

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County,)
)
Petitioner,)
)
VS.) Docket # 1619
)
ROBERT BLESS)
Police Officer,)
)
Respondent.)

DECISION

THIS MATTER COMING ON to be heard pursuant to proper notice, the Cook County Sheriff's Merit Board finds as follows:

WHEREAS, Robert Bless (hereinafter referred to as the "Respondent"), was appointed as a police officer and had duties and responsibilities owed to the citizens and taxpayers of Cook County and Cook County Sheriff Thomas J. Dart (the "Petitioner") (collectively referred to as the "Parties"); and

WHEREAS, the Cook County Sheriff's Merit Board (the "Board") has jurisdiction over this subject matter relating to the Parties in accordance with 55 ILCS 5/3 - 7001 to 7017; and

WHEREAS, each member of the Board has been duly appointed to serve as a member of the Board pursuant to appointment by the Petitioner and confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; and

WHEREAS, the Respondent was personally served with a copy of a complaint issued by the Petitioner (attached hereto) and a notice of hearing issued by the Board (attached hereto) and the Respondent personally appeared before the Board to contest the charges contained in the complaint; and

WHEREAS, Lance C. Tyson (the "Commissioner") heard evidence presented by the Petitioner through counsel pursuant to a trial beginning November 13, 2012 and concluding on January 29, 2013 ("Trial Date") and the Commissioner evaluated the credibility of the witnesses and supporting evidence. After considering all of the evidence, the Board finds as follows:

FACTUAL BACKGROUND

Through a complaint dated October 6, 2011, the Petitioner sought the termination of the Respondent for (1) not having a secondary employment request on file with the Petitioner; (2) not having proper authority to work secondary employment as a Commissioner for the McHenry County Board starting December 1, 2008 and continuing through 2010; (3) not having the Respondent's Department Head nor designee give proper authority to engage in secondary employment in 2009 through and including November 23, 2010; (4) unauthorized secondary employment while receiving temporary disability checks from the Cook County Insurance Benefit Fund and (5) falsely reporting to investigators from the Office of Professional Review that he had a secondary employment request on file thereby violating Department Rules and Regulations – ROC 00-01-A.2 "Knowledge of Rules, Orders, Procedures and Bulletins"; ROC 00-01-A.4 "Communications and Correspondence"; ROC 00-01-A.11 "Absence Due to Injuries Received While on Duty"; ROC 01-01-A.12 "Conduct Regarding the Performance of Duty"; ROC 11-01-A.13 Standard of Conduct"; Cook County Sheriff's Order 07-2 "Secondary Employment" and Cook County Sheriff's Department Merit Board Rules and Regulations, Article X, Paragraph B (collectively referred to as the "Board Rules").

ISSUE

Whether the Respondent, by his conduct, violated the Board Rules set forth above and if so, whether the discipline sought by the Petitioner under the complaint is appropriate and reasonable.

FINDINGS OF FACT

A trial in this matter was held on the Trial Date at the Cook County Administration Building, 69 West Washington Street, Room 1100, Chicago, Illinois. The Petitioner was represented by counsel, [REDACTED] and [REDACTED]. The Respondent was represented by counsel, [REDACTED]. Proper notice to the Parties was provided. The following witnesses testified on behalf of the Petitioner:

- 1. [REDACTED]
- 2. [REDACTED]
- 3. [REDACTED]
- 4. [REDACTED]
- 5. Robert Bless (as an adverse witness) and
- 6. [REDACTED]

(collectively referred to as "Petitioner's Witnesses"). The following witnesses testified on behalf of the Respondent:

- 1. [REDACTED]
- 2. [REDACTED]
- 3. [REDACTED] and
- 4. [REDACTED]

(collectively referred to as "Respondent's Witnesses").

EVIDENCE

The evidence is clear that the Respondent was gainfully employed by the taxpayers of McHenry County as a County Commissioner from December 1, 2008 to November 2012 and had a reasonably active legal practice with Bless & Associates from 2004 to the present. The evidence is also clear that a meeting took place at a Dunkin' Donuts in Palatine sometime in either late January or early February 2009 where several witnesses testified that the Respondent handed what looked like a secondary employment form to Sergeant [REDACTED]. The issue here is whether the Respondent annually filed a secondary employment request with the Cook County Sheriff's Office as required under the Board Rules. The Petitioner clearly established that the Respondent failed to annually obtain permission to maintain secondary employment. Even if the Respondent handed such a request to Sergeant [REDACTED] at the Dunkin' Donuts in February 2009, no active or approved secondary employment requests were on file for the time period between January 31, 2009 and December 9, 2010.

Furthermore, under ROC 00-01-A.4 "no member of the Department will make false official record(s), reports or report any inaccurate, false or improper information". The evidence demonstrates that the Respondent breached such duty. The Petitioner established through the testimony of [REDACTED], investigator for the Cook County Sheriff's Office, Office of Professional Review ("OPR"), that the Respondent made an inaccurate and false statement when the Respondent (with counsel) said that he "*did submit a secondary employment each year for Bless & Associates.*" (Page 149 of the Transcript and see also Sheriff's Exhibit No. 3). Mr. [REDACTED] did not find any evidence that an application had been submitted for 2009 forward for Bless & Associates.

What is extremely troubling here is that the evidence demonstrates the Respondent lied to the Petitioner so he could work two additional jobs and still get paid by the Cook County taxpayers by claiming he was injured. The evidence revealed that from September 10, 2008 through November 2010 the Respondent was classified as duty injury status. Such status precluded the Respondent from driving. (Page 124-125 of the Transcript). The Cook County Office of Risk Management began investigating the Respondent and found that he was in fact driving thereby in violation of his classification. The evidence showed not only was the Respondent driving while on duty injury status, but the Respondent was getting reimbursed for such driving by the taxpayers of McHenry County.

FINDINGS


The Board finds that the Petitioner satisfied its burden to show by a preponderance of the evidence that the Petitioner violated the Board Rules. See, 55 ILCS 5/3-7012 (providing the burden of proof governing the Cook County Sheriff's Merit Board hearings). The Petitioner's Witness and the Exhibits established the following:

- (1) The Respondent was not authorized to engage in secondary employment at any time while receiving temporary disability checks from the Cook County Insurance Benefit Fund;
- (2) The Respondent's Department Head nor designee gave authorization to the Respondent to engage in secondary employment in 2009 through and including November 23, 2010; and
- (3) The Respondent falsely reported to investigators from the Office of Professional Review that he had a secondary employment request on file for his business, Bless and Associates, for each year including 2010.

CONCLUSION OF LAW


Even if the Board found that Respondent's request to enter into evidence documents comparing other respondents' disciplinary results with this matter was admissible and not hearsay, the egregiousness of the Respondent's acts sets this matter apart from others. This Respondent was sworn to uphold the public trust of not just the taxpayers of Cook County but also the public trust of the taxpayers of McHenry County. The Board finds that the Respondent maliciously breached that trust. The evidence clearly demonstrates that the Respondent lied to the Cook County Sheriff's Office, Office of Professional Review so to continue looting Cook County taxpayers by continuing to receive temporary disability checks from the Insurance Fund while getting paid as an attorney and while getting paid as a McHenry County Commissioner. What this Board finds extremely egregious is that the evidence showed the Respondent while under injured duty status was being reimbursed for car travel mileage (many times traveling up to 64 miles – see page 177 of the Transcript) by McHenry County taxpayers even after being directed not to drive by his own doctors and the Cook County Risk Management Office. Based on the evidence presented, and after assessing the credibility of the witnesses and the weight given to the evidence in the record, the Cook County Sheriff's Merit Board finds that the Respondent did violate the Board Rules.

WHEREFORE, THE COOK COUNTY SHERIFF'S MERIT BOARD HEREBY ORDERS that the Respondent, Robert Bless, be terminated from employment with the Cook County Sheriff's Department effective October 6, 2011.

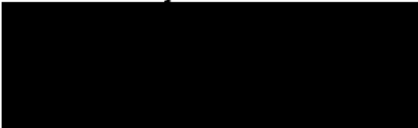

James P. Nally, Chairman


Robert F. Hogan, Secretary



Byron Brazier, Vice Chairman



Lance C. Tyson, Board Member


Kim R. Widup, Board Member


John R. Rosales, Board Member


Brian J. Riordan, Board Member


Vincent T. Winters, Board Member


John J. Dalicandro, Board Member

Dated

May 3, 2013

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ROBERT BLESS,)	
)	
Plaintiff,)	
)	
v.)	No. 13 C 4271
)	
COOK COUNTY SHERIFF’S OFFICE;)	Judge John Z. Lee
TOM DART in his official and individual)	
capacity; DEWAYNE HOLBROOK;)	
JOSEPH WAYS, SR.; ZELDA WITTLER,)	
SHERYL COLLINS; EDWARD DYNER;)	
HENRY HEMPHILL; ROSEMARIE)	
NOLAN; COOK COUNTY SHERIFF’S)	
MERIT COMMISSION; COOK COUNTY,)	
a unit of local government,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

In 2013, the Cook County Sheriff’s Merit Commission (“Merit Board”) issued an administrative decision directing the Cook County Sheriff’s Office (“Sheriff’s Office”) to terminate Police Officer Robert Bless. Invoking Illinois’s Administrative Review Law, 735 Ill. Comp. Stat. 5/3-102, Bless asks the Court to vacate that decision and order the Sheriff’s Office to reinstate him. For the reasons below, Bless’s motion is granted in part and denied in part.¹

¹ Bless also has filed claims under 18 U.S.C. §1983 and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, against the Cook County Sheriff’s Office and numerous individual defendants, alleging race discrimination and First Amendment retaliation. Accordingly, the Court has supplemental jurisdiction over this state law claim. Defendants have moved for summary judgment as to these claims, and the motion is granted for the reasons discussed in the accompanying order.

I. Background

A. **Factual Background**

Bless served as a police officer with the Sheriff's Office until the Merit Board voted to fire him on May 6, 2013. R.² at 24–28. During the last few years of his employment with the Sheriff's Office, Bless also worked secondary employment as a lawyer and as a McHenry County Board Commissioner. *Id.* at 488, 496–97.

In September 2008, Bless suffered serious injuries as a result of a car accident that occurred while he was on duty. *Id.* at 435, 512–15. At the time, Bless was placed on injured on-duty status and granted temporary disability benefits. *Id.* For the next two years, Bless collected those benefits; at the same time, he continued to work as a lawyer and Commissioner. *Id.* at 489–98.

Under the Sheriff's Office's rules, an employee may only work other jobs if he or she submits a secondary employment request form and receives authorization. *Id.* at 1083–91. Bless claims that he properly submitted secondary employment forms for both his law practice and his role with McHenry County. *Id.* at 499, 507–08. Defendants dispute this, asserting that Bless had not submitted any requests from early 2009 through late 2010. *Id.* at 498–500, 509, 511, 560–61.

For that reason, the Office of Professional Review (“OPR”), a division of the Sheriff's Office, brought administrative charges against Bless in May 2011. *Id.* at 692–93. Following an investigation, the Sheriff's Office filed formal charges before

² For convenience's sake, the Court cites to the Administrative Review Record, filed as ECF Nos. 26–29, as “R.” followed by the relevant page numbers.

the Merit Board in October 2011. *Id.* at 18–23. In its complaint, the Sheriff’s Office accused Bless of driving without first obtaining authorization from his physician, engaging in unapproved secondary employment, and lying to investigators. *Id.*

B. The Merit Board’s Decision

After holding a three-day evidentiary hearing that featured testimony from ten witnesses, the Merit Board issued a written decision on May 6, 2013. *R.* at 24–28.

Among other factual findings, the Board concluded that:

- “[Bless] was classified as injury duty status. . . .; [s]uch status precluded [him] from driving. . . .; [and] he was in fact driving . . . in violation of his classification.” *Id.* at 26.
- “[Neither] Respondent’s Department nor designee gave authorization to the Respondent to engage in secondary employment in 2009 through and including November 23, 2010.” *Id.* at 27.
- “[T]he Respondent made an inaccurate and false statement when [he told investigators] that he did submit a secondary employment [form] each year for Bless & Associates [his law firm].” *Id.* at 26 (internal quotation marks omitted).

Based on those findings, the Merit Board ordered the Sheriff’s Office to terminate Bless. *Id.* at 27. In reaching that result, the Board emphasized that “the egregiousness of Respondent’s acts set[] this matter apart from others.” *Id.* “The evidence clearly demonstrates that the Respondent lied,” the Board explained, “so [as] to continue looting Cook County taxpayers by continuing to receive temporary disability checks.” *Id.* “This Respondent was sworn to uphold the public trust of not just the taxpayers of Cook County,” the Board continued, “but also the public trust of the taxpayers of McHenry County.” *Id.* Shortly after the Merit Board released its decision, Bless filed suit in this Court.

II. Legal Standard

Illinois's Administrative Review Law governs this claim and empowers courts to review agency decisions. *See* 735 Ill. Comp. Stat. 5/3-110. In doing so, courts must take agencies' factual findings as "prima facie true and correct" and refrain from reweighing the evidence. *Id.*; *see Launis v. Bd. of Fire & Police Comm'rs*, 603 N.E.2d 477, 481 (Ill. 1992). "Rather, review is limited to determining whether findings of fact are against the manifest weight of the evidence, and if not, whether those findings supported the administrative decision." *Wright v. Vill. of Franklin Park*, No. 05 C 3696, 2008 WL 820560, at *8 (N.D. Ill. Mar. 25, 2008) (citing *Launis*, 603 N.E.2d at 484).

Still, the deference owed to an agency's decision is not "boundless." *Kouzoukas v. Ret. Bd. of the Policemen's Annuity & Benefit Fund*, 917 N.E.2d 999, 1011 (Ill. 2009) (citation omitted). "Although a decision may be supported by some evidence, which if undisputed would sustain the administrative finding, it is not sufficient if upon a consideration of all the evidence, the finding is against the manifest weight." *McRay v. Ross*, No. 17 C 01588, 2018 WL 2432164, at *3 (N.D. Ill. May 30, 2018) (citing *Bowlin v. Murphrysboro Firefighters Pension Bd. of Trs.*, 857 N.E.2d 777, 782 (Ill. App. Ct. 2006)). That means that review "cannot amount to a rubber stamp of proceedings below." *Bowlin*, 857 N.E.2d at 782.

In reviewing "an administrative agency's decision to discharge an employee," courts follow "a two-step process." *Marzano v. Cook Cty. Sheriff's Merit Board*, 920 N.E.2d 1205, 1208 (Ill. App. Ct. 2009). At the first step, courts ask whether an

agency's "findings of fact are contrary to the manifest weight of the evidence." *Walker v. Dart*, 30 N.E.3d 426, 435 (Ill. App. Ct. 2015) (citation omitted). At the second step, courts analyze whether those "findings of fact provide a sufficient basis for [the agency's] conclusion that cause for discharge exists." *Id.*

III. Analysis

The threshold question is whether this Court retains jurisdiction to hear Bless's administrative review claim. In the accompanying order, the Court granted summary judgment in Defendants' favor as to Bless's federal claims. *See* 8/3/2020 Order, ECF No. 466. When "all federal claims have been dismissed prior to trial," the Seventh Circuit has held that "the usual practice is to dismiss . . . state supplemental claims." *Groce v. Eli Lilly & Co.*, 193 F.3d 496, 501 (7th Cir. 1999). One exception is when "the statute of limitations has run on the pendent claim, precluding the filing of a separate suit in state court." *Sharp Electronics Corp. v. Metropolitan Life Ins. Co.*, 578 F.3d 505, 514–15 (7th Cir. 2009) (citation omitted).

That exception applies here. Under Illinois law, courts may only consider an administrative review claim if it is filed within thirty-five days of an agency's decision. *See* 735 Ill. Comp. Stat. 5/3-103. But Bless lodged his claim here, rather than in state court. And, because Illinois courts reject equitable tolling in this context, Bless's filing of the claim in federal court within thirty-five days would not toll the limitations period. *See Van Milligen v. Dep't of Emp't Sec.*, 868 N.E.2d 1083, 1093 (Ill. App. Ct. 2007); *Davis v. Cook Cty.*, 534 F.3d 650, 654 (7th Cir. 2008) (in deciding questions of supplemental jurisdiction, federal courts should consider

whether a state court would apply “a rule of tolling”). Given that an Illinois court would likely refuse to hear Bless’s administrative review claim, the Court exercises its discretion to retain supplemental jurisdiction over that claim. *See* 28 U.S.C. § 1367(a). With that, the Court turns to the merits.

Bless argues that the Court should set aside the Merit Board’s decision for three reasons.³ First, the Board’s decision is too vague to permit proper review; second, each of the Board’s factual findings contradict the manifest weight of the evidence; third, even if the Board’s findings were accurate, those findings would not justify discharge.

A. Vagueness

At the outset, Bless casts the Board’s decision as so vague as to preclude meaningful review. An agency must provide “in writing, a reasoned explanation for its decision in [each] case, complete with findings and conclusions.” *Medina Nursing Ctr., Inc. v. Health Facilities & Servs. Review Bd.*, 992 N.E.2d 616, 621 (Ill. App. Ct. 2013). In doing so, the agency must “adequately articulate the bases of their action, showing a rational connection between the facts found and the choice made.” *Id.* at 620.

³ Bless also suggests that the Merit Board was biased against him because some of its members were political supporters of Sheriff Dart, a Democrat. Mot. Admin. Rev. at 9–10, ECF No. 434. But “[a] party must raise a claim of bias by the administrative agency soon after learning of it because it would be improper to allow a party to withhold a claim of bias until it obtained an unfavorable ruling.” *Royal Towing, Inc. v. City of Harvey*, No. 03 C 4925, 2005 WL 1563198, at *4 (N.D. Ill. June 24, 2005) (citing *A.R.F. Landfill, Inc. v. Pollution Control Bd.*, 528 N.E.2d 390, 394 (Ill. App. Ct. 1988)). Seeing no reason for Bless’s delay, the Court concludes that he has waived this argument.

To the extent that Bless casts the Board's entire decision as vague, that objection is unsubstantiated. While brief, the four-page opinion summarizes the evidence presented, arrives at factual findings, and links those findings with legal conclusions. And, contrary to Bless's suggestion, the Board had no obligation to discuss each exhibit entered and witness tendered. What matters is that the decision is sufficiently detailed for a court to "conduct a meaningful review of the issues." *Roman v. Cook Cty. Sheriff's Merit Bd.*, 17 N.E.3d 130, 156 (Ill. App. Ct. 2014). Read as a whole, the Board's opinion clears that hurdle.

This result accords with *Roman*, the case upon which Bless relies. In *Roman*, a court chastised the Board for "fail[ing] to provide *any* analysis or explanation whatsoever in its initial decisions." *Id.* at 156 (emphasis added). Here, by contrast, the Board outlined the evidentiary basis for its findings and the legal conclusions they support. Taken as a whole, the Board's decision is not so vague that this Court cannot review it.

B. Factual Findings

When reviewing an administrative decision under Illinois law, the first step is to decide whether the agency's "findings of fact are contrary to the manifest weight of the evidence." *Walker*, 30 N.E.3d at 435. In essence, the Board's decision boils down to four factual determinations: (1) Bless drove a car when his injury status precluded him from doing so, (2) Bless worked several second jobs without prior authorization, (3) Bless lied to investigators, and (4) Bless flouted a series of other rules. *See R.* at 26–27.

1. Driving Restriction

First, the Board found that Bless's "duty injury status . . . prevented him from driving" between September 2008 and November 2010, and that he did so anyway. R. at 26. The parties agree that Bless began driving in February 2009, *id.* at 467–69, but disagree as to whether his leave status prevented him from doing so.

During the evidentiary hearing, ██████████, the Sheriff's Office's personnel director, testified that Bless's "injured on duty status" included a driving restriction. *Id.* at 426–27. Similarly, in an April 2009 memorandum, ██████████ wrote that Bless "had a driving restriction documented and on file with the Risk Management Office." *Id.* at 1043. Although ██████████ later admitted that she never saw that file herself, she clarified that a contact in Risk Management told her about its contents.⁴ *Id.* at 438.

The Board also heard evidence from medical professionals who treated Bless. Doctor ██████████, who examined Bless on behalf of Risk Management, stated that he warned Bless against driving during a November 2008 appointment. *Id.* at 611. And in early 2009, ██████████ again cautioned Bless not to drive until a physical therapist or doctor determined that his range of motion had returned. *Id.* at 614–15. For the first few months of that year, a physical therapist named ██████████ worked with

⁴ Bless failed to raise any evidentiary objections to ██████████'s testimony about the contents of the file before the Merit Board. Nor does he advance any such arguments here. Thus, any such objections are deemed waived. See *Shipley v. Chi. Bd. of Election Comm'rs*, 947 F.3d 1056, 1063 (7th Cir. 2020) (noting that "perfunctory and undeveloped arguments . . . are waived").

Bless. *Id.* at 358–61. Although Bless exhibited some improvement in his range of motion, ██████ never told him “when he could drive or should start to drive,” because he preferred to leave that decision to Bless’s doctors. *Id.* at 360–61.

Based on this record, the Court cannot say that the Merit Board clearly erred in finding that Bless drove in violation of his duty status. Bless did testify that his driving had not been restricted in February 2009. *Id.* at 587–88. But, considering ██████, ██████, and ██████’s testimony, the Merit Board could reasonably have disbelieved Bless. That ██████ later reviewed a video of Bless driving in early 2009 and opined that it was safe for him to do so makes little difference. *Id.* at 620. The question is not whether Bless had the ability to drive. Rather, the question is whether he violated his duty status by doing so. Given ██████’s testimony that Bless’s file included such a restriction, and given that none of his healthcare providers lifted that restriction before February 2009, the Board’s conclusion is not contrary to the manifest weight of the evidence. Accordingly, this finding against Bless is sustained.

2. Secondary Employment

The Board also found that Bless had engaged in secondary employment without obtaining authorization from the Sheriff’s Office.⁵ R. at 26–27. At the time, the Office’s rules required employees to secure permission to work secondary jobs. *Id.* at 209–10. Moreover, these rules put the onus on police officers to obtain approval

⁵ More specifically, the Board concluded that Bless disobeyed the “Secondary Employment” and “Knowledge of Rules, Orders, Procedures, and Bulletins” general orders. R. at 25; *see also id.* at 20–22 (listing the relevant sections of the rules). Although Bless casts those conclusions as vague, that is incorrect. As discussed in the paragraphs that follow, the Board adequately explained its conclusion that Bless had violated the cited rules.

before accepting or starting another job. *Id.* at 209–10, 246; *see also id.* at 412–413 (“Q: Is it [employees’] responsibility to ensure that approval is obtained before they start working? [REDACTED]: Yes”).

According to [REDACTED], the personnel department maintains a database that “identifies all of the employees in the Sheriff’s Office that have submitted a secondary employment form to their department head that has been forwarded on to us.” *Id.* at 411. When the Office started to investigate Bless, [REDACTED] searched the database for secondary request forms. *Id.* at 415. But she says that she discovered no requests from Bless—approved or unapproved—for the relevant time period. *Id.* 420. Based on that testimony, the Board concluded that Bless had failed to obtain approval to work as a lawyer and elected official from early 2009 until late 2010. *Id.* at 26–27.

In challenging that determination, Bless points to evidence that he had submitted a request for that period. For example, he cites the testimony of three patrol officers and a sergeant who recalled that Bless had filed a request form in early 2009. *Id.* at 370–66, 378–82, 386–93, 590–91. Additionally, Bless complains that he “was never informed that his ability to engage in secondary employment was not approved.” *Mot. Admin. Rev.* at 18. That misses the point. The rules make employees responsible for securing approval before starting a second job, not just for submitting a request. *R.* at 209–10. And, as Bless admitted to the Board, he “never received approval” for his work as a lawyer and Commissioner during 2009. *Id.* 560–61. That is enough to support the Board’s factual finding.

Equally unavailing is Bless's argument that the Board should have disregarded ██████'s testimony entirely.⁶ During the trial, ██████ stated that Bless had no secondary employment requests on file from before 2008; this was incorrect. *Id.* at 429, *see id.* at 814–39. But that error does not necessarily discredit ██████'s other testimony; after all, her review was focused on whether Bless's file contained request forms for 2009 and 2010. What is more, "it is not the function of [a reviewing] court to reevaluate witness credibility." *Nwaokocha v. Ill. Dep't of Fin. & Prof'l Regulation*, 105 N.E.3d 16, 30 (Ill. App. Ct. 2018) (citation omitted). And that is especially true here, where nothing in the record indicates that anyone in the Sheriff's Office approved Bless's requests for secondary employment in 2009 or 2010.

The Board did not clearly err in concluding that Bless disobeyed the Office's secondary employment rules, and Bless's objections to this finding are rejected.

3. Statement to Investigators

Next, the Board found that Bless had lied in a written statement to OPR investigators regarding his work as an attorney by falsely stating that "he had a secondary employment request *on file*." *Id.* at 27 (emphasis added).⁷ R. at 26–27. But that is not exactly what Bless wrote in his statement. Rather, as the Board

⁶ Bless also attempts to discredit ██████'s testimony by referring to information not contained in the administrative record, including her deposition in this case. But the Board could only consider the evidence before it, and the Court's review is confined to the administrative record. *See* 735 Ill. Comp. Stat. 5/3-110.

⁷ Specifically, the Board determined that Bless's allegedly false statement violated a rule providing that "no member of the Department will make false official record(s), reports or report any inaccurate, false or improper information." R. at 26.

acknowledges elsewhere in its decision, Bless actually told investigators that “he did *submit* a secondary employment application each year for [his law firm].” *Id.* at 699–700 (emphasis added). The question then is whether the Board clearly erred in finding that Bless had lied when he said that he had submitted a secondary employment form for his legal practice. *Id.* at 26.

To reach that conclusion, the Board relied on the testimony of ██████, the personnel director, and ██████, an OPR investigator. *Id.* at 26. As noted, ██████ attested that the Office did not have any secondary employment request forms on file for Bless for 2009 or 2010. *Id.* 409–39. Likewise, ██████ testified that he had asked several employees at the Sheriff’s Office to check whether Bless had any requests on file for that period. *Id.* at 449–50. When that search failed to turn up any request forms, ██████ decided that Bless’s statement that he had submitted such a request in 2009 was a lie. *Id.* 452, 455.

But the Board heard other evidence that undermines ██████’s hypothesis. Most important, Sergeant ██████ said that he met with Bless at a Dunkin’ Donuts in late 2008 or early 2009. *Id.* at 570. During that meeting, ██████ says, Bless handed him a secondary employment request form for his legal work. *Id.* According to ██████, he forwarded those forms up the chain of command, just as the Office’s policies required. *Id.* at 571–72. “I surrendered the forms to the Lieutenant,” ██████ explained, “and then I believe either he put them in the admin box or they got turned in with the paper.” *Id.* at 572. The record is silent as to what happened to the forms after that.

Three other officers were present at the Dunkin' Donuts and corroborated ██████'s account. Officer ██████ stated that, in early 2009, he had witnessed Bless hand ██████ a secondary employment request form. *Id.* at 388–89. Officer ██████ represented that, although he did not see the form itself, he had heard Bless tell ██████ that “he was turning in his secondary employment form.” *Id.* 373–74. And Officer ██████ testified to hearing the same statement. *Id.* at 381–82.

The Court is mindful that the Merit Board's determinations deserve “the benefit of the doubt.” *Coyne v. Milan Police Pension Bd.*, 807 N.E.2d 1276, 1285 (Ill. App. Ct. 2004). Still, the manifest weight of the evidence contradicts the Board's conclusion that Bless had lied when he said that he submitted a request form in 2009. *See Royal Towing*, 2005 WL 1563198, at *5 (emphasizing that “the manifest weight standard is not a mere stamp of approval for agency decisions”) (citation omitted). Here, four other police officers corroborated Bless's story that he had submitted an authorization form in early 2009.

This is not a case where the Board faced a choice between conflicting evidence. *See Launius*, 603 N.E.2d at 481 (warning that “it is not the court's function to resolve factual inconsistencies”). Notably, ██████'s assertion that Bless's personnel file had contained no relevant request forms is not inconsistent with the officers' testimony. As ██████ acknowledged, each form must pass through six different supervisors before it arrives at the personnel office. R. at 432. Although supervisors were told to forward files to ██████'s office, there was no system in place to make sure that happened. *Id.*

at 432. Thus, the most plausible reading of the record is that Bless had submitted a request form in 2009, but it was misplaced before it reached his personnel file. The Board failed to consider that possibility, let alone explain why it was rejected. *See Coyne*, 807 N.E.2d at 1285 (noting that, while the Board’s “prerogative undoubtedly includes making credibility determinations,” it “must articulate the findings underlying [those] choice[s] to facilitate meaningful review”). Because the finding that Bless lied to investigators contradicts the manifest weight of the evidence, that aspect of the Board’s decision is vacated.

Furthermore, as Bless points out, the decision suggests that the Board may have believed that Bless had engaged in other deliberate conduct to conceal his secondary employment. For example, the Board faulted Bless for “looting Court County taxpayers” and described his conduct as “extremely egregious.” *Id.* at 27. That language can be interpreted in two ways. One reading is that it follows from the Board’s conclusion that Bless had lied to OPR investigators. Another reading is that the Board understood Bless to have engaged in other acts of concealment. If so, such a finding also must be vacated, because the Board failed to specify those acts or articulate how the record supports them. *See Medina*, 992 N.E.2d at 621 (recognizing that an agency must provide “a reasoned explanation for its decision”). On remand, the Board should clarify whether it determined that Bless practiced other forms of deliberate concealment, and if so, should explain that conclusion.

4. Other Rule Violations

Aside from the factual findings discussed above, the Board also concluded that Bless disobeyed the Office's general orders related to (1) "Absence Due to Injuries Received While on Duty," (2) "Conduct Regarding the Performance of Duty," and (3) "Standard of Conduct." R. at 25; *see also id.* at 20–22 (listing the relevant sections of the rules). But the Board does not explain why it decided that Bless broke those rules. Indeed, even after reviewing the Board's decision, the Court is left to guess the factual support for these conclusions. *See Medina*, 922 N.E.2d at 620 (requiring "a rational connection" between factual findings and an agency's choices). Accordingly, the Court vacates the Board's determination that Bless had violated the enumerated rules. To the extent that those rules factor into the Board's decision on remand, the Board should articulate what led it to believe that Bless had violated them.

C. Discharge Decision

"[When] an important pillar of the Board's discharge decision [is] vacated, the next question is whether the affirmed findings provide 'cause' for the firing." *McRay*, 2018 WL 2432164, at *10; *see Walker*, 30 N.E.3d at 435 (asking whether an agency's "findings of fact provide a sufficient basis for [its] conclusion that cause for discharge exists"). In voting to dismiss Bless, the Board placed great weight on its determination that he had made a false statement to the investigators. Indeed, the Board described Bless's alleged lie as "extremely troubling" and found that it contributed to a "malicious[] breach of the public trust." *Id.* at 26–27. Given that

the Board's discharge decision depended in large part on its finding that Bless had lied, that decision must be revisited.

Under the Act, a reviewing court may “reverse and remand [an agency’s] decision in whole or in part, and, in that case, . . . state the questions requiring further hearing or proceedings.” 735 Ill. Comp. Stat 5/3-111(a)(6). Furthermore, because “[t]he Merit Board, not the reviewing court, is in the best position to determine the effect of an employee’s conduct,” that approach is appropriate here. *Lopez v. Dart*, 118 N.E.3d 580, 598 (Ill. App. Ct. 2019). Therefore, the Court remands this case to the Board for it to decide whether the vacatur of the false-statement finding alters its conclusion that discharge is warranted. *See, e.g., McRay*, 2018 WL 2432164, *10 (“[R]ather than deciding in the first instance . . . the Court will exercise its discretion under the Illinois Administrative Review Act and remand to the Board.”).

In doing so, the Board should keep in mind that the “[Illinois] Supreme Court has discussed a special need for uniformity or consistency in sanctions in disciplinary proceedings.” *Siddiqui v. Ill. Dep’t of Prof’l Regulation*, 718 N.E.3d 217, 228 (Ill. App. Ct. 1999) (citing *In re Wigoda*, 395 N.E.2d 571, 575 (Ill. 1979)). In deciding to discharge Bless, the Board declined to consider “other respondents’ disciplinary results.” R. at 27. Perhaps the Board will permit Bless to introduce those disciplinary records on remand. Or perhaps not. Either way, it should explain that choice in a way that enables a court to “conduct a meaningful review.” *Roman*, 17 N.E.3d at 156; *see also Royal Towing*, 2005 WL 1563198, at *6 (noting that a court must be able to “discern from *the record* why the Board disregarded . . . evidence”).

IV. Conclusion

For the reasons above, Plaintiff's administrative review claim is granted in part and denied in part. The Merit Board's finding that Bless had lied to the investigators is not supported by the manifest weight of the evidence and is vacated. Furthermore, because the finding was material to the Board's conclusion that Bless be terminated, the matter is remanded to the Board.

IT IS SO ORDERED.

ENTERED 8/3/20



John Z. Lee
United States District Judge

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County

vs.

**Robert Bless
Police Officer**

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Docket No. 1619

REMAND DECISION

RESPONSE TO MEMORANDUM OPINION AND ORDER

Introduction

In 2013, Cook County Sheriff's Merit Board issued an administrative decision directing the Cook County Sheriff's office to terminate police officer Robert Bless. Invoking Illinois Administrative Review Law 732 Ill. Comp. Stat. 5/3-102, Robert Bless asked the court to vacate the decision and order the Sheriff's Office to reinstate him. In a Remand Order given by the United States District Court for the Northern District of Illinois, Eastern District, it has been ordered that the plaintiffs administrative review claim is granted in part and denied in part.

Basis for the Merit Board Finding

It was concluded that the Merit Board's finding that Robert Bless had lied to the investigators is not supported by the manifest weight of the evidence and is vacated. Furthermore, because the finding was material to the Merit Board's conclusion that Bless be terminated, the matter is remanded to the Board. What was remanded to the Merit Board is to decide whether the exclusion of the false statement findings would alter the conclusion to terminate Robert Bless. And in doing so, the Board should keep in mind that the Illinois Supreme Court has discussed a special need for uniformity or consistency in sanctions and disciplinary proceedings. The court commented that the Merit Board declined to consider "other respondents disciplinary results", then further stated that perhaps the Board will permit Bless to introduce other disciplinary records on remand. Or perhaps not. In either way it should explain that choice and a way that it enables the court to conduct a meaningful review.

Merit Board Response to Remand

After considering the testimonies for the Sheriff and the Respondent, in particular, the testimony of Dr. [REDACTED] and the physical therapist, [REDACTED]; and that the federal court affirmed that Robert Bless violated medical restrictions by driving and that he worked secondary employment without approval as required by policy. It should be noted that the Sheriff's office relied on the recommendation of Bless's treating neurosurgeon, Dr. [REDACTED], and the physical therapist that Robert Bless should remain on medical restrictions and not return to work. The evidentiary record clearly establishes that Robert Bless falsely claimed an inability to drive to medical personnel because of self-described and continuing pain and stiffness, which supported his medical restrictions and prevented him from coming to work. Yet, he continued to drive to and from his other employment. Therefore, by Robert Bless requesting secondary employment approval, would have contradicted his claim of being in unable to drive and thereby void his

disability leave. The complaint of lying to OPR, given the weight of the complaint is a minor element to the actual conduct of the respondent.

The Merit Board in its deliberations understands that all cases are different and we rely on the Appellate Court which concluded and addressed the issue of disparate discipline in *Siwek v. Police Board*, 374 Ill. App. 3d 735, 872 N.E.2d 87 (1st Dist. 2007). There, a police officer on paid medical leave was terminated for violating police department regulations. She argued the Board's decision to terminate her was arbitrary and unreasonable and cited Illinois precedent where other police officers' conduct was arguably worse yet resulted in less severe sanctions. The court held the Board's decision to terminate was not erroneous stating, "The fact that different individuals have been disciplined differently is not a basis for concluding that an agency's disciplinary decision is unreasonable; such conclusions are appropriate when individuals receive different discipline in a single, identical, "completely related" case.

Additionally, the Merit Board in its deliberation relies on a collaborative dialogue to gain consensus from its members, based on his or her Merit Board experience and their understanding of previous cases. We understand that every case has their own peculiarities, circumstances, and situational conditions. It is the practice of the Merit Board to view each case on its own value, distinction and weight.

Conclusion

It is therefore the unanimous decision of the Cook County Sheriff's Merit Board that Robert Bless did violate the Rules and Regulations of the Sheriff's Department and that termination is warranted and was the proper conclusion.

Wherefore, based on the foregoing, it is hereby ordered that Respondent Sheriff Police Robert Bless be terminated, effective October 6, 2011.

JOHN J. DALICANDRO, Chairman
BYRON BRAZIER, Vice-Chairman
VINCENT T. WINTERS, Secretary
KIMBERLY PATE GODDEN, Board Member
ELENI P. SIANIS, Board Member
DARREN COLLIER, Board Member
TERRENCE J. WALSH, Board Member



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**COOK COUNTY
SHERIFF'S MERIT BOARD**
69 West Washington - Suite 1100
Chicago, IL 60602

Robert Bless
Police Officer
Docket No. 1619

This Remand Decision is adopted and entered by a majority of the Members of the Merit Board:

John J. Dalicandro, Byron Brazier, Vincent T. Winters, Kimberly Pate Godden, Eleni P. Sianis and Terrence J. Walsh.

Not Present: Darren Collier.

DISSENT

The following Members of the Merit Board dissent from the Findings and Decision of the majority of the Board.

[NONE]

DATED AT COUNTY OF COOK, STATE OF ILLINOIS, THIS 14th DAY OF OCTOBER, 2021.