

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Stephen Ames,
Appellant-Petitioner,

v.

Town of Kingsford Heights,
Indiana,
Appellee-Respondent.

August 4, 2022

Court of Appeals Case No.
21A-MI-2400

Appeal from the
LaPorte Circuit Court

The Honorable
Michael S. Bergerson, Special
Judge

Trial Court Cause No.
46D01-1911-MI-2658

Molter, Judge.

- [1] Stephen Ames was a deputy town marshal in the Town of Kingsford Heights, Indiana (“the Town”) until September 2019 when he received a notice of suspension letter due to disciplinary issues and conduct violations. He was

terminated as deputy town marshal after a disciplinary hearing held in front of the Town Council of Kingsford Heights (“the Town Council”). Ames filed a complaint with the LaPorte Circuit Court, appealing the Town Council’s decision to terminate him, and after a hearing, the trial court issued findings of fact and conclusions of law, finding in favor of the Town but directing the Town Council to file findings of fact that complied with Indiana Code section 36-8-3-4.

- [2] Ames appeals the trial court’s judgment, arguing that the trial court erred when it affirmed the Town Council’s decision to terminate Ames as deputy town marshal. Specifically, he asserts that (1) the Town Council did not have jurisdiction to act because it was not a safety board, which is the entity authorized to act under Indiana Code section 36-8-3-4; (2) his due process rights were violated because the Town failed to comply with the notice requirements under Indiana Code section 35-8-3-4(c); (3) the Town Council’s decision was not supported by substantial evidence; (4) the Town failed to file the record from the disciplinary proceedings with the trial court in accordance with Indiana Code section 36-8-3-4(h) and the trial court erred when it allowed the Town to supplement the record with two exhibits; and (5) it was an abuse of discretion for the trial court to remand to the Town Council so that it could issue findings of fact in compliance with Indiana Code section 36-8-3-4. Because we find no error, we affirm.

Facts and Procedural History

- [3] Ames was a deputy town marshal for the Town. On September 11, 2019, the Town issued a notice of suspension letter (“Suspension Letter”) to Ames, and Ames received the letter on or around the same date. The Suspension Letter identified six separate disciplinary issues and violations of conduct against Ames that occurred in the previous year. The Suspension Letter also set out the date and time of the disciplinary hearing to address these allegations and charges, informed Ames of his right to counsel, and advised Ames that, as a result of these allegations, he could face further disciplinary action, including termination of his employment as a deputy marshal for the Town. Ames was personally served with the Suspension Letter.
- [4] The disciplinary hearing was held on October 15, 2019. Ames failed to appear at the hearing, but his attorney, Michael Deppe, was present for the hearing. Attorney Deppe agreed to proceed with the hearing without Ames being present and stated, “If you want to try him in absentia, that’s fine.” Appellant’s App. Vol. 2 at 56.
- [5] At the disciplinary hearing, Rich Oberle, who had been the town marshal when Ames was deputy town marshal, testified about disciplinary issues and conduct violations that were the subject of the Suspension Letter. Oberle testified Ames failed to appropriately complete a burglary investigation, despite advising Oberle the investigation was complete. The burglary report lacked factual detail, was missing the elements to support the charge Ames was requesting, and had extremely poor grammar. Oberle also testified regarding an

investigation of a domestic disturbance that Ames was involved with where Ames entered into the Town's record management system that a report was submitted when it had not been submitted. Additionally, although Ames indicated that he had been injured in responding to the domestic disturbance, he left out the details of his injury in the report he later filed. He later corrected the report to include his injury, although it lacked information on the propensity of violence of the individuals involved, which Oberle knew to be true from his experience. Ames further failed in another case to disclose exculpatory material to the State.

[6] Although Ames had a duty to observe his surroundings, Oberle testified that Ames had failed to observe an elderly lady who had fallen over when the event occurred right in front of Ames's squad car in plain view. Ames failed to complete reports in a timely manner and failed to complete reports in violation of the Town's standard operating procedure multiple times in 2019. Ames also failed to perform his job functions because he was responsible for ordinance violations in a portion of the Town and failed to issue violations, which caused Oberle to have to address these violations himself. Ames violated the Town's standard operating procedures by consuming tobacco in his town vehicle even after being previously reprimanded for smoking in his squad car. Ames's actions violated the standard operating procedures of the department and affected his ability to perform his service. The Town is a small community, and Ames caused distrust in the police department by his actions. As a result of

Ames's disciplinary issues and conduct violations, Oberle recommended Ames be terminated as a deputy marshal.

- [7] David Combs, who was Town Marshal at the time of the hearing, testified he witnessed Ames act insubordinately toward Oberle. Ames always made negative statements and criticisms of Oberle to Combs when Oberle was not present. Combs testified that Ames's behavior was negative for a small department because "it's almost crippling" when half of the officers in the department are not "stepping in line," which ultimately could affect the safety of the citizens of the Town. Appellant's App. Vol. 2 at 134.
- [8] Although Ames was not present at the disciplinary hearing, his attorney made many evidentiary objections that were sustained and thoroughly cross-examined the witnesses against Ames. Based on the evidence presented at the hearing, the Town's attorney requested Ames be terminated from his employment as a deputy town marshal for the Town. At the conclusion of the disciplinary hearing, the Town Council issued findings of fact and terminated Ames as a deputy town marshal.
- [9] On November 12, 2019, Ames filed his complaint with the trial court, in which he sought to appeal the disciplinary decision of the Town Council. In his complaint, Ames raised several alleged errors, including that the Suspension Letter failed to clearly set out the allegations against him in accordance with Indiana Code section 36-8-3-4(c)(3), there was not substantial evidence to support the Town Council's decision to terminate him, the Town Council failed

to issue specific findings of fact as required under Indiana Code section 36-8-3-4, and that the Town Council lacked jurisdiction to take any disciplinary action against him.

[10] The trial court directed Ames to serve the Town with the complaint and the request for transcript. It is unclear from the record whether Ames ever perfected service on the Town. On March 19, 2021, the trial court issued a scheduling order setting various deadlines for the case, including a May 3, 2021 deadline for the Town to file the transcript and record of the disciplinary hearing. The Town issued subsequent findings of fact on April 19, 2021. On April 22, 2021, the Town filed the responsive documents with the trial court.

[11] On August 8, 2021, the trial court held a hearing on Ames's complaint. The trial court took the matter under advisement and ordered the parties to submit proposed findings of fact and conclusions of law. On October 13, 2021, the trial court issued findings of fact and conclusions of law, finding for the Town but directing the Town Council to reconvene and issue findings of fact that complied with Indiana Code section 36-8-3-4. The trial court found, "[t]he 'Findings of Fact' dated April 19, 2021, were merely signed by the President of the Town Council without any supporting documentation that the Town Council had reconvened and had adopted such 'Findings of Fact.'" Appellant's App. Vol. 4 at 205. The trial court found the April 19, 2021 "Findings of Fact" did not comply with Indiana Code section 36-8-3-4, but the failure to issue specific findings does not invalidate a board's decision and that boards have an

opportunity to correct deficient findings. *Id.* (citing *State ex. Rel. Miecznikowski v. Hammond*, 448 N.E.2d 1239, 1244 (Ind. Ct. App. 1983)).

- [12] On October 18, 2021, the Town Council issued findings in compliance with Indiana Code section 36-8-3-4. On October 21, 2021, the Town filed its findings of fact with the trial court. Ames now appeals.

Discussion and Decision

- [13] Generally, the discipline of police officers is within the province of the government's executive branch, not its judicial branch. *Gary Police Civ. Serv. Comm'n v. City of Gary*, 124 N.E.3d 1266, 1270 (Ind. Ct. App. 2019). Therefore, when reviewing a police officer disciplinary action, a court is limited to determining "whether the board . . . possessed jurisdiction over the subject matter and whether the board's decision was made pursuant to proper procedures, was based upon substantial evidence, was arbitrary or capricious, and was in violation of any constitutional, statutory, or legal principle." *Id.* (citing *Jandura v. Town of Schererville*, 937 N.E.2d 814, 819 (Ind. Ct. App. 2010), *trans. denied*). An arbitrary and capricious decision is one which is willful and unreasonable, made without any consideration of the facts and in total disregard of the circumstances, and lacks any basis that might lead a reasonable person to the same decision. *Peru City Police Dep't v. Martin*, 994 N.E.2d 1201, 1204 (Ind. Ct. App. 2013), *trans. denied*. A party challenging an administrative decision bears the burden of proving it arbitrary and capricious. *Id.*

I. Jurisdiction

[14] Ames first argues that the trial court erred in affirming the Town Council’s decision because the Town Council lacked jurisdiction to conduct the disciplinary hearing. He contends that Indiana Code section 36-8-3-4(a) empowers only “the safety board of a town”—not a town council—to discipline a deputy town marshal. But that argument fails because the Town Council was properly operating as the safety board.

[15] Indiana Code section 36-8-3-4 provides that “the appropriate appointing authority of a town or township *is considered* the safety board of a town or township,” Ind. Code § 36-8-3-4(a) (emphasis added), and that is the entity empowered to discipline deputy town marshals through “demotion, dismissal, reprimand, forfeiture, or suspension,” Ind. Code § 36-8-3-4(b). There is no dispute here that the Town Council is the appropriate appointing authority. Indiana Code section 36-5-7-3 provides that town marshals serve “at the pleasure of the town legislative body.” Ind. Code § 36-5-7-3. Indiana Code section 36-5-7-6(c) governs the dismissal of deputy town marshals, and it provides that “a deputy town marshal who has been employed by the town for more than six (6) months . . . may be dismissed only if the procedure prescribed by [Indiana Code section 36-5-7-3] is followed.” That statute in turn provides that “when terminating . . . a [deputy] marshal who has been employed by the town for more than six (6) months . . . the *legislative body* must conduct the disciplinary removal and appeals procedure prescribed by IC 36-8 for city fire and police departments.” Ind. Code § 36-5-7-3 (emphasis added). “[T]he town

council . . . is the town legislative body.” Ind. Code § 36-5-2-2. Thus, the Town Council is the appropriate appointing authority, and it properly operated as the safety board.

II. Statutory Compliance of Suspension Letter

[16] Ames next argues that the Suspension Letter did not comply with Indiana Code section 36-8-3-4(c), and he was, therefore, denied his right to due process. He asserts that he was not given the requisite notice contained in subsection (c). That subsection states in pertinent part that, if a disciplined member of the police department requests a hearing, “[w]ritten notice shall be given either by service upon the member in person or by a copy left at the member’s last and usual place of residence at least fourteen (14) days before the date set for the hearing.” Ind. Code § 36-8-3-4(c). The written notice must state:

- (1) the time and place of the hearing;
- (2) the charges against the member;
- (3) the specific conduct that comprises the charges;
- (4) that the member is entitled to be represented by counsel;
- (5) that the member is entitled to call and cross-examine witnesses;
- (6) that the member is entitled to require the production of evidence; and

(7) that the member is entitled to have subpoenas issued, served, and executed in the county where the unit is located.

Id.

[17] Although on appeal Ames claims the Suspension Letter lacked the requisite information for (2), (3), (5), (6), and (7), and deprived him of his right to a meaningful opportunity to be heard, he did not raise any of these alleged deficiencies to the Town Council. In its order affirming the Town Council, the trial court found that Ames had waived his argument that the Suspension Letter lacked the notice requirements under Indiana Code section 36-8-3-4(c) because of this failure, and we agree. Issues not raised before an administrative body are generally waived for judicial review. *See Ind. Horse Racing Comm'n v. Martin*, 990 N.E.2d 498, 506 n.3 (Ind. Ct. App. 2013) (“Issues that are not raised before the administrative agency are generally waived for judicial review.”); *see also Adkins v. City of Tell City*, 625 N.E.2d 1298, 1302–03 (Ind. Ct. App. 1993) (treating safety boards as administrative entities created by statutes). Moreover, by participating through counsel at the hearing before the Town Council, Ames waived these notice issues. *See Sullivan v. City of Evansville*, 728 N.E.2d 182, 191–92 (Ind. Ct. App. 2000) (“Having reviewed Dannheiser’s formal written complaint and having appeared before the Commission at a date and time agreed upon by counsel for both parties, Sullivan has waived consideration of

the notice issue with respect to the Commission’s consideration of Dannheiser’s complaint.”).¹

III. Decision Supported by Sufficient Evidence

[18] Ames further argues that the Town Council abused its discretion and acted arbitrarily and capriciously in its decision to terminate him because the decision was against the weight of the evidence. Specifically, Ames asserts that the Town Council’s decision was based solely on Oberle’s testimony, which Ames characterizes as opinion. We disagree.

[19] During the disciplinary hearing in front of the Town Council, both Oberle, who was the town marshal when all of Ames’s violations occurred, and Combs, who was a fellow deputy town marshal at the pertinent times, testified about the disciplinary issues and conduct violations that Ames committed that were the subject of the Suspension Letter. Oberle testified Ames failed to appropriately complete a burglary investigation, despite advising Oberle otherwise. The burglary report lacked factual detail, was missing the elements to support the charge Ames was requesting, and had extremely poor grammar. Oberle also testified that Ames investigated a domestic disturbance where he made an entry in the record management system that he had submitted a report when he had

¹ Although Ames argued in his complaint to the trial court and in his appellate brief that the Suspension Letter was lacking in the specificity of the conduct that comprised the charges against him such that he was not advised of the allegations against him, we note that the Suspension Letter contained six enumerated allegations of misconduct alleged against Ames and contained sufficient specificity to put him on notice of the allegations against him.

not. During the same investigation, Ames indicated that he had been injured but left out the details of his injury in the report he later filed. When he later corrected the report to include his injury, it lacked information on the propensity of violence of the individuals involved. Ames further failed to disclose exculpatory material to the State in another case.

[20] Ames also failed to observe an elderly lady who had fallen over right in front of Ames's squad car in plain view. Ames failed to complete reports in a timely manner and failed to complete reports in violation of the Town's standard operating procedure multiple times in 2019. Ames also failed to perform his job functions by failing to issue ordinance violations in his assigned portion of the Town, which caused Oberle to have to address these violations himself. Ames violated the Town's standard operating procedures by smoking in his town vehicle even after being previously reprimanded for doing so. Ames's actions violated the standard operating procedures of the department and affected his ability to perform his service and caused distrust in the police department.

[21] Combs testified he witnessed Ames act insubordinately toward Oberle. Ames also repeatedly made negative statements and criticisms of Oberle to Combs when Oberle was not present. Combs testified that Ames's behavior was negative for a small police department because "it's almost crippling" when half of the officers in the department are not "stepping in line," which ultimately could affect the safety of the citizens of the Town. Appellant's App. Vol. 2 at 134. This evidence presented at the disciplinary hearing was sufficient to support the Town Council's decision to terminate Ames.

[22] In arguing that the Town Council’s decision was not supported by substantial evidence, Ames refers to Oberle’s testimony as opinion and asserts it should not have been given weight. However, these contentions are merely requests for this court to reweigh the evidence and judge the credibility of the witnesses, which we cannot do. In reviewing a police officer disciplinary action, a court may not judge witness credibility or weigh conflicting evidence in determining whether there was substantial evidence to support the action. *Winters v. City of Evansville*, 29 N.E.3d 773, 778–79 (Ind. Ct. App. 2015) (citing *Jandura*, 937 N.E.2d at 819), *trans. denied*. We conclude that the Town Council’s decision was based on substantial evidence.

IV. Filing of Record in Compliance with Statute

[23] Ames also argues that the trial court erred when it allowed the Town to file the record from the disciplinary proceedings outside the timeframe required by Indiana Code section 36-8-3-4(h). He contends that because the Town failed to file the record from the disciplinary proceedings within the statutory timeframe, the trial court erred in affirming the Town Council’s decision and was required to rule in favor of Ames.

[24] Indiana Code section 36-8-3-4(h) states in relevant part: “Within ten (10) days after the service of summons² the safety board shall file in court a complete

² It is unclear from the record when, or if, the Town was ever served by Ames. Ames asserts that the Town was served on November 18, 2019, but the evidence he cites to for this contention indicates that the certified mailing was sent to the Kingsford Heights Police Department and not the Town Council. *See* Appellant’s App. Vol. 4 at 196–98.

transcript of all papers, entries, and other parts of the record relating to the particular case.” Although the statute does not state what action, if any, the trial court should take if the record is not timely filed, Ames insists that the trial court was required to rule in his favor because the Town did not timely file the record. But our court has previously held that the ten-day timeframe in Indiana Code section 36-8-3-4(h) does not require strict compliance as long as the transcript of the proceedings “is in fact filed in time to be of service to the parties in the presentation and trial of the case de novo in the court to which it is appealed.” *Hamilton v. City of Indianapolis*, 64 N.E.2d 303, 346 (Ind. Ct. App. 1946). This court reasoned that when an aggrieved party appeals the disciplinary decision, “the appellant [becomes] the moving party or aggressor, and it does not seem essential to the protection of his rights that the provision of the statute in reference to the time within which a transcript should be filed by the board need be strictly complied with.” *Id.*

It is our opinion that the provision of the statute here involved requiring the board to file a transcript of its proceedings in the court to which the case has been appealed within [ten] days after service of summons is directory merely and, under the circumstances disclosed by the record in this case, no error can be predicated upon the court’s refusal to enter judgment for the appellant because of a failure to comply strictly therewith.

Id. at 347.

[25] The Town submitted the transcript and the record from the disciplinary proceedings on March 22, 2021, which was in accordance with the case

management order that the trial court had issued and before the date of the trial court's review hearing, which was on August 8, 2021. Therefore, although not filed within ten days of service on the Town, the transcript and the record were filed "in time to be of service to the parties in the presentation and trial of the case de novo in the court to which it [was] appealed." *Id.* at 346.

[26] Ames further contends that the trial court erred when it allowed the Town to supplement the record with two exhibits and failed to strike those exhibits. On August 2, 2021, the Town filed two more exhibits to the record from the disciplinary proceedings—the Suspension Letter and the original decision of the Town Council issued on October 15, 2019, terminating Ames's employment as deputy town marshal. Although these two documents were not filed in March 2021 when the rest of the record was filed, they were both still filed before the hearing and were in time to be of service to Ames in the presentation of his evidence during the hearing in front of the trial court. *See Hamilton*, 64 N.E.2d at 346. Ames has not demonstrated that he suffered any prejudice from this timing. We therefore conclude the trial court did not err when it allowed the Town to file the record from the disciplinary proceedings outside the time frame in Indiana Code section 36-8-3-4(h) and when it denied Ames's motion to strike.

V. Remand Order

[27] On October 13, 2021, the trial court issued findings of fact and conclusions of law, finding in favor of the Town but directing the Town Council to reconvene and issue findings of fact that comply with Indiana Code section 36-8-3-4. The

trial court found that “[t]he ‘Findings of Fact’ dated April 19, 2021, were merely signed by the President of the Town Council without any supporting documentation that the Town Council had reconvened and had adopted such ‘Findings of Fact’” and the findings did not comply with Indiana Code section 36-8-3-4. Appellant’s App. Vol. 4 at 205. That statute requires that “[t]he reasons for the suspension, demotion, or dismissal of a member of the police or fire department shall be entered as specific findings of fact upon the records of the safety board.” Ind. Code § 36-8-3-4(e). The trial court then ordered that the case should be remanded to the Town Council to require the Town Council to reconvene and issue findings of fact that complied with the statute. *Id.* at 210.

[28] Ames acknowledges that the caselaw allows “for a remand to an administrative body for findings of fact,” but he contends that remand was error here because “the instant matter was ripe with errors by the Town Council,” and those errors, “considered in their totality, should have caused a reversal of the Town Council, not another opportunity to remedy one of its mishaps.” Appellant’s Br. at 25. This argument is flawed in the premise—as explained above, the Town Council’s decision was proper. As for the sufficiency of the findings, it is undisputed that the failure to issue specific findings does not invalidate a board’s decision, and boards have an opportunity to correct deficient findings. *State ex. rel. Miecznikowski v. Hammond*, 448 N.E.2d 1239, 1244 (Ind. Ct. App. 1983); *see also, Yunker v. Porter Cnty. Sheriff’s Merit Bd.*, 178 Ind. App. 364, 372, 382 N.E.2d 977, 983 (Ind. Ct. App. 1978) (“[T]he only finding made by the Board was a citation to the rules and regulations which Yunker was found to

have violated. This was insufficient as a finding of fact. However, this failure does not necessarily invalidate the Merit Board's decision. It is a technical defect which the Board should have an opportunity to correct.”).

[29] Accordingly, the trial court did not err when it directed the Town Council to reconvene and issue findings of fact that comply with Indiana Code section 36-8-3-4.

[30] Affirmed.

Mathias, J., and Brown, J., concur.