



day suspension. The Commission adopted the ALJ's findings of fact, but agreed with the ISP that Roman's discharge was the appropriate discipline. The circuit court reversed and remanded the matter to the Commission so that it could more fully explain its decision.

¶ 3 The Commission conducted further proceedings, and issued another decision that included additional findings of fact and conclusions of law to support its determination that the discharge was a proper disciplinary action. The circuit court denied Roman's motion to strike the Commission's decision and his complaint for administrative review. On appeal, Roman argues that: (1) the circuit court erred when it failed to enter an order adopting the ALJ's recommendations; (2) the court erred in denying Roman's motion to strike the Commission's decision on remand. For the following reasons, we affirm.

¶ 4 **BACKGROUND**

¶ 5 Roman worked as a level Guard 2 in the Protective Service Unit of the ISP from December 9, 2004, until his discharge on October 5, 2012. The administrative charges against Roman alleged that: he vacated his post at the James R. Thompson Center leaving it unattended while an employee entered the building without swiping his access card; he repositioned two video cameras that provided coverage of his post and then told a fellow guard not to reposition them to their correct location, and he had been disciplined eight times during a five-year period for various infractions. Roman filed a request with the Commission for a hearing to appeal his discharge.<sup>1</sup> During the hearing before the ALJ, both parties presented the testimony of seven witnesses as well as documentary evidence. The ALJ issued his findings of fact, conclusions of

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<sup>1</sup> Roman's appeal of his discharge was filed under appeal number DA-10-13 and consolidated for a hearing with his separate appeal of a 20-day suspension under case number S-48-12. The Commission entered separate findings for these two appeals, and Roman challenges only his discharge under appeal number DA-10-13.

law and proposed decision, determining that the charges against Roman were proved, but did not warrant termination. The ALJ recommended a penalty of a 90-day suspension, and not discharge.

¶ 6 On March 21, 2014, the Commission issued its decision adopting the ALJ's findings of fact, but held that discharge was the appropriate disciplinary action. The Commission held that in recommending an inappropriate level of discipline, the ALJ placed insufficient emphasis on three factors that favored a greater penalty: Roman's inability to provide a credible explanation as to why he moved the cameras; his significant disciplinary history, and his admission that he abandoned his post while on duty.

¶ 7 Roman sought administrative review of the Commission's final decision in the circuit court. At the January 23, 2015, hearing the circuit court noted that the decision in *Department of Correction v. Welch*, 2013 IL App (4th) 120114, required that the Commission make specific findings of fact or conclusions of law when imposing a different type of discipline than the ALJ's recommendation. The court indicated that the Commission did not set forth specific findings of fact or conclusions of law that were different than what the ALJ relied on in choosing a different discipline level and for that reason, the court reversed the Commission's decision.

¶ 8 The court continued the matter to another date without entering a specific order. Subsequently, the Commission filed a motion to reconsider, and sought a determination by the court that the ISP was a necessary party in the proceedings. The circuit court granted Roman's leave to amend his complaint and serve the ISP with summons. On June 3, 2015, the ISP appeared and adopted the Commission's answer and pleadings, and the court held a hearing on the motion to reconsider. Based on *Welch*, the court held that the Commission failed to provide specific reasons to increase the level of discipline recommended by the ALJ, and denied the motion to reconsider. On July 14, 2015, the court entered an order stating that the Commission's

decision was reversed for failure to comply with *Welch*, recited the parties' arguments, and remanded without instruction regarding those arguments.

¶ 9 Following the court's order, the Commission again reviewed the ALJ's proposal for decision and the parties' responses. It then questioned the ALJ during a closed session, and issued a decision on remand. The Commission adopted the ALJ's findings of fact, and again determined that Roman's discharge was appropriate, expanding its stated reasons for its decision.

¶ 10 Roman filed a motion in the circuit court to strike the Commission's decision on remand, arguing that the court had clearly reversed the Commission and ordered it to impose only a suspension on remand. Roman also argued that the Commission's refusal to follow that order was in error and required a finding that the Commission was in contempt of court. Following a hearing, the court denied Roman's motion to strike and dismissed his complaint for administrative review. This appeal follows.

¶ 11 ANALYSIS

¶ 12 This court reviews the decision of the agency, rather than that of the circuit court. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 819 (2009). Judicial review of an agency's decision extends to all questions of law and fact presented by the record. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008). The standard applied on review of an agency's decision depends upon whether the issue presented is one of fact or of law. *Carpetland U.S.A., Inc. v. Illinois Department of Employment Security*, 201 Ill. 2d 351, 369 (2002). When reviewing purely factual findings, the agency's findings and conclusions are deemed to be *prima facie* true and correct and, thus, are reviewed under a manifest weight of the evidence standard. *Id.*

¶ 13 In cases of discharge, the scope of review is a two-step process. *Williams v. Illinois Civil Serv. Comm'n*, 2012 IL App (1st) 101344, ¶ 9. We must first determine whether the agency's findings of fact are contrary to the manifest weight of the evidence. *Id.* If the agency's findings of fact are not contrary to the manifest weight of the evidence, we must next determine whether the findings of fact provide sufficient basis for discharge. *Id.* The latter consideration is measured by whether the decision is arbitrary, unreasonable, or unrelated to the requirements of service. *Department of Human Services v. Porter*, 396 Ill. App. 3d 701, 726 (2009).

¶ 14 The Commission's regulations define "cause for discharge exists" as follows:

"a) Cause for discharge consists of some substantial shortcoming which renders the employee's continuance in his or her position in some way detrimental to the discipline and efficiency of the service and that the law and sound public opinion recognize as good cause for the employee no longer holding the position.

b) In determining the appropriate level of discipline, the Commission shall consider the employee's performance record, including disciplinary history, and the employee's length of continuous service, unless the offense would warrant immediate discharge in accordance with subsection (a)." 80 Ill. Adm. Code 1.170 (West 2012).

¶ 15 On appeal, Roman argues the circuit court erred in failing to enter an order specifically requiring the Commission to enter a finding and decision consistent with the proposal of the ALJ, after the court initially reversed the Commission's decision. Roman also argues that the court erred when denying his motion to strike the Commission's decision on remand as the court's new order was in direct opposition with the ALJ's findings and recommendations and the court's previous order.

¶ 16 We note that Roman's arguments on appeal exclusively focus on the circuit court's

findings and orders. But, the only relevant decision, for the purposes of our review, is the final decision of the Commission. See *Illinois Department of Juvenile Justice v. Illinois Civil Service Comm'n.*, 405 Ill. App. 3d 515, 521 (2010) (appellate court's role is to review the decision of the administrative body, not of the circuit court). The issue on appeal is whether the Commission's ultimate decision to discharge Roman was arbitrary, unreasonable, or unrelated to the requirements of service.

¶ 17 Here, Roman does not dispute or assert that the ALJ's findings of facts, adopted by the Commission, are against the manifest weight of the evidence. Nor does he argue that the Commission's ultimate determination of cause for discharge was in error. His circular argument that the Commission's decision was against the manifest weight of the evidence because the circuit court found it conclusory and arbitrary—solely focuses on the circuit court's preliminary rulings, and not on the final decision of the Commission after remand. Therefore, because Roman failed to properly address and substantiate the issue on appeal, his request that we reverse the Commission's decision is denied as unsupported.

¶ 18 Roman also failed to provide an adequate record for our review of the Commission's decision. The record on appeal does not include the Commission's complete answer to Roman's request for administrative review, consisting of the record of the proceedings before the Commission. "The duty to provide a sufficient record is that of the appellant, and any doubt rising from an insufficient record will be resolved in the appellees' favor." *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). Any doubts arising from the incompleteness of the record are resolved against Roman, the appellant in this case. Accordingly, we must presume that the Commission's decision was not against the manifest weight of the evidence.

¶ 19 Furthermore, Roman’s contention that “there is no question that the Circuit Court entered an order adopting the March 7, 2014 recommendations of the ALJ to suspend Roman for 90 days” is belied by the record.

¶ 20 The circuit court originally reversed the Commission’s decision in an oral ruling on January 23, 2015. During that hearing, the circuit court noted that the Commission did not set forth specific findings of fact or conclusions of law that were different than what the ALJ relied on in choosing a different discipline level, and, for that reason, the Commission did not meet the requirements under *Welch* and reversal of its decision was required. The court indicated that it was “just going to reverse” and directed the parties to submit proposal orders. The court declined to issue a written disposition order, and over the next several months, the case was continued multiple times as the court considered the Commission’s motion to reconsider and the specific form the final order should take.

¶ 21 During the hearing on the motion to reconsider, the court explained, “let me tell you what I thought I did. I don’t know what the Commission wants to do with the recommended sanction, all I did was to rule that the decision that [it] issued didn’t comply with the requirements and standards in *Welch*. That’s all I did.” The court further explained that, on remand, the Commission could exercise its discretion to adopt the ALJ’s proposed discipline, reduce it, or increase it, so long as it entered an order in compliance with the requirements of *Welch*. The court issued an order denying the motion to reconsider for the reasons stated on the record, and entered a written order on July 14, 2015, reversing the Commission’s decision for failure to comply with *Welch* and remanding the matter without further written instruction. Therefore, the key issue for the circuit court was the Commission’s compliance with *Welch* and not the substance of the Commission’s decision or the ALJ’s proposed discipline. Contrary to Roman’s

argument, the court did not adopt the recommendations of the ALJ, and did not order that a specific suspension be imposed by the Commission.

¶ 22 In its order on remand, the Commission indicated that it adopted and modified the ALJ's findings of fact, and thoroughly explained its reasons behind its decision to modify the sanction recommended by the ALJ. Specifically, the Commission stated that the ALJ placed an insufficient emphasis on a number of factors that required a greater penalty than suspension. For instance, the Commission referenced that Roman was unable to provide a credible explanation for adjusting the view of the cameras to exclude his assigned post, or for his absence from the post. The Commission also noted that, contrary to the ALJ's findings of fact, "a security lapse \*\*\* need not result in an actual security breach to warrant an employee's discharge." Unlike the ALJ's conclusions, the Commission found Roman's absence from the police desk without notice after he repositioned the security cameras "sufficient to establish that he took advantage of the repositioning to take actions not in furtherance of his duties."

¶ 23 The Commission also emphasized that, in fashioning Roman's recommended suspension, the ALJ did not adequately considered Roman's poor performance evaluations and his significant disciplinary history, factors that indicated Roman's lack of trustworthiness. Based on the Commission's different findings on certain key points, and the nature of the offenses, the Commission found good cause to remove Roman from his position. The Commission's decision on remand complies with the *Welch* requirements as the Commission made specific findings of fact and conclusions of law in support of its decision to modify the ALJ's recommended form of discipline. See *Department of Correction v. Welch*, 2013 IL App (4th) 120114, ¶ 44. ("It is well established that, where the Commission adopts an ALJ's decision but disagrees with the appropriate discipline to be imposed, it must make specific findings of fact or conclusions of law



to support its decision to increase or decrease the proposed level of discipline; otherwise its decision is wholly conclusory and arbitrary”). Therefore, the circuit court properly denied Roman’s motion to strike the Commission’s decision on remand, the as the Commission had satisfied the court’s concerns that the requirements of *Welch* had been met.

¶ 24 Finally, Roman summarily asserts that his due process rights were violated by the Commission’s decision on remand because there were no further proceedings or a hearing. The fundamental principles of due process apply to administrative proceedings. *McElroy v. Cook Cty.*, 281 Ill. App. 3d 1038, 1042 (1996). Due process in an administrative proceeding involving the discharge of a public employee requires that the employee be given notice of the charges against him, an explanation of the employer's evidence, and an opportunity to be heard. *Id.* Here, Roman received notice of the charges and a full opportunity to defend himself before the Commission and the court including the opportunity to present witnesses and other evidence before the Commission. The court’s decision to remand the case did not negate Roman’s due process rights.

¶ 25 **CONCLUSION**

¶ 26 Based on the foregoing, we affirm the circuit court’s order denying Roman’s motion to strike the Commission’s decision discharging Roman.

¶ 27 Circuit court’s judgment affirmed.

¶ 28 The Commission’s decision affirmed.