

2019 IL App (1st) 180772-U

No. 1-18-0772

Order filed on April 9, 2019.

Second Division

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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|-----------------------------------|---|-----------------------|
| LLOYD MILLER,                     | ) | Appeal from the       |
|                                   | ) | Circuit Court of      |
| Plaintiff-Appellant,              | ) | Cook County.          |
|                                   | ) |                       |
| v.                                | ) |                       |
|                                   | ) |                       |
| THE VILLAGE OF MOUNT PROSPECT,    | ) | No. 17 CH 9069        |
| THE BOARD OF FIRE AND POLICE      | ) |                       |
| COMMISSIONERS OF THE VILLAGE OF   | ) |                       |
| MOUNT PROSPECT, and BRIAN LAMBEL, | ) |                       |
| FIRE CHIEF,                       | ) | The Honorable         |
|                                   | ) | Anna H. Demacopoulos, |
| Defendants-Appellees.             | ) | Judge Presiding.      |

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JUSTICE LAVIN delivered the judgment of the court.  
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* The decision of the Village of Mount Prospect Board of Fire and Police Commissioners was not against the manifest weight of the evidence or without cause. The plaintiff's due process rights were not violated.

¶ 2 On January 13, 2017, Village of Mount Prospect firefighter/paramedic Lloyd Miller reportedly made threatening statements due to his disagreement over union matters. Chief Brian Lambel, for the Mount Prospect Fire Department, filed disciplinary charges against Miller for violating the workplace violence policy, among workplace rules, and recommended his discharge. Following an evidentiary hearing before the Mount Prospect Board of Fire and Police Commissioners (Board), Miller was discharged. He filed a complaint for administrative review in the circuit court, which affirmed the Board’s decision. Miller now appeals. He argues the Board’s decision was against the manifest weight of the evidence, his discharge was without cause, and his due process rights were violated. We affirm.

¶ 3 **BACKGROUND**

¶ 4 At the evidentiary hearing before the Board, the combined testimony of Miller’s fellow firefighter/paramedic Joseph Reschke, his union representative Matthew Takoy, and Chief Lambel showed that Miller was unhappy with changes to the firefighter promotional process for becoming a lieutenant, which the union approved by vote in a meeting on January 11, 2017. Miller specifically expressed his dissatisfaction to Takoy at that meeting and over the telephone.

¶ 5 Two days later, Reschke was working with Miller. Reschke testified that he was friendly with Miller, having worked with him before, but that day, “something didn’t seem right with him.” When Reschke asked Miller how “things [were] on the new shift,” Miller looked mad, shook his head, and said that he didn’t like being there. Miller then volunteered his disapproval of the recent union vote and stated he would “kill some people” if he didn’t make the next lieutenant’s list. Reschke gestured that Miller “didn’t need to go there,” but Miller angrily reiterated that he would “literally kill some people.” He would “line them up and kill them so they can watch each other die.” Reschke, who was reluctant to report a colleague but at the same

time uncomfortable, chose to tell superiors the next day. He also submitted a written account of the incident to superiors.

¶ 6 Chief Lambel testified he subsequently notified Miller that they would begin an investigation. Chief Lambel placed Miller on paid administrative leave, reported the matter to police, and changed the locks at all the fire stations. Also around that time, Miller denied using or owning guns, but Takoy found about six Facebook photos of him with guns or related paraphernalia. Takoy turned over the photos to Chief Lambel.

¶ 7 Prior to charges being filed, on February 20, Chief Lambel's lawyer formally interrogated Miller about the threatening statements, and he denied making them. Chief Lambel and Takoy were present, but they did not participate in the interrogation. At the hearing, Chief Lambel testified that Miller was not credible during the interrogation, and he believed Reschke's report, as there was no reason for Reschke to concoct the story. Takoy similarly testified that Miller was not credible during the interrogation. They further testified that during the interrogation, Miller deliberately obfuscated, downplayed or falsely denied his opposition to the promotional changes and other union matters, like his recent unsuccessful run for a board position, and his knowledge of Facebook photos showing him with guns or related paraphernalia. The interrogation further revealed that although Miller took a promotional test in 2015, and failed it, he claimed he did not really want the promotion. He also acknowledged that as of February 20, he was "undecided" on whether he wanted to remain a firefighter, as opposed to a lieutenant, but in December/January he wished to become a lieutenant. The transcript of the interrogation was admitted into evidence at the Board's evidentiary hearing.

¶ 8 In conclusion, Chief Lambel and Takoy testified that they were concerned for their well-being and safety because of the threats, and Miller was not trustworthy for return to work. Chief Lambel noted the threats had lowered workplace morale.

¶ 9 In his defense, Miller denied that he made any statements about killing people or expressing anger over his role in the fire department. He testified that Reschke “made up” the allegations, perhaps because they both ran for the same position in the union, although neither won. Miller also testified that Takoy was lying about the extent of Miller’s opposition to the promotional process. Miller asserted he told the truth during the interrogation and was not evasive. Counsel for Miller highlighted his good service and unsullied record as a firefighter for 12 years.

¶ 10 After the hearing, the Board found Miller made the threats, falsely denied doing so and attempted to cover his motive for the threats. In addition, the Board found Miller made false statements during the investigation, interfered with the investigation, and failed to truthfully answer questions during the interrogation.

¶ 11 ANALYSIS

¶ 12 Miller first contends the Board’s findings of fact were against the manifest weight of the evidence and its decision was without cause. An administrative agency’s findings of fact on review are *prima facie* true and correct. *Washington v. Police Board of the City of Chicago*, 257 Ill. App. 3d 936, 941 (1994). A reviewing court’s function is to ascertain whether the findings and decision of the agency are against the manifest weight of the evidence, *i.e.* where the opposite conclusion is clearly evident. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992). If the record contains evidence to support the agency’s decision, it should be affirmed. *Id.* at 88-89. Also, an agency’s decision will be upheld unless it’s

clearly erroneous, or the reviewing court is left with a definite and firm conviction that a mistake has been made. *Dowrick v. Village of Downers Grove*, 362 Ill. App. 3d 512, 515 (2005).

¶ 13 While Miller denied making the statements or having motives for making them, the Board did not believe him. Contrary to Miller's contention otherwise, evidence that Miller was angry, disappointed, and/or expressly opposed to certain union matters was relevant to his potential motive for making threats and aided the Board in determining whether Reschke, Takoy, and Chief Lambel were credible. The fact that Miller denied using or owning guns, per Takoy, but then had Facebook photos showing him with guns and gun paraphernalia was also relevant to motive and credibility. The same can be said for Miller's unsatisfactory answers about his gun photos during the interrogation or his statement during the interrogation that the promotional changes "were moving in a good direction," which was at odds with Takoy's testimony about Miller's feeling on the changes. Moreover, the Board was entitled to find that Miller downplayed his ambitions to become a lieutenant and find that Reschke failed to report the matter immediately because of his friendship with Miller, rather than that the report itself was false. Regardless, the inconsistencies Miller now cites are minor, and none indicate Reschke fabricated his report. See *Woods v. City of Berwyn*, 2014 IL App (1st) 133450, ¶ 37.

¶ 14 While Miller wishes us to do the opposite, it is not our function to reweigh the evidence or make an independent determination of the facts, and we may not substitute our judgment for that of the administrative agency. *Abrahamson*, 153 Ill. 2d at 88; *Teil v. City of Chicago*, 284 Ill. App. 3d 167, 170 (1996) (noting, the administrative agency's job is to determine witness credibility and resolve conflicts in testimony). We cannot say that the Board's findings were against the manifest weight of the evidence. In other words, the opposite conclusion was not

clearly evident. The totality of the evidence supported the Board's finding that Miller violated the workplace violence policy and other charges.

¶ 15 Accordingly, the Board's findings provide sufficient basis and good cause for its decision to discharge Miller at Chief Lambel's recommendation. See *McCleary v. Board of Fire & Police Comm'n of the City of Woodstock*, 251 Ill. App. 3d 988, 998 (1993) (noting, that a single valid finding of a violation of departmental rules will authorize dismissal); see also *Abrahamson*, 153 Ill. 2d at 88 (noting, that a reviewing court defers to the administrative agency in determining what sanction is appropriate). The decision was not arbitrary, unreasonable, or unrelated to the requirements of service, notwithstanding Miller's prior accomplishments as a firefighter. See *Woods*, 2014 IL App (1st) 133450, ¶¶ 41, 43 ("The city need not wait until that threat manifests as serious violence before seeking discharge.").

¶ 16 In reaching this conclusion, we reject Miller's due process claim. Miller argues that he received inadequate notice of the interrogation and should have been interrogated a second time. He contends the unfavorable statements made at the February 20 interrogation could not be admitted at the Board's evidentiary hearing. Section 3.2 of the Firemen's Disciplinary Act (Act) (50 ILCS 745/3.2 (West 2016)) states that before a fireman can be questioned as to an allegation of misconduct, he must first be "informed in writing of the allegations and whether the allegations, if proven, \*\*\* may result in removal, discharge, or suspension from duty in excess of 24 hours." *Id.* Also, section 3.8 of the Act states that a fireman subject to an interrogation must be advised in writing that "admissions made in the course of the interrogation may be used as evidence of misconduct or as the basis for charges seeking suspension, removal, or discharge[.]" 50 ILCS 745/3.8 (West 2016).

¶ 17 Here, in accordance with the Act, Chief Lambel informed Miller by letter on February 8, 2017, that he was to participate in an interrogation regarding his alleged January 13 threats. Miller was also notified that the interrogation related to his alleged interference with “the Department’s investigation in providing false and/or misleading information to individuals involved in gathering evidence or information and/or altering or removing photographs from social media sites.” The letter further stated that any admissions he made in the interrogation “may be used as evidence of misconduct or as the basis for charges seeking suspension, removal, or discharge.” The letter ordered Miller to “fully cooperate with the investigation and to answer all questions truthfully and completely.” It stated his “failure to fully cooperate or to answer questions truthfully and completely may result in filing of charges that may include suspension or removal.”

¶ 18 Miller’s contention that he was not adequately notified of that interrogation or its scope is belied by the record. The interrogation covered whether he made the threats, whether he lied about them, and his motives behind the threats. The record shows that Miller knew any untruthful answers he provided or failure to cooperate in the interrogation could be a basis for an ensuing charge, and the charges that were actually filed were consistent with the notice given, as required by statute. He was thus reasonably advised of the charges and able to intelligently present a defense. *Abrahamson*, 153 Ill. 2d at 93.

¶ 19 Similarly, we reject Miller’s due process claim that he was improperly denied discovery documents which would have assisted in his defense. At the outset of the administrative hearing, Miller’s counsel, Daniel Q. Herbert, noted that while he had represented Miller for over a month, Herbert had not received all the requested documents, including Miller’s disciplinary and personnel files, medical records, and department-issued e-mails. Herbert further noted he had

filed a discovery request and request under the Illinois Freedom of Information Act (FOIA) (5 ILCS 140/1, *et seq.* (West 2014)), although he acknowledged the FOIA request had been denied.<sup>1</sup> Herbert stated that he would not be ready to present his case until he received the documents. Counsel for Chief Lambel responded that she had timely sent or discussed with Herbert her hearing exhibits, documents and witnesses. She asserted Chief Lambel had provided all relevant and exculpatory documents, as required. Because Miller was not presenting his case then, the parties essentially passed the matter.

¶ 20 Later, just before the first day of the hearing concluded, Herbert again requested Miller's personnel file and medical documents, and counsel for Chief Lambel assured Herbert that he would have the requested documents. The next day, Chief Lambel testified and concluded his case. Miller then presented his case. The matter of documents was not mentioned again at the evidentiary hearing, and Miller did not specifically include the issue in his complaint for administrative review.

¶ 21 Miller nonetheless contends now that the documents were required for his cross-examination of opposing witnesses and, without them, he was "unable to rebut the allegations made against him." Miller, as set forth, only requested the documents for presentation of his *own* case. He made no objection to Chief Lambel's case proceeding absent the documents. See *Franklin County Board of Review v. Department of Revenue*, 346 Ill. App. 3d 833, 839 (2004) (noting, issues or defenses not raised by the parties before the administrative agency will not be considered for the first time on appeal). Given Miller's claim before the Board and the record, we must presume that Miller received the necessary documents to comport with due process.

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<sup>1</sup>Notably, in his due process claim, Miller relies only on his oral representations before the Board, but does not point to any motion or FOIA request actually filed, and our review of the record does not reveal any such written motions. *Gakuba v. Kurtz*, 2015 IL App (2d) 140252, ¶ 2 (stating that an appellant must present a sufficiently complete record to support his claim of error).



That is, the record shows there is nothing to support his claim of error since the matter was resolved. *Gakuba v. Kurtz*, 2015 IL App (2d) 140252, ¶ 2. Moreover, he forfeited the discovery issue by failing to raise it in his complaint for administrative review before the circuit court, and it therefore cannot be raised on appeal. See *Messer & Stilp, Ltd. v. Department of Employment Security*, 392 Ill. App. 3d 849, 861 (2009). For all of the above reasons, Miller's due process claims fail. To the extent Miller raises arguments in his reply brief that were not raised in his opening brief, they are forfeited. Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018).

¶ 22

#### CONCLUSION

¶ 23 We affirm the judgment of the circuit court affirming the Board's decision.

¶ 24 Affirmed.