

**NOTICE**

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2017 IL App (4th) 160682-U

NO. 4-16-0682

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

September 18, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE DEPARTMENT OF CORRECTIONS,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
HEIDI S. SCOTT and ILLINOIS CIVIL SERVICE	)	No. 16MR447
COMMISSION,	)	
Defendants-Appellees.	)	Honorable
	)	John P. Schmidt,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Presiding Justice Turner and Justice Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding the Illinois Civil Service Commission's decision to impose a 90-day suspension in lieu of discharge was not arbitrary, unreasonable, or unrelated to the requirements of service.

¶ 2 In October 2015, defendant, Heidi S. Scott, was discharged from her employment with plaintiff, the Illinois Department of Corrections (Department), after she (1) left her vehicle key unattended in a restroom accessible to inmates, and (2) attempted to avoid punishment by asking a colleague to claim ownership of the key. Scott appealed to defendant, the Illinois Civil Service Commission (Commission) and, following a hearing, the administrative law judge (ALJ) recommended discharge. Disagreeing with the ALJ's recommendation, the Commission issued a decision imposing a 90-day suspension in lieu of discharge. Following a July 2016 administrative review hearing, the circuit court upheld the Commission's decision.

¶ 3 The Department appeals, asserting the Commission's decision to reject the ALJ's recommendation for discharge and instead impose a 90-day suspension was unsubstantiated, and therefore arbitrary, unreasonable, or unrelated to the requirements of service. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Internal Investigation and Procedures

¶ 6 Scott had been employed by the State of Illinois since 1999. In January 2015, Scott began working for the Department as a business administrator for Western Illinois Correctional Center (Western). In that role, Scott (1) reported directly to the warden, (2) supervised numerous employees, and (3) prepared Western's multimillion dollar budget. When Scott began working for the Department, she underwent security training, which included instruction to maintain possession of keys in areas accessible to inmates.

¶ 7 On July 21, 2015, Scott left her vehicle's keyless entry and ignition device (key) in the women's restroom in the administration building. Notably, select inmates cleaned the administration building—including the restroom in which Scott left her key. Upon discovering her key had been turned over to the warden's office, Scott asked Tami Weber, an office associate and subordinate, to retrieve the key. Weber retrieved the key from Warden Jeff Korte after claiming the key belonged to her and proceeded to return the key to Scott.

¶ 8 Later that month, Western filed a deficient performance notice, alleging Scott violated the Department's rules and policies that required her to (1) maintain possession of her key in any area accessible to inmates, and (2) conduct herself in a professional manner and not in a manner unbecoming of a State employee. The Department conducted an employee review hearing, at which time the hearing officer found Scott had violated the aforementioned rules and

recommended discharge. Warden Korte and John Baldwin, the Director of the Department, agreed with the recommendation. The Department of Central Management Services approved Scott's discharge and, in October 2015, she was formally discharged. Scott appealed to the Commission.

¶ 9 B. The Administrative Hearing

¶ 10 Prior to the administrative hearing, the Department moved to amend the charges against Scott. The amended charges were as follows. Count I charged Scott with leaving her key in Western's women's restroom. Count II alleged Scott requested a subordinate employee, Weber, to falsely claim ownership of the key. According to the Department, Scott's actions violated the rules and policies that required her to (1) maintain possession of her key in any area accessible to inmates, and (2) conduct herself in a professional manner and not in a manner unbecoming of a State employee. After conducting preliminary matters, the administrative hearing commenced in December 2015. We outline only the evidence necessary to resolve this appeal.

¶ 11 1. *Heidi Scott*

¶ 12 Scott testified she began working at Western in January 2015, at which time she received training on prison security measures. On July 21, 2015, Scott admitted she left her key in the women's bathroom of Western's administration building. Tracey Harrison, a correctional counselor, discovered the key a few minutes later and turned it in to the warden's office. When Scott learned the key had been recovered, she asked Harrison to retrieve it from the warden's secretary so Scott could avoid any conflict with the warden.

¶ 13 Harrison attempted to retrieve the key, but the key had already been turned over to Warden Korte. Scott then asked Weber to retrieve the key from the warden. Weber retrieved

the key from the warden and returned it to Scott. Scott denied telling Weber to obtain the key by claiming ownership of it.

¶ 14 During the initial investigation, Scott provided information to Timothy Megginson, an internal affairs investigator. Scott admitted she left her key in the bathroom and asked Weber to retrieve it. However, she denied telling Megginson that she wanted Weber to claim ownership of the key. When reviewing Megginson's notes, she asked him to cross out a section in which he wrote that Scott told Weber to claim ownership of the key. However, she failed to direct Megginson to strike the following statement Megginson attributed to her: "[T]ell them they're yours or whatever, to just get them back."

¶ 15 Scott testified regarding three prior disciplinary proceedings. In June 2015, she received (1) an oral reprimand for leaving her office keys in her office door when leaving the prison grounds, and (2) a one-day suspension for violating the chain of command. She also received a 20-day suspension in 2012, while working for the Department of Revenue, after using a State computer for personal use. Scott provided copies of several positive performance evaluations she received from 1999 through 2012, while she worked at the Department of Revenue.

¶ 16 *2. Tami Weber*

¶ 17 Weber testified she was an office associate at Western, which technically made her a subordinate employee to Scott, although Scott was not her supervisor. On July 21, 2015, Weber and Scott were in the women's restroom when Weber noticed a key on a shelf. When Scott acknowledged the key was hers, Weber reminded her to collect the key before leaving. Weber then left the restroom before Scott.

¶ 18 A few minutes later, Weber learned Harrison had discovered a key in the women's restroom. Scott asked Harrison to retrieve the key from the warden's secretary, but Harrison returned without the key, explaining it was in Warden Korte's possession. Scott then asked Weber to retrieve the key from the warden because Scott was afraid of getting into trouble. According to Weber, Scott believed Weber would not get into trouble because Weber was well-liked.

¶ 19 Weber then went to Warden Korte's office and claimed the key as hers. Weber did not recall whether Scott specifically asked her to claim the key as hers. Weber stated, "I believe she did ask me to say that it was mine, because that was the whole point \*\*\* that I say that it was mine" so Scott would avoid getting into trouble, but Weber could not recall the language Scott used. When Weber claimed the key belonged to her, Warden Korte slid the key across his desk without further discussion. Weber left the office, handed the key to Scott, and returned to her work. Approximately 10 minutes later, she received a call from Warden Korte advising her to prepare an incident report. In her incident report and subsequent interview with Megginson, Weber made no mention that Scott advised her to claim ownership of the key.

¶ 20 As a result of her actions, Weber received a three-day suspension. Weber testified she had been employed by the Department for approximately six months at the time of the incident, and she did not truly comprehend the significance of key security.

¶ 21 *3. Tracey Harrison*

¶ 22 Harrison testified that on July 21, 2015, she discovered a key in the women's restroom in the administrative building. Harrison asked a few people in nearby offices if the key belonged to them and, after no one claimed ownership, she took the key to the warden's office and left it with the warden's secretary.

¶ 23 After learning the key belonged to Scott, Harrison informed Scott the key was with the warden's secretary. Scott asked Harrison to retrieve the key so Scott could avoid getting into trouble, but the key had already been turned over to Warden Korte. According to Harrison, Scott then turned to Weber and said, "[C]an you just go and tell them they're yours, can you go and get them, I don't want to get in trouble." Not wanting to be involved further, Harrison left.

¶ 24 *4. Warden Jeff Korte*

¶ 25 Warden Korte testified that he oversaw operations at both Western and the associated Clayton Work Camp. Approximately 10 employees reported directly to him, including Scott.

¶ 26 On July 21, 2015, he received a misplaced key from his secretary. Shortly thereafter, Weber came into his office and claimed ownership of the key. Warden Korte admitted he did not verify the key's ownership before giving Weber the key. He could not recall whether he lectured her about key security. However, he soon learned the key belonged to Scott, not Weber, and he ordered an investigation into the incident.

¶ 27 After the investigation and subsequent hearing, Warden Korte agreed Scott should be discharged. Warden Korte testified personal key security was important, and that leaving a key in the bathroom was "very serious," as an inmate could remove the key from the prison facility. Warden Korte also found Scott's deception "very serious," as it constituted a breach of integrity unacceptable for a person trusted to care for a multimillion dollar budget. He clarified that Scott's role was to approve the budget, but she had no spending authority or access to funds. According to Warden Korte, he found Scott's deception more serious than misplacing her key.

¶ 28 *5. The ALJ's Recommendation*

¶ 29 Following a hearing, the ALJ entered a 16-page proposed decision in March 2016 outlining his findings of fact and legal conclusions. The ALJ made the following relevant findings of fact. Scott had been employed with the State since 1999, and with the Department since January 2015, where she was in a supervisory position. In June 2015, Scott received an oral reprimand for leaving her office keys in the door while she left for lunch. On July 21, 2015, Scott left her key in the women's restroom. Upon learning the key was in the warden's office, she asked Harrison to retrieve it. When Harrison was unsuccessful, Scott asked Weber to retrieve the key from Warden Korte. The ALJ found, "[a]t Scott's request, Weber retrieved the keys from the warden as if they were her own," and she returned them to Scott. Scott asked Weber to obtain the key so Scott could avoid conflict with Warden Korte.

¶ 30 The ALJ noted Scott denied asking Weber to claim ownership of the key. Scott corrected Megginson's notes that stated she told Weber to "just tell them that they're yours" to read, "just tell them whatever." Scott testified she overlooked a later statement claiming she asked Weber to claim ownership, testifying that statement was not true. Contrary to Scott's testimony, Harrison testified Scott told Weber to claim ownership of the key. Weber testified she claimed the key as her own but could not recall whether Scott asked her to do so. According to Weber, Warden Korte simply slid the key across the table without further inquiry or discussion. The ALJ highlighted Warden Korte's statements that (1) key security was "very serious"; and (2) Scott's deception constituted a "huge breach of integrity," particularly where he depended on her truthfulness in their interactions and in formulating a budget.

¶ 31 After making findings of fact, the ALJ made conclusions of law. As to count I, alleging Scott left her key in the restroom, the ALJ determined the preponderance of the evidence demonstrated Scott left her key in the restroom, which was an area accessible to

inmates, in violation of the Department's rules and policies. Accordingly, the ALJ determined the Department proved count I.

¶ 32 As to count II—Scott directing a subordinate to claim ownership of her key—the ALJ found the evidence adduced at the hearing failed to support that Scott directed Weber to lie. The ALJ determined, "Scott's attempt at deception did not come off as insidious, but more of a spur of the moment poor decision to use any available resource to avoid the potential for discipline after misplacing her keys a second time." In the view of the ALJ, "Scott irresponsibly begged a co-worker for assistance in retrieving her misplaced keys from the Warden." However, "Scott knew losing her keys was a disciplinable offense and she used Weber to avoid taking responsibility for her own mistake while showing little consideration for the trouble she might cause Weber." Because the ALJ found Scott's behavior to be unprofessional and unbecoming of a State employee under the Department's rules and policies, the ALJ found the Department proved count II.

¶ 33 The ALJ next considered the appropriate discipline for Scott. The ALJ noted Scott was an employee who "exceeded expectations" in her prior position but also highlighted her three prior disciplinary incidents. The ALJ concluded a significant suspension would be appropriate for a second instance of misplaced keys, but Scott's attempt to cover up her own mistake was conduct unbecoming of a Department employee. In her attempt to avoid conflict, Scott's brief security risk was amplified by intentionally placing Weber in an unacceptable position to cover up Scott's mistake. The ALJ therefore recommended discharge.

¶ 34 C. The Commission's Decision



¶ 35 Ultimately, in April 2016, the Commission adopted the ALJ's findings of fact and determined the Department proved the charges against Scott. However, the Commission rejected the recommendation of termination. The Commission stated:

"Considering the nature of the offense, the employee's performance record including disciplinary history and length of continuous service, the proven charges do not rise to the level which sound public opinion recognizes as good cause for the employee to no longer hold the position in light of other cases in which the Commission has imposed less than discharge and that [Scott] had no expectation that discharge would result from simply a mistake and that discharge was disproportionate to the offense, the proven charges warrant a 90-day suspension plus the duration of her suspension pending discharge in lieu of discharge."

¶ 36 D. Circuit Court Proceedings

¶ 37 In August 2016, both Scott and the Department filed complaints for administrative review in the circuit court of Sangamon County. Scott's case was docketed as Sangamon County case No. 16-MR-442 and the Department's case was docketed as Sangamon County case No. 16-MR-447.

¶ 38 Scott's complaint alleged the Commission's decision was contrary to law, as insufficient evidence existed to demonstrate she told Weber to claim ownership of the key. The Department, in its complaint, alleged the Commission's decision to reject the ALJ's recommendation of discharge and instead order a 90-day suspension was arbitrary and capricious.

¶ 39 Following a hearing on both complaints, the circuit court entered an order affirming the Commission's decision. The court found the Commission "substantiated its decision to reverse Scott's termination, albeit, barely." Although the Commission's decision lacked "any substantial analysis," the court determined it was "barely good enough" because "such a simple analysis is acceptable" under Illinois law. In making its decision, the court highlighted what it perceived to be flaws in the Commission's finding.

¶ 40 The Department filed a notice of appeal in Sangamon County case No. 16-MR-447. Sangamon County case No. 16-MR-442 is not at issue on this appeal.

¶ 41 II. ANALYSIS

¶ 42 On appeal, the Department asserts the Commission's decision to reject the ALJ's recommendation and impose a 90-day suspension in lieu of discharge was arbitrary, unreasonable, and unrelated to the requirements of Scott's service.

¶ 43 When reviewing an administrative decision, we review the final decision of the Commission, not the circuit court. *Illinois Department of Juvenile Justice v. Illinois Civil Service Comm'n*, 405 Ill. App. 3d 515, 521, 939 N.E.2d 54, 59 (2010). "In discharge cases, the scope of review of an administrative agency's decision regarding discharge is generally a two-step process involving first, a manifest-weight standard, and second, a determination of whether the findings of fact provide a sufficient basis for the agency's conclusion that cause for discharge does or does not exist." (Internal quotation marks omitted.) *Id.* at 521, 939 N.E.2d at 59-60. The court may examine all questions of law or fact present in the record, but the factual findings of the agency are deemed *prima facie* true and correct. 735 ILCS 5/3-110 (West 2016).

¶ 44 In this case, there are no issues with respect to the first step of the process—that the Department proved both charges against Scott. The issue in this case revolves around the

second step of the process—whether the Commission's findings of fact supported its decision to impose a 90-day suspension in lieu of discharge. In reviewing the second step, "the question is not whether the reviewing court would have imposed a harsher or more lenient penalty, but whether the Commission substantiated its decision." *Department of Corrections v. Welch*, 2013 IL App (4th) 120114, ¶ 39, 990 N.E.2d 240. The Commission substantiates its decision when it explains why its decision is inconsistent with the ALJ's decision. See *Illinois Department of Juvenile Justice*, 405 Ill. App. 3d at 524, 939 N.E.2d at 62 (citing *Austin v. Civil Service Comm'n*, 247 Ill. App. 3d 399, 404, 617 N.E.2d 349, 353 (1993)). If the Commission fails to substantiate its decision, we must conclude its reasoning is arbitrary, unreasonable, or unrelated to the requirements of service. *Id.*

¶ 45 As an initial step toward showing the Commission's decision was arbitrary, unreasonable, or unrelated to the requirements of service, the Department argues discharge was warranted under the facts of this case. Pursuant to title 80, section 1.170(a) of the Illinois Administrative Code (80 Ill. Adm. Code 1.170 (2016)), "cause for discharge" is defined as "some substantial shortcoming that in some way renders the employee's continuance in the position detrimental to the discipline and efficiency of the service and that law and sound public opinion recognize as good cause for the employee's removal from the position." According to the Department, Scott's actions—misplacing her key and asking a subordinate to falsely claim ownership of the key—fall under this definition.

¶ 46 Assuming, *arguendo*, that Scott's actions rendered her continued employment detrimental to the discipline and efficiency of the Department such that discharge was an appropriate option for the Commission to consider, we turn to the Department's next argument—that the Commission failed to substantiate its decision to impose a lesser sanction.

¶ 47 When the Commission adopts the ALJ's factual findings but ultimately rejects the recommendation for discipline, the Commission "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." *Welch*, 2013 IL App (4th) 120114, ¶ 44, 990 N.E.2d 240. The Commission's decision must contain "a concise and explicit statement of the underlying facts supporting the findings." 5 ILCS 100/10-50(a) (West 2016). Those findings must be "specific enough to permit an intelligent review of its decision." *Violette v. Department of Healthcare & Family Services*, 388 Ill. App. 3d 1108, 1112, 904 N.E.2d 1229, 1233 (2009). Here, in finding discharge disproportionate to the offense, the Commission stated it considered (1) the nature of the offense; (2) Scott's performance record, including the length of continuous service and disciplinary history; (3) Scott's lack of expectation that discharge could result from "simply a mistake"; and (4) other cases in which the Commission imposed less than discharge.

¶ 48 In affirming the Commission's decision, the circuit court relied on *Illinois Department of Juvenile Justice*. In that case, the Department of Juvenile Justice charged an employee with secretly recording workplace conversations. *Illinois Department of Juvenile Justice*, 405 Ill. App. 3d at 517-18, 939 N.E.2d at 56-57. Following a hearing, the ALJ recommended discharge, but the Commission disagreed and, instead, suspended the employee. *Id.* at 520-21, 939 N.E.2d at 59. This court noted, "The question before us is not whether this court would have imposed a harsher or more lenient penalty. Instead, the question before us is whether, in opting for a suspension in lieu of discharge—in contradiction to the ALJ's recommendation—the Commission substantiated its decision or whether its departure was arbitrary, unreasonable, or unrelated to the requirements of service." *Id.* at 524-25, 939 N.E.2d

at 62. In affirming the Commission's decision, this court highlighted that the Commission "explained why its decision that a 90-day suspension in lieu of discharge was the appropriate level of discipline by specifically placing greater emphasis than did the ALJ on [the employee's] 15 years of service without any disciplinary infractions." *Id.* at 525, 939 N.E.2d at 62. We also noted the ALJ, and therefore the Commission, found no evidence that the employee's actions were premeditated or done with malicious intent. *Id.* at 521, 939 N.E.2d at 59. Because the Commission properly considered the employee's history and lack of malicious intent, which were findings supported by the record, this court determined the Commission's decision was not arbitrary, unreasonable, or unrelated to the requirements of service. *Id.* at 525, 939 N.E.2d at 63; see also 80 Ill. Adm. Code 1.170 (2016) ("In determining the appropriate level of discipline, the Commission shall consider the nature of the offense, the employee's performance record, including disciplinary history, and the employee's length of continuous service.").

¶ 49 The Department argues *Illinois Department of Juvenile Justice* is distinguishable because, in that case, there was no evidence the employee had malicious intent, whereas Scott, in the present case, had malicious intent—attempting to avoid discipline while subjecting her subordinate to discipline. In making this argument, the Department overlooks the ALJ's factual findings as to both counts that were adopted by the Commission. As to Scott's attempted deception, the ALJ found the evidence failed to support that Scott directed Weber to lie. Rather, she "irresponsibly begged a co-worker for assistance in retrieving her misplaced keys from the Warden" with "little consideration for the trouble she might cause Weber." The ALJ characterized this as a "spur of the moment poor decision," not an action contemplated with malicious intent. Because the Commission adopted the ALJ's findings of fact, the Commission

would have considered this finding as part of the nature of the offense in determining whether discharge was an appropriate sanction.

¶ 50 Additionally, the Department argues the employee in *Illinois Department of Juvenile Justice* had no disciplinary history, whereas Scott had been subject to discipline three times. The evidence demonstrated Scott received a 20-day suspension in 2012 for personal use of a State-owned computer while she worked for the Department of Revenue. Other than that incident, her performance reviews were positive during the period from 1999 to 2012. Since beginning her employment with the Department in January 2015, Scott had been disciplined twice. In June 2015, she received a one-day suspension for violating the chain of command and an oral reprimand for leaving her office keys in her door when she left the facility.

¶ 51 Although Scott had a disciplinary history, whereas the employee in *Illinois Department of Juvenile Justice* did not, the Commission's decision noted that it considered both Scott's disciplinary history and her length of continuous service in determining discharge was inappropriate. By highlighting that it considered Scott's disciplinary history and her 16 years of service, the Commission demonstrated it weighed Scott's disciplinary history less heavily than the ALJ did, particularly in light of the ALJ's findings regarding the nature of the offense.

¶ 52 The Department contends *Welch*, 2013 IL App (4th) 120114, 990 N.E.2d 240, is more analogous to the present case than *Illinois Department of Juvenile Justice*. In *Welch*, a correctional officer was suspended pending discharge after she provided gum to and consumed food prepared by inmates, in violation of Department rules. *Id.* ¶ 5. The ALJ recommended a 60-day suspension, but the Commission found the violations warranted only a 14-day suspension after determining the evidence indicated the violations were "minimal" within the context of

other disciplinary cases from the prison. *Id.* ¶¶ 9-10. This court reversed the Commission's decision, concluding,

"Labeling Welch's violations as 'minimal' as opposed to 'consequential' is not a specific finding of fact or conclusion of law that supports the Commission's decision to decrease Welch's suspension from 60 to 14 days when the reason given by the Commission, *i.e.*, that other employees who engaged in similar conduct were not discharged, was the same reason the ALJ considered in making its determination that a 60-day suspension was appropriate." *Id.* ¶ 46.

¶ 53 The Department argues, similar to *Welch*, the Commission in this case adopted the ALJ's findings of fact, but arbitrarily described Scott's actions as a "mistake," without citing any evidence in the record to support such a finding. The record, however, shows the ALJ classified Scott's actions in much the same way. The ALJ found that Scott leaving her key in the restroom was a mistake, and that sending Weber to claim the key was a lapse of judgment rather than insidious conduct. This is consistent with the Commission's decision that Scott made a mistake.

¶ 54 In *Welch*, this court reversed the Commission's findings because it simply recharacterized the ALJ's findings as "minimal" rather than "consequential." Conversely, here, the Commission provided more support for reaching a different decision by noting it considered such facts as the nature of the offense, Scott's disciplinary history, and the length of Scott's service. The Commission's decision therefore included "a concise and explicit statement of the underlying facts supporting the findings." 5 ILCS 100/10-50(a) (West 2016). Those findings

were "specific enough to permit an intelligent review of its decision." *Violette*, 388 Ill. App. 3d at 1112, 904 N.E.2d at 1233. Moreover, the Department conceded at oral argument the Commission's finding that discharge was disproportionate to the offense was a specific conclusion of law sufficient to support its decision. See *Welch*, 2013 IL App (4th) 120114, ¶ 44, 990 N.E.2d 240. As the circuit court noted, the Commission's decision was "barely good enough" to pass muster.

¶ 55 Accordingly, we conclude the Commission's decision sufficiently substantiated its determination to depart from the ALJ's recommendation of discharge, and that its decision to impose a 90-day suspension in lieu of discharge was not arbitrary, unreasonable, or unrelated to the requirements of service.

¶ 56 III. CONCLUSION

¶ 57 For the foregoing reasons, we affirm the Commission's judgment.

¶ 58 Affirmed.