

No. 1-19-0928

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| ANTHONY FEENEY, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellant and Cross-Appellee, |) | Cook County. |
| |) | |
| v. |) | |
| |) | |
| THE CIVIL SERVICE BOARD OF THE |) | |
| METROPOLITAN WATER RECLAMATION DISTRICT) |) | |
| OF GREATER CHICAGO; JOHN KENDALL, |) | No. 17 CH 13307 |
| MAZIE HARRIS, AND DONALD STORINO, in Their |) | |
| Capacities as Members of the Civil Service Board; THE |) | |
| METROPOLITAN WATER RECLAMATION |) | |
| DISTRICT OF GREATER CHICAGO, a Municipal |) | |
| Corporation; and DAVID ST. PIERRE, in His Capacity |) | |
| as Executive Director, |) | |
| |) | |
| Defendants |) | |
| |) | Honorable |
| (The Metropolitan Water Reclamation District of |) | David B. Atkins, |
| Greater Chicago and David St. Pierre, Defendants- |) | Judge Presiding. |
| Appellees and Cross-Appellants). |) | |

JUSTICE CUNNINGHAM delivered the judgment of the court, with opinion.
Presiding Justice Mikva and Justice Harris concurred in the judgment and opinion.

OPINION

¶ 1 The plaintiff-appellant, Anthony Feeney, filed suit against, *inter alia*, his employer, defendant-appellee, the Metropolitan Water Reclamation District of Greater Chicago (District), as well as defendant the Civil Service Board of the Metropolitan Water Reclamation District of Greater Chicago (Board) on October 3, 2017, after he was suspended from his job as a pipefitter for a seven month period beginning in February 2017. His suspension stemmed from charges that

he deceitfully took advantage of the District discount when purchasing paint from Southtown Paint and Wallpaper (Southtown) in Orland Park, Illinois.

¶ 2 The circuit court of Cook County found that the Board's decision to suspend Feeney was not against the manifest weight of the evidence but held that the Board exceeded its statutory authority in imposing an additional month of suspension following the date of its decision. Therefore, the court remanded the case to the Board for further proceedings.

¶ 3 On remand, the parties limited their dispute to the amount of back pay to which Feeney was entitled. The District argued that Feeney was entitled to \$6822.29 because he was on vacation from August 9 (when the Board announced its decision) through August 22, while Feeney argued that he should be paid for this vacation time and was entitled to \$10,022.07. The Board found Feeney entitled to the lesser amount, and Feeney again appealed to the circuit court.

¶ 4 On April 24, 2019, the circuit court found Feeney was entitled to the greater amount and specified that its order was now final and appealable. Feeney timely appealed from the circuit court's order and the District cross-appealed.

¶ 5 On appeal, Feeney argues that (1) the Board did not make sufficient findings of fact in its order, (2) the Board erred in concluding that his conduct was related to the requirements of service, and (3) he is entitled to remand to present additional evidence on the issue of mistaken identity. In its cross-appeal, the District argues that the Board did not exceed its authority in imposing a suspension beyond the date of its decision. For the following reasons, we vacate the judgment of the circuit court of Cook County and remand the case to the Board with directions.

¶ 6

BACKGROUND

¶ 7 Feeney is a pipefitter leadman for the District in its Stickney plant. In December 2017, the District began investigating Feeney's alleged use of an unauthorized discount on his personal purchases from Southtown in October and November 2016. Two months later, on February 2, 2017, the District suspended Feeney without pay for 30 days pending discharge in connection with its investigation. The District subsequently filed charges against Feeney before the Board alleging that Feeney identified himself as a District employee to Southtown employees in order to receive the District discount on his personal paint purchases and avoid paying sales tax. The District alleged that Feeney violated Administrative Procedure 10.27.0, Rules for Employee Conduct, section 3, intolerable offenses, paragraph e, which prohibits employees from "engaging in fraud, deceit, or intentionally providing false information or making misrepresentations *** in the use or attempted use of various government-mandated or District-provided benefits." By law, Feeney's suspension was extended until the Board's decision was rendered. See 70 ILCS 2605/4.14 (West 2016).

¶ 8 The Board held a hearing on the charges in May and June 2017. At the hearing, several employees from Southtown testified, beginning with Matthew Maciasz, who rang up Feeney's purchase on October 18, 2016. Matthew Maciasz testified that Feeney came into the store that morning and purchased a gallon and two quarts of paint as well as some paintbrushes. Matthew Maciasz testified that he charged Feeney's purchase to the District's account because "that's what Feeney said it was for, that's the account to use." Feeney also gave Matthew Maciasz a purchase order number. Matthew Maciasz testified that Feeney left without paying. On cross-examination, Matthew Maciasz admitted that he did not ask Feeney for a badge or confirm that the purchase order number was connected to the District.

¶ 9 Matthew Offord, another Southtown employee, testified that he served Feeney on November 2. After preparing Feeney's paint, he asked Feeney if he had an account. Feeney replied that he was with the District and gave a purchase order number. While the sales receipt for the purchase indicates that the paint was sold to the District, Feeney paid for it on his own. On cross-examination, Offord explained that Southtown sold items to the District at a discount, and the District was not required to pay sales tax on its purchases. While Southtown also had discounts individual for painters who paid cash, the discount was not as great as the District's discount and individual painters were also responsible for paying sales tax.

¶ 10 Casey Maciasz served Feeney at Southtown on November 3. Feeney gave Casey his items and told Casey he was employed at the District. Despite this, Casey rang Feeney up as an individual painter and gave him the lesser cash discount. Feeney then paid and left the store.

¶ 11 Mary Ornoff¹, Southtown's office manager, also testified. According to Mary, when Feeney's October 18 purchase was made and charged to the District, an e-mail was automatically sent to the District. After receiving the e-mail, Kathryn Skrzypek, an account clerk for the District who also testified, noted that the purchase order number was incorrect and called Mary to tell her that it was not a District-authorized purchase and the District would not pay for it. Skrzypek testified that the same thing happened with Feeney's November 2 purchase, in that she received an e-mail notifying her of the charge. When Skrzypek called Mary again, Mary pulled up the credit card charge and discovered that Feeney made the purchase.

¶ 12 When Feeney returned to Southtown the afternoon of November 3, a Southtown employee informed Mary that Feeney was there, and Mary came out of her office to talk to him. She asked

¹Mary is Matthew and Casey Maciasz's mother.

Feeney to pay the \$104.96 outstanding invoice of October 18 that the District had refused to pay. Feeney initially maintained that he had already paid but ultimately made the requested payment. The payment of \$104.96 that Feeney made still included the District's discount and did not include sales tax, although by that point Mary knew that he was not entitled to those benefits.

¶ 13 In January 2017, Tom Bolland Jr., a "very good customer" of Southtown, left a voicemail for Casey. In his voicemail, Bolland said that Feeney had mistakenly charged his purchases to the District, but he should have charged it to the Bolland account because Bolland was working on a painting project for Feeney. Casey told Mary about the voicemail, and Mary called Bolland's brother, Mike, as she had a better relationship with him. From that call, she got the impression that the Bollands wanted Southtown to say they made a mistake in giving Feeney the District discount, but Mary refused.

¶ 14 Finally, Robert Byrne, a senior human resources analyst for the District, testified on the District's behalf. Byrne interviewed Feeney in connection with the District's investigation. During that interview, Feeney maintained that he did not ask Southtown to charge the District for his purchases but only mentioned that he knew Mark Flynn, a painter for the District who also patronized Southtown. Feeney claimed that Matthew Maciasz² "assumed" he worked for the District.

¶ 15 Byrne also testified that Feeney had previously been suspended pending discharge in January 2015. That suspension was the result of a failure to perform his supervisory duties by allowing District employees to have access to a room at the Stickney plant to watch television and

²Feeney refers to Matthew Maciasz as Matthew Ornoff, because that is Matthew's mother's surname, but Matthew's surname is Maciasz. We will refer to him as Matthew Maciasz.

sleep during work hours. Feeney and the District entered into a settlement agreement where Feeney admitted wrongdoing in exchange for a shorter suspension. Feeney also agreed to comply with the District's rules and regulations and "refrain from engaging in any conduct that is grounds for discipline and discharge."

¶ 16 After the District rested, Feeney called several painters for the District to testify on his behalf, beginning with Flynn. Flynn testified that he works in the Stickney plant with Feeney but in the paint shop. The District had a contract to buy paint from Southtown in 2014 and 2015 but not 2016.

¶ 17 Howard Meter and Ricardo Gilmore, painters for the District who worked in Calumet, also testified. Meter testified that he never went to Southtown to purchase paint for the District but only for personal projects. However, he and Gilmore went to Southtown in the spring of 2016 to obtain quotes for materials they needed for the District. Meter and Feeney bore some resemblance to each other.

¶ 18 Feeney finally testified on his own behalf. He testified that he had been a pipefitter leadman for the District at the Stickney plant for 23 years. He had also been going to Southtown for 25 years but did not know that the District had an account at Southtown. On October 16, he was having painting done on his house and the painters sent him for supplies. He went to Southtown, where Casey served him. Casey asked Feeney what he did, and Feeney told him that he worked for the District. Casey knew Flynn, and he and Feeney chatted about their mutual acquaintance. Matthew Maciasz may have been present for this conversation. Feeney testified that he paid for his purchase and left.

¶ 19 Feeney returned to Southtown two days later, on October 18. At that time, he never mentioned the District or the discount to Matthew Maciasz, who served him. He testified that he only gave a purchase order number after Matthew Maciasz asked for it, and the reason he gives a purchase order number is to keep his house expenses separate from his heating and air-conditioning side business expenses.

¶ 20 Following the testimony, the Board took the matter under advisement before issuing a written ruling on August 9, 2017. In its ruling, the Board noted that the credibility of the Southtown employees and Feeney were “significant” to the outcome but did not explicitly make credibility findings, instead stating that the credibility of “multiple witnesses” was “inconclusive.” It defined the issue as whether Feeney was deceitful in “attempting to secure favorable pricing or discounts as a result of his District employment.” Because the discounts Feeney obtained were less than \$100—\$36, to be exact—the Board held that discharge was “excessive” despite the fact that “any deceit by its employees damages the reputation of the District.” Ultimately, the Board concluded that Feeney should be suspended for six months following the initial 30-day suspension, for a total of seven months ending on September 9, 2017.

¶ 21 After the Board denied his petition for rehearing, Feeney filed a complaint for administrative review in the circuit court of Cook County on October 3, 2017. Following briefing, on June 6, 2018, the circuit court affirmed the Board’s decision but held that the additional one-month suspension following the Board’s decision was void and remanded the matter back to the Board.

¶ 22 On remand, the parties stipulated that the only issue for resolution was the amount of back pay owed to Feeney given that the circuit court found that Feeney’s suspension should have ended

on August 9, 2017. On January 16, 2019, the Board awarded Feeney \$6822.29 in back pay (excluding Feeney's vacation from August 9 through August 22), though Feeney sought \$10,022.07 (pay for the full month).

¶ 23 The Board denied Feeney's petition for rehearing, and Feeney again sought review in the circuit court. On April 24, 2019, the circuit court found that Feeney was entitled to \$10,022.07 in back pay and stated that its order was final and appealable as it resolved all issues between the parties. This appeal followed.

¶ 24 ANALYSIS

¶ 25 We note that we have jurisdiction to review this matter as Feeney filed a timely notice of appeal following the circuit court's final order. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. July 1, 2017).

¶ 26 The dispositive issue on appeal is the sufficiency of the Board's order imposing a seven-month suspension on Feeney. Feeney contends that the Board's order did not make the required findings of fact, rendering review impossible. Initially, the Board responds that Feeney forfeited this claim by failing to raise the argument before the Board in the first instance.

¶ 27 In an action for administrative review, a party ordinarily forfeits any argument it failed to raise before the administrative agency. *Keeling v. Board of Trustees of the Forest Park Police Pension Fund*, 2017 IL App (1st) 170804, ¶ 45. But Feeney could only make the argument that the Board's decision was insufficient to permit review *after* the Board had rendered its decision. While the Board argues that Feeney should have raised this argument in his rehearing petition, the relevant statute does not contemplate such action. Rather, the Metropolitan Water Reclamation District Act provides that "[e]ither the sanitary district or the employee may file a written petition

for rehearing of the *finding and decision* of the civil service board within 21 calendar days after the finding and decision are served.” (Emphasis added.) 70 ILCS 2605/4.14 (West 2016). Stated differently, rehearing is permitted only to challenge the *substance* of the decision, not the form. Thus, there was no avenue for Feeney to challenge the adequacy of the Board’s decision aside from the circuit court.

¶ 28 *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200 (2008), on which the Board heavily relies, does not compel a different result. There, defendant-appellee, the Electoral Board, found plaintiff-appellant Cinkus ineligible to run for office based on a \$100 debt he had failed to pay to the Village of Stickney. *Id.* at 206-207. On appeal, Cinkus argued that the order regarding the debt was ambiguous and uninformative because it did not state a due date. *Id.* at 212. In other words, he challenged the sufficiency of the underlying judgment on which the Electoral Board’s decision was based. *Id.* at 213. But because Cinkus did not challenge the debt on these grounds before the Electoral Board—instead arguing only that a debt owed to a municipality did not disqualify him from running for office—the supreme court found that he had forfeited this issue for review. *Id.*

¶ 29 Nothing about this case is similar to *Cinkus*. On appeal, Feeney is not challenging the sufficiency of an underlying judgment that formed the basis of an agency’s decision but the sufficiency of the agency’s decision itself. It makes little sense to require Feeney to make this argument at the agency level on rehearing as it would put the Board in a position to “grade its own paper.” That is the responsibility of the reviewing court.

¶ 30 Turning to the merits, on administrative review, this court reviews the final decision of the agency, not the decision of the circuit court. *Engle v. Department of Financial & Professional*

Regulation, 2018 IL App (1st) 162602, ¶ 28. Therefore, it is the agency's responsibility to make findings that permit such review. *Reinhardt v. Board of Education of Alton Community Unit School District No. 11*, 61 Ill. 2d 101, 103 (1975). The agency's decision "should adequately articulate the bases for its action, showing a rational connection between the facts found and the choice made." *Roman v. Cook County Sheriff's Merit Board*, 2014 IL App (1st) 123308, ¶ 82; see also *Reinhardt*, 61 Ill. 2d at 103 (" 'the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained' ") (quoting *Securities & Exchange Comm'n v. Chenery Corp.*, 318 U.S. 80, 94 (1943)).

¶ 31 Here, the Board's decision began by listing the charges against Feeney and then noting that it held a discharge hearing at which multiple witnesses testified on behalf of both the District and Feeney. The Board further noted that it had reviewed "all the pleadings, exhibits, oral testimony and documents of record." The decision, in relevant part, goes on to read as follows:

"On October 18, 2016; November 2, 2016; and November 3, 2016, Feeney visited Southtown and sought to purchase paint. The District contends that Feeney attempted to obtain favorable District pricing or discounts. Feeney contends that he never requested any favorable District pricing or discounts. The credibility of Southtown employees and Feeney are significant in the outcome of this matter.

Since no allegations have been made that Feeney attempted to have the District pay for the paint purchase, it becomes an issue of deceit by Feeney in attempting to secure favorable pricing or discounts as a result of his District employment. The discounts given to Feeney on the aforementioned three occasions he visited Southtown appear to be less than One Hundred (\$100.00) Dollars. While

the CSB recognizes that any deceit by its employees damages the reputation of the District, discharge under these facts would appear excessive.

The CSB is cognizant of Feeney's prior disciplinary infractions resulting in prior suspension; however, in the case at bar, the controverted testimony of multiple witnesses and the inconclusive credibility of those witnesses would dictate a penalty less than discharge from the District."

¶ 32 When reviewing an agency's decision, we presume that the agency's factual findings are *prima facie* true and correct (735 ILCS 5/3-110 (West 2016)), and we will not disturb those findings unless they are against the manifest weight of the evidence (*Williams v. Department of Human Services Division of Rehabilitation Services*, 2019 IL App (1st) 181517, ¶ 21). Of course, in order to undertake this review, we must know what those findings of fact are. See *Medina Nursing Center, Inc. v. Health Facilities & Services Review Board*, 2013 IL App (4th) 120554, ¶ 23.

¶ 33 Here, the Board's decision raises more questions than it answers. While it found that the credibility of the witnesses was the cornerstone of its decision, it made no credibility findings. And its reference to Feeney's deceit is likewise oblique. We do not know to what deceit the Board was referring. Did the Board believe that Feeney was deceitful in merely mentioning his employment, as Feeney testified, perhaps in the hope of receiving the District discount? Or did the Board believe Matthew Maciasz's testimony that Feeney explicitly asked for the discount? The answers to these questions are necessary for us to determine whether the Board's decision was against the manifest weight of the evidence.

¶ 34 We cannot, as the District urges, “infer” that the Board found Feeney and his witnesses less credible than the District’s witnesses because the Board did not ultimately agree with the District’s recommendation to terminate Feeney. Clearly, the Board was at least somewhat persuaded by certain portions of Feeney’s testimony and credited it over the testimony of the District’s witnesses, given that it found only suspension was appropriate. But we will not speculate on the Board’s reasoning for this conclusion. See *id.* ¶ 26 (declining to supply “theoretical justification” for agency decision for fear of making “factual findings and judgment calls” which the agency alone should make and attributing them to the agency “in a speculative way”).

¶ 35 We find the District’s reliance on *Lopez v. Dart*, 2018 IL App (1st) 170733, unhelpful. There, the plaintiff appealed his termination by the Cook County Sheriff’s Merit Board, arguing, *inter alia*, that the Merit Board failed to make specific factual findings regarding the plaintiff’s defense of alcoholism. *Id.* ¶ 73. But we found that argument factually erroneous, given that the Merit Board detailed the evidence regarding the plaintiff’s alcohol addiction and explicitly stated that it had given “ ‘due consideration’ ” to that evidence but did not believe the plaintiff’s addiction excused his violation of attendance policies. *Id.* ¶¶ 33, 73. We rejected the plaintiff’s argument that more specific factual findings were required. *Id.* ¶ 73.

¶ 36 Here, Feeney is not asking for *more specific* factual findings but for factual findings in the first place. Because the vagueness and incompleteness of the Board’s decision renders it impossible for us to review, we remand this case to the Board to make the necessary factual findings in support of its decision. See *Stewart v. Boone County Housing Authority*, 2018 IL App (2d) 180052, ¶ 39 (where agency did not state reason for its decision, case remanded to agency to reconsider evidence and make findings sufficient for review).

¶ 37 Our decision to remand this case to the Board makes it unnecessary to consider Feeney's remaining challenges to the Board's decision. Nor will we address the merits of the District's cross-appeal, which argues that the circuit court erred in finding that the Board lacked authority to impose a seven-month suspension. Until we have the benefit of the Board's reasoned decision, we cannot resolve these issues.

¶ 38 **CONCLUSION**

¶ 39 For the foregoing reasons, we vacate the judgment of the circuit court of Cook County's and remand this case to the Board with directions to make findings of fact which support its decision.

¶ 40 Vacated and remanded with directions.

No. 1-19-0928

Cite as: *Feeney v. Civil Service Board of the Metropolitan Water Reclamation District of Greater Chicago*, 2020 IL App (1st) 190928

Decision Under Review: Appeal from the Circuit Court of Cook County, No. 17-CH-13307; the Hon. David B. Atkins, Judge, presiding.

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