just cause for a penalty as severe as termination. However, even the violation of just one rule can be sufficient grounds for termination depending on the severity. *Id.* at ¶145.

Sheriff's Order 11.2.20.0 governs the conduct of CCSO employees both on and off duty. It expects employees to conduct themselves in a professional and ethical manner both on and off duty. Sheriff's Order 11.4.5.0 prohibits discrimination and harassment/sexual harassment in the workplace. It states that employees of the CCSO are expected to treat others with dignity and mutual respect at all times and it is an employee's right to experience a non-hostile work environment free from discrimination and harassment/sexual harassment. The policy also states that, "any person found to have engaged in discrimination and harassment/sexual harassment shall be terminated."

As discussed above, the Merit Board had sufficient evidence supporting the determination that Valdez sexually harassed Rush. Based on the Sheriff's policies and their zero tolerance for discrimination and sexual harassment, Valdez's conduct amounts to a substantial shortcoming that affects the efficiency and the discipline of the service. Valdez has not met his burden to show the sanction of discharge was unreasonable, arbitrary, or unrelated to the needs of the Department. In fact, to the contrary; it was expressly authorized by the Sheriff's written policies and supported by the record.

C. The *de facto* officer doctrine applies.

Valdez's final argument is that the Merit Board was not lawfully constituted at the time of the hearing and, as such, the decision should be reversed. He argues Board members Byron Brazier, John Dalicandro, and Kim R. Widup were either improperly appointed to the Board or their appointments had expired.

Valdez relies on the decision in *Taylor v. Dart*, 2017 IL App (1st) 143684-B, to support his argument that the Merit Board's decision is void. Since *Taylor*, there have been several attacks to the Merit Board's composition. After *Taylor*, the Illinois legislature amended 55 ILCS 5/3-7002 to cure the defects complained of in *Taylor*. After *Taylor*, the Appellate Court has consistently rejected collateral challenges to the Board's composition based on the *de facto* officer doctrine. See *Pietryla v. Dart*, 2019 IL App (1st) 182143; *Cruz v. Dart*, 2019 IL App (1st) 170915; *Lopez v. Dart*, 2018 IL App (1st) 170733. The only exception so far has been

where the disciplinary actions before the Merit Board were pending when *Taylor* was decided, there was no final administrative decision rendered, and the Board was an entirely new Board composed after the statutory amendment to 55 ILCS 5/3-7002. See *Goral v. Dart*, 2019 IL App (1st) 181646.

Valdez's administrative case ended on March 5, 2015, when the Merit Board made the decision to terminate his employment. This was long before *Taylor* and, thus, does not fall within the *Goral* exception. Following the long and steady line of cases that have applied the *de facto* officer doctrine to situations like this, the court rejects Valdez's challenges to the Board's composition and appointment procedure, which are the same type of challenges that were before the court in *Taylor* and its progeny.

IT IS ORDERED: The March 5, 2015 Merit Board decision is affirmed in all respects.

Judge Celia G. Gamrath

ENTERED: SEP 09 2019

Circuit Court - 2031

Judge Celia Gamrath, #2031
Circuit Court of Cook County, Illinois
County Department, Chancery Division