

No. 1-15-3398

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

THOMAS J. DART, in his official capacity)	
as Sheriff of Cook County,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County,
)	
v.)	No. 15 CH 2309
)	
THE COOK COUNTY SHERIFF’S MERIT BOARD,)	Honorable
JAMES P. NALLY, Chairman, BYRON BRAZIER, Vice)	Franklin U. Valderrama,
Chairman, JOHN J. DALICANDRO, Secretary, BRIAN)	Judge Presiding.
RIORDAN, Board Member, KIM R. WIDUP, Board)	
Member, JOHN R. ROSALES, Board Member,)	
VINCENT T. WINTERS, Board Member, JENNIFER E.)	
BAE, Board Member, and BRANDEN S. NORISE,)	
)	
Defendants-Appellees.)	

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

ORDER

- ¶ 1 *Held:* The circuit court’s judgment is affirmed and the decision of the Cook County Sheriff’s Merit Board is confirmed. The decision that Officer Branden Norise did not violate the Rules and Regulations of the Cook County Sheriff’s Office or of the Merit Board was not against the manifest weight of the evidence.
- ¶ 2 In this administrative review action, plaintiff Thomas J. Dart, in his official capacity as

Sheriff of Cook County, appeals from the circuit court's order confirming the decision of defendant Cook County Sheriff's Merit Board and its members (collectively, the Merit Board) returning Officer Branden Norise to employment. We affirm the judgment of the circuit court and confirm the decision of the Merit Board because we agree that the Merit Board's decision not to impose discipline against Officer Norise was not against the manifest weight of the evidence.

¶ 3

BACKGROUND

¶ 4 Officer Norise was employed by the Cook County Sheriff's Office as an officer with the Cook County Department of Corrections (CCDOC). On July 4, 2013, Officer Norise became engaged in a physical altercation with Randall Brown, a detainee, at the Receiving Classification & Diagnostic Center of the CCDOC. After an internal investigation was completed, on March 14, 2014, Sheriff Dart filed a complaint seeking Officer Norise's termination on the grounds that he violated the Rules and Regulations of the Cook County Sheriff's Merit Board and the General Orders of the CCDOC by using excessive force against Mr. Brown and by failing to accurately report the incident.

¶ 5 Sheriff Dart charged that Officer Norise "fail[ed] to decrease the level of force [he] utilized with detainee Randall Brown as detainee Randall Brown lessened his resistance." In the complaint, Sheriff Dart stated that Officer Norise struck Mr. Brown "with a closed fist causing detainee Randall Brown to fall forward to the ground" and that Officer Norise punched Mr. Brown a total of six times and kicked him a total of two times while Mr. Brown was "face down on the ground and covering his head with both arms *** without [Officer Norise] attempting to handcuff him." Sheriff Dart further charged that, in written reports Officer Norise completed after the incident, he failed to indicate that he punched Mr. Brown more than once or that he kicked him.

¶ 6 The Merit Board hearing took place on September 12, 2014. At the hearing, Sheriff Dart presented evidence from expert witness Larry Schurig, director of the Use of Force Review Unit of the Cook County Sheriff's Office, and Richard Ellitch, the individual from the Cook County Sheriff's Office of Professional Review who investigated the complaint against Officer Norise. In his defense, Officer Norise testified on his own behalf and presented the testimony of his expert, Samuel D. Faulkner. A surveillance video (without audio) that had been taken of the incident was also played for the Merit Board and used for reference during the testimony of the witnesses.

¶ 7 In its decision dated January 12, 2015, the Merit Board concluded that, "[b]ased on the evidence presented, the testimony and the video that was shown and produced into evidence," Officer Norise did not violate the Rules and Regulations of the Cook County Sheriff's Office or of the Merit Board. Based on this finding, the Merit Board ordered Officer Norise returned to employment with the Cook County Sheriff's Office.

¶ 8 Sheriff Dart timely filed a complaint in the circuit court seeking administrative review of the Merit Board's decision. On October 28, 2015, the court confirmed the decision of the Merit Board. The Sheriff timely appealed on November 24, 2015. We have jurisdiction to review the circuit court's judgment under section 3-112 of the Code of Civil Procedure governing administrative review (735 ILCS 5/3-112 (West 2014)) and 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)).

¶ 9 ANALYSIS

¶ 10 In administrative review cases, "we review the decision of the administrative agency, not the determination of the circuit court." *Wade v. City of North Chicago Police Pension Board*,

226 Ill. 2d 485, 504 (2007). An agency's findings and conclusions of fact are deemed to be *prima facie* true and correct. *In re Fatima A.*, 2015 IL App (1st) 133258, ¶ 58 (citing 735 ILCS 5/3-110 (West 2012)). A reviewing court does not “weigh the evidence or substitute its judgment for that of the agency” but is “limited to ascertaining whether such findings of fact are against the manifest weight of the evidence.” *Id.* Sheriff Dart asks us to reverse in this case on the basis that the findings of the administrative agency were against the manifest weight of the evidence.

¶ 11 An agency’s decision is against the manifest weight of the evidence “only when the opposite conclusion is clearly apparent” (*In re Tajannah O.*, 2014 IL App (1st) 133119, ¶ 20) or “if no trier of fact could have agreed with the agency” (*Fatima A.*, 2015 IL App (1st) 133258, ¶ 58). Our review is limited: if there is anything in the record that fairly supports the action of the agency, the decision was not against the manifest weight of the evidence and will be sustained on appeal. *O’Boyle v. Personnel Board of the City of Chicago*, 119 Ill. App. 3d 648, 654 (1983).

¶ 12 The Sheriff argues that the Merit Board’s findings were against the manifest weight of the evidence as to each of the two charges against Officer Norise: (1) using excessive force against Mr. Brown and (2) failing to follow Sheriff’s Office requirements for accurately reporting the incident. We address the Merit Board's findings in reference to each of these charges in turn.

¶ 13 A. Use of Excessive Force

¶ 14 Sheriff Dart argues that Officer Norise used excessive force against Mr. Brown when he “failed to de-escalate the use of force and continued to strike and kick” Mr. Brown. The Sheriff does not dispute that Mr. Brown initiated the physical confrontation when he “shoved or punched” Officer Norise, nor does he dispute that Officer Norise’s initial use of force against Mr. Brown was justified.

¶ 15 Sheriff Dart relies heavily on the surveillance video, which he summarizes as follows, making reference to the minute-and-second time counter on the digital file played at the hearing. Based on the Sheriff's summary, the video reflects that, between the time stamp of 3:40 and 3:54, Officer Norise and Mr. Brown "exchange[d] words" and, at about 4:00, Officer Norise "appear[ed] to motion to [Mr.] Brown to move towards the door." The Sheriff's summary reflects that at 4:01, Officer Norise "stepped inside the bullpen and walked towards [Mr.] Brown" who had both of his hands inside his shirt. Between 4:07 and 4:09, Mr. Brown "shoved or punched [Officer] Norise, who then struck [Mr.] Brown" and, after Mr. Brown went to the floor, he "grabbed [Officer] Norise's right leg."

¶ 16 The Sheriff's description of what occurred next, with citations to the record, is that between 4:10 and 4:18:

"[Mr.] Brown let go of [Officer] Norise's right leg, tucked his knees under his chest and covered his head with both hands. *** [A]t this point, [Mr.] Brown was no longer resisting and was simply in a fetal position trying to protect himself. [Citation.] Instead of handcuffing [Mr.] Brown, [Officer] Norise deliver[ed] six (6) strikes and two (2) kicks to [Mr.] Brown's head. *** [T]he six (6) strikes and two (2) kicks were excessive in nature and not within Department policy. [Citation.] The Response To Resistance/Use of Force Policy requires de-escalation and where [Mr.] Brown [was] covering his head, [Officer] Norise's acts clearly were prohibited under the Sheriff's General orders."

The Sheriff contends that when Mr. Brown was in the "fetal position with his knees on the floor

and his arms and hands covering his head,” he was “obviously not resisting” and the force used by Officer Norise, at that point, was excessive in nature. The video reflects that, at 4:21, Mr. Brown again grabbed Officer Norise’s leg, after which Officer Norise handcuffed Mr. Brown and escorted him out of the bullpen cell.

¶ 17 The Sheriff relies on the testimony of his expert, Mr. Schurig, who opined that Officer Norise used excessive force against Mr. Brown. According to Mr. Schurig, Officer Norise’s actions were “prohibited” by the Rules and Regulations in that he failed to de-escalate the situation or attempt to gain control of Mr. Brown when Mr. Brown’s actions “cease[d]” and Mr. Brown was on the ground and “appear[ed] to be covering his head.” The Merit Board also heard testimony from the Sheriff’s investigator, Mr. Ellitch, who explained that, in investigating the incident, he believed Officer Norise used excessive force. Mr. Ellitch specifically noted that, after reviewing the video, he “could find no justification” for “the two kicks and the last three punches” made by Officer Norise.

¶ 18 In his own defense at the hearing, Officer Norise testified that, on July 4, 2013, he was assigned to the Receiving Classification & Diagnostic Center of the CCDOC to watch the detainees while they were being distributed medication in a room referred to as the “bullpen.” His job was to “make sure everyone [was] sitting down” and, if someone caused a disruption, he was “allowed to escort them out” and put them in an isolation room to let them “cool down.” Officer Norise stated that he was not equipped with pepper spray that day because his weapon certification had lapsed and he had not yet been “granted the opportunity” to recertify, and he did not have a radio despite having asked his sergeant for one before he began his shift.

¶ 19 During his testimony, Officer Norise was shown the surveillance video of the bullpen on the day in question and, starting about 90 seconds prior to the physical encounter with Mr.

Brown, he provided an explanation of what was depicted in the video. At about the 2:31 mark in the video, Officer Norise explained, the door to the bullpen opened as he let another detainee into the room; the door had been closed because he was the only officer there at the time. He explained that there were about seven detainees immediately outside the bullpen, lined up in the hallway and waiting to be moved elsewhere. Officer Norise testified that he was in the doorway of the bullpen talking to another detainee when, at 3:34 in the video, they were interrupted by Mr. Brown who said to Officer Norise, “why are you talking to me like I’m f*** crazy?” Officer Norise instructed Mr. Brown to sit down and Mr. Brown responded, “I don’t have to do s***” and continued to direct profane and racially-provocative statements at Officer Norise. Officer Norise stated that, after telling Mr. Brown several more times to sit down, he then instructed Mr. Brown to come out of the room. According to Officer Norise, Mr. Brown then called him an expletive, told him that he would not comply, and stated, “[y]ou want me out of here, make me come out.” This testimony is consistent with what is reflected in the video.

¶ 20 Officer Norise explained that, as he was trained to do, he approached Mr. Brown to escort him out of the room. Officer Norise testified that he saw Mr. Brown taking his arms out of his sleeves and thought he was going to let Officer Norise grab his arms, but then Mr. Brown grabbed him and hit him twice. Officer Norise stated that he “had no clue” that Mr. Brown was going to punch him, that it was the “worse [*sic*] case scenario” and he was “actually shocked when it happened.” Officer Norise explained that he “had no backup coming whatsoever” and felt that if he had run out of the room, Mr. Brown “would have just followed [Officer Norise], and no telling who else he had with him.”

¶ 21 Officer Norise testified that Mr. Brown punched him twice in the head. In response, Officer Norise began “struggling” with Mr. Brown, and then Officer Norise punched him,

“[b]ecause that was the only thing [Officer Norise] could do to start to try to get [Mr. Brown] to stop resisting, [be]cause he was fighting.” Officer Norise stated that, as he learned to do during training, he instructed Mr. Brown to stop resisting and to lay down, but Mr. Brown’s demeanor did not change in response to those commands and he “wasn’t giving up at all.”

¶ 22 Officer Norise testified that after Mr. Brown went to the ground around 4:08 in the video, which is around when the Sheriff asserts Officer Norise used excessive force, Mr. Brown “kept grabbing at [Officer Norise]” and did not respond to the officer’s instructions to “[s]top resisting” and “lay on [his] stomach.” Around 4:11 in the video, Officer Norise still “felt like [Mr. Brown] was trying to take [his] legs out from under [him],” so Officer Norise “did what [he] was trained” to do, which was to lay on top of Mr. Brown and tell him to stop resisting and lay flat on his stomach so he could be handcuffed. He stated that Mr. Brown “didn’t respond, he kept growling, he kept struggling and reaching for [Officer Norise’s] leg.” In response, Officer Norise explained, he “gave [Mr. Brown] striking blows” and “kicked him” in order to make Mr. Brown stop grabbing at his legs and to prevent Mr. Brown from “get[ting] leverage” over Officer Norise and causing him to fall over. Officer Norise stated that he continued to instruct Mr. Brown to lay on his stomach and, because he did not comply, Officer Norise struck him with the side of his fist and side of his foot in a way that “wasn’t trying to hurt [Mr. Brown],” but to communicate to him that he had to comply with Officer Norise’s orders.

¶ 23 Officer Norise testified that, after striking and kicking Mr. Brown, he heard Mr. Brown say “[a]ll right, all right, all right,” which told Officer Norise that Mr. Brown was giving up and, at that point, Officer Norise was able to handcuff him. At about 4:19 in the video, when Officer Norise was trying to turn Mr. Brown, Mr. Brown grabbed Officer Norise’s leg. Officer Norise stated that he viewed this action as Mr. Brown continuing to resist, but because Officer Norise

was now in a safer position relative to Mr. Brown, “there was no need to strike him or hit him anymore, and [Officer Norise] was able to [hand]cuff him.”

¶ 24 The Merit Board also heard testimony from Samuel D. Faulkner, an expert in defensive tactics, subject control, use of force, and response to resistance, who opined on behalf of Officer Norise that his actions were reasonable under the circumstances. Mr. Faulkner testified that when Mr. Brown was on the ground, because his knees were under his body, he was potentially in a “defensive position.” Until the subject is in a prone position where his hip bones are “flat on the floor,” Mr. Faulkner stated, the subject is not under control and is a potential threat. Mr. Faulkner also pointed out that because Officer Norise’s strikes were delivered with “a side of the hand or a side of the foot,” they were done in a way not to “cause any damage” or to “be malicious” to the individual, but to get him under control.

¶ 25 Mr. Faulkner further testified that the standard would not have required Officer Norise to attempt to put handcuffs on Mr. Brown at any time before he actually did because, until that point, Mr. Brown was in a “defensive position.” He explained that officers “would not be taught” to attempt to handcuff a subject who is in a defensive position and there is “no method anywhere of handcuffing a combative individual.”

¶ 26 The Sheriff contends that “no physical encounter was even necessary” between Officer Norise and Mr. Brown, and Officer Norise “could have avoided this incident by not entering the cell by himself and, instead, calling for assistance.” The Merit Board heard uncontested testimony from Officer Norise that, if a detainee is being disruptive in the bullpen, an officer may enter the bullpen to bring the detainee into an isolation room. The Sheriff does not contend that Officer Norise violated any of the Rules and Regulations by entering the bullpen. While in hindsight it might have been better for Officer Norise to have avoided this confrontation, as the

Merit Board points out in its brief, courts must measure excessive force “from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Graham v. Connor*, 490 U.S. 386, 396 (1989).

¶ 27 In his reply brief, Sheriff Dart argues that Officer Norise violated the Rules and Regulations by responding with physical force to profane and provocative statements made to him by Mr. Brown. The Sheriff cites the Sheriff’s Order prohibiting the “[u]se of force as a response to verbal insults or subject threats where there is no immediate threat to the safety of the institution, subjects, or staff.” However, the evidence was clear that Officer Norise was not responding solely to offensive comments. The actions that the Sheriff argues constituted excessive force did not occur until after Mr. Brown made profane and provocative comments, refused to comply with Officer Norise’s orders, and physically engaged Officer Norise.

¶ 28 The Merit Board was not obligated to accept the testimony of the Sheriff’s witnesses over the expert testimony offered by Mr. Faulkner and Office Norise’s account of what occurred. “[T]he weight of the evidence and the credibility of the witness[es] are determined by the agency.” *O’Sullivan v. Board of Commissioners of the Cook County Board*, 293 Ill. App. 3d 1, 9 (1997). There was evidence in the record to support the Merit Board’s determination that Officer Norise did not use excessive force, and we do not find the opposite conclusion to be clearly evident. Thus, the Merit Board’s determination was not against the manifest weight of the evidence.

¶ 29 B. Reporting of the Incident

¶ 30 Sheriff Dart also argues that Officer Norise violated the Rules and Regulations by failing to accurately report his actions during the incident with Mr. Brown and that the Merit Board’s failure to sustain a violation of the Sheriff’s General Orders regarding reporting of incidents was

against the manifest weight of the evidence.

¶ 31 In its written decision, the Merit Board did not make a separate specific finding that Officer Norise did not file a false report. Rather, after reviewing the evidence and assessing the credibility of the witnesses, the Merit Board concluded that “[r]espondent did not violate the Rules and Regulations of the Cook County Sheriff’s Office and the Merit Board.” While we agree with the Sheriff that the evidence demonstrates that Officer Norise was not completely accurate in his written reports, considering the totality of the circumstances, including all of the information Officer Norise provided, both orally and in writing, and the circumstances under which he provided it, we cannot conclude that the Merit Board’s decision should be overturned. Rather, we believe that the Merit Board’s decision not to impose discipline, despite the fact that the evidence showed some omissions in Officer Norise’s written reports, was within its discretion.

¶ 32 We will reverse an agency’s disciplinary decision only where it is an abuse of discretion. *Kazmi v. Department of Financial & Professional Regulation*, 2014 IL App (1st) 130959, ¶ 21. A disciplinary decision is an abuse of discretion only if it is “arbitrary and capricious, or if the sanction is overly harsh in view of the mitigating circumstances.” *Id.* When considering an administrative sanction, a reviewing court “defers to the administrative agency’s expertise and experience in determining what sanction is appropriate to protect the public interest.” *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 99 (1992).

¶ 33 After the incident, Officer Norise completed multiple forms including an Incident Report, a Response to Resistance/Use of Force Report, and an Inmate Disciplinary Report. The Sheriff contends that Officer Norise’s Incident Report as well as the narrative portion of the Use of Force Report inaccurately reflect that Officer Norise struck Mr. Brown only once, whereas the

surveillance video shows that Officer Norise actually struck Mr. Brown six times and kicked him twice. The Merit Board, in its brief, concedes that Officer Norise's completion of the reports "is not perfect."

¶ 34 The Merit Board heard testimony from Mr. Ellitch regarding Officer Norise's reporting of the incident with Mr. Brown. Mr. Ellitch testified that the first page of the Use of Force Report includes a check-list where the officer indicates what types of actions were taken, and the second page of the report is where the officer provides a narrative description of what happened. Mr. Ellitch stated that on the front page of that report, Officer Norise checked the boxes that were labeled, "presence, verbal commands, take down, handcuffing, blocks, kicks, and close hand strikes and punches." However, Mr. Ellitch testified, in the narrative portion of that report, Officer Norise documented only the first strike to Mr. Brown, and failed to document all of the strikes and kicks that followed. Similarly, in both the Inmate Disciplinary Report and the Incident Report, Officer Norise indicated that he struck Mr. Brown only once, and made no mention of kicking Mr. Brown.

¶ 35 Mr. Ellitch testified that when he interviewed Officer Norise about the incident, Officer Norise's statement to him "corroborated the actions that [he] saw in the video." According to Mr. Ellitch, Officer Norise's reporting "inconsistencies" were limited to the "omissions" in the written reports; there was "no inconsistency" with what Officer Norise stated in the interview and what was shown in the video.

¶ 36 Officer Norise also testified at the hearing about how he documented the incident in the reports. Officer Norise explained that about 15-20 minutes after the incident, he was given another assignment requiring him to watch a monitor and activate doors while completing his reports. He testified that while he was writing his reports, "the lieutenant kept coming over the

radio and asking – rushing about the report.” Officer Norise stated that “usually” what happens is that the officer will write one report, and the same information will then be used on the other reports. He also testified that, after he “had time to think about it,” he explained during the investigative interview, as well as to the lieutenant and sergeant, “about all the kicks and punches” that occurred during the incident.

¶ 37 Sheriff Dart is correct that Officer Norise did not accurately and completely represent the incident with Mr. Brown in the narrative section of his reports. However, not every reporting violation requires disciplinary action by the Merit Board. Although the Rules and Regulations state that filing a false report subjects an officer to “disciplinary action up to and including termination of employment and/or the filing of criminal charges,” we have previously stated that “cause” supporting removal, demotion, or suspension of a correctional officer is “a substantial shortcoming that renders continuance in office detrimental to the discipline and efficiency of the service, or something that the law and sound public opinion recognize as good cause for no longer occupying office” ((internal quotation marks omitted) *Roman v. Cook County Sheriff’s Merit Board*, 2014 IL App (1st) 123308, ¶ 143). While formal written charges and a hearing before the Merit Board are required for an officer to be “removed, demoted or suspended” for cause (55 ILCS 5/3-7012 (West 2014)), the Merit Board Rules and Regulations allow the Sheriff to “suspend for any reasonable period of time not to exceed thirty (30) days” or “take [other] reasonable disciplinary measures for infractions of the Rules and Regulations” without filing charges with the Merit Board (Cook Co. Sheriff’s Merit Board Rules & Regulations, art. VIII, § A.1-2 (eff. Oct. 15, 2015)). The Sheriff could have imposed discipline, up to a 30 day suspension, for the inaccurate reports without going to the Merit Board.

¶ 38 Under the circumstances of this case, it does not appear that Officer Norise's actions

reflected any intent to hide information or impede the investigation of the incident. The Merit Board's determination that Officer Norise's omissions in his written reports did not necessitate discipline by the Merit Board was not an abuse of its discretion.

¶ 39

CONCLUSION

¶ 40 For the foregoing reasons, we affirm the judgment of the circuit court and confirm the decision of the Merit Board.

¶ 41 Affirmed.