THIRD DIVISION
August 26, 2020

No. 1-19-2277

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KEVIN SUDDUTH, JR.,	)	
	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
	)	Cook County
v.	)	
	)	19 CH 897
HUMAN RESOURCES BOARD OF THE CITY OF CHICAGO, SALVADOR A. CICERO, chairman, and THE CITY OF CHICAGO, a municipal corporation,	)	Honorable Raymond Mitchell Judge Presiding
Defendants-Appellees.	)	

PRESIDING JUSTICE ELLIS delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

¶ 1 *Held*: Affirmed. Decision to disqualify plaintiff from eligibility as probationary police officer was not clearly erroneous, as applicable administrative special order mandated disqualification.

¶ 2 The Human Resources Board of the City of Chicago (Board) upheld a decision finding plaintiff Kevin Sudduth, Jr. ineligible to become a Chicago police officer. The Board relied on a provision of Administrative Special Order No. 14-01 (ASO 14-01). On appeal, Plaintiff argues the Board erred by determining that the ASO mandated disqualification. We disagree and affirm.

¶ 3 BACKGROUND

¶ 4 To become an officer of the Chicago police department (CPD), applicants must answer a lengthy questionnaire, undergo a background check, and take a polygraph examination. Plaintiff did all these things. But, in a bitter twist of irony, his honesty disqualified him from the list of eligible candidates.

¶ 5 CPD sets its "Pre-Employment Disqualification Standards for Applicants for the Position of Police Officer" by issuing administrative orders. At the time relevant to this case, those standards were governed by ASO 14-01.

¶ 6 Pertinent here, ASO 14-01 provides standards for prior criminal conduct involving drugs, specifically, ASO section IV(B)(2)(a) (Drug Policy). The Drug Policy states that "applicants who currently use illegal drugs are not eligible for employment." But:

> "while the Chicago Police Department does not condone prior unlawful drug use by its applicants, we recognize that some otherwise qualified candidates may have engaged in drug use at some time in the past. * * *. These standards balance the Chicago Police Department's need to maintain a drug-free environment and foster the public integrity needed to enforce applicable drug laws with the understanding that people sometimes have made mistakes that are not indicative of future performance or current abilities."

¶ 7 With this policy statement in mind, the Drug Policy lists 5 standards. With regard to drug use, the policy provides that "[a]n applicant who has used marijuana within the last three (3) three years (from the date of the [questionnaire]) or has used marijuana frequently over a substantial period of time at any point in his or her life will be found unsuitable for employment." At the same time, the Drug Policy states: "An applicant who has sold, distributed

or manufactured any illegal drug *at any time* will be found unsuitable for employment." (Emphasis added.)

¶ 8 Nothing in Plaintiff's background check suggested that his history violated the Drug Policy. He was 34, married with three children, and had never been convicted of, or even arrested for, any conduct involving drugs. However, during the polygraph, Plaintiff disclosed that for a few months, more than a decade earlier, he sold marijuana. Based on this, and other information uncovered during the pre-employment investigation, the CPD investigator determined there were several reasons to disqualify Plaintiff from becoming a police officer. The CPD removed his name from the list of eligible candidates and informed him of its decision.

¶ 9 Plaintiff appealed the decision to Board, and the matter was scheduled for a hearing. During the hearing, the CPD presented the testimony of its investigator about what he had uncovered during the pre-employment investigation into Plaintiff's background. Among other things, the investigator testified that Plaintiff admitted to selling marijuana in the past. In his defense, Plaintiff presented numerous character witness—who were very complimentary of his hard-working, calm, and thoughtful demeanor. He also testified on his own behalf.

¶ 10 Plaintiff grew up in the Chatham neighborhood of Chicago. His mother died when he was young, and he "grew up pretty much under the supervision of [his] grandparents and [] uncles." He explained that growing up, Chatham was a "real, real rough neighborhood" with "[a] lot of deaths, individuals in jail." It has gangs and "a lot of drug dealing." However, he was able to largely avoid gangs and crime because of his "male role models." He explained that, unfortunately, many of his friends growing up didn't have this support: "[s]ome of them are deceased. Some of them, when I heard from them, they've been in jail multiple times, all sorts of things, shot, every negative thing you could think of."

¶ 11 Plaintiff testified that growing up—when he was in his early twenties—he sold marijuana for "three months." He explained that "[a]t the time just pretty much the peer pressure, the neighborhood I grew up in. I didn't have to. It was more so of me just being young and dumb and trying to see may what—a lot of the young men that I was around was into those type of things, and it was more so me wanting to see exactly what's all the fuss about." He "stopped of [his] own free will" because he knew it was illegal.

¶ 12 The hearing officer issued a report that found that CPD had not proved most of its bases for disqualifying Plaintiff. However, the hearing officer concluded that

> "The City proved by a preponderance of the evidence that Applicant Kevin Sudduth sold marijuana for 3 months in 2003, and Applicant admitted to said conduct in sworn testimony at the hearing. Thus, the City met its burden of proof of showing by a preponderance of evidence that Applicant violated Administrative Special Order 14-01 Section IV.B. Disqualification Based on Criminal Conduct (2) Other Criminal Conduct (a) Conduct Involving Drugs (¶ 3)."

¶ 13 Based on this conclusion, the hearing officer "respectfully recommended that the Human Resources Board enter an Order upholding the removal of the name of [plaintiff] from the eligibility list for the position of Probationary Police Officer." The Board adopted the hearing officer's report and upheld the decision to remove plaintiff's name "from the list of those eligible to become Chicago Police Officers."

¶ 14 Plaintiff filed a petition for writ of *certiorari* with the circuit court. In relevant part, the writ argued that, in light of Plaintiff's hard upbringing, outstanding character, and strong moral compass, "there was no basis for the Board to uphold Plaintiff's removal from the eligibility

list." The circuit court denied the writ, finding that Plaintiff admitted to conduct that required mandatory disqualification according to the ASO.

¶ 15 This appeal followed.

¶ 16 ANALYSIS

¶ 17 Plaintiff appeals from the denial of his writ of *certiorari*. The review of a writ is essentially the same as if a petition had been filed under the Administrative Review Law. *Johnson v. O'Connor*, 2018 IL App (1st) 171930, ¶ 13. On appeal, we review the decision of the Board, as opposed to that of the circuit court. *Id*.

¶ 18 The applicable standard of review depends on whether we are reviewing questions of fact, questions of law, or a mixed question of law and fact. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008); *Apostolov v. Johnson*, 2018 IL App (1st) 173084, ¶ 18. We review the agency's factual findings to determine if they are against the manifest weight of the evidence. *Finnerty v. Personnel Board*, 303 Ill. App. 3d 1, 8 (1999). Questions of law, including the interpretation of administrative regulations, are reviewed *de novo*. *Beggs v. Board of Education of Murphysboro Community Unit School District No. 186*, 2016 IL 120236, ¶ 50. Finally, mixed questions of law and fact are reviewed under the clearly erroneous standard. *Apostolov*, 2018 IL App (1st) 173084, ¶ 18. A mixed questions examines the " 'legal effect of a given set of facts' or, stated another way, whether uncontested facts satisfy the statutory standard." *Id*. (quoting *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 216 Ill. 3d 455, 472 (2005)). We will reverse and remand for a new hearing if we find that the agency applied the wrong legal standard. See *Jensen v. East Dundee Fire Protection District Firefighters' Pension Fund Board of Trustees*, 362 Ill. App. 3d 197, 204-05 (2005).

¶ 19 Interpreting an ASO is a question of law. *O'Connor*, 2018 IL App (1st) 171930, ¶ 16. We review these orders with the same principles that guide statutory construction. *Id*. ¶ 17. Our primary objective is "to ascertain and give effect to the intent of the regulatory agency," the most reliable indicator of which is the plain language of the regulation. *CBS Outdoor, Inc. v. Department of Transportation*, 2012 IL App (1st) 111387, ¶ 27. If the language of the rule " 'is clear and unambiguous, we must apply it as written, without resort to extrinsic aids of statutory construction.' " *Id*. (quoting *People ex rel. Madigan v. Illinois Commerce Comm'n*, 231 Ill. 2d 370, 380 (2008)).

¶ 20 Plaintiff claims the Board misinterpreted the Drug Policy when it found that selling drugs *mandated* disqualification. Construing the same ASO at issue in this case, this court has already determined that it "defines both when disqualification is discretionary as well as when it is mandatory." *O'Connor*, 2018 IL App (1st) 171930, ¶ 19. For example, in *O'Connor*, we explained that although the first sentence of subsection (B)(2)(c) stated that an applicant *may* be disqualified for conduct demonstrating violence, it also specified the circumstances where the applicant "*will* be 'found unsuitable for employment.' " *Id*.

¶ 21 Likewise, in *Apostolov*, 2018 IL App (1st) 173084, ¶ 28, we held that another provision "automatically disqualifies applicants who have engaged in 'criminal conduct.' " Although that provision made "limited exceptions based on certain factors, including the seriousness, frequency and recency of the applicant's criminal conduct," it did not make the distinction that the applicant was insisting must exist. *Id*.

¶ 22 Here, the Drug Policy contains the same mandatory language as the provisions considered in *O'Connor* and *Apostolov*. At the outset, the Drug Policy explains that not everyone who has used drugs will be found unqualified. It expresses CPD's "understanding that people

sometimes have made mistakes" in the past. But each of the 5 standards listed in the Drug Policy contain the "will be found unsuitable for employment" language that *O'Connor* explained required mandatory disqualification:

- an applicant who used drugs while employed in any position of public trust "will be found unsuitable for employment;"
- an applicant who misrepresents their history of drug use "will be found unsuitable for employment;"
- "[a]n applicant who has *sold*, distributed or manufactured any illegal drug *at any time* will be found unsuitable for employment" (emphasis added);
- an applicant who has used marijuana in the last 3 years "will be found unsuitable for employment;" and
- an applicant who has used any other illegal drug within the last 10 years "will be found unsuitable for employment."

¶ 23 Plaintiff says this language is ambiguous, because the Drug Policy purports to "understand" mistakes, on the one hand, but uses mandatory language for *any* instance of selling drugs, on the other. We cannot agree. Our decision in *O'Connor* correctly held that the "will be found unsuitable for employment" language indicates *mandatory* disqualification. The "understanding" in the Drug Policy applies in limited circumstances to those who have used drugs in the distant past. The Drug Policy made it clear, however, that CPD's "understanding" does not extend to selling drugs, for which any instance of doing so, at any time in the past, warrants disqualification. We have no authority to insert different language into the plain language of this provision. See *Apostolov*, 2018 IL App (1st) 173084, ¶ 29.

¶ 24 The Drug Policy is clear and unambiguous—an applicant who has *ever* sold drugs is automatically disqualified. As it is undisputed that plaintiff sold drugs for a short time, albeit in the distant past, he is disqualified from the CPD. The Board's conclusions were not clearly erroneous, and its reading of the applicable regulation was correct.

¶ 25 A prevailing theme in plaintiff's argument is that he is being unfairly punished for a stupid mistake he made years ago. On that score, we are sympathetic. But whatever we may think of this somewhat draconian regulation, judges have boundaries. Our duty in a case like this one is not to decide whether we agree with the regulation or whether we like the outcome. Our duty is to interpret the applicable regulation, consider the applicable facts, and apply the law to those facts. With that as our only task, the outcome is clear. Under the plain language of ASO 14-01, plaintiff was ineligible to serve.

¶ 26 CONCLUSION

¶ 27 For these reasons, we affirm the judgment below.

¶ 28 Affirmed.