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COMMONWEALTH OF KENTUCKY

JUDGE MELISSA LOGAN BELLOWES

JEFFERSON CIRCUIT COURT

NO. 22-CI-001802

DIVISION SEVEN (7)

MYLES COSGROVE

APPELLANT

vs.

OPINION AND ORDERLOUISVILLE METRO POLICE DEPARTMENT; and
LOUISVILLE METRO POLICE MERIT BOARD

APPELLEES

*** **

This matter stands submitted upon the appeal brought by Appellant, Myles Cosgrove (hereinafter, "Cosgrove") of the Louisville Metro Police Merit Board decision to uphold his termination. After carefully considering and thoroughly reviewing the record, parties' arguments, and applicable law, the Court will affirm the decision of the Louisville Metro Police Merit Board.

OPINION

Cosgrove was dismissed from his position as a police officer, after he was involved in the death of an unarmed person during the execution of a search warrant. Following a review of the dismissal by the Police Merit Board, the Board ruled that Cosgrove's dismissal was justified.

Former Chief Gentry explained that she relied on a number of aspects which led to Cosgrove's termination. The trajectory of the shots, the significant target identification and target isolation problems, and Cosgrove's own testimony were the ultimate factors considered. (F&O ¶ 78). The Board agreed with former Chief Gentry on the matter that

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officers must be required to meet certain standards, such as the identification and isolation of a target. Cosgrove himself testified and told the Board of his inability to see a target- stating he saw “shadowy shapes” and no weapon (TR 11/10/21), loss of hearing, and loss of recall that he was firing a weapon, or how many shots were fired. (Board’s Findings & Orders ¶ 245-248.) The Board determined that Cosgrove failed to identify and isolate the target, concluding that Cosgrove was reckless in the firing of his service weapon sixteen times without a clear target. It is well established law that the Board has the authority to weigh the evidence and testimony in making its ultimate decision. Crouch v. Jefferson County, Kentucky Police Merit Board, 773 S.W.2d 461, 463 (1988.) Cosgrove subsequently appealed the decision to this court.

Judicial review of administrative action is concerned with the question of arbitrariness. American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Commission, 379 S.W.2d 450, 456 (Ky. 1964). A tripartite test for arbitrariness is applicable in all cases of judicial review of an administrative agency’s actions, where the Court determines whether the agency exceeded its statutory powers, whether it employed proper procedures to provide adequate due process, and whether there is substantial evidence to support the agency’s decision. Id. at 456-57. The parties’ arguments in this case center around the last prong of the test, whether the Police Merit Board’s decision was supported by substantial evidence.

Substantial evidence is defined as evidence, taken alone or in light of all the evidence, which has sufficient probative value to induce conviction in the minds of reasonable people. Thompson v. Kentucky Unemployment Ins. Comm’n, 85 S.W.3d 621, 624 (Ky. App. 2002). So long as an administrative agency’s decision is supported by any

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substantial evidence, it is binding on the reviewing court, even if there is conflicting evidence in the record. Id.; see also Parrish v. Kentucky Bd. of Medical Licensure, 145 S.W.3d 401, 408 (Ky. App. 2004).

Under administrative law, “there is deference to the trier of facts and agency determinations are to be upheld if the decision is supported by substantial, reliable, and probative evidence found within the record as a whole.” Hocker v. Fisher, 590 S.W.2d 342, 344 (Ky. App. 1979). The presumption is that the administrative board acted reasonably and properly. Central Kentucky Development Co. v. Knippenberg, 416 S.W.2d 745, 746 (Ky. 1967). The administrative board, as trier of the facts, is afforded great latitude in its evaluation of the evidence heard and the credibility of witnesses appearing before it. Kentucky State Racing Commission v. Fuller, 481 S.W.2d 298, 308 (Ky. 1972). A Court may not substitute its opinion as to the credibility of the witnesses, the weight given the evidence, or the inferences to be drawn from the evidence. Thompson, 85 S.W.3d at 624. A Court's function in administrative matters is one of review, not reinterpretation. Id.

Cosgrove’s main argument was that the Louisville Metro Police Department (hereinafter “LMPD”) did not have substantial evidence to reach their decision. More specifically, that LMPD lacked evidence that Cosgrove had gone against his training in shooting without proper “target identification” and “target isolation.” Cosgrove also argued that LMPD was politically motivated and acted with bias against him, due to comments made by Mayor Fischer and the appointment of a new official to oversee the case. LMPD countered with the argument that they did indeed have substantial evidence to base their decision on, and that there was no evidence of improper meddling with the process.

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Most of Cosgrove's impressive, 38 page brief dealt with evidentiary issues under the guise of examining the standards used to judge LMPD's decision. The standard for these appeals is whether the administrative entity had substantial evidence to support their decision. Given the requirement that courts defer to the evidentiary findings of administrative bodies, as long as LMPD had some evidence to support their findings, this Court cannot reverse their decision. While Cosgrove claimed that the board could not support their finding that he did not have proper target identification and isolation when he fired his weapon, LMPD cited numerous examples from Cosgrove's and Lt. Lacefield's depositions, as well as the physical evidence that qualify as substantial evidence to justify their approval of Cosgrove's dismissal.

Cosgrove's stronger argument was an allegation of political motivation in his firing. However, while a theory that he was fired for political reasons might be plausible based on the facts presented, there is no direct evidence that Mayor Fischer or anyone else improperly influenced the proceedings to ensure Cosgrove was fired. Put simply, while Cosgrove has provided certain evidence that his firing could have been politically motivated, he has not provided sufficient evidence to prove that it was, especially in an appellate setting, such as this.

Ultimately, Cosgrove's argument, that LMPD used standards that were contrary to due process, is without merit. The evidence shows that the Merit Board had sufficient reason to differentiate between Cosgrove and Sgt. Mattingly, due to the latter's testimony and being injured before returning fire. Moreover, there is sufficient evidence to show that target isolation and target identification were in fact part of the training for LMPD officers, even though Cosgrove heavily relies on the fact that the terms "target isolation" and

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“target identification” were not specifically spelled out in the LMDC policies. As such, it would not be unreasonable to expect Cosgrove to know this was a part of the standards he was meant to follow in LMPD’s standard operating procedures.

Additionally, the principles of target identification and isolation are not simply part of police training, but part the law of self-defense itself. Even normal citizens must exercise the “highest degree of care” in ascertaining whether they are shooting at a legitimate target. Crabtree v. Dawson, 119 Ky. 148, 83 S.W. 557 (1904). Cosgrove seems to be arguing that he should be held to a less stringent standard than an ordinary Kentucky resident, despite having considerably more legal privileges. A normal citizen who violated these principles could be subject to criminal liability, let alone the risk of being terminated from their employment.

Given the evidence presented in the record, the Court must find that the Police Merit Board had substantial evidence upon which to base their decision, were thus not arbitrary in their decision, and as such must be affirmed.

ORDER

Wherefore, IT IS HEREBY ORDERED that the judgment of the Louisville Metro Police Merit Board is affirmed.



MELISSA LOGAN BELLOWS, JUDGE
Jefferson Circuit Court

Date

cc: Mr. L. Scott Miller
Mr. Derrick T. Wright

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