PB2337

THIRD DIVISION
MARCH 07, 2001

NOTICE
The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

No. 1-99-3752

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| JOSEPH MISURACA, | ) | Appeal from the |
| | ) | Circuit Court of |
| Petitioner-Appellant, | ) | Cook County. |
| | ) | |
| v. | ) | No. 99 CH 128 |
| | ) | |
| TERRY G. HILLARD, Superintendent of Police, THE POLICE BOARD OF THE CITY OF CHICAGO, and THE CITY OF CHICAGO, a municipal corporation, | ) | |
| | ) | Honorable |
| | ) | Dorothy K. Kinnaird, |
| Respondents-Appellees. | ) | Judge Presiding. |

ORDER

In this administrative review action, petitioner, Joseph Misuraca, appeals the order of the circuit court affirming the decision of respondents, the City of Chicago (City), the City's Police Board (Police Board), and Terry Hillard, the superintendent of the Chicago Police Department (Department), dismissing him from his employment as an officer with the Department. Petitioner argues the Police Board's decision must be overturned because it is not supported by the evidentiary record. For the following reasons, we affirm.

Prior to his dismissal in December 1998, petitioner had served as a police officer with the Department for just over two years. In April 1998, Hillard filed charges seeking petitioner's dismissal on the grounds that petitioner had violated Article 5, "Rules of Conduct," Rules 1 and 2, of the Department's rules and regulations. These rules respectively prohibit a member of the Department from violating "any law or ordinance" and from engaging in "[a]ny action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department." The former charge was predicated upon petitioner's alleged violation of chapter 2-74-090 of the Chicago Municipal Code (Municipal Code) which prohibits any "person" from making "any false statement, certificate, mark, rating or report with regard to any test, certification or appointment." Chicago Municipal Code, ch. 2-74-090 (1990). The superintendent's charges were based on petitioner's alleged falsification of statements made by him in employment application materials submitted by him in 1993 prior to becoming a member of the Department.

Petitioner denied the charges and hearings before the Police Board were held on August 25 and September 29, 1998. The evidence presented at the hearing established that petitioner first applied for an officer position with the Department in 1991. As a part of that application process, petitioner was required to complete a personal history questionnaire (the "1991

Questionnaire), which petitioner did on August 25, 1991. Petitioner also underwent a psychological examination and a personal background check by a departmental investigator.

Oddly, while his 1991 application was pending, petitioner filed a second employment application with the Department in October 1993. Shortly thereafter, in March 1994, petitioner was notified that he had been disqualified from the 1991 application process on the ground that certain background information he had disclosed rendered him ineligible for employment. Petitioner responded by appealing the Department's decision to the Personnel Board of the City of Chicago (Personnel Board).

As part of the 1993 application process, petitioner was once again required to complete a personal history questionnaire (the "1993 Questionnaire"), which was submitted by petitioner on May 20, 1995. In relevant part, the 1993 Questionnaire, question number 49, inquired whether petitioner had "ever previously submitted an application to any law enforcement agency including any other police department" and, if yes, to list such agencies. Petitioner disclosed he had filed a prior employment application with the Elmwood Park police department. Petitioner did not list any other prior applications.

Further, petitioner was asked in question numbers 52 and 57, respectively, whether he had "ever possessed any controlled substance or marijuana contrary to law" or whether he had "ever been interviewed by the police in a criminal matter." Petitioner

responded no to each of the foregoing questions.

At the 1998 hearings, petitioner conceded that he was not entirely candid in responding to the aforementioned inquiries. With respect to question number 49, petitioner acknowledged he failed to reveal a previous application to the Village of Morton Grove police department, a fact petitioner had admitted in his 1991 Questionnaire. Petitioner also admitted failing to disclose his 1991 application to the Department. Petitioner accepted responsibility for the missing information, explaining that he had simply "forgot" about his prior applications, and he specifically acknowledged that his omissions should have been contained in his response.

Furthermore, petitioner admitted he failed to reveal in response to question number 52 that he had experimented with marijuana while in high school. Petitioner indicated that he disclosed this fact during his 1991 psychological examination and expressly conceded that this information should have been disclosed in the 1993 Questionnaire. Petitioner stated the incompleteness of his answer was simply due to a "mistake." Kenneth Pisano, an investigator with the Department who conducted the background check on petitioner in connection with the 1993 application, testified that petitioner denied, when asked, any prior use of marijuana or any other drug.

Finally, with respect to whether he had ever been interviewed by the police in a criminal matter, petitioner agreed

with the characterization of the Department's attorney that he had been previously "interviewed" by members of the Elk Grove police department in connection with a physical altercation involving another individual for which petitioner was arrested and charged with battery. Petitioner also admitted relating "this interview" to the departmental investigator during the 1991 application process.

However, upon questioning by his own attorney, petitioner refuted the characterization of his contact with the Elk Grove police officers as an "interview." Because he was asked merely what had occurred during the incident, and not posed any further questions, petitioner did not believe the nature of the subject inquiry amounted to an "interview" as contemplated by the 1993 Questionnaire. Petitioner additionally stated that he conferred with an attorney on the matter and, pursuant to his understanding, this information did not need to be disclosed since his arrest had been expunged prior to his completion of the questionnaire.

Partly based on the information he had provided in connection with his 1993 application, petitioner was hired as an officer with the Department in May 1996. Thereafter, the Personnel Board notified petitioner by a letter dated April 16, 1997 that his disqualification from the 1991 application process had been affirmed. Petitioner maintained he never received notice of the Personnel Board's ruling in April 1997 and claimed

he first became aware of that decision when it was disclosed to him in November 1997 during the 1993 application process. Notably, petitioner, in addition to never informing the Department of his 1991 application, never advised anyone from the Department during the 1993 process of his disqualification or his appeal then pending before the Personnel Board.

Paul Parizanski, the supervising sergeant of personnel at the Department who is responsible for the administration of the application process and the evaluation of employee applicants, testified that the Department relies, in part, on the information provided in an applicant's personal questionnaire, as well as the report prepared by the departmental investigator, in determining the applicant's eligibility for employment. Parizanski testified that he recommended petitioner for employment as an officer after specifically considering the information contained in petitioner's 1993 Questionnaire and the report prepared by investigator Pisano.

Parizanski first learned of petitioner's disqualification from the 1991 application process in April 1997 when he was directed by the Personnel Board to remove petitioner's name from the 1991 list of eligible candidates. Upon taking the necessary steps to effectuate petitioner's removal, Parizanski realized petitioner had already successfully completed the 1993 application process and had been hired by the Department. Parizanski stated that if he had been aware of petitioner's then

pending appeal, the Department would have suspended petitioner's 1993 application pending a final resolution by the Personnel Board. If petitioner's appeal was ultimately unsuccessful, petitioner would have then been disqualified from the 1993 process.

Parizanski stated that the Department reviews all unsuccessful employment applications filed previously by an applicant and weighs any such applications in determining the eligibility of that applicant for later employment. Where a prior application is disclosed, the Department thoroughly investigates the prior proceedings to ascertain the reason(s) for the applicant's prior rejection. Because it does not have information regarding an applicant's prior submissions for employment readily available, the Department, according to Parizanski, relies heavily on the applicant himself to provide this information. Parizanski explained if the Department discovered that an applicant had provided false information in a questionnaire or was not entirely candid about his or her background, the applicant would be disqualified from the application process.

Upon consideration of the evidence, the Police Board unanimously sustained the superintendent's charges and found that petitioner violated Rules 1 and 2 by providing false and/or incomplete information during the 1993 application process. Finding petitioner's conduct constituted cause for separation,

the Police Board ordered petitioner's termination from the Department. Petitioner filed a timely complaint for administrative review with the circuit court, which upheld the Police Board's decision, and this appeal followed.

Our review of a decision of the Police Board dismissing an officer is traditionally a two-step process. First, we must determine whether the Police Board's findings of fact are against the manifest weight 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 board's findings are supported by the record, we must then determine whether those findings are sufficient to support the conclusion that "cause" exists for the officer's discharge. Merrifield, 294 Ill. App. 3d at 529, 691 N.E.2d at 198.

Petitioner initially suggests that neither Rule 1 nor 2 had any applicability in the underlying proceedings. According to petitioner, those rules govern solely the conduct of employees of the Department and have no application to the conduct of applicants, like him, during the employment application process. As correctly noted by petitioner, the Police Board stated in the initial portion of its written decision that petitioner "was at all times employed as a police officer by the Department." Petitioner construes this statement to mean that the Police Board found him to be an employee of the Department at the time he completed and submitted the 1993 Questionnaire. Based on his

understanding of the applicability of Rules 1 and 2, petitioner maintains the board's finding is against the manifest weight of the evidence.

Petitioner, however, never raised this issue before the Police Board. A review of the record shows that while petitioner vigorously contested the superintendent's allegations that he falsified information on his application materials, he never questioned whether his alleged misconduct fell within the ambit of either Rule 1 or 2. Consequently, petitioner has waived this issue for review. See North Avenue Properties, L.L.C. v. Zoning Board of Appeals of the City of Chicago, 312 Ill. App. 3d 182, 185, 726 N.E.2d 65, 68 (2000) ("arguments not raised before the administrative agency are waived for purposes of administrative review").[1] We note a finding of waiver is appropriate here because petitioner's contention does not go to the underlying authority of the Police Board to act on the superintendent's charges; certainly, the board had the power to the consider whether petitioner violated certain departmental rules and, if so, to order his discharge.

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[1] Petitioner misconstrues the Police Board's statement that he was "at all relevant times employed as a police officer by the Department." Contrary to petitioner's understanding, the Police Board did not find that petitioner was a member of the Department at the time he was participating in the 1993 application process. Rather, the Police Board's statement relates to the applicability of the departmental rules specified in the charges to petitioner and reflects the board's finding that petitioner was an employee of the Department at the time those charges were filed.

Petitioner next asserts the Police Board's findings that he made false statements and deliberately omitted other information in completing the 1993 Questionnaire are not supported by the evidence. Because petitioner does not claim the Police Board lacked cause for his dismissal, we need only consider whether the board's findings are against the manifest weight of the evidence.

The findings of the Police Board are deemed prima facie true and correct (735 ILCS 5/3-110 (West 1998)), and, accordingly, we will not reweigh the evidence or make an independent determination of the facts. Merrifield, 294 Ill. App. 3d at 528, 691 N.E.2d at 198. Likewise, the assessment of witness credibility, the determination of the weight to be accorded the witness testimony, and the inferences to be drawn from the evidence are matters resting solely in the province of the Police Board. Merrifield, 294 Ill. App. 3d at 528, 691 N.E.2d at 198. Our sole responsibility is to determine if an opposite conclusion is clearly apparent from the record or whether the Police Board's findings are unreasonable, arbitrary, and not based upon the evidence. Merrifield, 294 Ill. App. 3d at 528, 691 N.E.2d at 198. If the record contains any evidence to support the Police Board's findings, its decision will be sustained on appeal. Merrifield, 294 Ill. App. 3d at 528, 691 N.E.2d at 198.

Petitioner argues that none of his responses at issue constitute a "false statement" as contemplated by chapter 2-74-

090 of the Municipal Code.[2] With respect to question number 49, petitioner concedes "[i]t is undisputed [he] did not provide complete information" in disclosing that he had previously applied to only the Elmwood Park police department. Petitioner maintains, however, that his failure to reveal his prior applications to the City and the Village of Morton Grove cannot be considered "false statements" since those nondisclosures were due to an inadvertent error on his part.

Neither chapter 2-74-090 nor any other provision of the Municipal Code define the phrase "false statement." A "false statement" is commonly defined as any "[s]tatement knowingly false, or made recklessly without honest belief in its truth, and with purpose to mislead or deceive," as well as "[a]n incorrect statement made or acquiesced in with knowledge of incorrectness or with reckless indifference to actual facts and with no reasonable ground to believe it correct." Black's Law Dictionary 602 (6th ed. 1990). Such statements are characterized by an attempt to deceive and do not include statements that were simply

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[2] In its brief, the Police Board maintains that its decision was actually based on chapter 2-74-095 of the Municipal Code. Chapter 2-74-095, entitled "Employment applications - Unlawful practices," states, in relevant part, that "[n]o person shall knowingly make any false statement or material omission on any application for employment with the city." Chicago Municipal Code, ch. 2-74-090 (1990). While this provision seemingly applies to the facts of the case at hand, the superintendent's charges were expressly based on chapter 2-74-090, not chapter 2-74-095. More importantly, the Police Board's written finding of a Rule 1 violation was specifically predicated on chapter 2-74-090 and the board never mentions chapter 2-74-095 in its decision.

made erroneously. See Black's Law Dictionary 602 (6th ed. 1990); In re Kyriazes, 38 B.R. 353, 355 (Bankr. N.D. Ill. 1983).

Petitioner, by listing only the Elmwood Park police department when he in fact had knowingly applied to two other police agencies, clearly provided inaccurate information regarding the number of police departments to which he previously applied for employment. Whether that information was knowingly provided with an intention to deceive the Department, so as to constitute a false statement for purposes of chapter 2-74-090, was a determination left for the members of the Police Board. Upon considering the evidence presented to it, the board rejected petitioner's proffered excuse of mistake and found that petitioner's inaccurate response was deliberately made.

Contrary to petitioner's assertion, the Police Board did not have to accept his asserted reason as to why his applications to the City and Morton Grove police departments were not specified. The Police Board, which was in the best position to judge the credibility of the evidence and specifically petitioner's testimony, was entitled to accord as much weight to petitioner's explanation as it saw fit and we will respect that determination on appeal. In this regard, we note petitioner did in fact reveal his prior application to the Morton Grove police department in the 1991 Questionnaire. Further, the record shows that while petitioner had not been notified of his disqualification from the 1991 application process when he submitted his application for

employment in 1993, petitioner no doubt wished to gain employment through the 1993 process. The Police Board could have reasonably concluded that petitioner, to avoid the consequences of having the proceedings on his 1993 application either suspended or dismissed, did not believe it prudent to disclose his 1991 application and, thus, knowingly omitted that fact in his response.

Petitioner similarly argues his response to question number 52 indicating that he never possessed marijuana contrary to law did not constitute a false statement. Yet, petitioner admitted at the board's hearings that he had used marijuana in high school, and explicitly conceded that this fact should have been contained in his response. We find petitioner's assertion that his use of marijuana did not encompass possession contrary to the law completely incredulous. Again, the Police Board, as the sole judge of the petitioner's credibility, was free to reject petitioner's asserted lack of memory regarding his prior marijuana use, particularly where the record shows that petitioner similarly denied using marijuana in response to questions posed by investigator Pisano. Based on the evidence before it, and on the reasonable probability that a candidate's prior illicit drug use would not be looked upon favorably by the Department, the Police Board was justified in concluding that petitioner intentionally provided untrue information.

We likewise reject petitioner's claim that the Police Board

had no factual basis to conclude his answer to question number 57 represented a false statement. Petitioner expressly responded to the questioning of the Department's attorney that he had been previously interviewed by Elk Grove police officers in connection with a battery offense and that he had disclosed this interview to the Department's investigator during the 1991 background check. The fact petitioner later attempted to explain when questioned by his own lawyer why he did not believe his contact with the officers constituted an interview does not negate his acknowledgments of the characterizations posed by the Department's lawyer. The Police Board was not required to accept petitioner's explanations concerning his answer, especially where prior criminal behavior, like illegal drug use, would not be highly favored by the Department. We specifically note the implausibility of petitioner's explanation that he did not reveal this information because his arrest stemming from the incident had been expunged. Question number 59 did not ask if petitioner had ever been arrested for a crime but, instead, clearly inquired whether petitioner had ever been "interviewed" by the police in a criminal matter. Regardless, even if we were to agree with petitioner that his response in this regard was truthful, our previous discussion in relation to petitioner's other disclosures is sufficient to uphold the Police Board's decision finding violations on petitioner's part.

For the foregoing reasons, we conclude the findings of the Police Board are supported by the manifest weight of the evidence and affirm its decision to dismiss petitioner as an officer with the Department.

Affirmed.

CERDA, J., with WOLFSON, and BURKE, JJ., concurring.

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

| | | |
|---|---|---|
| IN THE MATTER OF CHARGES FILED AGAINST POLICE OFFICER JOSEPH F. MISURACA, STAR NO. 19968 | ) ) ) | No. 98-2337 |

**FINDINGS AND DECISION**

On April 23, 1998, the Superintendent of Police filed charges with the Police Board of the City of Chicago against Police Officer Joseph F. Misuraca, Star No. 19968 (hereinafter sometimes referred to as "Respondent"), for violating the following rules:

Rule 1: Violation of any law or ordinance.

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

The Police Board of the City of Chicago investigated these charges and caused a hearing on these charges against Police Officer Joseph F. Misuraca to be had before Thomas E. Johnson, Hearing Officer of the Police Board of the City of Chicago, on August 25, 1998 and September 29, 1998.

Following the hearing, the members of the Police Board read and reviewed the certified transcription of the proceedings of the hearing. Thomas E. Johnson, Hearing Officer, made a written report and conferred with the Police Board before it rendered a decision.

The Police Board of the City of Chicago, as a result of its investigation of the charges, finds and determines that:

1. The Respondent was at all times employed as a police officer by the Department of Police of the City of Chicago.

2. The charges were filed in writing and a Notice, stating the time, date and place, when and where a hearing of the charges

was to be held, together with a copy of the original charges, was served upon the Respondent more than five (5) days prior to the hearing on the charges.

3. The hearing was conducted before Thomas E. Johnson, Hearing Officer of the Police Board of the City of Chicago, on August 25, 1998 and September 29, 1998.

4. Throughout the hearing, Police Officer Joseph F. Misuraca was present and was represented by counsel.

5. The Respondent Police Officer Joseph F. Misuraca, Star No. 19968, charged herein, contrary to the Rules and Regulations, is guilty of violating to wit:

Rule 1: **Violation of any law or ordinance,** in that on or about May 20, 1995, during the application process stemming from the 1993 police examination, Officer Misuraca made false statements in the Personal History Questionnaire-Background Investigation form, thereby violating City of Chicago Municipal Code, Chapter 2 - 74-090.

Rule 2: **Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,** in that on or about May 20, 1995, during the application process stemming from the 1993 police examination, Officer Misuraca impeded the Department's efforts to achieve its policy and goals and brought discredit on the Department when he

made false statements in the Personal History Questionnaire-Background Investigation form.

By reason of the findings of fact, the Respondent is guilty of violating Rules 1 and 2. Cause exists for the separation of the Respondent Police Officer Joseph F. Misuraca, Star No. 19968, from the Department of Police and from the services of the City of Chicago.

Respectfully submitted,

THOMAS E. JOHNSON
Hearing Officer

## D E C I S I O N

The members of the Police Board, having read and reviewed the certified copy of the transcription of the hearing, having received the oral report of the Hearing Officer, Thomas A. Johnson, and having conferred with the hearing Officer on the credibility of the witnesses and the evidence, hereby adopt all findings herein and, in reaching its decision as to the penalty imposed, the Board has taken into account not only the facts of this case but also the officer's complimentary and disciplinary history, which is attached hereto as Exhibit A;

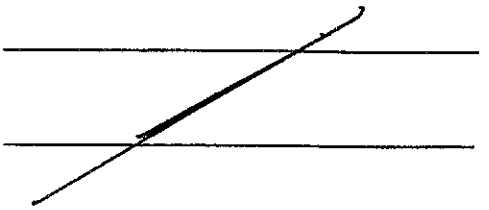
**IT IS HEREBY ORDERED** that the respondent, Police Officer Joseph F. Misuraca, Star # 19968, as a result of having been found guilty of the charges in Police Board Case 98-2337, is hereby separated and discharged from his position as a Police Officer, and from the services of the City of Chicago.

**DATED ~~AT~~ CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS** 2nd **DAY OF** December, **1998.**

Executive Director of the Police Board

**D I S S E N T**

The following members of the Police Board hereby dissent from the decision of the majority of the Board.



RECEIVED A COPY OF THIS COMMUNICATION

THIS_____ DAY OF _____, 1998.

_____
SUPERINTENDENT OF POLICE

City of Chicago
Richard M. Daley, Mayor

**Office of the Police Board**

Demetrius E. Carney
President

Scott J. Davis
Vice President

Phyllis L. Apelbaum
Victor P. Armendariz
Patricia C. Bobb
Willaim C. Kirkling, D.D.S.
Rev. Johnny L. Miller
Art Smith
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Under Illinois law, you have the right to appeal the Police Board's decision. In accordance with 735 Illinois Compiled Statutes 5/3-102, your appeal must be filed within 35 days of the date the Board personally serves you with a copy of the decision, or within 35 days of the postmark of the date the Board mails a copy of the decision to you. Failure to appeal the Board's decision within this time limit can result in dismissal of your complaint.