

No. 1-16-2671

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RICHARD LABRECK,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 15 CH 16681
)	
THOMAS J. DART, SHERIFF OF COOK COUNTY,)	
and the COOK COUNTY SHERIFF'S MERIT)	
BOARD,)	Honorable
)	Franklin Ulysses Valderrama,
Defendants-Appellees.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

Held: In this administrative review action, we affirmed the order of the circuit court confirming the Merit Board's decision suspending plaintiff for 180 days for his negligence leading to the escape of a female detainee from her hospital room.

¶ 1 Defendant-appellee, the Cook County Sheriff's Merit Board (Merit Board), ordered that plaintiff-appellant, Richard LaBreck, be suspended from his employment as a Cook County correctional officer for 180 days for negligence leading to the escape of a female detainee from her hospital room at Mount Sinai Hospital. On administrative review, the circuit court confirmed. Plaintiff appeals. We affirm the circuit court.

¶ 2 At the hearing before the Merit Board, John Kerlin testified that he is a senior investigator with the Office of Professional Review of the Cook County Sheriff's Office. On October 21, 2013, Investigator Kerlin interviewed plaintiff regarding an allegation that he was inattentive to duty on September 14, 2013, resulting in a female detainee's escape from custody at Mount Sinai Hospital.

¶ 3 Plaintiff told Investigator Kerlin that, on September 14, 2013, he was instructed to report to Mount Sinai Hospital to relieve officers who were watching a female detainee, Brittany Mulheron. When plaintiff arrived at Ms. Mulheron's hospital room, the officers left. Plaintiff was assigned a male partner, Cook County correctional officer, Richard Lombard, but he was not at the hospital at the time of plaintiff's arrival. Plaintiff believed that a female correctional officer should have been assigned to partner with him to guard Ms. Mulheron. However, there are no Cook County Sheriff's rules or regulations requiring that a female correctional officer be assigned to guard a female detainee.

¶ 4 Ms. Mulheron, who was shackled to the bed, told plaintiff she needed to use the bedpan to urinate and required privacy. Plaintiff pulled a curtain around Ms. Mulheron and attempted to use the police radio to notify his superiors that his partner was not present; however, the radio did not work because the battery was dead. Shortly thereafter, Officer Lombard came into the room and asked: "Where is your detainee?" Plaintiff pointed toward the curtain, and Officer Lombard called out Ms. Mulheron's name, but she did not respond. Officer Lombard opened the curtain and discovered that Ms. Mulheron was not there.

¶ 5 Officer Lombard told plaintiff to go down the stairs to look for Ms. Mulheron while he notified security. Plaintiff went downstairs, and soon thereafter, Ms. Mulheron was captured on the first floor. Ms. Mulheron was placed on a gurney and returned to her hospital room.

¶ 6 Investigator Kerlin determined that plaintiff had violated Cook County Department of Corrections General Order 4.1, which states:

“Misconduct which impairs an employee’s ability to perform his/her assigned responsibilities, or adversely affects or involves the Cook County Department of Corrections and/or the Office of the Sheriff of Cook County may be cause for disciplinary action. Serious misconduct would include those violations of the law which constitutes a misdemeanor [or] a felony, or alleged/suspected, violations of Cook County Department of Corrections rules and orders which pose a threat to the safety of the staff or the security of the institution. ***

A. Guidelines for SERIOUS MISCONDUCT include, but are not limited to:

1. Negligence leading to an escape.”

¶ 7 Investigator Kerlin also determined that plaintiff’s conduct fell under Article X of the Merit Board’s rules and regulations, which provides that a correctional officer is “subject to disciplinary action by the Sheriff and the Merit Board” when he violates a General Order.

¶ 8 Investigator Kerlin found that, unlike plaintiff, Officer Lombard had not violated General Order 4.1, or Article X of the Merit Board’s rules and regulations because he was not on the scene when Ms. Mulheron escaped custody and had not yet taken charge of Ms. Mulheron.

¶ 9 Investigator Kerlin submitted his findings to his supervisor, the executive director of the Sheriff’s Office of Professional Review, who recommended termination of plaintiff’s employment.

¶ 10 Officer Richard Lombard testified that he works for External Operations, meaning he is assigned to guard detainees at hospitals. The job duties include: checking to make sure that the

security devices are securely attached to the detainee; that the stun cuff, which emits volts of electricity to keep the detainee from escaping, is on and working properly; and that the area is safe. Typically, two officers are assigned to guard a detainee at an “outlying hospital,” meaning a hospital other than John H. Stroger, Jr. Hospital of Cook County (Stroger Hospital). A detainee typically has one of her arms and one of her legs handcuffed/shackled to the bed.

¶ 11 On September 14, 2013, Officer Lombard was assigned the 2 p.m. shift at Stroger Hospital. However, when Officer Lombard arrived at Stroger Hospital, he was told to report to Mount Sinai Hospital to assist plaintiff in guarding Ms. Mulheron. Officer Lombard drove to Mount Sinai Hospital, parked in the garage, and stopped in the hospital gift shop to get a soda and some potato chips. He then took the elevator to the third floor room where Ms. Mulheron was being detained.

¶ 12 When Officer Lombard got to the third floor, he saw a lot of nurses and patients walking back and forth and he stopped at the nurses’ desk and “inquired about the status” of Ms. Mulheron. Officer Lombard then walked into Ms. Mulheron’s room, which he described as follows:

“Q. Could you describe for the hearing officer what the room looked like?

A. When you’re entering the room, it’s a very small and narrow hallway that goes to where the beds are. Entering the room, to the immediate right there is a sink, closets and then a bathroom, and it’s kind of confined. When you pass that up, it’s this very small corridor going into the main room, and depending on what room you have, it may have one or two beds.

Q. Did this room that you went into on September 14, 2013, have one or two beds?

A. Two beds.

Q. And which bed was detainee [Ms.] Ms. Mulheron supposed to be in?

A. It was the first bed closest to the door; that's where she was supposed to be.

Q. And when you walked in, where was [plaintiff] situated?

A. He was sitting on the corner of the first bed by the window.

Q. *** How close was the window to that first bed where *** [Ms.] Ms. Mulheron was supposed to be handcuffed to?

A. Ten feet maybe, at most."

¶ 13 Officer Lombard asked plaintiff where Ms. Mulheron was and he stated that she was behind the curtain using the bedpan. Officer Lombard called to Ms. Mulheron and asked her to respond. When she did not do so, he moved the curtain and saw that she was gone. Officer Lombard and plaintiff attempted to use the police radio to report the escape, but the radio did not work. They also attempted to activate the stun cuff via remote control, but the remote control was also not working.

¶ 14 Officer Lombard and plaintiff went out to the hallway, and the officer remembered that he had seen a female walking across the hallway when he first entered the floor. Officer Lombard told plaintiff he thought he saw the female going down the stairs. Plaintiff went down the stairs while Officer Lombard told the nurses to notify security about Ms. Mulheron's escape. Officer Lombard then went to the first floor and saw that plaintiff and another security officer had captured Ms. Mulheron, who was handcuffed to a gurney. Ms. Mulheron was transported back to her room and secured to the bed.

¶ 15 Officer Lombard contacted Stroger Hospital and informed them of Ms. Mulheron's escape and that she was back in custody. Cook County sergeant, George Marks, came to Mount

Sinai Hospital and Officer Lombard gave him an explanation of what had occurred. Afterwards, plaintiff and Officer Lombard were relieved by two other officers and returned to External Operations to file a report.

¶ 16 Officer Lombard had watched female detainees at Mount Sinai Hospital more than 10 times over the years, always with a female partner. Unlike male officers, female officers are allowed to observe a female detainee in the washroom.

¶ 17 Officer Lombard testified he knew of no formal rule or policy requiring an officer to stand in the doorway of the detainee's room while watching her. However, the officer is required to guard against an escape by keeping a visual on the detainee at all times and blocking paths of escape.

¶ 18 Sergeant Marks testified he is assigned to External Operations and his job duties include supervising officers assigned to hospitals. Typically, two officers are assigned to guard a detainee at Mount Sinai Hospital. If one of the two officers is late, the officers on the previous shift should stay until the officer arrives. Officers assigned to guard a detainee at a hospital provide supervision of the detainee as well as security for the hospital staff and civilians. The officers should never leave a detainee unattended, as they may escape and harm staff and/or patients.

¶ 19 Sergeant Marks was notified of an escape at Mount Sinai Hospital on September 14, 2013. He drove there and saw that Ms. Mulheron had been recaptured and was secured in the room with handcuffs and shackles. After talking with plaintiff and Officer Lombard, Sergeant Marks spoke with a nurse who stated that, prior to the escape, she had checked on Ms. Mulheron to make sure that the handcuffs and shackles on her were not too tight. Sergeant Marks checked the stun cuff and found that it was not working.

¶ 20 Sergeant Marks spoke with Ms. Mulheron, who stated she used deodorant on her ankle to help her slip out of the shackles. As a detainee, Ms. Mulheron was not allowed to have deodorant while in the hospital, and it was the officers' duty to make sure there is no such "foreign substance" within the hospital room.

¶ 21 Sergeant Marks testified that, prior to this incident, there had never been a time when two male officers were assigned to watch a female detainee on his shift. Sergeant Marks further testified that plaintiff was the only officer disciplined for Ms. Mulheron's escape.

¶ 22 Plaintiff testified he had been employed by the Department of Corrections for 11 years. On September 14, 2013, he was assigned to watch a detainee in room 320 at Mount Sinai Hospital at 2 p.m. He arrived at Mount Sinai Hospital just prior to 2 p.m., went directly to the room, and spoke to the officers from the previous shift. One of the officers was male and one was female. They told him that the detainee was a female (Ms. Mulheron), and that nothing unusual had happened during their shift. Plaintiff checked Ms. Mulheron's restraints and confirmed that her right leg and left arm were shackled to the bed. She was also wearing a stun cuff on her left leg. After he checked the restraints, the officers from the previous shift left.

¶ 23 Plaintiff knew he was supposed to have a partner during his shift, but he did not know who it would be, and the partner had not yet arrived. Plaintiff did not ask the officers from the previous shift to stay until his partner arrived. Instead, plaintiff tried using the police radio to contact his superiors and inform them his partner had not yet arrived, and that he was currently watching a female detainee by himself, but the radio did not work. Plaintiff's cell phone was not working because the battery was dead and there was no landline phone in the room. The nearest phone was in the nurses' station, but he was unable to go to the nurses' station to use that phone to call his superiors because he could not leave Ms. Mulheron unattended in the room.

¶ 24 About five minutes after plaintiff's shift started, Nurse Lewis came into the room and checked Ms. Mulheron's restraints and stun cuff to make sure they were not too tight. Plaintiff began charging his cell phone, using a plug on the other side of the room, away from Ms. Mulheron's bed. Ms. Mulheron told plaintiff she needed to use the bathroom. Plaintiff believed that, based on his training, he was not supposed to unshackle Ms. Mulheron nor allow her to leave the bed to use the bathroom. Plaintiff pulled a curtain around Ms. Mulheron and told her to use the bedpan.

¶ 25 Plaintiff was standing in front of the bed on the other side of the curtain, about three feet away from Ms. Mulheron, looking through some paperwork. He could hear her urinating into the bedpan. Plaintiff did not turn his back to the curtain or leave the room. He did not hear any sounds indicating that Ms. Mulheron was attempting to free herself from the shackles. He had no reason to believe Ms. Mulheron possessed any contraband or prohibited items, including deodorant, at the time she used the bedpan.

¶ 26 After "a few minutes" passed, plaintiff told Ms. Mulheron to hurry up. Meanwhile, plaintiff's partner, Officer Lombard, arrived and asked about Ms. Mulheron's location. Plaintiff told him she was using the bedpan on the other side of the curtain. Officer Lombard called out to her and then pulled the curtain back, revealing that Ms. Mulheron was gone.

¶ 27 Officer Lombard pushed a remote control button to activate the stun cuff attached to Ms. Mulheron, but they did not hear any cries of pain from her. Plaintiff ran to the police radio and tried to call his superiors, but the radio still was not working. Officer Lombard ran to the nurses' station to notify hospital security and told plaintiff he had seen a patient running down the stairwell.

¶ 28 Plaintiff ran down the stairwell to the first floor and saw Ms. Mulheron, who was still wearing the stun cuff. Plaintiff and a hospital security guard grabbed her and transported her to her room.

¶ 29 Officer Lombard notified Sergeant Marks, who came to the hospital and asked both officers questions about what had occurred. Sergeant Marks had plaintiff remove the stun cuff from Ms. Mulheron, tested it, and determined it was not working.

¶ 30 On cross-examination, plaintiff acknowledged that one of his job responsibilities was to make sure that Ms. Mulheron did not escape. When Ms. Mulheron was behind the curtain using the bedpan, plaintiff did not stand in the doorway so as to block any possible escape.

¶ 31 Following all the evidence, the Merit Board found that plaintiff violated General Order 4.1, was subject to discipline under Article X of the Merit Board's rules and regulations, and was suspended from employment for 180 days.

¶ 32 Plaintiff filed a complaint for administrative review, and the circuit court confirmed the Merit Board. Plaintiff now appeals to this court.

¶ 33 Plaintiff contends the Merit Board erred in finding that his negligence led to Ms. Mulheron's escape, which constituted "serious misconduct" in violation of General Order 4.1 and subjected him to disciplinary action by the Merit Board under Article X of its rules and regulations.

¶ 34 On administrative review, we review the final decision of the agency, not the decision of the circuit court. *C.R. England, Inc. v. Department of Employment Security*, 2014 IL App (1st) 122809, ¶ 40. The applicable standard of review depends on whether the question presented to the Merit Board is one of fact, one of law, or a mixed question of law and fact. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 390 (2001). "A mixed

question of law and fact is one involv[ing] an examination of the legal effect of a given set of facts. Stated another way, a mixed question is one in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether *** the rule of law as applied to the established facts is or is not violated.” (Internal citations and quotation marks omitted.)

Id. at 391. Here, the Merit Board’s decision involved a mixed question of law and fact, as the historical facts of plaintiff’s conduct while guarding Ms. Mulheron are admitted and the issue is whether these facts established plaintiff’s negligence leading to Ms. Mulheron’s escape such that he violated General Order 4.1 and was subject to discipline under Article X of the Merit Board’s rules and regulations. As the Merit Board’s findings involved a mixed question of law and fact, its findings will not be reversed unless clearly erroneous, meaning where the record leaves us with a “ ‘definite and firm conviction that a mistake has been committed.’ ” *Id.* at 395 (2001) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

¶ 35 The Merit Board’s findings were not clearly erroneous. The testimony of plaintiff, Sergeant Marks, and Officer Lombard established that as an officer assigned to guard Ms. Mulheron at the hospital, plaintiff had the duty to ensure she had no foreign substances, such as the deodorant she used to free herself from her shackles, and he was to keep her in view and block any paths of escape. Plaintiff negligently breached his duty when, after pulling the curtain around Ms. Mulheron to allow her to use the bedpan, he began looking at paperwork (either about three feet away according to plaintiff, or 10 feet away according to Officer Lombard), failed to block the exit, and did not notice that Ms. Mulheron used the deodorant to free herself from the handcuffs and shackles and escaped from her room. Plaintiff only became aware of Ms. Mulheron’s escape when Officer Lombard subsequently walked in the room, pulled back the curtain, and discovered her missing. Plaintiff’s negligence directly led to Ms. Mulheron’s

escape, as she would have been unable to leave the room had plaintiff been adequately monitoring her.

¶ 36 Plaintiff cites a number of “mitigating” factors showing that he did not act negligently, specifically: Officer Lombard was apparently given the wrong assignment initially, causing him to arrive late to Mount Sinai Hospital, leaving plaintiff without a partner at the time of Ms. Mulheron’s escape; the police radio was not working, preventing plaintiff from notifying his superiors that his partner had not yet arrived; no female officer was assigned to the room to monitor Ms. Mulheron while she used the bed pan, which forced plaintiff to allow Ms. Mulheron to use the bed pan alone behind a curtain; and the stun cuff did not work, preventing plaintiff from stopping Ms. Mulheron after she escaped.

¶ 37 None of the “mitigating” factors cited by plaintiff, in any way, excused him from performing his basic job duty of ensuring Ms. Mulheron did not have a foreign substance and watching Ms. Mulheron to ensure that she stayed in the room and did not escape. Specifically, the mechanical failures of the police radio and stun cuff; the late arrival of his partner; and the absence of a female officer should not have prevented plaintiff from discovering the deodorant, nor should they have prevented him from continuously watching the curtain while Ms. Mulheron was behind it or blocking the doorway to prevent her escape. Further, with respect to his partner’s late arrival, plaintiff could have asked the officers from the previous shift to stay until his partner arrived. Accordingly, the Merit Board’s finding that plaintiff violated General Order 4.1 by negligently allowing Ms. Mulheron to escape subjecting him to disciplinary action by the Merit Board under Article X of its rules and regulations, was not clearly erroneous.

¶ 38 Next, plaintiff contends the Merit Board erred by finding cause exists for suspending him for 180 days. A correctional officer may not be suspended “except for cause.” 55 ILCS 5/3-

7012 (West 2012). An administrative tribunal's finding of cause for suspension shall only be overturned if it is arbitrary, unreasonable, or unrelated to the requirements of the service. *Simonis v. Countryside Fire Protection District*, 173 Ill. App. 3d 418, 425 (1988). "A broad discretion is accorded an administrative agency in determining what constitutes a proper cause for suspension, but it is essential to the validity of such suspension that it be based upon substantial misconduct or incapacity." *Keen v. Police Board of the City of Chicago*, 73 Ill. App. 3d 65, 73-74 (1979). "The concept of misconduct must be rooted in substantial shortcomings and does not include conduct which is so trivial as to be unreasonable and arbitrary." *Id.* at 74.

¶ 39 As discussed earlier in this order, plaintiff was negligently inattentive to his duty, as he failed to discover the deodorant Ms. Mulheron used to free herself from the shackles, nor did he adequately watch Ms. Mulheron and block the exit to ensure she stayed in the hospital room and did not escape. Such inattentiveness to duty, which potentially could have led to harm to staff and/or other patients had Ms. Mulheron not been quickly recaptured, was a substantial shortcoming and not trivial. See General Order 4.1, providing that negligence leading to an escape is "serious misconduct." On this record, we cannot say that the Merit Board's decision to suspend plaintiff for 180 days was arbitrary, unreasonable, or unrelated to the requirements of the service.

¶ 40 Plaintiff argues that "systematic failures," *i.e.*, the malfunctioning police radio and stun cuff, and the failure of his partner to arrive on time or of the officers from the previous shift to remain until the partner showed up, were all out of his control and therefore he should not have been suspended for 180 days. Plaintiff is essentially rearguing the Merit Board's finding of his negligence leading to Ms. Mulheron's escape. As discussed, the Merit's Board's findings were supported by the record and were not clearly erroneous.

¶ 41 Plaintiff also contends his “cause” for suspension was arbitrary and unreasonable when it is compared to the lack of any discipline imposed on Officer Lombard for his role in Ms. Mulheron’s escape. Plaintiff cites *Launius v. Board of Fire and Police Commissioners*, 151 Ill. 2d 419 (1992), which held that evidence of discipline imposed on another officer in the same case or in a completely related case is relevant and useful to the Board in exercising its discretion and insuring consistency in its disciplinary actions. *Id.* at 441-42. However, *Launius* also held that different discipline may be imposed on officers where the circumstances surrounding their conduct are different. *Id.* at 442-43.

¶ 42 In the present case, the Merit Board expressly noted that Officer Lombard “had erroneously been told to report to Stroger and was therefore late getting to Mount Sinai” whereas plaintiff was in the room with Ms. Mulheron and “took charge” of her and therefore “it was his responsibility to ensure she did not escape.” The Merit Board further recounted how plaintiff negligently failed to meet his responsibility of ensuring that Ms. Mulheron did not escape. Given the different circumstances surrounding the conduct of plaintiff and Officer Lombard, we cannot say the 180-day suspension imposed on plaintiff was arbitrary and unreasonable when compared to the lack of a similar suspension for Officer Lombard.

¶ 43 Plaintiff also cites to his “good work history” and lack of prior discipline as other reasons the 180-day suspension was unwarranted. The Merit Board expressly noted plaintiff’s “otherwise good work history” when deciding to suspend him 180 days *in lieu of* terminating his employment as requested by the Cook County Sheriff’s Office. The Merit Board adequately considered plaintiff’s prior disciplinary record and did not act arbitrarily and unreasonably when suspending him 180 days.

¶ 44 For all the foregoing reasons, we affirm the judgment of the circuit court.

No. 1-16-2671

¶ 45 Affirmed.