

NOTICE
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2018 IL App (5th) 160424-U

NO. 5-16-0424

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

JAMES BRADLEY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Franklin County.
)	
v.)	No. 15-MR-165
)	
ARTHUR GEORGE PRADEL, in His Official)	
Capacity as Chairman of the Illinois State Police)	
Merit Board; ILLINOIS STATE POLICE MERIT)	
BOARD; LEO P. SCHMITZ, in His Official)	
Capacity as Director of the Illinois State Police;)	
and ILLINOIS STATE POLICE,)	Honorable
)	David K. Overstreet,
Defendants-Appellees.)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Goldenhersh and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* Where the Illinois State Police Merit Board’s finding that James Bradley violated internal rules by disobeying orders was not contrary to the manifest weight of the evidence, we affirm the circuit court’s order affirming that finding. Where the Illinois State Police Merit Board’s 45-day suspension was not arbitrary, unreasonable, or unrelated to the requirements of service, we affirm the circuit court’s order affirming the suspension. Where James Bradley’s argument that the Illinois State Police had no authority to order a specific psychological treatment is without merit, we affirm the circuit court’s order.

¶ 2 James Bradley appeals from the trial court's order affirming the Illinois State Police Merit Board's disciplinary action. In 2010, Bradley was diagnosed with anxiety and post-traumatic stress disorder (PTSD). The Illinois State Police (ISP) removed Bradley from active duty with pay in late summer 2010. Bradley remained inactive until August 20, 2014. In June 2011, a psychological evaluator, who examined Bradley at the ISP's request, recommended that Bradley receive therapy for his anxiety and PTSD. On two occasions, Bradley's supervising officers ordered him to provide documentation of this therapy. In March 2014, the ISP filed a complaint against Bradley alleging that Bradley violated an internal rule by not following orders of his supervising officers. In August 2014, a hearing officer held an evidentiary hearing and concluded that Bradley violated the ISP rule. The ISP Merit Board (Board) issued its final administrative order suspending Bradley from duty for 45 days without pay. We affirm.

¶ 3 FACTS

¶ 4 James Bradley began employment with the ISP in March 1997. Upon graduation from the academy, Bradley has continuously been employed with the ISP on assignment in various districts. Since March 2001, Bradley has been assigned to District 13. He has always held the rank of trooper.

¶ 5 In 2010, Bradley was examined by his treating personal physician, Dr. Bob Thompson. He alleged various physical ailments, including blurred vision, flickering eyes, gastrointestinal symptoms, and tightness in his chest. In response to Dr. Thompson's questions about Bradley's personal and professional life, he informed Dr. Thompson about difficulties he previously had with a work supervisor. Dr. Thompson

recommended that Bradley take some time off from work. Dr. Thompson completed an ISP medical evaluation form that diagnosed Bradley with anxiety and PTSD, and concluded that he was disabled.

¶ 6 Shortly after Bradley was diagnosed with anxiety and PTSD in 2010, he began treating with providers at Southern Illinois Psychiatry in Marion. He continued to treat at this facility until 2014. He initially saw Anna Searcy, a psychiatric advanced practice nurse. He had appointments with Searcy twice per month until the fall of 2012 or early 2013. Bradley also had hour-long talk therapy sessions with Kathy Cooper, a licensed clinical social worker, once or twice per week from October 2010 through August or September of 2011. Bradley testified that he and Cooper talked about ways to manage stress. Bradley also treated with Dr. Naeem A. Qureshi, a psychiatrist, every six months.

¶ 7 Beginning in late summer 2010, Bradley began using his benefit time to take days off from work. At around this same time, Dr. Qureshi confirmed the diagnosis that Bradley was suffering from PTSD. On August 4, 2010, the Board was informed of Bradley's medical condition and diagnoses. Thereafter, the ISP placed Bradley on non-service connected leave for the remainder of 2010.

¶ 8 In May 2011, the ISP ordered Bradley to have a medical evaluation by Dr. Wayne Stillings, a psychiatrist. Dr. Stillings examined Bradley and performed a "fitness for duty" evaluation. Dr. Stillings concluded that Bradley was able to return to work.

¶ 9 On May 16, 2011, Colonel Robert W. Haley of the ISP sent Bradley a letter informing him that he was to return to work on May 17, 2011. Bradley reported to work on May 18, 2011, but prepared two memos outlining the medications he was taking and

stating his personal opinion that he was not ready to resume work because he had not been released by his treating physicians.

¶ 10 In late May, the ISP Director Hiram Grau stated that the reports regarding Bradley's fitness for duty were in conflict. Director Grau relieved Bradley from duty with pay because of the conflict and ordered Bradley to undergo a psychological evaluation. The ISP selected Dr. Paul Detrick, a psychologist, to perform the independent evaluation. During Dr. Detrick's June 2011 evaluation, Bradley explained that he had been harassed by his immediate supervisor at work and that, when he reported the harassment, his superiors were not supportive. He acknowledged that he had not worked for this supervisor since 2008. Bradley told Dr. Detrick that when he returned to work in May 2011, he saw his former supervisor in the parking lot and heard his voice over a police radio. Bradley reported that those two indirect contacts with his former supervisor caused immediate and tremendous anxiety resulting in physical symptoms including chest tightness, possible increased blood pressure and pulse rate, a headache, and extreme anger. Dr. Detrick concluded that Bradley was not then fit for duty and recommended that Bradley undergo "focused symptom-alleviating treatment" to include methods such as "cognitive restructuring and graduated in vivo exposure to anxiety-evoking situations." He believed that if Bradley had one month of this form of therapy, he would be ready to return to work.

¶ 11 The Board reviewed Dr. Detrick's recommendation. On June 23, 2011, Colonel Patrick Keen of the ISP informed Bradley that he was being transitioned to a "non-service connected leave of absence." Colonel Keen also informed Bradley that he must

undergo focused symptom-alleviating treatment pursuant to Dr. Detrick's recommendations, and to work with Kathy Parmenter, an ISP employee who was in charge of the Employee Assistance Program, a program that provides mental health service assistance to State employees. Colonel Keen testified that this letter served as a direct order.

¶ 12 Parmenter testified that she began contacting Bradley by phone, by letter, and by email shortly after June 23, 2011. She spoke with Bradley initially but testified that he stopped returning her calls and emails and did not set up treatment through her or through the Employee Assistance Program.

¶ 13 In October 2011, Colonel Keen informed Bradley that he needed to complete the focused symptom-alleviating treatment. Bradley testified that he received the letter but that he did not set up treatment.

¶ 14 In December 2012, Bradley sent a letter to Colonel Keen asking what steps he needed to take to return to work. In this letter, Bradley acknowledged that he had been directed by Dr. Detrick to obtain specialized therapy. In response, Lieutenant Colonel Scott Abbott wrote to Bradley on March 21, 2013, and reminded him that he had been ordered to receive focused symptom-alleviating treatment for at least one month. Additionally, he advised Bradley that he would not be considered for return to work until he completed the treatment. Lieutenant Colonel Abbott informed Bradley that the ISP had tried to contact him multiple times, and that it was Bradley's responsibility to have his own mental health provider contact Dr. Detrick to determine the scope of the ordered treatment and who would be capable of providing that type of therapy. Alternatively, he

stated that if Bradley's own mental health provider completed the form releasing him to return to work, then the ISP would arrange for Bradley to be reevaluated by Dr. Detrick. Bradley did not submit the documentation. Lieutenant Colonel Abbott testified that this letter contained his order. Bradley testified that he understood this letter to represent a supervising officer's order.

¶ 15 In September 2013, Colonel Marc Maton of the ISP informed Bradley that he needed to complete and provide documentation of the focused symptom-alleviating treatment on or before October 25, 2013. Bradley scheduled an appointment with Dr. Qureshi to discuss the ISP-required documentation but did not obtain the documentation at the appointment because Dr. Qureshi wanted to first speak to Bradley's worker's compensation attorney. Bradley wrote two follow-up responses to Colonel Maton. In the first response, dated October 10, 2013, he stated: "In regards to your letter dated September 20, 2013, I met with Dr. Qureshi on October 9, 2013. He advised, he was going to collect the requested materials as soon as possible. I will forward them on to you as soon as I receive them from Dr. Qureshi." In the second response, dated October 22, 2013, Bradley indicated that he was still waiting to receive the documentation from Dr. Qureshi.

¶ 16 Bradley did not provide the documentation of his focused symptom-alleviating treatment by October 25, 2013, and he did not request an extension of time in which to provide the documentation. He testified that he and his wife made numerous requests to Dr. Qureshi in an effort to obtain the required documentation.

¶ 17 The Board met in January 2014 to discuss Bradley's case. The Board recommended that Colonel Maton file a Complaint Against Department Member Form (CADMF) in order to initiate a formal disciplinary investigation against Bradley for not providing the documentation as ordered in his September 20, 2013, letter. Colonel Maton completed the CADMF in March 2014.

¶ 18 The ISP Division of Internal Investigation received Colonel Maton's CADMF and began an investigation. At the conclusion of the investigation, the Division of Internal Investigation charged Bradley with disobeying a direct order based on Bradley's failure to comply with letters ordering him to receive the focused symptom-alleviating treatment, and on Bradley's failure to submit the documentation confirming that he had received the treatment.

¶ 19 On July 28, 2014, Bradley's primary care physician released him to return to work effective July 31, 2014. The ISP Director Grau issued an "official action" that directed Bradley to return to work, but placed him on administrative leave with pay.

¶ 20 On August 6, 2014, Bradley appeared before the ISP's Disciplinary Review Board to respond to the charge filed by the Division of Internal Investigation. At this appearance, Bradley produced a letter written by Dr. Qureshi stating that Bradley was still under his care and that therapist Cooper of Southern Illinois Psychiatry had provided Bradley with focused symptom-alleviating treatment up until June 2011.

¶ 21 Later in August 2014, the ISP ordered Bradley to report to Dr. Detrick for a fitness for duty evaluation. Dr. Detrick performed the evaluation and concluded that Bradley was fit to return to duty. The ISP Director Grau informed Bradley that he had been cleared by

Dr. Detrick and that he was reinstated to full duty without restrictions effective August 20, 2014.

¶ 22 On August 29, 2014, ISP Director Grau, on behalf of the Board, filed a complaint against Bradley. The Board alleged that Bradley violated an internal ISP rule by failing to obey a supervising officer's order to provide documentation that he had received focused symptom-alleviating treatment on or before October 25, 2013.

¶ 23 In April 2015, the appointed hearing officer held the evidentiary hearing on the Board's complaint. In July 2015, the hearing officer found that Bradley had completed the prescribed focused symptom-alleviating treatment as indicated in Dr. Qureshi's letter. However, the hearing officer ruled that Bradley violated the internal ISP rule by not following orders to provide documentation of the treatment by the stated deadline.

¶ 24 On October 15, 2015, the Board entered its final order suspending Bradley without pay for 45 days. Bradley filed his administrative review petition in Franklin County circuit court. On September 9, 2016, the circuit court affirmed.

¶ 25 Bradley appeals the circuit court's order affirming the administrative order.

¶ 26 **LAW AND ANALYSIS**

¶ 27 On appeal, Bradley raises two issues. First, Bradley claims that the 45-day suspension without pay was inappropriate. Second, Bradley contends that the ISP cannot require him to submit to a specific psychological treatment.

¶ 28 Our role on appeal is to review the final decision of the Board—not the circuit court's order affirming the Board's decision. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531, 870 N.E.2d 273, 292 (2006); 735 ILCS 5/3-101 *et seq.* (West

2014). Review of the Board’s decision that Bradley violated an ISP rule and the Board’s disciplinary action suspending Bradley without pay requires a two-step process. *Chambers v. Flota*, 191 Ill. App. 3d 603, 606, 548 N.E.2d 61, 63 (1989).

¶ 29 The first step requires us to determine if the Board’s decision that Bradley violated a rule is contrary to the manifest weight of the evidence. *Walsh v. Board of Fire & Police Commisioners*, 96 Ill. 2d 101, 105, 449 N.E.2d 115, 117 (1983). The findings of the Board’s decision are only contrary to the manifest weight of the evidence if the “opposite conclusion is clearly evident.” *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88, 606 N.E.2d 1111, 1117 (1992). On review, we presume that the factual findings and conclusions of the administrative agency are *prima facie* true and correct. 735 ILCS 5/3-110 (West 2014). We must not review the evidence or make an independent determination of the facts. *Abrahamson*, 153 Ill. 2d at 88. “If the record contains evidence to support the agency’s decision, it should be affirmed.” *Id.*

¶ 30 The second step requires us to determine if the Board’s findings of fact sufficiently established that discipline was warranted. *Walsh*, 96 Ill. 2d at 105 (quoting *Department of Mental Health & Developmental Disabilities v. Civil Service Comm’n*, 85 Ill. 2d 547, 551, 426 N.E.2d 885, 887 (1981)). Specifically, we must determine if the Board’s findings of fact “provide a sufficient basis for the agency’s conclusion that cause for suspension does or does not exist.” *Chambers*, 191 Ill. App. 3d at 606. To determine whether or not a “sufficient basis” exists, we must assess whether the Board’s disciplinary decision was arbitrary, unreasonable, or unrelated to the requirements of service. *Id.* On appeal, we must not consider whether we would impose a different

punishment. *Siwek v. Police Board*, 374 Ill. App. 3d 735, 738, 872 N.E.2d 87, 90 (2007). Our review is “limited to a determination of whether the Board acted unreasonably or arbitrarily by selecting a type of discipline that was inappropriate or unrelated to the needs of the service.” (Internal quotation marks omitted.) *Id.*

¶ 31 *Violation of an ISP Rule and Disciplinary Sanction*

¶ 32 Here, the Board found that Bradley violated Department Directive ROC-002 Rules of Conduct Paragraph III.A.4 which mandates that: “Officers will obey any lawful order of a superior ***.” As a result of this violation, Bradley was suspended for 45 days without pay.

¶ 33 *Violation Supported by Manifest Weight of the Evidence*

¶ 34 The Board initially found that it had the authority to require Bradley to submit documentation regarding his treatment, stating that the Board “has the authority to undertake reasonable inquiries as to the status of employees who have been off work for an extended period of time.” The Board concluded that the letters Lieutenant Colonel Abbott and Colonel Maton sent Bradley were reasonable and necessary to fulfill the Board’s purpose in assisting and monitoring employees who are on medical leaves of absence. Finally, the Board found that the March 21, 2013, and September 20, 2013, letters to Bradley represented “orders” from his supervising officers. The letters constituted orders because they were directives from Bradley’s supervisors in the ISP chain-of-command.

¶ 35 We have reviewed the exhibits, hearing transcript, and record on appeal and find no error in the Board’s conclusion that Bradley violated an ISP rule. We note that the ISP

internal rule at issue is plainly written and mandates that an officer obey any lawful order of a superior. We find that the factual evidence clearly supports a conclusion that Bradley violated ISP orders in March 2013 and in September 2013. Bradley acknowledges that both letters contained orders from his supervising officers. Furthermore, the record is clear that Bradley did not provide the required documentation.

¶ 36 We also find factual support for our conclusion that Bradley violated an ISP rule. On June 2, 2011, Dr. Detrick performed his independent psychological evaluation and concluded that Bradley could benefit from focused symptom-alleviating treatment. Parmenter, the ISP employee who was assigned to assist Bradley in completing the ordered treatment, contacted him in late June 2011. Parmenter testified that although she initially made contact with Bradley, he stopped returning her calls. In October 2011, Colonel Keen notified Bradley that he needed to complete the focused symptom-alleviating treatment. At the hearing, Bradley acknowledged his receipt of this letter. On March 21, 2013, Lieutenant Colonel Abbott sent Bradley a letter reminding him that it had been almost two years since Dr. Detrick prescribed one month of focused symptom-alleviating treatment. As stated in this letter, despite “multiple attempts to contact him to achieve these results,” the ISP had not received documentation of this treatment. Bradley testified that he was aware that this was a direct order from his supervising officer. On September 20, 2013, Colonel Maton sent Bradley a letter directing him to provide documentation of his focused symptom-alleviating treatment to the Board by October 25, 2013. Colonel Maton advised Bradley that “[f]ailure to follow this order will result in disciplinary action.” Colonel Maton testified that he wrote this letter in order to compel

Bradley's compliance, and that he viewed this directive as an order. Bradley testified that he was aware that this was a direct order from his supervising officer. Although Bradley sent two emails to Colonel Maton before the deadline about his efforts to get the documentation from Dr. Qureshi, Bradley did not produce the documentation before the deadline. Additionally, Bradley did not seek an extension of time to file the documentation.

¶ 37 Bradley did not comply with the orders until August 6, 2014—nine months after the deadline expired. Furthermore, Bradley only complied with the orders after disciplinary charges were filed against him. Additionally, Dr. Detrick ordered this treatment over three years before that date. We conclude that the Board had the authority to order Bradley to submit documentation of his treatment. We also find that the Board's decision that Bradley failed to follow direct orders from his supervisors and thus violated the ISP's internal rule was correct.

¶ 38 *Findings Established That Discipline Was Warranted*

¶ 39 On appeal, Bradley argues that the Board did not follow the ISP's disciplinary matrix, and thus his 45-day suspension is unreasonable.

¶ 40 On appeal from an administrative disciplinary sanction, the reviewing court must “defer to the administrative agency's expertise and experience in determining the appropriate sanction to protect the public interest.” *O'Neill v. Rodriguez*, 298 Ill. App. 3d 897, 904, 699 N.E.2d 1081, 1086 (1998) (citing *Abrahamson*, 153 Ill. 2d at 99). The agency has specific expertise and experience to determine the effect of the sanctioned employee's conduct on the overall operation of the agency. *Kappel v. Police Board*, 220

Ill. App. 3d 580, 590, 580 N.E.2d 1314, 1321 (1991) (citing *Jones v. Civil Service Comm'n*, 80 Ill. App. 3d 74, 76, 399 N.E.2d 256, 258 (1979)). Illinois courts recognize that police departments function as paramilitary organizations and therefore “require disciplined officers to function effectively.” *Siwek*, 374 Ill. App. 3d at 738. Part of the efficacy of the department is the understanding that all rules, regulations, and orders must be obeyed. *Id.* Consequently, the use of sanctions in situations where rules, regulations, and orders are disobeyed is not inappropriate or unrelated to the needs of a police department. *Id.* (citing *Sangirardi v. Village of Stickney*, 342 Ill. App. 3d 1, 17-18, 793 N.E.2d 787, 800-81 (2003); *Haynes v. Police Board*, 293 Ill. App. 3d 508, 512-13, 688 N.E.2d 794, 797-98 (1997)).

¶ 41 In this case, the Board concluded that a 45-day suspension was appropriate for multiple reasons. The Board noted that Bradley’s oppositional conduct had been going on for over four years. Although he received treatment, Bradley neglected to provide documentation of the treatment until after he was charged with violating an ISP rule. Overall, the Board stated that Bradley’s noncooperation was inexcusable. The Board also found that Bradley’s attempt to blame his lack of documentation on Dr. Qureshi was disingenuous. Given the passage of four years, and Bradley’s repeated failure to cooperate, we find that the Board’s suspension was certainly not arbitrary or unreasonable. *Chambers*, 191 Ill. App. 3d at 606. Bradley knew that he had to complete focused symptom-alleviating treatment before he could return to active duty. Bradley’s failure to communicate that he completed the treatment in June 2011 until August 2014

establishes that the 45-day suspension was directly related to the requirements of service.
Id.

¶ 42 We also find that Bradley’s argument that his suspension was unreasonable because it deviated from an ISP disciplinary matrix is meritless. At the hearing, Colonel Deborah Simental testified. Colonel Simental oversees the ISP Division of Internal Investigation—the entity that investigated the complaint filed against Bradley. She testified that Bradley was charged with a violation of a rule of conduct and that the disciplinary range for a first offense is a 15- to 30-day suspension. However, Colonel Simental testified that 30 days is not the maximum discipline allowable as the Board can consider aggravating circumstances. In this case, Colonel Simental testified that Bradley’s failure to comply with letters containing orders from supervising officers constituted a factor in aggravation.

¶ 43 We conclude that the Board’s findings of fact provided “a sufficient basis for the agency’s conclusion that cause for suspension” existed. *Chambers*, 191 Ill. App. 3d at 606.

¶ 44 ISP’s Authority to Order Psychological Treatment

¶ 45 Bradley argues that the ISP had no legal authority to order psychological treatment. We find that Bradley’s argument is flawed in several respects.

¶ 46 Initially we note that Bradley was not disciplined for failing to undergo treatment. In fact, the hearing officer found that Bradley completed the focused symptom-alleviating treatment. Instead, Bradley was disciplined for failing to follow direct orders from his supervising officers.

¶ 47 We find additional defects in this argument because Bradley completed the treatment, and thus any “order” to undergo this psychological treatment was irrelevant and moot. According to the “documentation” provided by Dr. Qureshi, Bradley had undergone focused symptom-alleviating treatment *before* Dr. Detrick had suggested he do so in June 2011. Bradley was under the care of Dr. Qureshi at Southern Illinois Psychiatry from 2010 through 2014. He had regular therapy sessions with Cooper from 2010 until the fall of 2011. Dr. Qureshi indicated in his report to the Board that Cooper provided Bradley with “symptom focused treatment” *until* June 2011.

¶ 48 While Bradley argues that the ISP had no lawful authority to order him to undergo specific treatment, he cites no law in support of this theory. The cases he cites are not on point. See *Union Pacific Ry. Co. v. Botsford*, 141 U.S. 250, 251 (1891) (stating a common law individual right to be in control of his own person); *Dendor v. Board of Fire & Police Commisioners*, 11 Ill. App. 3d 582, 589, 297 N.E.2d 316, 330 (1973), *overruled on other grounds by Lockett v. Chicago Police Board*, 133 Ill. 2d 349, 549 N.E.2d 1266 (1990) (fireman challenging his termination claiming that he was fired for exercising his first amendment rights); *Skinner v. Railway Labor Executives’ Ass’n*, 489 U.S. 602, 607 (1989) (employees in certain industries regulated for safety have no fourth amendment privacy rights relative to urine samples mandated by federal drug testing regulations).

¶ 49 Finally, we find that in light of Bradley’s diagnoses of anxiety and PTSD, his employer must have involvement in and oversight of his treatment in order to ensure the public’s safety upon his eventual return to active duty. *Grames v. Illinois State Police*, 254 Ill. App. 3d 191, 205, 625 N.E.2d 945, 956 (1993) (holding that State Police must

“maintain police officers who *** provide for the safety and well-being of the community”); *Sangirardi*, 342 Ill. App. 3d at 14 (holding that a police department has the authority to order a fitness exam and to review the results because of the “paramilitary nature of police departments and the critical importance of police officers to public health and safety”).

¶ 50

CONCLUSION

¶ 51 For the foregoing reasons, the judgment of the circuit court of Franklin County is hereby affirmed.

¶ 52 Affirmed.