

No. 1-14-0168

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

**IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT**

OFFICER TOMI BURTLEY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 13 CH 4054
)	
CITY OF HARVEY CIVIL SERVICE)	
COMMISSION,)	Honorable
)	Diane J. Larsen,
Defendant-Appellee.)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court
Justices Simon and Pierce concurred in the judgment.

ORDER

¶ 1 *Held:* The Commission's determination to discharge Burtley was not arbitrary or unreasonable where it did not find Burtley to be a credible witness, and evidence in the record supported its decision to terminate Burtley for cause.

¶ 2 Plaintiff, Tomi Burtley, appeals the order of the circuit court affirming, upon administrative review, the determination of defendant, City of Harvey Civil Service Commission

(Commission), to discharge Burtley for cause. The Commission discharged Burtley in connection with the loss of a semi-automatic handgun from evidence in a criminal proceeding. On appeal, Burtley contends the Commission's findings were against the manifest weight of the evidence given her testimony that she retrieved the gun from the evidence vault and date-stamped the retrieval form when she returned the gun. She further argues that the Commission's findings did not sufficiently support its decision to discharge her for cause. For the following reasons, we affirm.

¶ 3 JURISDICTION

¶ 4 The trial court entered an order affirming the determination of the Commission on December 13, 2013. Burtley filed a notice of appeal on January 10, 2014. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered below. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008).

¶ 5 BACKGROUND

¶ 6 Burtley was employed by the city of Harvey as a police officer for approximately seven years until her termination for cause on January 8, 2013. Burtley was charged with violating several rules and regulations of the police department in relation to the loss of the gun from the evidence vault. Specifically, she was charged with (1) violation of department rules regarding the handling of evidence in a criminal proceeding; (2) conduct unbecoming an officer; (3) and incompetence. The Commission held hearings on the charges on November 2, 2011, October 30, 2012, and December 6, 2012.

¶ 7 The Commission made the following findings at the hearing. Burtley was subpoenaed to appear in court on May 13, 2010, in connection with the case of State of Illinois v. Kendall

Edwards, Docket No. 08-CR 22119. On May 12, 2010, in preparation for her appearance, Burtley completed a city of Harvey police department evidence retrieval form. The evidence relating to the case consisted of a Hi-Point .380 ACP semi-automatic handgun, one black colored single stack handgun magazine, and nine .380 caliber live handgun bullets. The form indicated that Burtley received the handgun on May 13, 2010, at 9 a.m.

¶ 8 Assistant State's Attorney Joseph Cook, who was to prosecute the criminal case, contacted Burtley before the trial and she informed him that she had brought the gun into court on a prior date and the gun was received by another state's attorney. In preparation for trial, ASA Cook met with Burtley. ASA Cook went to the state's attorney's office to retrieve the weapon but he could not find the required form indicating that the office had it in evidence. When he asked Burtley about what may have happened to the gun, she stated that she gave it to a short female assistant state's attorney with blond or light hair. ASA Cook asked ASA Kathy Morrissey, who fit the description, to step into the room and Burtley stated that she thought she had given the gun to ASA Morrissey. ASA Morrissey, however, told ASA Cook that she did not receive a gun from Burtley nor did she recognize her. ASA Cook spoke with another assistant state's attorney who had previously been assigned to the courtroom, but she stated that she did not sign for any gun to be placed in evidence.

¶ 9 ASA Cook asked Burtley to look for the evidence at the police station. Burtley testified that she explained she had just moved and had things packed away in boxes. Burtley told ASA Cook that she would look for her documents at home and, when she returned home, she found her copy of the time-stamped evidence retrieval form. When she gave the form to her department, she was told it "was not acceptable."

¶ 10 ASA Cook contacted Barbara Revalee, the evidence officer of the Harvey police department. Revalee gave him inventory sheets indicating that Burtley had taken the gun out of evidence but it had never been returned. The inventory sheets also indicated that no assistant state's attorney had signed for the gun. If an assistant state's attorney had received the gun, he or she would have signed the form. ASA Cook testified that he discussed the inventory sheets with Burtley but Burtley stated that she could not recall the conversation. Since the state's attorney could not locate the gun to present as evidence, the State had to dismiss the criminal case against Kendall Edwards.

¶ 11 Burtley testified that she returned the gun to the evidence vault as indicated by a time stamp of May 13, 2010, 10:20 a.m. on the bottom of the evidence retrieval form. Burtley acknowledged that the form contained places for signatures indicating that the gun had been returned, but no one signed the form. Burtley admitted that she used a personal stamp to time stamp the form because the practice had "always been accepted in the past by the department." Burtley also needed a key to the vault, and she testified that she got it from a supervisor but she could not "recall who the supervisor was at that time."

¶ 12 Commander Cameron Forbes testified that he was the watch commander on the day Burtley allegedly returned the gun to the evidence vault. He stated that he did not have contact with Burtley that day nor did he provide her with the key to the vault. Officer James Brooks testified that he was the watch supervisor on that day and did not see Burtley, nor did he give her a key to the evidence vault or receive a gun from her. He acknowledged, however, that he was on duty from 2:45 p.m to 11 p.m. and the time-stamp on the form was in the morning. On cross-examination, Forbes stated that the department has no policy requiring a supervisor to sign whenever he or she gives the key to an officer. He testified that procedure is that an "officer is

given the key, and then about three minutes later, they return the key." Steven Porter conducted an internal investigation but after a thorough search of the evidence room, the gun was never recovered.

¶ 13 The Commission found the testimony of Revalee, Forbes, Brooks, Porter, and ASA Cook credible, while finding that Burtley was not a credible witness. It stated that a "glaring example of [Burtley's] untruthfulness was that she was able to recall all of the facts to questions asked by her attorney during direct examination, but she was not able to recall several facts and issues when asked questions under cross-examination." The Commission determined that Burtley "knowingly took a firearm from the evidence room of the City of Harvey Police Department and never returned the firearm. The result of which was the dismissal of a criminal case against a Defendant for use of a weapon by a felon. Then, [Burtley] concocts an unbelievable story that she returned the weapon to the evidence vault without anyone in a supervisory capacity knowing that she did so." The Commission found that Burtley "demonstrated a substantial shortcoming which renders continuance in employment detrimental to the efficiency of the Police Department" and it ordered her discharged effective December 6, 2012.

¶ 14 Burtley brought her complaint for administrative review before the trial court, and on December 13, 2013, the trial court affirmed the Commission's determination. Burtley filed this timely appeal.

¶ 15

ANALYSIS

¶ 16 Burtley challenges the Commission's decision to terminate her employment as a police officer. Administrative review of the Commission's decision to discharge is a two-step process in which we determine whether the Commission's findings of fact are against the manifest weight of the evidence and, if not, whether those findings sufficiently support the Commission's

decision to terminate for cause. *Siwek v. Police Board of the City of Chicago*, 374 Ill. App. 3d 735, 737 (2007). A determination is against the manifest weight of the evidence if "all reasonable people would find that the opposite conclusion is clearly apparent." *Kimball Dawson, LLC v. City of Chicago Department of Zoning*, 369 Ill. App. 3d 780, 786 (2006). A reviewing court will affirm the agency's decision if evidence in the record exists supporting its determination. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992).

¶ 17 The Commission found that the Harvey police department possessed evidence in connection with the case of State of Illinois v. Kendall Edwards, Docket No. 08-CR 22119. The evidence consisted of a Hi-Point .380 ACP semi-automatic handgun, one black colored single stack handgun magazine, and nine .380 caliber live handgun bullets. Burtley was subpoenaed to appear in court on the case so she filled out the form as required to retrieve the gun from the vault. The form indicated that Burtley received the gun on May 13, 2010, at 9 a.m. However, when ASA Cook subsequently met with Burtley in preparation for trial, he could not locate the gun. When he asked Burtley about what may have happened to the gun, she stated that she gave it to a short female assistant state's attorney with blond or light hair. ASA Cook asked ASA Kathy Morrissey, who fit the description, to step into the room and Burtley told him that she thought she had given the gun to ASA Morrissey. ASA Morrissey, however, did not receive a gun from Burtley nor did she recognize her. ASA Cook then spoke with another assistant state's attorney who had previously been assigned to the courtroom, but she stated that she did not sign for any gun placed in evidence. ASA Cook received a copy of the evidence retrieval form used by Burtley and he saw that the form did not have any name,

date, or time showing it was received by the assistant state's attorney. He stated that if an assistant state's attorney had received the gun, he or she would have signed the form.

¶ 18 Burtley testified that she returned the gun to the evidence vault as indicated by a time stamp of May 13, 2010, 10:20 a.m. on the bottom of the evidence retrieval form. However, Burtley admitted she stamped the form herself, which she alleged was a practice that had "always been accepted in the past by the department." Although the police department has no policy requiring a supervisor to sign whenever he or she gives the key to an officer, Commander Forbes testified that the officer must get the key from a supervisor in order to access the evidence vault. Commander Forbes, who was the watch commander on the day Burtley allegedly returned the gun to the evidence vault, testified that he did not have contact with Burtley that day nor did he provide her with the key to the vault. Officer James Brooks, who was the watch supervisor on that day, also did not see Burtley nor did he give her a key to the evidence vault or receive a gun from her during his shift. Burtley offered no evidence to rebut this testimony. Although she alleged that she received the key from a supervisor, she could not recall his or her name. Steven Porter conducted an internal investigation but after a thorough search of the evidence room, the gun was never recovered. Since the state's attorney could not locate the gun to present as evidence, the State had to dismiss the criminal case against Kendall Edwards.

¶ 19 The Commission found the testimony of Revalee, Forbes, Brooks, Porter, and ASA Cook credible, while finding that Burtley was not a credible witness. It determined that Burtley "knowingly took a firearm from the evidence room of the City of Harvey Police Department and never returned the firearm. The result of which was the dismissal of a criminal case against a Defendant for use of a weapon by a felon. Then, [Burtley] concocts an unbelievable story that she returned the weapon to the evidence vault without anyone in a supervisory capacity knowing

that she did so." Evidence in the record supports the Commission's determination, and we cannot say that the opposite conclusion is clearly evident.

¶ 20 Burtley disagrees, arguing that no evidence in the record contradicts her "testimony that she file stamped the evidence retrieval form on May 13, 2010 at 10:20 am when she returned the weapon to the evidence vault." However, the Commission found her testimony not credible. The factfinder is not obligated to credit Burtley's testimony over other testimony. *People v. Primbas*, 404 Ill. App. 3d 297, 302 (2010). It is within the province of the Commission, as the agency hearing the testimony, to assess witness credibility and resolve conflicts in the evidence. *Collura v. Board of Police Commissioners*, 113 Ill. 2d 361, 373 (1986). The Commission's findings were not against the manifest weight of the evidence.

¶ 21 Burtley also contends that she followed accepted police department procedure by stamping the form herself when she returned the evidence, and having received no prior criticism or discipline for the practice, she argues that "the sanction of discharge was arbitrary and unreasonable." As support, she cites *Bell v. Civil Service Comm'n*, 161 Ill. App. 3d 644 (1987). In *Bell*, the employee was discharged for falsifying her technical time reports. *Bell*, 161 Ill. App. 3d at 645. However, the hearing officer's findings showed that the employee did not intentionally falsify time reports, but that she was confused as to how to use the new forms and no one had corrected her mistakes in the past. *Bell*, 161 Ill. App. 3d at 647-48. The Commission never rejected those specific findings. *Id.* at 648. Here, the Commission found Burtley's testimony to be untruthful and therefore it did not credit her testimony when it contradicted that of the assistant state's attorneys or other police department personnel. *Bell* is distinguishable from the case at bar.

¶ 22 The relevant issue is not whether the reviewing court would have disciplined the employee more leniently, but whether the Commission acted unreasonably or arbitrarily in discharging the employee. *Krocka v. Police Board of the City of Chicago*, 327 Ill. App. 3d 36, 48 (2001). The Commission concluded that Burtley knowingly took the handgun out of the evidence vault and the gun was never returned. Burtley was the last known person in possession of the gun. Although she argues that she returned the gun on May 13, 2010, as indicated by a date stamp she herself used on the evidence form, the commander and supervisor on duty testified that they did not give Burtley the key to the vault. Burtley acknowledged that in order to access the evidence vault she needed a key from a supervisor, but she could not recall the supervisor who gave her the key. The loss of the gun forced the State to dismiss its case against defendant Kendall Edwards. Furthermore, the Commission determined that Burtley was untruthful in her testimony and in her conversations with the assistant state's attorneys and the police department. As such, Burtley "demonstrated a substantial shortcoming which renders continuance in employment detrimental to the efficiency of the Police Department." "Illinois courts have recognized that police departments, as paramilitary organizations, require disciplined officers to function effectively." *Siwek*, 374 Ill. App. 3d at 738. Therefore, "[a]n officer's violation of a single rule has long been held to be a sufficient basis for termination." *Id.* The Commission did not act unreasonably or arbitrarily in discharging Burtley and we find that its determination was not erroneous.

¶ 23 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 24 Affirmed.