

No. 1-11-3684

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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TRANIS AUSTIN,	)	Appeal of
	)	the Circuit Court
Plaintiff-Appellant,	)	of Cook County.
	)	
v.	)	No. 10 CH 34790
	)	
THOMAS J. DART, In His Official Capacity As	)	
The Sheriff of Cook County, THE COOK	)	
COUNTY SHERIFF’S MERIT BOARD,	)	
JAMES P. NALLY, BYRON BRAZIER, JOHN	)	
DALICANDRO, MARYNELL O. GREER,	)	
ROBERT F. HOGAN, DANIEL J. LYNCH,	)	
BRIAN J. RIORDAN, LANCE C. TYSON,	)	
and KIM R. WIDUP, All In Their Official	)	
Capacities As Members of The Cook County	)	
Sheriffs Merit Board, and Executive Director,	)	
EDWARD WODNICKI,	)	Honorable
	)	Peter Flynn,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE QUINN delivered the judgment of the court.  
Presiding Justice Harris and Justice Connors concurred in the judgment.

**ORDER**

¶ 1 *HELD*: The decision of the Cook County Merit Board terminating the plaintiff as a correctional officer was not against the manifest weight of the evidence and the discharge was not shown to be an arbitrary sanction. This court affirms the judgment of the administrative board.

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¶ 2 Plaintiff, Tranis Austin, appeals from an order of the circuit court that affirmed the Cook County Sheriff's Merit Board ("Board") decision that approved plaintiff's termination from the Sheriff's Office as a correctional officer.

¶ 3 I. Standard of Review

¶ 4 On appeal, this court reviews the Board's decision directly rather than the circuit court's decision. *Marconi v. Chicago Heights Pension Board*, 225 Ill. 2d 497, 531 (2006). *Reichert v. Board of Fire & Police Commissioners*, 388 Ill. App. 3d 834, 843 (2009). This court's review of an employee termination "for cause" case is composed of two stages. First, the Board's finding of guilt is reviewed and only reversed if it against the manifest weight of the evidence. The Board's factual determinations can only be deemed against the manifest weight of the evidence where an opposite conclusion is clearly evident. Secondly, the Board's finding of guilt is reviewed to determine if there was sufficient cause for termination and is reversed only if the termination was arbitrary and unreasonable or was unrelated to the employee's requirements of service. *Ehlers v. Jackson County Sheriff's Merit Commission*, 183 Ill. 2d 83, 89 (1998); *Reichert v. Board of Fire & Police Commissioners*, 388 Ill. App. 3d 834, 843 (2009). This court does not reweigh the evidence. This court also does not substitute its judgment for that of the Board, but must affirm the Board's decision when the administrative record contains evidence that supports the Board's decision. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 534 (2006); *Siwek v. Police Board of the City of Chicago*, 374 Ill. App. 3d 735, 738 (2007). The Board's decision is entitled to great deference because it is in the best position to determine the effect an employee's conduct has on the agency's operations. *Applegate v. State of Illinois Department of Transportation*, 335 Ill.

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App. 3d 1056, 1062 (2002). A termination, such as in the instant appeal, is not *per se* arbitrary or unreasonable simply because mitigating evidence is present in the record. *Siwek v. Police Board of the City of Chicago*, 374 Ill. App. 3d 735, 738-39 (2007). Utilizing these standards, we have reviewed the Board's evidentiary hearing and final decision.

¶ 5

## II. Procedural History

¶ 6 On January 30, 2009, the Cook County Sheriff filed an administrative complaint with the Board which requested plaintiff's termination from his position as a correctional officer. The complaint alleged violations of six sections of the Cook County Sheriff's General Orders and one section of the Board's rules and regulations all arising out of an incident where plaintiff took two silver coins belonging to a detainee. When confronted, plaintiff told his supervisors several stories and then destroyed paperwork related to the inmate's property in direct violation of rules and his supervisor's directives. On April 14, 2010, a hearing was begun. Numerous exhibits were received into evidence without objection. Two of plaintiff's supervisors testified. They established the procedures for collection and recordation of any detainee's cash and property and the resulting accounting paperwork that must be prepared by an officer. They also established plaintiff's conduct on January 7, 2009 which led to the January 30, 2009 Sheriff's request for plaintiff's termination. The Board's hearing was continued at the request of plaintiff until after disposition of his criminal trial for theft involving the same set of facts. The Board's hearing recommenced on May 26, 2010. At that time, plaintiff proceeded with his defense, in part, by submitting into evidence the transcript of his criminal trial with a directed finding in his favor at the close of the State's case. *People v. Austin*, 10 CR 00675 ( J. Gaughan, May 13, 2010). On July 15, 2010, the Board ruled that the

Sheriff proved by a preponderance of the evidence that plaintiff violated the six Sheriff's General Orders and the Board's rules and regulations. The Board terminated plaintiff's employment.

¶ 7 On August 12, 2010, plaintiff filed a complaint in the circuit court seeking administrative review of the Board's decision to terminate his employment. On June 7, 2011, the circuit court remanded the case to the Board for more detailed findings. The Board issued a supplement to its July 15, 2010 decision on November 7, 2011.<sup>1</sup> On December 9, 2011, the circuit court issued its final order upholding the decision of the Board as not against the manifest weight of the evidence and determined that the penalty of termination that was imposed was not disproportionate to the conduct with which plaintiff was charged and found to have violated. On December 15, 2011, plaintiff filed his timely notice of appeal.

¶ 8 III. Facts

¶ 9 The evidence at the Board hearing regarding plaintiff is garnered from exhibits admitted into evidence by both parties, and from witnesses testifying at the hearing.

¶ 10 Plaintiff was a correctional officer assigned on January 7, 2011 to the Trust Section of the Department of Corrections. Correctional officers in the Trust Section are responsible for collecting, processing and inventorying the cash and property of detainees transported to the Cook County Jail

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<sup>1</sup> The Board's November 7, 2011 decision on remand was not made a part of the court's official record on appeal. Plaintiff attached a copy of the Board's decision on remand to his opening appellate brief. The appellant bears the burden of presenting a complete official record on appeal. *People v. Barker*, 403 Ill. App. 3d 515, 523 (2010). Despite having this omission brought to appellant's attention via appellee's brief along with a statement by the appellee that there is no objection to this document being included as part of the official record, appellant has not filed a motion to supplement the official record with the Board's November 7, 2011 decision. We hereby, *sua sponte*, enter an order supplementing the official record with the Board's November 7, 2011 decision on remand.

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by police agencies. The processing is done in the detainees' presence. While processing the cash and property of a group of female detainees, one female detainee became hysterical because plaintiff, after checking with his supervisor, was going to inventory two U.S. silver dollar coins as common cash and place them in the common cash drawer for which the detainee would receive a check when released. Later, plaintiff's supervisor came to check on plaintiff's work and specifically asked plaintiff about the whereabouts of the two silver dollar coins. Plaintiff first stated he made some change for another correctional officer, implying he gave the two silver dollar coins away. Then, plaintiff stated he exchanged two paper dollar bills for the two silver coins and pocketed them himself. The supervisor requested the coins and plaintiff turned them over. Plaintiff, when asked about the detainee, stated he did not remember her name but that she had already left the facility as she had been bonded out. Plaintiff's supervisor ordered plaintiff to leave alone all of the paperwork plaintiff had prepared during his shift of the inventory and processing of all of the detainees' property and cash and went in search of the detainee and found her. When the supervisor returned ten minutes later, most of the paperwork was missing. When the supervisor asked plaintiff what happened, he stated he tore it up and did not know where it was. The supervisor searched the area and found the paperwork in a garbage can outside of the room. A review of the receipt of the contents of the property bag the detainee arrived with was \$28.50 and the one prepared by plaintiff reflected a two dollar shortage of \$26.50, that was then altered to reflect \$28.50. The totaled receipt prepared by plaintiff for cash collected from all detainees originally amounted to \$1,764.15 and after recalculation by the supervisor who added in the two silver dollar coins retrieved from plaintiff, amounted to \$1,766.15.

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¶ 11 Testimony from several officers, including plaintiff established that it was a common practice for officers to make change for themselves from the contents of the cash box collected from detainees. Plaintiff had made change for others out of the cash box on January 7, 2010.

¶ 12 The supervisors prepared their own paperwork of the intake of cash and compared it to the cash taken from detainees that night. From their paperwork, it was determined that plaintiff had pocketed the two silver dollar coins and had not replaced them with a like amount of other cash.

¶ 13 The Board found exactly that: plaintiff took \$2.00 from the cash box without replacing it with a like amount of cash. The Board found that plaintiff was in violation of General Orders 3.8 III, B.1, D.3, 4., 5., and 4.1IIIA.17 and the Board's Rules and regulations X.,B.3. As a result, the Board approved plaintiff's termination. On remand from the circuit court, the Board supplemented its decision with the specific finding that plaintiff had violated General Order 3.8 III. D. 5 in that he destroyed an official record when plaintiff, in direct violation of his supervisor's order, threw into the garbage the first paperwork he had compiled for the detainees' property and cash.

¶ 14 IV. Analysis

¶ 15 In summary, plaintiff was ordered by his supervisors to place the two silver dollar coins into the trust fund for detainees, but instead placed them into his pocket. Though the detainee brought in a total of \$28.50 in cash which included her two silver dollar coins, plaintiff initially recorded the total amount as \$26.50. After being questioned by his supervisors, plaintiff attempted to alter the recorded amount to \$28.50. Plaintiff was also ordered by his supervisor to leave all paperwork alone while the supervisor went in search of the detainee and plaintiff's other supervisor. Plaintiff disobeyed this direct order and altered or destroyed multiple documents relating to his duties as the

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intake officer in charge of documenting detainees' possessions.

¶ 16 The plaintiff was charged with a series of violations as follows: (1) General Order 3.8, Sect. III. B.1 of the Cook County Sheriff's Office which states , in pertinent part, that "[a]ny conduct to realize personal gain through public employment ...is any conduct which would create a justifiable impression in the public mind that such trust is being violated."; (2) General Order 3.8, Sect. III. D. 3. which directs that "[e]mployees will respect property rights and prohibit unauthorized use, theft misuse or waste of property belonging to...a detainee...." ; (3) General Order 3.8, Sect. III. D. 4. which states that "[e]mployees will comply with...verbal orders issued by proper authorities."; (4) General Order 3.8 sect. III. D. 5. which states that "[e]mployees will facilitate ...record-keeping." This order specifically "prohibits falsification, unauthorized alteration or destruction of ...records..."; (5) General Order 4.1, Sect. III. A-17 which prohibits any employee from engaging in conduct unbecoming a Department of Corrections employee; (6) General Order 4.1, Sect. III. A-18 which prohibits an employee from making a false oral or written statement as part of a report, and (7) The Board's Rules and Regulations, Art. X, para. B which prohibits violation of any of the Cook County Sheriff's Office's general orders , directives and other rules and orders and regulations.

¶ 17 A sheriff's correctional officer cannot "be removed, demoted or suspended except for cause, upon written charges filed with the Board by the Sheriff and a hearing before the Board thereon," where the officer is given the opportunity to present evidence and argument to refute the charges. 55 ILCS 5/3-7012 (West 2010). Plaintiff was provided all statutory due process. The Board never went beyond the charges that plaintiff was given adequate notice of and on which a fair and impartial hearing was conducted. *Lavin v. Civil Service Commission*, 18 Ill. App. 3d 982, 988 (1974).

¶ 18 It is well established that an officer's violation of a single rule may constitute a sufficient basis for discharge. *Siwek v. Police Board of the City of Chicago*, 374 Ill. App. 3d 735, 738 (2007). In the instant case, the Board found that plaintiff had violated all seven orders he was charged with violating by the Sheriff.

¶ 19 Plaintiff in his appellate brief challenges the sufficiency of the evidence as to whether plaintiff: (1) misappropriated cash from the cash box used to accumulate cash collected from detainees; (2) falsified or destroyed official records; and (3) misappropriated anything of value from the cash box.<sup>2</sup> Plaintiff merely reargues the factual basis for the Board's final decision. In other words, plaintiff disagrees with the weight the Board placed on the evidence presented. No legal argument is presented that certain evidence was inadmissible. The plaintiff argues that the Board deliberately ignored the reasons for his acquittal in his criminal case. However, the criminal case involved a criminal charge of theft. The State must prove criminal charges beyond a reasonable doubt. The criminal court stated: "I'm not saying he's innocent, but I'm saying looking at the totality of this - - And certainly there is a discrepancy in the cash receipt, I see that, but looking at the totality of the circumstances, I have no alternative, even taking the evidence in the light most favorable to the State to direct this finding." The Board, in the instant civil proceeding, considered all evidence and testimony utilizing the preponderance of the evidence standard of proof. *Schinkel v. Board of Fire & Police Commissioner of Algonquin*, 262 Ill. App. 3d 310, 321 (1994). The Sheriff was required to show that the facts demonstrate that it is probably more true than not true that

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<sup>2</sup> Issue 1 and Issue 3 appearing in plaintiff's opening brief seem to be the identical issue, phrased ever so slightly differently. The only items of value contained in the cash box were cash.

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the plaintiff violated the orders and rules and regulations of his employment with which he was charged. *Id.* The evidence presented demonstrated that plaintiff's conduct violated the employment directives as specified in the Sheriff's complaint for termination. The Board found, correctly, that plaintiff was guilty of the violations with which he was charged. These findings are not against the manifest weight of the evidence. Rather, the manifest weight of the evidence demonstrates plaintiff committed these multiple employee infractions.

¶ 20 Next, plaintiff argues that the punishment of termination does not fit his crime. However, in discharge cases, courts should rightfully be hesitant to reverse an agency's decision to terminate an employee. *O'Grady v. Cook County Sheriff's Merit Board*, 260 Ill. App. 3d 529 (1994). The Sheriff's office has a legitimate interest in ensuring its correctional officers maintain integrity, abide by all laws and avoid any conduct that would tend to reflect negatively on the Sheriff's office. *Village of Oak Lawn v. Illinois Human Rights Commission*, 133 Ill. App. 3d 221, 224 (1985) (trustworthiness, integrity and good judgment are qualifications for any job); *Sindermann v. Civil Service Commission*, 275 Ill. App. 3d 917, 928 (1995) (police officers are expected to act with integrity, honesty and trustworthiness).

¶ 21 "Cause" for termination of an employee has been defined as a "substantial shortcoming which renders the employee's continuance in office in some way detrimental to the discipline and efficiency of the service and which the law and sound public opinion recognize as good cause for his no longer holding the position." *Kappel v. Police Board of the City of Chicago*, 220 Ill. App. 3d 580, 589 (1991). Again, this court may not substitute its judgment for the Board's judgment. Even if this court were to consider a lesser sanction more appropriate, which it does not, that consideration

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does not render the punishment the Board imposed arbitrary. *Yeksigian v. City of Chicago*, 231 Ill. App. 3d 307, 312 (1992).

¶ 22 The Board found that plaintiff pocketed two silver dollar coins and that he embarked on a path of untrue statements and alteration and destruction of documents he was ordered to preserve in an effort to cover up what he had done. First, he said he exchanged the coins with another correctional officer for whom he made change. Then, he stated he pocketed the coins, but replaced them with equivalent cash. Then, he told his supervisor that the detainee who owned the coins had been bailed out when, in fact, she was still in custody. He then altered paperwork and disposed of other paperwork he was ordered to save. He then told his supervisor he did not know what happened to the paperwork or where it was. Plaintiff provides no comparative cases where an employee's integrity and veracity were called into question in this manner who were not terminated. Simply put, plaintiff presented no evidence or argument that all employees who violate these orders are not treated equally with termination. Therefore, the decision to terminate the plaintiff was not arbitrary.

¶ 23

#### V. Conclusion

¶ 24 In summary, we conclude that plaintiff violated the six General Orders of the Sheriff's Office and the Merit Board rules when he pocketed the two silver dollar coins, told conflicting stories to his supervisor, and prepared, altered and destroyed paperwork that he was specifically directed to keep surrounding the intake of detainees' property and cash. The Board's findings were not contrary to the manifest weight of the evidence. Accordingly, both the Board's order and the circuit court order affirming the order of the Board are affirmed.

¶ 25 Affirmed.