

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 20

MILWAUKEE COUNTY

KEVIN DUDLEY

Petitioner,

v.

BOARD OF FIRE AND POLICE
COMMISSIONERS OF THE CITY
OF MILWAUKEE

Respondent.

FILED
OCT 13 2008
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Case No.: 07-CV-7114

DECISION AND FINAL ORDER

Introduction

The Petitioner, Kevin Dudley, seeks judicial review of a decision by the Board of Fire and Police Commissioners of the City of Milwaukee ("Board"). In a written decision, the Board upheld two counts of discharge against the petitioner, terminating him from his position as a police officer. Petitioner seeks review of the Board's decision under Wis. Stat. §62.50(20). This Court has reviewed the record along with all the submissions from the parties and for the reasons stated herein, the Court affirms the decision of the Board.

Background

On December 7, 2007, Police Officer Kevin A. Dudley was served with Personnel Order No. 2006-309, dismissing him from the Milwaukee Police Department. Mr. Dudley was discharged from the Milwaukee Police Department for failing to render services in an efficient manner in violation of MPD Rule 4, Section 2/015.00 and for failing to be appropriately civil and courteous in violation of MPD Rule 4, Section 2/060.00. The rule violations stem from a September 13, 2006 interaction Mr. Dudley had with a citizen. Mr. Dudley appealed the discharge to the Board which held a hearing on May 16, 2007. At the onset of the hearing Mr.

Dudley admitted both violations and therefore the only issue for the Board to determine was whether the discharge was proper, as petitioner argued the penalty was inappropriate, as it did not satisfy the just cause standards required by Wis. Stat. §62.50(17)(b) 1,6,7.

In a written decision issued on June 4, 2007 the Board unanimously upheld the discharge of Mr. Dudley. The board cited that the service record of Mr. Dudley contained multiple instances in the ten year period prior to the September 13, 2006 incident which required corrective and/or disciplinary action, including counseling, reprimands and a suspension.¹ The Board placed significant emphasis on the fact that less than six months prior to the September 13, 2006 incident, Mr. Dudley had been specifically warned in writing by the Chief of Police that he could lose his job if there were any further instances of misconduct involving rude, uncivil or discourteous behavior toward a citizen or a co-worker.

Standard of Review

Under statutory review, in accordance with Wisconsin Statute §62.50(20), the Court is limited to the question of “under the evidence is there just cause, as described in sub. (17)(b), to sustain the charges against the accused?”

Wisconsin Statute §62.50 states:

(17) Decision, Standard to Apply...

(b) No police officer may be suspended, reduced in rank, suspended and reduced in rank or discharged by the board under sub. (11), (13) or (19) or under par. (a) based on charges filed by the board, members of the board, an aggrieved person or the chief under sub. (11), (13) or (19) or under par. (a), unless the board determines whether there is just cause, as described in this paragraph, to sustain the charges. In making this determination, the board shall apply the following standards, to the extent applicable:

¹ The Board’s decision states that there have been twelve previous incidents. Petitioner argues in his brief that there have only been seven previous rule violations. Whether there have been seven or twelve previous rule violations however, is irrelevant to this Court’s review.

1. Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.
- ...
6. Whether the chief is applying the rule or order fairly and without discrimination against the subordinate.
7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the chief's department.

A circuit court determines whether the evidence supports an order of the Board. *Gentilli v. Board of Fire & Police Comm'rs of the City of Madison*, 2004 WI 60, ¶ 35, 272 Wis.2d 1, 680 N.W.2d 335.

The Board's decision must be reasonable, based on the evidence. *Younglove v. City of Oak Creek Fire & Police Commission*, 218 Wis.2d 133, 139, 579 N.W.2d 294 (Ct. App. 1998). The test is whether taking into account all the evidence in the record, "reasonable minds could arrive at the same conclusion as the agency." *Kitten v. State Dep't of Workforce Dev.*, 252 Wis.2d 561, 644 N.W.2d 649. Where one or more inferences may be drawn from the evidence, the drawing of one such permissible inference by the Board is an act of fact finding, and the inference so derived is conclusive on the reviewing court. *Universal Foundry Co. v. DILHR*, 86 Wis.2d 582, 589, 273 N.W.2d 324 (1979). The reviewing court must affirm an administrative decision even if it is against the great weight or clear preponderance of the evidence, as long as a reasonable person could reach the same conclusion based upon the evidence in the record. *Robertson Transportation Company v. Public Service Commission*, 39, Wis.2d 653, 658-59, 159 N.W.2d 636 (1968).

The Board's factual findings must be upheld if they are supported by credible and substantial evidence in the record. *Princess House, Inc. v. DILHR*, 111 Wis.2d 46, 54, 330 N.W.2d 169 (1983). "Reviewing tribunals defer to credibility determinations made by those that hear and see the witnesses." *Younglove* at 139. This Courts role is merely to consider whether the Board's decision "is supported by the evidence [the commission] found credible. *Id.*

Analysis

As indicated above, this Court cannot assess the weight and credibility of the evidence considered by the Board. The issue on this review is whether the Board had “just cause” to discharge the petitioner from the Milwaukee Police Department. The Board provided this Court with a thorough review of petitioner’s service record. The Board indicated it believed the discharge was appropriate given petitioner’s history of rule violations, specifically that he has had multiple offenses and has previously been counseled, reprimanded and suspended without pay. Additionally the Board found that the petitioner had been specifically warned in writing that he could lose his job if there were any further instances of misconduct. Although the petitioner argues that the Board did not have “just cause” under Wis. Stats. §62.50(17)(b)1, 6, 7, to discharge him, and that no police officer had previously been discharged for this type of rule violation, the discipline imposed was within the Board’s discretion. This Court will not, and cannot, overturn the Board’s decision as its decision was supported by credible and substantial evidence and made on a correct theory of law. The Board reached a reasonable decision and acted according to law.

Conclusion and Order

THEREFORE, based on a thorough review of the record and the arguments of the parties, IT IS HEREBY ORDERED that the Decision of the Board of Fire and Police Commissioners for the City of Milwaukee is hereby affirmed.

Dated this 13th day of October, 2008, in Milwaukee, Wisconsin.

BY THE COURT:

The Honorable Dennis F. Morone
Milwaukee County Circuit Court, Branch 20
