2016 IL App (1st) 152780-U

THIRD DIVISION
December 14, 2016

No. 1-15-2780



IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| MARCO PRADO,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>ILLINOIS STATE POLICE MERIT BOARD, ILLINOIS STATE POLICE, and HIRAM GRAU, Director of the Illinois State Police,<br><br>Defendants-Appellees. | ) | Appeal from the Circuit Court of Cook County.<br><br>No. 14 CH 18767<br><br>The Honorable Peter Flynn, Judge Presiding. |

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Lavin and Cobbs concurred in the judgment.

**ORDER**

*HELD*: Police Merit Board's administrative decision finding plaintiff guilty of the charges against him was not against the manifest weight of the evidence, and its administrative decision finding cause to discharge him from his employment was not arbitrary, unreasonable or unrelated to the requirements of service.

¶ 1 Following an administrative hearing, plaintiff-appellant Marco Prado (plaintiff) was terminated from his employment as an Illinois state trooper, a decision which was affirmed by

the trial court. Plaintiff brings this appeal against defendants-appellees the Illinois State Police Merit Board (Board), the Illinois State Police (ISP), and Hiram Grau, the Director of the Illinois State Police (defendants, or as named), contending there was no cause for his discharge and the Board's decision to terminate him was arbitrary and unrelated to his requirements for service. He asks that we reverse the Board's decision and remand to impose discipline short of discharge and other appropriate relief. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 The incident that resulted in the termination of plaintiff's employment as a state trooper was captured on both video and audiotape and presented during his administrative hearing. Accordingly, the underlying facts are mainly undisputed.

¶ 4 On September 8, 2012, plaintiff, who was off-duty, and his girlfriend, Maribel Solis, traveled to a casino in Hammond, Indiana for a concert. During his time there, plaintiff consumed three beers. Following the concert's conclusion, and in the early morning hours of the next day, September 9, 2012, plaintiff began to drive himself and Solis back to Chicago. At 3:19 a.m., he was pulled over near a closed toll booth by Chicago police officer Richard Austin.[1]

¶ 5 Officer Austin approached plaintiff's car and asked if he knew how fast he was driving. Prado believed he was driving about 70 miles per hour; officer Austin corrected him by informing him he was traveling 76 miles per hour in a 45 mile-per-hour zone. Officer Austin then asked plaintiff for his driver's license. Plaintiff, however, refused to provide his license

[1]Officer Austin's squad car's dash camera recorded the entire traffic stop on videotape; his microphone was initially charging when the stop occurred, but he was eventually able to turn it on and record the remainder of the stop audibly as well.

and, in a manner officer Austin stated was "very cocky" and "full of himself," plaintiff instead produced his work identification card and badge, identifying himself as a state trooper. This exchange continued, with officer Austin telling plaintiff that the stop was being recorded and that he did not intend to give him a ticket but simply needed his information to fill out a "blue card" (a statistical report), and with plaintiff consistently refusing to provide his license and repeatedly informing officer Austin he was a state trooper and there was no need for a prolonged traffic stop. Eventually, officer Austin told plaintiff he was going back to his squad car and, when he was ready, plaintiff could come over and give him his driver's license so he could fill out the blue card, as he does with every stop. Plaintiff became increasingly upset with officer Austin.

¶ 6 After several moments, plaintiff walked over to officer Austin's squad car and officer Austin asked him if he had his driver's license. At this point, plaintiff saw a piece of paper in the squad car with his name written at the top and, believing officer Austin was writing him a ticket even though officer Austin had already explained he was not, plaintiff became irate. In response to officer Austin's question about whether he was ready to produce his license, plaintiff shouted, "if you f**king, you come get from me. You come get it from me. You come get it." He repeated that he was a state trooper and that he could not believe officer Austin was writing him a ticket since he always only gave Chicago police officers he pulled over a verbal warning for traffic violations. Plaintiff's rant continued with several additional comments and exclamations, including:

-"You better not give me a ticket. I'm telling you. *** You're disrespecting me.

I'm telling you, I'm going to find out who you are *** [w]ho you work for, who your lieutenant is and everything because I'm State Police, okay?";

-"Call your supervisor. *** Call and get him over here, and he'll f**kin' tell you what you gotta do. *** he's gonna like *** cut [you] another a**hole probably";

-"Call your lieutenant here. *** Call them so they can f**kin' cut another a**hole in your a**. *** Cause you're a piece of sh*t. *** and if you were not in uniform, I'd beat the f**k out of you";

-"I'm gonna call Sergeant Ward. I know so many f**king people here. *** I'm gonna f**king if he's not in uniform, I'd beat his f**king a** right now";

-"I showed you my badge. What do you want from me? *** you're not making anything good out of this. *** my Captain will go to your f**kin Captain and f**kin put you on suspension";

-"I want to go home and you're gonna write me a f**king ticket? I gotta sit here because, because this is your job, right? Right? Just, just wait til I pull over the next f**king CPD. Because of you, they're all gonna f**kin' suffer, every f**kin CPD on [I-]290, f**kin speeds *** I'm telling your lieutenant that right now";

-"All right, well, you know I know I'm going to find out where you live and what you're doing and who you cool with and, and, and where you what district you're at, who your lieutenant is and all that stuff."; and

-"I'm not gonna even touch the politics involved with this, but this is f**ked up dude. This is gonna be like f**kin, f**kin world news, probably, close to world

> news. I cannot f**kin believe you're giving me a f**king ticket. A CPD, is giving me, giving a state trooper a ticket."

¶ 7 Within plaintiff's diatribe, he demanded that officer Austin call his lieutenant to come to the scene, which officer Austin eventually did. Sergeant Scott Kinzie then arrived. He repeatedly asked plaintiff to have a seat in his car, but plaintiff consistently refused, insisting that his own captain was on the way and that officer Austin should have let him go when he showed him his badge. Plaintiff repeatedly told Sergeant Kinzie that he always let fellow speeding officers go, that officer Austin was "a piece of sh*t," and that he should have let him go. At one point, Sergeant Kinzie walked plaintiff back to his car and again told him to have a seat, but plaintiff again refused, repeated the same arguments and began to wander around the area and into active lanes of traffic. Sergeant Kinzie spoke to officer Austin, and officer Austin wrote plaintiff a ticket for speeding and a ticket for the failure to obey police.

¶ 8 Later that day, plaintiff wrote a memorandum to his master sergeant documenting the incident and providing his version of it. He explained that he became upset because he felt he was not given proper profession respect, because he believed officer Austin was going to write him a ticket, and because officer Austin questioned whether he was drunk. He apologized for succumbing to his emotions.

¶ 9 Two days later, officer Austin filed a complaint against plaintiff with the ISP. He recounted the incident in full and described how plaintiff lectured him on how to conduct a stop of a state trooper, refused to surrender his driver's license, and insisted he should not be given a ticket–all of this after officer Austin informed plaintiff he was being recorded and that he (officer

Austin) had no intention of writing him a ticket but merely needed to fill out a blue card. Officer Austin also detailed plaintiff's diatribe and profanity, Sergeant Kinzie's arrival, and plaintiff's dismissal of him and his wandering into active lanes of traffic.

¶ 10 Based on officer Austin's complaint, and following an internal investigation of the incident wherein plaintiff stated he simply "lost [his] cool" and never intended any real threat against officer Austin, this matter proceeded administratively with a seven-count complaint against plaintiff alleging violations of the State Police Code of Ethics and its Rules of Conduct, including (1) plaintiff's commission of felony intimidation against officer Austin; (2) his failure to truthfully answer questions during his administrative interview; (3) his commission of misdemeanor disorderly conduct; (4) his discredit of himself and the ISP because of his off-duty alcohol consumption that resulted in obnoxious and offensive behavior; (5) his attempted use of his official position, identification and star to avoid the consequences of illegal acts; (6) his failure to maintain a level of conduct in line with the standards of the profession; and (7) his failure to use his issued equipment for its intended purpose.[2] While counts 3 through 7 presented misconduct with varying levels of potential reprimand according to the ISP's discipline matrix, counts 1 and 2 were both punishable by termination.

¶ 11 During the ensuing administrative hearing, the videotape of the stop, as well as a transcript of the audiotape, were presented to and played before the hearing officer. Plaintiff and

[2]This count referred to plaintiff's department-issued portable breath test (PBT) machine, which he admitted he had in his own car while off-duty during the incident. Reference and testimony was made regarding this, stating that plaintiff had used this to test his alcohol level before leaving the casino, and that he also perhaps allowed Solis to use it as well.

officer Austin also testified. Briefly, in addition to his recount of the incident, officer Austin stated that he never intended to give plaintiff a ticket and told him as much at the outset of their encounter. He described that, due to his belligerent behavior, plaintiff talked himself into, rather than out of, a ticket. Officer Austin further testified that it never entered his mind to file a criminal complaint against plaintiff for felony intimidation, as neither he nor his supervisor were aware this was an option based on the circumstances.

¶ 12 In addition to his version of the incident, plaintiff testified that he did not feel alcohol influenced his behavior that night, but did acknowledge that his behavior was deplorable. He admitted his actions reflected badly on his office and the ISP, he was obnoxious and offensive, he attempted to use his office to avoid his illegal acts, he acted unreasonably to disturb another and breach the peace, and he threatened to physically harm officer Austin. He further admitted that he knew it was illegal to threaten to inflict physical harm with the intent to cause someone to not perform a particular act. He explained that his anger during the incident was not about receiving a ticket but, rather, because he felt he was not given professional courtesy and respect after he told officer Austin he was a state trooper, and he stated he did not mean anything he said that night, as it was "just talk." He testified that since the incident, he has taken steps to modify his behavior. For example, he met with a lieutenant who placed him on an action plan pursuant to which he has been attending weekly counseling sessions with superior officers, he was offered online courses and a list of chaplains to contact for assistance, and he voluntarily participated in a peer support program. He also met several times with clinical psychologist Dr. Susan Radtke through his employee assistance program. He also apologized for his conduct.

¶ 13 Plaintiff presented other testimony and evidence on his behalf. His girlfriend Solis testified that plaintiff seemed fine before the incident and she had never before seen him act the way he did toward another officer, toward her, or toward any other driver. She stated plaintiff has a good reputation within the community and is a respectful person, not arrogant. She also noted that following the incident, plaintiff confided in her that he was embarrassed, regretted his behavior and did not know why he acted as he did. Similarly, Miguel Marin, plaintiff's close friend of 30 years, testified that he has never seen plaintiff lose his temper or get into a fight with someone, and that plaintiff has a good reputation in the community for peacefulness. Marin also described that plaintiff confided in him that he had made a mistake and regretted the incident. In addition to this testimony, plaintiff presented the disciplinary records of some 18 other ISP troopers involved in off-duty and on-duty incidents of alcohol consumption and abusive conduct, none of which resulted in their termination of employment. He also presented a letter from his supervising lieutenant, Jeff Grendzinski, which described that he conducted his own investigation of plaintiff's on-duty traffic stops from random recordings and found that he conducted himself appropriately, respectfully and professionally. And, plaintiff presented a report from Dr. Radtke, in which she detailed that he enrolled in therapy to analyze his belligerent behavior during the incident and, after 14 sessions with her, has since received help in alleviating his anxiety, grief and remorse over it. She stated in her report that his behavior was "one isolated instance of poor anger management and faulty judgment as consequence of alcohol consumption" and, while she recommended continued therapy, she noted that plaintiff does not have any underlying psychological issues to treat.

¶ 14 Sergeant Joel Decatur of the Division of Internal Affairs, who investigated the incident for that department and reviewed the administrative charges, testified that the complaint against plaintiff, as well as the counts it contained, was consistent with what he found during his investigation. Similarly, First Deputy Director of the ISP Brian Ley testified that he reviewed the video and transcript of the incident, as well as various interviews. He concluded that plaintiff's conduct was consistent with the allegations in the seven counts against him, resulting in violations of the Code of Ethics and the Rules of Conduct, which are mandatory for all ISP troopers. Particularly with respect to counts 1 and 2, Deputy Director Ley stated that plaintiff committed felony intimidation when he threatened to physically harm officer Austin and find out where he lives and works, as plaintiff made these comments to compel officer Austin not to write him a ticket and to threaten and expose him to harm and ridicule. Deputy Director Ley further noted that counts 1 and 2 against plaintiff were punishable by termination, and he stated that this would be appropriate here. He explained that he weighed the severity of plaintiff's misconduct with the fact that he was off-duty, his efforts at remediation, and the lack of any prior complaints concerning his temper. Ultimately, Deputy Director Ley concluded that, regardless of the absence of any criminal charges, plaintiff's actions were so egregious that any mitigation could not remedy the situation, as he had "severely damaged" the crucial relationship between the CPD and the ISP who work together and rely on each other to respond to each other's emergencies. Deputy Director Ley stated that this was "one of the most disturbing videos [he had] ever seen of the actions of one of [his] officers." Based on his verbal abuse, repeated refusals to obey orders, and personal threats of harm, Deputy Director Ley believed termination of plaintiff's

employment was appropriate.

¶ 15 At the close of the presentation of all the testimony and evidence, an administrative hearing officer issued his findings of fact and conclusions of law, which he organized pursuant to each count. With respect to count 2, which alleged that plaintiff did not answer questions truthfully during his administrative interview regarding whether a breath test was administered to Solis that night, the hearing officer found that this was not proven by a preponderance of the evidence, since the video did not depict the allegation. However, with respect to counts 3-7, the hearing officer found that these violations were proven against plaintiff by a preponderance of the evidence based on the video and audiotape and his own admissions. For example, the hearing officer found that plaintiff disobeyed direct orders from officer Austin and Sergeant Kinzie and instead used profanities and threats to engage in unprofessional behavior (count 3); he consumed alcohol off-duty which resulted in obnoxious behavior (count 4); he used his official identification in an effort to avoid a ticket (count 5); his conduct brought the ISP in disrepute in violation of the high standards of the law enforcement profession (count 6); and he misused department equipment (the PBT machine) (count 7).

¶ 16 With respect to count 1, alleging that plaintiff committed felony intimidation with the intent to cause officer Austin to omit the performance of an act (writing a ticket) by threatening to inflict physical harm, the hearing officer found that this was also proven by a preponderance of the evidence. As to this count, the hearing officer detailed the events of the incident, including plaintiff's disobedience, rants, refusals to cooperate, misunderstandings, use of profanities, and threatening speech. He noted that the video and audio tape were

"compelling" and depicted:

> "an arrogant, condescending, intimidating, abusive Trooper Prado, totally out of control yelling a multitude of obscenities and threats without provocation toward Officer Austin because [plaintiff] felt he did not receive proper respect as a State Trooper during the traffic stop."

The administrative hearing officer further found that it was "clear from a review of the record *** that [plaintiff's] tirade and threats of physical harm were made with the intent to intimidate Officer Austin and not write Trooper Prado a traffic citation."

¶ 17 The administrative hearing officer concluded his review of the incident by outlining the factors in aggravation and mitigation. As to the former, he noted the "unrebutted, uncontradicted" video and audiotape of the incident, which he again called "compelling," as well as plaintiff's "sense of entitlement" and "very disturbing" conduct, including threats against officer Austin which lasted for more than half an hour. The hearing officer further stated that he found even "more alarming" plaintiff's "intimidating rant threatening to inflict bodily harm on Officer Austin by telling him if he was not in uniform he would beat the f**k out of him and telling him he would find out where he lives." The hearing officer acknowledged plaintiff's insistence that the appropriate discipline here was suspension, and considered in mitigation that plaintiff seemed "contrite and remorseful" and has accepted responsibility for his conduct. He further considered plaintiff's claim that this was a one-time incident, that his lieutenant (Grendzinski) reviewed his work and found him to be professional and respectful, that Solis had never seen him act this way before, and that he had sought help to address his behavior,

including therapy with Dr. Radtke. And, the hearing officer noted plaintiff's presentation of the 18 comparative cases all resulting in varying degrees of discipline short of termination. His recommendation was to stand on his findings and leave the appropriate sanctions and penalty to be determined by the Board.

¶ 18 The Board reviewed the charges, testimony, evidence and findings of the hearing officer and found plaintiff guilty of counts 1, 3, 4, 5, 6 and 7. It found plaintiff's conduct during the incident to be "egregious, intentional, intolerable, and a discredit to the Department," and "such a substantial shortcoming that it renders continued employment with the Illinois State Police detrimental to the work and image of the Illinois State Police." The Board noted its consideration of the mitigating evidence presented, including plaintiff's remorse, his enrollment in therapy, and his agreement to continue counseling, as well as officer Austin's "extraordinary patience" with respect to the incident. However, the Board declared that "the evidence offered in mitigation does not overcome the evidence which forms the basis for discipline," which amounted to "a serious breach of integrity such that Trooper Prado has forfeited any right he had to employment as a sworn officer with the Illinois State Police." Accordingly, the Board decided unanimously to terminate plaintiff's employment.

¶ 19 Following the Board's decision, plaintiff filed a complaint for administrative review. Upon full briefing and argument, the trial court affirmed the Board's decision.

¶ 20 ANALYSIS

¶ 21 Plaintiff presents two issues on appeal. He first contends that his conduct did not constitute "cause" for discharge because he did not commit the offense of felony intimidation.

He then contends that the Board's decision to terminate his employment for his conduct was arbitrary and unrelated to his requirements for service. We disagree with both contentions.

¶ 22 As the Board comprises an administrative agency relegated to making decisions surrounding the employment of their own personnel, we note that, pursuant to the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2006)), it has discretionary authority in this regard. See, *e.g.*, *O'Boyle v. Personnel Board*, 119 Ill. App. 3d 648, 653 (1983), citing *Caldbeck v. Chicago Park District*, 97 Ill. App. 3d 452, 458 (1981); see also *Hanrahan v. Williams*, 174 Ill. 2d 268, 272-73 (1996). Judicial review of an administrative decision to discharge an employee requires a two-step approach. See *Walsh v. Board of Fire & Police Commissioners*, 96 Ill. 2d 101, 105 (1983); see also *Yeksigian v. City of Chicago*, 231 Ill. App. 3d 307, 310 (1992). First, we must determine whether the Board's findings of fact and decision were against the manifest weight of the evidence. See *Walsh*, 96 Ill. 2d at 105; *Yeksigian*, 231 Ill. App. 3d at 310. Second, we must determine whether those findings sufficiently support the Board's conclusion that cause for discharge or removal existed. See *Walsh*, 96 Ill. 2d at 105; *Yeksigian*, 231 Ill. App. 3d at 310.

¶ 23 Pursuant to this two-step approach, we turn to plaintiff's first contention that the evidence presented at his hearing was insufficient to support the findings against him, *i.e.*, that his off-duty verbal confrontation with officer Austin did not amount to "cause" for discharge. We begin by noting the well-established principle that, in determining whether the Board's findings of fact are against the manifest weight of the evidence, we as the reviewing court are to examine only the Board's decision, not that of the trial court. See *Daniels v. Police Board*, 338 Ill. App. 3d 851,

858 (2003); see also *Cesario v. Board of Fire, Police and Safety Commissioners of the Town of Cicero*, 368 Ill. App. 3d 70, 74 (2006). Accordingly, and in addition, the Board's findings are considered to be *prima facie* true and correct, and we may not reweigh the evidence or make any independent determinations of fact. See *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992); *O'Boyle*, 119 Ill. App. 3d at 653 (the agency is "charged with the primary responsibility of adjudication in [its] specialized area"); see also *Caliendo v. Martin*, 250 Ill. App. 3d 409, 416 (1993) (these activities are not the function of the court, but rather, are only for the agency). Thus, we may not substitute our judgment for that of the Board here. See *Abrahamson*, 153 Ill. 2d at 88. Nor is reversal of the Board's decision justified simply because the opposite conclusion is reasonable or because we might have ruled differently. See *Abrahamson*, 153 Ill. 2d at 88; *Caliendo*, 250 Ill. App. 3d at 416 (this is not sufficient to set aside the agency's decision). Instead, in order for us to find that the Board's decision is truly against the manifest weight of the evidence, we must be able to conclude that " 'all reasonable and unbiased persons, acting within the limits prescribed by the law and drawing all inferences in support of the finding, would agree that the finding is erroneous' [citation] and that the opposite conclusion is clearly evident." *O'Boyle*, 119 Ill. App. 3d at 653, quoting *Daniels v. Police Board*, 37 Ill. App. 3d 1018, 1023 (1976), and *Jenkins v. Universities Civil Service Merit Board of the State Universities Civil Service System*, 106 Ill. App. 3d 215, 219 (1982); see also *Abrahamson*, 153 Ill. 2d at 88 (the agency's decision is against manifest weight "only if the opposite conclusion is clearly evident"); *Yeksigian*, 231 Ill. App. 3d at 310 (the agency's decision is not against manifest weight "unless the opposite conclusion is clearly evident *** and, no

rational trier of fact, viewing the evidence in the light most favorable to the [agency], could have agreed with the *** determination"). This is an exacting standard and, if there is anything in the record which fairly supports the Board's conclusion, it is not against the manifest weight of the evidence and must be sustained. See *Finnerty v. Personnel Board*, 303 Ill. App. 3d 1, 12 (1999) (if there is evidence in record to support the agency's decision, it must be affirmed); *Caliendo*, 250 Ill. App. 3d at 416.

¶ 24 As plaintiff notes, and the parties agree, the principle charge at issue here is count 1, his commission of felony intimidation against officer Austin, as this was the charge in the complaint that allowed for termination according to the ISP discipline matrix upon a finding of guilt.[3] Our review of the record leads us to conclude, contrary to plaintiff's assertion, that the Board had before it more than sufficient evidence to support its finding that plaintiff was guilty of this charge.

¶ 25 Felony intimidation requires two elements: that a threat of physical harm be communicated and that it is made with the specific intent to coerce another to do something against his will. See *People v. Casciaro*, 2015 IL App (2d) 131291, ¶ 84, citing *People v. Verkruysse*, 261 Ill. App. 3d 972, 975 (1994). The purpose behind the criminalization of such conduct is to prohibit the making of threats intended to compel a victim to act against his will. See *Casciaro*, 2015 IL App (2d) 131291, ¶ 84, citing *People v. Peterson*, 306 Ill. App. 3d 1091,

[3]As noted earlier, of the seven counts against him, only two allowed for termination according to the ISP discipline matrix: count 1 (felony intimidation) and count 2 (failure to be truthful during his administrative investigation). Counts 3-7 were not punishable by termination, and count 2 was dismissed by the hearing officer and the Board as not proven by a preponderance of the evidence. Therefore, it is only upon count 1 that we are to focus.

1099-1100 (1999). With respect to the first element, the threat need not be imminent; rather, a threat of future physical harm is sufficient. See *Casciaro*, 2015 IL App (2d) 131291, ¶ 85. And, the means or method of the threat's communication is not relevant, as long as it institutes a reasonable tendency to create apprehension in the victim. See *Casciaro*, 2015 IL App (2d) 131291, ¶ 85, citing *People v. Holder*, 119 Ill. App. 3d 366, 372 (1983) (the victim must fear that its maker will carry out the threat); see also *People v. Byrd*, 285 Ill. App. 3d 641, 648 (1996) (the key focus is the intent to affect the victim's conduct via the threat, not the intent to carry out the threat). With respect to the second element, the intent to coerce the actions of the victim may be inferred by the maker's statements and the surrounding circumstances of the incident. See *Casciaro*, 2015 IL App (2d) 131291, ¶ 84, citing *Verkruysse*, 261 Ill. App. 3d at 975.

¶ 26 In the instant cause, the evidence indicates that plaintiff was immediately combative with officer Austin from the moment the stop began. According to officer Austin's complaint and testimony, when he approached plaintiff's car, plaintiff instantly began lecturing him on how to conduct a traffic stop involving a state trooper, namely, to let him go and not prolong the situation. When officer Austin asked him for his driver's license, plaintiff refused–and did so consistently throughout the half-hour stop–instead providing only his state trooper identification and badge. Officer Austin explained to plaintiff that, even though he was speeding, he was not going to write him any tickets; he simply needed his information to fill out a blue card which, as officer Austin continued to explain, is only a statistical report he is required to fill out upon every stop, regardless of whether a ticket is issued. For whatever reason (alcohol, arrogance, ego, etc.), plaintiff ignored this and continued to refuse to be cooperative, to the point that officer

Austin told plaintiff to come and speak to him at his squad car when he calmed down and was ready to produce his license. However, when plaintiff eventually did so, he saw his name on piece of partially obscured paper in officer Austin's squad car. Thinking it was a ticket, and despite the previous explanation by officer Austin, plaintiff, at this point, became irate and began his onslaught of insults and profanities, including threats of physical and professional harm directed specifically against officer Austin, as well as other CPD officers.

¶ 27 We have already presented plaintiff's rants in detail above, and again note that they were all captured on video and audiotape viewed by both the hearing officer and the Board. Among a few somewhat innocuous comments such as disbelief that officer Austin would write a fellow officer a ticket and that he himself had let countless speeding CPD officers go without tickets, as well as insults that perhaps demonstrate nothing more than a motorist frustrated at an officer following a stop, were, however, what the Board overwhelmingly found to be threats constituting felony intimidation. We find that the record clearly supports this. At the root of these was plaintiff's forceful insistence that officer Austin not write him a ticket. At first, plaintiff merely complained that he wanted to go home but could not because officer Austin was writing him a ticket. But very soon, this turned into warnings issued by plaintiff to officer Austin that he would find out who officer Austin was, who he worked for, who his friends were, and where he lived. He threatened not only to contact his superior who would "cut him another a**hole" because he was writing a fellow officer a ticket, but he also told officer Austin that, because of his actions, plaintiff would now begin targeting every CPD officer traveling on the interstate and make them "suffer" because of what officer Austin was doing. Most significantly,

plaintiff's rant finally deteriorated into physical threats, with repeated assertions that, if officer Austin were not in uniform, he would "beat the f**k out of" him.

¶ 28 Plaintiff asserts that he did not commit felony intimidation because the evidence herein does not show that either element was present during the incident. That is, he insists that officer Austin's testimony indicates he did not exhibit any apprehension, and he insists that he did not threaten officer Austin in order to coerce him to do something against his will, namely, to compel him not to write a ticket. Plaintiff's assertions, however, are belied by the record.

¶ 29 First, plaintiff is correct, as we have already discussed, that the threat element of felony intimidation requires the reasonable tendency to create apprehension in the victim: the victim must fear that the maker will carry out the threat at some point. See *Casciaro*, 2015 IL App (2d) 131291, ¶ 85. But, as we also noted, the focus in this respect is not the maker's intent to carry out the threat; rather, it is the maker's intent to affect the victim's conduct via the threat. See *Byrd*, 285 Ill App. 3d at 648. Here, it is true that officer Austin testified it never occurred to him to file a criminal complaint for felony intimidation against plaintiff. Yet, he also testified that this was because he did not know, nor did his supervisor know, that was an option under these circumstances. Moreover, we remind plaintiff that we are not in a criminal setting–this case is under administrative review. Simply because officer Austin never testified he became unnerved, scared, fearful or cowered in the face plaintiff's threats that night does not mean he was not apprehensive because of them or did not believe plaintiff would not carry them out. To be clear, less than two days after the incident, which he talked over at length with his supervisor, Sergeant Kinzie, who was also at the scene–pursuant to plaintiff's threats, no less–officer Austin filed an

official complaint against plaintiff with the ISP. Clearly, officer Austin did not think, as plaintiff insinuates, that the threats were "just talk" or empty promises; rather, he took the time to document the incident for his superiors and to outline every detail of plaintiff's belligerent conduct. From this, we find it hard to believe, and we are sure the Board agreed, that plaintiff's threats of personal physical harm, contact of his superiors, stalking of his home and friends, and retribution to his fellow CPD officers did not institute a reasonable tendency to create apprehension in officer Austin. Indeed, officer Austin's actions after the incident demonstrate the exact contrary.

¶ 30 Second, the evidence was also clear that plaintiff made the threats he did with the specific intent to coerce officer Austin to not give him a ticket. Plaintiff insists on appeal that this was not the case, that he became irate and behaved as he did not because he did not want officer Austin to give him a ticket, but because he was angry that office Austin did not treat him with respect and professional courtesy as a fellow officer. Therefore, plaintiff continues, the second element of felony intimidation was not present and there could be no legitimate basis for his discharge. However, while plaintiff now couches the reason for his behavior in terms of disrespect or unprofessionalism, his diatribe during the incident itself and the circumstances surrounding what occurred prove otherwise, namely, that his behavior rested primarily in his concern over the potential for getting a ticket.

¶ 31 Again, in his testimony and his complaint, officer Austin consistently testified that he explained to plaintiff at the outset of the stop that he was not going to write him a ticket. But, plaintiff, for whatever reason–alcohol consumption, misunderstanding, ignorance, ego–did not

know this or failed to take it into consideration during his resulting actions, including his threats. Rather, the record is clear that the basis for plaintiff's threats was precisely his intent to coerce officer Austin to not write him a ticket. For example, the testimony presented indicated that plaintiff became irate, and commenced yelling the majority of his belligerent threats, after the exchange in which he consistently refused to produce his license and after officer Austin went back to his squad car, telling plaintiff he would wait for him to come over when he was ready to produce it. After a time, plaintiff did so, and it was when he looked into officer Austin's squad car and saw a partially obscured piece of paper with his name and information on it, which plaintiff thought was a ticket, that the barrage began. Thus, it was evident that plaintiff's behavior was not necessarily solely the result of a feeling of disrespect as a fellow officer but, rather, mainly because he thought he was getting a ticket. This was, undoubtedly, the trigger.

¶ 32 Further support for this can be found in the very words plaintiff used within the threats themselves; the majority of them were based on the concept of getting a ticket. For example, plaintiff warned officer Austin, "[y]ou better not give me a ticket," and told him to call his supervisor who would "f**kin' tell you what you gotta do," *i.e.*, not issue him a ticket. Additionally, he demanded that he wanted to go home but could not because officer Austin was "gonna write me a f**king ticket," and he had to "sit here" and wait for him to do so because it was officer Austin's "job." These comments led immediately to his threat of issuing tickets to all of officer Austin's colleagues in retribution of officer Austin's action of writing him a ticket. Plaintiff later stated that he could not "f**kin believe" officer Austin was giving him "a f**king ticket," that a CPD officer was giving him, a state trooper, a ticket. Moreover, plaintiff's

interaction with Sergeant Kinzie, also at the scene, further indicates that plaintiff did what he did and made the threats he made based upon his belief he was being issued a ticket. He repeatedly told Sergeant Kinzie that he was upset because officer Austin was writing him a ticket when he otherwise should have let him go. And, plaintiff, in documenting the incident that very same day it happened, wrote a letter to his master sergeant stating that the reasons for his behavior were threefold: he felt he was not given proper professional respect, he was upset that officer Austin questioned whether he was drunk and, significantly, because he believed officer Austin was going to write him a ticket.

¶ 33 From all this, it is abundantly clear that plaintiff's threats–finding out who officer Austin was, who he worked for, where he lived, and who his friends were; promising to contact his superiors to "cut him another a**hole; vowing to ticket every CPD officer due to this situation; and beating officer Austin up–were the direct result of his efforts to coerce officer Austin into not writing him a ticket, regardless of whether officer Austin intended to do so. Plaintiff's current insistence that his behavior derived merely, and solely, from feeling slighted and professionally disrespected and that, accordingly, the intent element of felony intimidation is missing here, is, in our view, completely unsupported by the record.

¶ 34 Last among his assertions that the evidence presented did not amount to cause for his discharge is plaintiff's claim that, because he was not criminally charged or convicted of the crime of felony intimidation, "the ISP has not even proved a *prima facie* case" of a violation. However, plaintiff wholly misses the mark here. Plaintiff is not now, nor has he ever been, faced with criminal charges for felony intimidation in relation to the underlying incident. His cause is,

and has always, solely been one involving administrative review. As such, that he was never criminally charged is completely irrelevant. As we noted at the outset, the burden in administrative causes, such as the instant case, is a preponderance of the evidence, not guilt beyond a reasonable doubt. Being charged criminally and being charged administratively are not the same thing, nor are they somehow mutually exclusive. See, *e.g.*, *Daley v. El Flanboyan Corp.*, 321 Ill. App. 3d 68, 75 (2001) (burden of proofs involved are different); accord *In re T.D.*, 180 Ill. App. 3d 608, 612 (1989) (finding of not guilty in criminal case does not preclude finding of guilt in civil proceeding involving same actions). Moreover, and in the specific context of police employment proceedings, our courts have made clear that an officer need not be arrested or charged with an offense criminally in order to face, and be found guilty of, administrative charges. See *Grames v. Illinois State Police*, 254 Ill. App. 3d 191, 204 (1993) (police officer discharged for possession of cocaine following administrative proceedings notwithstanding fact that she had been found not guilty of this crime during a criminal prosecution against her for possession of a controlled substance; administrative decision upheld due to differences in burden of proof and noting that "the judgment in the criminal case is not *res judicata* in this [administrative] case"). Thus, any assertion plaintiff makes to the contrary fails.

¶ 35 Ultimately, where there is ample evidence in the record to fairly support the Board's findings and conclusions, its decision must be sustained. See *Finnerty*, 303 Ill. App. 3d at 12; *Caliendo*, 250 Ill. App. 3d at 416. Here, not only was the evidence ample, but it was overwhelming, independent and corroborative in every relevant detail. Accordingly, based on our review of the record before us, and in the light most favorable to the Board, we conclude that

the Board's decision finding plaintiff guilty of the administrative charge of committing felony intimidation was not against the manifest weight of the evidence.

¶ 36 Plaintiff's second contention on appeal is that the Board's decision to discharge him from his employment was improper because it was arbitrary and unrelated to his requirements for service as a state trooper. Accordingly, we turn to the second step in our two-step approach of the judicial review of an administrative decision to discharge an employee; that is, we must now determine whether the findings of the Board, which we have just concluded were not against the manifest weight of the evidence, sufficiently support its conclusion that cause for plaintiff's discharge and removal as a state trooper existed. See *Walsh*, 96 Ill. 2d at 105; *Yeksigian*, 231 Ill. App. 3d at 310-12. Based on our thorough review of the record here, we find that they did.

¶ 37 "Cause"–the foundation for discharge–encompasses a shortcoming which renders a police officer's continued employment with the department a detriment to the discipline and efficacy of the police force and which the law and sound public opinion recognize as a good reason for him to not occupy that position. See *Yeksigian*, 231 Ill. App. 3d at 312; accord *Walsh*, 96 Ill. 2d at 105; see also *Caliendo*, 250 Ill. App. 3d at 418 (cause exists where misconduct "manifests a disrespect for the law and tends to undermine public confidence in the honesty and integrity of the police force"). The existence of sufficient cause is a question for the Board to determine. See *Department of Mental Health and Developmental Disabilities v. Civil Service Commission*, 85 Ill. 2d 547, 551-52 (1981). Therefore, the Board's finding of cause "commands our respect" and substantial deference, and neither we nor the trial court may substitute judgment for that of the Board in this regard. See *Walsh*, 96 Ill. 2d at 105-06; *Yeksigian*, 231 Ill. App. 3d

at 312; see also *Launius v. Board of Fire and Police Commissioners of the City of Des Plaines*, 151 Ill. 2d 419, 436 (1992) (citing *Sutton v. Civil Service Commission*, 91 Ill. 2d 404, 411 (1982) (reviewing court may not overturn decision of discharge simply because it would have been more lenient or would have considered mitigating circumstances differently to impose lesser discipline). Ultimately, the Board's finding of cause may be overturned only if it is " 'arbitrary and unreasonable or unrelated to the requirements of service.' " *Yeksigian*, 231 Ill. App. 3d at 312, quoting *Allman v. Police Board of the City of Chicago*, 140 Ill. App. 3d 1038, 1040 (1986); see also *Kappel v. Police Board*, 220 Ill. App. 3d 580, 590 (1991) (Board, rather than courts, are better able to determine effect of officer's misconduct on proper operation of department).

¶ 38 Even a single finding of a violation of a single police departmental rule may be sufficient cause for discharge or removal. See *Siwek v. Police Board*, 374 Ill. App. 3d 735, 738 (2007); *Caliendo*, 250 Ill. App. 3d at 418 (and cases cited therein); see also *Finnerty*, 303 Ill. App. 3d at 12 (one violation alone was sufficient cause for discharge). This includes, for example, an officer's intimidation, disrespect and verbal abuse of a fellow officer. See, *e.g.*, *North v. De Witt County Sheriff's Department Merit Comm'n*, 204 Ill. App. 3d 881, 887-88 (1990). Such scenarios in which an officer "chooses to inveigh against his fellow officers and superiors" have been determined to impair the morale and administration of police departments. See *North*, 204 Ill. App. 3d at 887-88. And, it does not matter whether the conduct was committed while the officer was on or off duty. See *Remus v. Sheahan*, 387 Ill. App. 3d 899, 904 (2009) (citing *Davenport v. Board of Fire & Police Commissioners*, 2 Ill. App. 3d 864, 869-70 (1972)) (as officer is constantly in public eye, for the good of his department, he must, at all times, exercise

sound judgment and uphold his responsibilities to the public and the department).

¶ 39 Applying these principles to the instant cause, we conclude that the Board's decision was not excessive, unduly harsh or unrelated to the needs of service here. To the contrary, based on the record before us, sufficient cause existed to support plaintiff's termination from his employment.

¶ 40 The facts clearly demonstrate that, after appropriately being pulled over for speeding, plaintiff, who ignored officer Austin's status and position, as well as his instructions, felt he was somehow above the law and did not merit being stopped because of his employment. Believing officer Austin was writing him a ticket, he became irate and unleashed a tirade of insults, profanities and personal and professional threats against him, lasting for over half an hour as he walked in and out of active lanes of traffic. During this, plaintiff made clear that he was going to find out where officer Austin lived and worked and who his supervisors were; he threatened to indiscriminately ticket all of officer Austin's fellow officers in his name; and he swore he would beat officer Austin up were he not in uniform. He repeated all of this in front of officer Austin's supervisor, Sergeant Kinzie, whom plaintiff demanded come to the scene so he could "cut [officer Austin] another a**hole."

¶ 41 Plaintiff insists that he submitted "extensive mitigation testimony" to the hearing officer and Board, as well as some 18 comparable cases wherein other state troopers found to have committed similar acts all received disciplines short of discharge. He claims that these submissions militate against a finding of cause and against his termination from employment. He is mistaken on both fronts. First, discharge in cases where mitigation evidence was presented

is not *per se* arbitrary or unreasonable. See *Malinowski v. Cook County Sheriff's Merit Board*, 395 Ill. App. 3d 317, 323 (2009). We do find plaintiff's mitigation evidence noteworthy. His friends, Solis and Marin, testified that they have never seen plaintiff act this way and that he otherwise has a good reputation for peacefulness, and his supervisor Lieutenant Grendzinski wrote a letter stating that his review of plaintiff's traffic stops all indicate he is respectful and professional. Eventually, after the incident, plaintiff did take steps to modify his behavior, participating in a department action plan, attending counseling sessions and peer support groups, and meeting for several sessions with psychologist Dr. Radtke, who insisted this was an isolated incident of poorly-managed behavior, that plaintiff is working through his issues, and that he has no underlying psychological issues. And, plaintiff has apologized for his conduct.

¶ 42 Yet, while some of these changes are even commendable, the Board is not required to give mitigation evidence such weight that it overcomes its decision to discharge an officer from employment. See *Malinowski*, 395 Ill. App. 3d at 323. Both the hearing officer and the Board in this case acknowledged plaintiff's mitigating evidence in detail, specifying that they considered it and that plaintiff has accepted responsibility for the incident. However, both the hearing officer and the Board concluded that, even weighing these considerations in plaintiff's favor, the mitigating evidence did not overcome discharge. As Deputy Direct Ley testified, plaintiff committed felony intimidation in violation of mandatory ISP ethic and rules, and that his actions were punishable by termination of his employment, which was appropriate here due to their egregiousness and the damage they did to the crucial relationship between the ISP and the CPD, who are required to work together on a constant basis. Additionally, the hearing officer pointed

to the "unrebutted, uncontradicted" video and audiotape of the incident, which he called "compelling." He found plaintiff's conduct and "sense of entitlement" "very disturbing," finding most "alarming" plaintiff's "intimidating rant threatening to inflict bodily harm on Officer Austin." Likewise, the Board specifically found that plaintiff's conduct was "egregious, intentional, intolerable, and a discredit to the Department," comprising "such a substantial shortcoming that it renders continued employment with the Illinois State Police detrimental to the work and image of the Illinois State Police." And, even after explicitly considering all the mitigating factors plaintiff presented, the Board concluded that they did "not overcome the evidence which forms the basis for discipline," since that evidence showed "such a serious breach of integrity" that plaintiff "forfeited any right he had to employment as a sworn officer with the Illinois State Police."

¶ 43 Second, the 18 cases plaintiff submitted to the hearing officer and the Board, which he declares are "comparable," likewise do not "militate" a discipline less than termination of his employment here. The record is clear that both the hearing officer and the Board considered his presentation of these. However, "the fact that different individuals have been disciplined differently is not a basis for concluding that an agency's disciplinary decision is unreasonable; such conclusions are appropriate only when individuals receive different disciplines in a single, identical, 'completely related' case." *Siwek*, 374 Ill. App. 3d 738 (quoting *Launius*, 151 Ill. 2d at 441-42). The punishment issued by an administrative agency in another case, then, is relevant only when that case is completely related to the cause at hand, namely, when it involves the same identical incident. See *Launius*, 151 Ill. 2d at 441-42. Clearly, in order to even initiate a

comparison of different disciplines received by different officers, there must have been a single, identical set of circumstances arising from a completely related case which resulted in the imposition of those different disciplines. And, even then, it does not matter whether one employee was discharged and another was not; cause, and the punishment issued, depend solely on the facts presented as considered by the agency. See *Launius*, 151 Ill. 2d at 442. The incident at hand involved only one officer–plaintiff–and, as such, no comparison of the cases he cites is relevant to our review.

¶ 44 Therefore, without more, we will not substitute our judgment for that of the Board here. See, *e.g.*, *Walsh*, 96 Ill. 2d at 105-06; *Yeksigian*, 231 Ill. App. 3d at 312. Rather, pursuant to the record before us and contrary to his contention, we cannot conclude that the Board's finding of cause for discharge of plaintiff from his employment as a state trooper based on his actions as detailed and witnessed here was arbitrary, unreasonable or unrelated to the requirements of service.

¶ 45 Ultimately, the Board considered all the evidence presented including the video and audiotape of the incident at issue, considered the testimony presented, and weighed the mitigating circumstances. Not only do we hold that there was more than sufficient evidence in the record to fairly support the Board's findings as within the manifest weight of the evidence, but we also hold that its findings were in no way arbitrary, unreasonable or unrelated to the requirements of plaintiff's service as a state trooper. The Board's decision to terminate plaintiff from his employment, based on the underlying incident as found in the record, was wholly proper.

¶ 46 CONCLUSION

¶ 47 Accordingly, for the foregoing reasons, we affirm the Board's decision, as well as the judgment of the trial court, and uphold plaintiff's termination from employment.

¶ 48 Affirmed.