

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).

2019 IL App (4th) 180122-U

NO. 4-18-0122

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 14, 2019

Carla Bender

4th District Appellate Court, IL

THEODORE RHODES,)	Appeal from the
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
REEVE WAUD, in His Capacity as Chairman of the)	No. 16MR1133
State Police Merit Board; ILLINOIS STATE POLICE)	
MERIT BOARD; LEO P. SCHMITZ, in His Capacity)	
as Director of the Illinois State Police, and ILLINOIS)	
STATE POLICE,)	Honorable
Defendants-Appellees.)	Ryan M. Cadagin,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices DeArmond and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the Illinois State Police Merit Board’s findings were not against the manifest weight of the evidence.

¶ 2 In November 2016, the Illinois State Police Merit Board (Board) found that plaintiff, Theodore Rhodes, used his official position as a Master Sergeant in the Illinois State Police (Department) to attempt to obtain leniency for an acquaintance, James Newberry, in his pending driving under the influence (DUI) case. On that basis, the Board demoted him from the rank of Master Sergeant to Trooper and suspended him for 30 days. In December 2016, Rhodes filed a complaint for administrative review of the Board’s decision. In January 2018, the circuit court affirmed the Board’s decision.

¶ 3 Rhodes appeals, arguing that the Board’s finding is against the manifest weight of the evidence. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Department’s Complaint

¶ 6 In October 2015, defendant, Leo P. Schmitz, then-director of the Department, filed a six-count complaint with the Board requesting that Rhodes be suspended in excess of 30 days and demoted to the rank of Trooper. Because Rhodes challenges only the Board’s finding as to count II, we limit our discussion to the facts pertinent to that count.

¶ 7 Count II charged Rhodes violated Department Directive ROC-002, Paragraphs III.A.14.a., which states as follows: “Officers will not use their official position, official identification cards or stars for *** personal or financial gain for themselves or others.” The Department alleged Rhodes, between March 22, 2015, and April 15, 2015, in an attempt to obtain leniency, requested a subordinate “to contact the Fayette County State’s Attorney’s Office regarding Newberry’s pending DUI case” and “identified himself as an officer with the Department when he contacted the Fayette County State’s Attorney’s Office regarding Newberry’s pending DUI case.”

¶ 8 B. The Board Hearing

¶ 9 In February 2016, a hearing officer conducted a hearing on the Department’s complaint. The following relevant evidence was produced through testimony of witnesses and exhibits introduced by the Department.

¶ 10 1. *Master Sergeant Rhodes*

¶ 11 Rhodes testified that he had been employed by the Department for 22 years and was serving as a Master Sergeant in District 12, located in Effingham. Rhodes had known

Newberry for approximately 20 years. Newberry had worked as a subcontractor on two homes for Rhodes and had worked on commercial property owned by Rhodes in February and March of 2015.

¶ 12 Rhodes testified that he learned of Newberry's DUI arrest from the arresting officer, Trooper Seth Williams. According to Rhodes, Williams informed Rhodes of Newberry's arrest because at the time of his arrest, Newberry asked Williams if he (Williams) knew Rhodes. Newberry subsequently called Rhodes and informed him that he had been arrested for DUI in Fayette County.

¶ 13 Rhodes testified that after talking to Newberry, he asked Trooper Nathan Schnarre to contact the Fayette County State's Attorney. Rhodes asked Schnarre because Schnarre had a high arrest rate in Fayette County and worked closely with the State's Attorney's office. Rhodes testified that he did not recall asking Schnarre to have the State's Attorney review Newberry's file. He testified he only wanted Schnarre to ask the State's Attorney if Newberry needed his own attorney and if supervision was a possible sentence. Although Schnarre agreed to contact the State's Attorney, Rhodes had not heard back from Schnarre when Rhodes received a second call from Newberry.

¶ 14 Rhodes testified that Newberry called him a second time approximately one month after the initial call. According to Rhodes, Newberry informed Rhodes his court date was approaching and wanted to know if he should hire an attorney. Rhodes then called Schnarre to see if Schnarre had contacted the Fayette County State's Attorney. Schnarre informed Rhodes he had not. Rhodes testified he called Schnarre at least twice concerning Newberry, but perhaps more, and also sent text messages. Upon learning Schnarre had not contacted the State's Attorney, Rhodes contacted the Fayette County State's Attorney's office.

¶ 15 Rhodes testified that he spoke to Amanda Ade-Harlow, a Fayette County Assistant State's Attorney. He testified that Ade-Harlow told him that Newberry did not need an attorney and that Newberry should make an appointment with the State's Attorney, Joshua Morrison. Rhodes testified Ade-Harlow connected him with Morrison's secretary and he scheduled an appointment for Newberry to meet with Morrison. He further testified that (1) he did not recall whether he identified himself as a Master Sergeant to Ade-Harlow or the secretary, (2) he called the State's Attorney's office personally to help "cut through the red tape," and (3) he never met or spoke with Morrison.

¶ 16 *2. Trooper Nathan Schnarre*

¶ 17 Schnarre testified he was employed by the Department as a Trooper in District 12. He testified that Rhodes contacted him about Newberry in March 2015 and asked him to contact Morrison to have him (Morrison) look at Newberry's DUI report. He further testified that after the initial call, Rhodes called and texted him "maybe 6 to 8, 10" times but never asked him (Schnarre) to obtain favors or to negotiate leniency for Newberry. Schnarre testified that he texted Ade-Harlow on April 13, 2015, in regard to Newberry's case.

¶ 18 *3. Amanda Ade-Harlow*

¶ 19 Ade-Harlow testified that she was an assistant State's Attorney in Fayette County from December 2012 through August 2015. She testified that Schnarre texted her on April 8, 2015, asking her to call him, and that she did call him on April 13, 2015, and discussed Newberry's case. Also on April 13, 2015, Ade-Harlow testified that she looked at Newberry's report and texted Schnarre to tell him to have Newberry schedule an appointment with Morrison and Morrison might cut him (Newberry) a deal.

¶ 20 Ade-Harlow further testified that Rhodes called her on April 13, 2015, and asked about Newberry's DUI. She informed him that Morrison handled DUI cases and offered to leave a message with him. She testified that she learned a couple days later that Rhodes had called the office and scheduled an appointment for Newberry. She testified that although he never specifically asked for it, it was her impression that Rhodes was trying to get leniency for Newberry. Ade-Harlow also testified that it was uncommon for Department officers to make appointments for their friends.

¶ 21 *4. Kira Palmer*

¶ 22 Palmer testified that she worked in the Fayette County State's Attorney's office and was one of the people that kept Morrison's calendar. She testified that Rhodes called on April 15, 2015, and asked to speak with Morrison. Palmer transcribed a message for Morrison, which the Department introduced into evidence. The message contained the letters "ISP" under Rhodes' name, and Palmer testified that she did not specifically remember the phone call but that she would not have included "ISP" unless Rhodes had identified himself as with the Department. She further testified that Rhodes called back, made an appointment for Newberry with Morrison, and called back again to reschedule the appointment.

¶ 23 *5. Colonel Deborah Simental*

¶ 24 Simental testified that she was a Colonel in the Department and oversaw the Division of Internal Investigation. She testified that in her experience, it was uncommon for Department officers to call the State's Attorney's office about cases in which they were not the arresting officer and about cases involving family or friends.

¶ 25 C. The Hearing Officer's Findings and the Board's Decision

¶ 26 In July 2016, the hearing officer determined that the Department failed to prove by a preponderance of the evidence that Rhodes violated the directive alleged in count II. The hearing officer pointed to the lack of direct evidence presented by the Department and specifically found “that Rhodes did not attempt to obtain leniency for Newberry by requesting that Trooper Schnarre contact the Fayette County State’s Attorney’s office regarding Newberry’s pending DUI case or by identifying himself as an officer with the Department when he contacted the Fayette County State’s Attorney’s office regarding Newberry’s pending DUI case.”

¶ 27 The Board considered the hearing officer’s recommendations and issued a decision in November 2016. Contrary to the hearing officer’s recommendation concerning count II, the Board concluded the Department had proved by a preponderance of the evidence the charge in that count, demoted Rhodes to the rank of Trooper, and suspended him for 30 days.

¶ 28 D. The Circuit Court’s Ruling

¶ 29 In December 2016, Rhodes filed a complaint for administrative review. In January 2018, the circuit court affirmed the Board’s decision, concluding the evidence in the record supported the Board’s decision. In its written order, the court noted that Rhodes not only attempted to obtain leniency for Newberry, he “actually succeeded in procuring him a benefit” in that his “interference led to a scheduled meeting with the State’s Attorney that Newberry might not have otherwise received in such an expedited manner.”

¶ 30 This appeal followed.

¶ 31 II. ANALYSIS

¶ 32 Rhodes appeals, arguing that the Board’s finding is against the manifest weight of the evidence. We disagree and affirm.

¶ 33 A. The Standard of Review

¶ 34 “A court’s review of an administrative agency’s decision regarding suspension is a two-step process.” *Chambers v. Flota*, 191 Ill. App. 3d 603, 606, 548 N.E.2d 61, 63 (1989). First, a reviewing court determines whether the Board’s finding was against the manifest weight of the evidence. *Walsh v. Board of Fire & Police Commissioners of the Village of Orland Park*, 96 Ill. 2d 101, 105, 449 N.E.2d 115, 117 (1983). The Board’s findings are “against the manifest weight of the evidence only 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). “A reviewing court is limited to ascertaining whether an opposite conclusion is clearly evident from the record or whether the agency’s findings are unreasonable, arbitrary, and not based upon any of the evidence.” *Merrifield v. Illinois State Police Merit Board*, 294 Ill. App. 3d 520, 528, 691 N.E.2d 191, 198 (1998). “If the record contains any competent evidence to support the [Board]’s findings, the decision must be sustained on review.” *Id.*

¶ 35 The second step in the analysis is to determine whether the factual findings are sufficient to support the Board’s decision to demote Rhodes to the rank of Trooper and suspend him for 30 days. *Walsh*, 96 Ill. 2d at 105. To make this determination, we must assess whether the Board’s disciplinary decision was arbitrary, unreasonable, or unrelated to the requirements of service. *Merrifield*, 294 Ill. App. 3d at 530 (“A reviewing court will not decide whether a less stringent punishment is appropriate and will overturn the Board’s decision only if it is arbitrary and unreasonable or unrelated to the requirements of service.”).

¶ 36 B. The Board’s Finding Was Not Against the Manifest Weight of the Evidence

¶ 37 We conclude the record contains sufficient evidence to support the Board’s finding that Rhodes used his official position for the personal or financial gain of Newberry by attempting to obtain leniency for Newberry in his DUI case. The record indicates that Rhodes

had known Newberry for approximately 20 years and that Newberry had been working on commercial property owned by Rhodes in February and March 2015. Rhodes's call to the State's Attorney was unusual because he was not the arresting officer in Newberry's DUI case. Rhodes asked Schnarre, his subordinate, to speak with the Fayette County State's Attorney about Newberry's case. Rhodes called and texted Schnarre at least six to eight times because he knew Schnarre had a high arrest rate in Fayette County and worked closely with the State's Attorney's office. Moreover, Rhodes contacted the State's Attorney's office and identified himself as a Department officer. He admitted he did this to "cut through the red tape" and get a quicker answer for Newberry. Given this evidence, we conclude that the Board's finding was not unreasonable or arbitrary nor was it against the manifest weight of the evidence.

¶ 38 C. Forfeiture of the Discipline Issue

¶ 39 Defendants argue, and we agree, Rhodes has forfeited any argument the discipline imposed by the Board was arbitrary, unreasonable, or unrelated to the terms of his service. Illinois Supreme Court Rule 341(h)(7) (eff. Nov. 1, 2017) requires appellants' briefs contain an argument section containing "the contentions of the appellant and the reasons therefor, with citation of the authorities ***." A contention merely listed or a vague allegation of error does not satisfy the requirements of the rule. *Vancura v. Katris*, 238 Ill. 2d 352, 370, 939 N.E.2d 328, 340 (2010); *People v. Phillips*, 215 Ill. 2d 554, 565, 831 N.E.2d 574, 581 (2005) (issue forfeited where defendant raised it but failed to make any argument or citation to authority).

¶ 40 The final sentence of Rhodes's brief concludes by stating "this matter [must be] remanded to the Merit Board to reassess the proper amount of discipline to be imposed." This statement is located in the conclusion section, as opposed to the argument section, and contains no reasons in support or citation to authority. Because Rhodes failed to comply with Rule

341(h)(7), he has forfeited any argument the discipline imposed by the Board was arbitrary, unreasonable, or unrelated to the terms of his service, and we need not conduct the second-step analysis. See *Robbins v. Department of State Police Merit Board*, 2014 IL App (4th) 130041, ¶ 42, 22 N.E.3d 8 (stating this court need not conduct the first-step analysis where appellant failed to argue the Board's findings were against the manifest weight of the evidence).

¶ 41

III. CONCLUSION

¶ 42 For the reasons stated, we affirm the judgment of the circuit court affirming the decision of the Board.

¶ 43 Affirmed.