STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1355

In re: The Matter of the Recommendation for Discharge of
Francis M. Nelson, Police Officer, Minneapolis Police Department.

Filed July 8, 2008
Affirmed
Shumaker, Judge

Minneapolis Civil Service Commission

Marshall H. Tanick, Teresa J. Ayling, Mansfield, Tanick & Cohen, P.A., 1700 U.S. Bank Plaza, South Tower, 220 South Sixth Street, Minneapolis, MN 55402 (for relator Francis M. Nelson)

Jay M. Heffern, Minneapolis City Attorney, Caroline M. Bachun, Assistant City Attorney, 333 South Seventh Street, Suite 300, Minneapolis, MN 55402 (for respondent City of Minneapolis)

Considered and decided by Shumaker, Presiding Judge; Hudson, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

SHUMAKER, Judge

The City of Minneapolis terminated relator from his job as a police officer and the Minneapolis Civil Service Commission sustained the termination. In this certiorari review, we must determine whether irregularities in the process and procedures leading to relator's termination and in the commission's action require a reversal.

FACTS

The City of Minneapolis hired relator Francis M. Nelson to work as a police officer beginning June 8, 1997. After an internal complaint was filed against him, the Minneapolis Police Department placed him on leave on September 11, 1998. Upon its investigation, the department terminated Nelson but, after an appeal, the Minneapolis Civil Service Commission reinstated him with back pay, benefits, and seniority on January 24, 2002.

As conditions of Nelson's reinstatement, the department required that he have a background check to cover the period of his suspension and termination, that he have a medical examination to ensure fitness for his duties, and that he participate in any necessary training to reinstate his peace officer's license. Nelson submitted to the medical examination and was found fit to perform the functions of a police officer, but he opposed the background check, despite the department's longstanding practice to require such inquiry.

On December 17, 2002, Nelson reported an injury that he sustained the previous day in the police recruit academy. An emergency physician diagnosed his injury as cervical and lumbar strains and possible spinal cord contusion. Other doctors gave various opinions about Nelson's duty limitations and the appropriate time for his return to work. Because of conflicting medical opinions, the department required Nelson to be examined by Dr. Peter Marshall.

Dr. Marshall examined Nelson on January 29, 2003, and indicated that Nelson could return to full-time work with restrictions on lifting and continuous sitting. Nelson

did not return to work after this examination, and the department advised him that he could be subject to disciplinary action if he did not report for work immediately.

Dr. John Jacoby, Nelson's primary physician, reported to the department that Nelson had continuing physical problems that prevented him from working. On February 25, 2003, Dr. Marshall consulted with Dr. Jacoby and reported to the department that "there [was] no clear objective evidence to indicate a significant functional impairment" and that "the most probable cause for Officer Nelson's continuing disability is related to significant psychosocial factors, which may include issues in the work place or at home." Dr. Marshall then recommended that if, after therapy, Nelson was not able to return to duty within the next several weeks, "then a psychological fitness for duty evaluation should be initiated, followed by a medical fitness for duty follow-up exam if indicated."

Dr. Jacoby wrote a later report to the department indicating that Nelson's work limitations were to continue for two more weeks. The department then decided to require a psychological fitness-for-duty examination, and it notified Nelson that he was scheduled to be examined by psychologist Dr. Gary Fischler on March 17, 2003. Before the examination, Dr. Jacoby released Nelson to return to full, unrestricted duty. The department then cancelled the psychological examination as unnecessary.

During the period of his disability, Nelson contacted the mayor's office to report that, because he was trying to organize Asian officers, he was being targeted by the department and he was concerned that if he went back on the street he would be killed. He also alleged that the police chief was misappropriating funds "to set up the mayor." In March 2003, Nelson met with the United States Attorney's Office and related concerns

about department budget issues, and he indicated that he thought police sergeants and lieutenants "were spying on him, or meant him no good." Nelson met with the state auditor in April 2003, and reported his concerns about internal controls within the department. This meeting was followed by a letter from Nelson's attorney to the police chief indicating that Nelson was concerned about his safety and should be reassigned. The police chief responded by letter indicating that the internal affairs unit would look into Nelson's allegations of police misconduct.

Ultimately, despite being cleared to report to work on April 6, 2003, Nelson did not do so and instead sent to the department a doctor's report stating he could not work until April 21, 2003. By May 6, 2003, Nelson had worked only four days in off-premises training, and the police chief ordered him to report to work on May 9, 2003.

On May 7, 2003, a medical clinic sent a report to the department stating that "Nelson was seen for situational anxiety and neurodermatitis" and would not be able to work until June 9, 2003. On May 8, 2003, Nelson applied for medical disability leave until June 9, 2003, but he failed to provide the requisite documentation to qualify for such leave. A department human relations representative then contacted Dr. Marshall about Nelson's leave request. Dr. Marshall raised concerns about Nelson's psychological fitness and recommended

> a psychological fitness for duty evaluation to determine whether there may be psychological factors causing or contributing to what appears to be a persistent pattern of behavior involving avoidance of return to normal work duties as a Police Officer. Medical issues do not appear to be the primary cause of this apparent pattern.

Nelson's first precinct commander wrote a memorandum to the deputy police chief on May 13, 2003, stating that Nelson appeared unwilling to "work the street" and that caused extreme hardship in police staffing. The commander indicated that Nelson's two disclosed reasons for not working were his illness and his involvement in an investigation of police misconduct. The commander reported that Nelson had been scheduled to work on nine particular days in April and had called in sick each day but that "he made a quick recovery to attend a training seminar on duty the 21-24." The commander also noted that Nelson left a voicemail message on April 25, "saying that he was taking a vacation day," even though he did not have permission to do so, and then had called in sick on April 26 but ran a 10K race on that day. The commander suggested that Nelson be evaluated for fitness for duty.

The deputy police chief notified Nelson that he would need a psychological examination and scheduled an appointment with Dr. Fischler for May 27, 2003. In the interim, the department received a report from Dr. Dennis Cross, and like the clinic's May 7 report, it stated that Nelson was being treated for neurodermatitis and would not be able to work until June 9, 2003. The acting police chief then ordered Nelson to return to work on June 9, 2003, and informed him that any failure to comply with department policy "could result in disciplinary action up to and including termination."

Nelson attended the psychological examination with Dr. Fischler and underwent various psychological tests. In his report of the examination, Dr. Fischler concluded that Nelson suffers from a delusional disorder with strong persecutory beliefs regarding department conspiracies against him and retaliatory actions by police personnel. Noting

"that there might be a grain of truth in what he describes," Dr. Fischler concluded that Nelson "does not appear to [be] fit to work as a police officer at this time." Dr. Fischler also recommended mental health treatment for Nelson.

On June 6, 2003, Nelson requested sick leave and attached a note from Dr. Cross indicating that, because of lower back pain, neurodermatitis, and anxiety, Nelson would not be able to work until July 7, 2003.

On July 15, 2003, a deputy chief informed Nelson that he was being placed on medical leave for six months and could return to work at any time his doctor so determined.

Nelson's medical leave expired on January 15, 2004, and the department notified him that he must send medical documentation regarding his fitness for duty by January 30, 2004. On January 28, 2004, licensed psychologist Brockman Schumacher sent a report to the department, stating in its entirety: "I have evaluated Mr. Nelson and find that he is medically able to return to his employment as a police officer." The department responded by telling Nelson that, if the city's mental health provider concurs, he would be reinstated to his position as a police officer. Nelson was told to send all reports to Dr. Fischler, and Nelson agreed to do so.

The department then scheduled another psychological examination for Nelson with Dr. Fischler. Nelson objected, saying that Dr. Fischler was not a neutral examiner as required by the department's labor agreement. The department's position was that the purpose of Dr. Fischler's examination was to determine whether his opinion would

conflict with that of Schumacher, the licensed psychologist, and that it was premature to schedule a neutral, third-party examination.

Nelson did not attend the examination with Dr. Fischler. The department again informed him that, because he had been on leave for six months and because his own psychologist stated that he was fit for duty, the department wanted to find out whether Dr. Fischler concurred. If Dr. Fischler did not concur, then it was the department's position that a neutral, third-party examiner would be appropriate. The department rescheduled the examination for April 6, 2004, and informed Nelson that if he did not attend he could be fired. Nelson did not attend the rescheduled examination.

The department rescheduled the examination for April 26, 2004, told Nelson that he had to have a fitness-for-duty examination before he could return to work, and indicated that he would be fired if he failed to attend the examination. Nelson did not attend this examination.

For the next two and one-half months, the department and Nelson's attorney exchanged correspondence regarding the propriety of the examination with Dr. Fischler and the procedures that the department and Nelson were required to follow.

Meanwhile, Dr. Fischler and Schumacher conferred and disagreed as to Nelson's fitness for duty. The parties then focused on obtaining a neutral, third-party examiner. The department gave two names to Nelson and asked him to choose one. Nelson provided third and fourth names as his choices.

By September 2004, Minneapolis had a new police chief who held a meeting regarding Nelson's issues. Nelson attended. Nelson was offered light-capacity duty, but he refused.

Thereafter, Nelson's attorney and the department continued to dispute the issues of the fitness examination, the appropriate assessment procedures, back pay, and Nelson's status as a whistleblower.

On November 9, 2004, the department directed Nelson to attend a psychological evaluation by Dr. Michael Campion, the department having rejected Nelson's two alternative examiners as not having background in evaluating police-officer issues. Because Nelson refused to provide Dr. Campion with medical releases, the examination was canceled.

The department then scheduled a meeting for December 14, 2004, and required Nelson to attend. The purpose of the meeting was to discuss possible charges regarding Nelson's violation of civil service rules relating to absence without leave and insubordination. Before that meeting, Nelson provided the requisite medical authorizations, and the department rescheduled the examination with Dr. Campion. Nelson attended the examination on December 1, 2004, and the department then canceled the meeting set for December 14.

On January 15, 2005, Dr. Campion sent a "duty-to-warn" letter to the department, stating that he believed Nelson might be a danger to himself and to others, especially to Minneapolis police personnel. Dr. Campion also prepared a report of his examination and tests, in which he concluded that Nelson suffers from a delusional disorder of a

persecutory type and that he is unfit for work as a police officer. The department then terminated Nelson.

Nelson challenged his termination in an appeal to the Minneapolis Civil Service Commission. Hearings were held in September and November 2005 before a hearing officer for the commission. The officer submitted his findings and conclusions on February 16, 2007, and recommended that the commission "affirm the discharge of Officer Francis Nelson from his employment with the Minneapolis Police Department."

Noting that the delay in filing the hearing officer's report was "excessive," the commission nevertheless concluded that proper procedures were followed, and it adopted the recommendation for termination on June 4, 2007. This appeal followed.

D E C I S I O N

We are called upon to determine whether the Minneapolis Civil Service Commission's decision to uphold the discharge of Francis Nelson from the Minneapolis Police Department is supported by the facts and applicable law. As Nelson points out, that decision may be reversed if it is "unreasonable, oppressive, arbitrary, fraudulent, without evidentiary support, or based on an incorrect theory of law." *Radke v. St. Louis County Bd.*, 558 N.W.2d 282, 284 (Minn. App. 1997). We review legal issues de novo. *Almor Corp. v. County of Hennepin*, 566 N.W.2d 696, 700 (Minn. 1997).

Delay

Nelson argues that the 452-day delay between the hearing before the hearing officer and the officer's report violates Civil Service Commission Rule 11.07D, was unreasonable and unjustifiable, and per se warrants reversal. The commission itself

found the delay "excessive," and we find it inexcusable, despite the great detail, thoroughness, and comprehensiveness of the hearing officer's report. But the issue is whether the delay requires a reversal, and that issue must be determined by the application of the law.

Rule 11.07D provides that a hearing officer "shall" file findings, conclusions, and a recommendation "within forty-five days from the close of the hearing record." As Nelson accurately points out, the canons of statutory construction define "shall" as denoting a mandatory action. Minn. Stat. § 645.44, subd. 16 (2006). He argues that, because the hearing officer violated the 45-day mandate, the commission's action is not sustainable.

Although rule 11.07D sets an apparently mandatory time limit for filing findings, conclusions, and a recommendation, it provides no consequences whatsoever for exceeding the time limit. Caselaw holds that when a statute—which would fairly include a rule—contains no language that provides consequences for failure to comply, the language of the rule is to be construed as directory only. *Carl Bolander & Sons Co. v. City of Minneapolis*, 488 N.W.2d 804, 809-10 (Minn. App. 1992), *aff'd* 502 N.W.2d 203 (Minn. 1993). Moreover, "[v]iolation of a directory statute does not result in the invalidity of the action taken." *Id.* at 810 (quotation omitted).

Additional caselaw specifically addresses the issue of timing violations. In *First Nat'l Bank of Shakopee v. Dep't of Commerce*, the commerce commission was required to file orders within 90 days, but failed to file in a timely manner. 310 Minn. 127, 131, 245 N.W.2d 861, 864 (1976). The Minnesota Supreme Court held, "Regardless of

whether the commission violated the 90-day filing requirement, its decision and order are nevertheless valid. We believe that the 90-day filing requirement is directory only, and not mandatory, and therefore its violation does not operate to invalidate the order." *Id.* In *Hans Hagen Homes, Inc. v. City of Minnetrista*, the supreme court explained:

> [W]here the provisions of the statute do not relate to the essence of the thing to be done, are merely incidental or subsidiary to the chief purpose of the law, are not designed for the protection of third persons, and do not declare the consequences of a failure of compliance, the statute will ordinarily be construed as directory and not as mandatory.

728 N.W.2d 536, 541 (Minn. 2007) (quotation omitted). Even the use of "shall" does not make a time limit mandatory if there is no consequence for a failure to comply with the time limit. *Id.* And in *Sullivan v. Credit River Twp.*, the supreme court also found language in the public-meeting statute to be "directory rather than mandatory since it fails to provide a method for enforcement and does not specify that actions taken at a meeting which is not public shall be invalid." 299 Minn. 170, 176, 217 N.W.2d 502, 507 (1974).

Similarly, in *Benedictine Sisters Benevolent Ass'n v. Pettersen*, the supreme court found that a commissioner's failure to render a decision within a 30-day period did not invalidate its decision, as the language stating that the commissioner shall render a decision was directory only. 299 N.W.2d 738, 740 (Minn. 1980). Recently, the court of appeals found that language directing that an implied consent hearing "must be held at the earliest practicable date, and in any event no later than 60 days following the filing of the petition for review," was directory, and not mandatory. *Riehm v. Comm'r of Pub. Safety*, 745 N.W.2d 869, 875 (Minn. App. 2008), *review denied* (Minn. May 20, 2008);

see also Savre v. Indep. Sch. Dist. No. 283, 642 N.W.2d 467, 472 (Minn. App. 2002) ("[A] statute which does not declare the consequences of a failure to comply may be construed as a directory statute.") (quotation omitted)); *cf. Manco of Fairmont, Inc. v. Town Bd. of Rock Dell Twp.*, 583 N.W.2d 293, 295 (Minn. App. 1998) (stating that in a case when "a statute expresses the consequences of a failure to comply with its provisions, it is mandatory"), *review denied* (Minn. Oct. 20, 1998).

Nelson attempts to distinguish his situation from these directory-language cases by relying on *Barneson v. W. Nat'l Mut. Ins. Co.*, 486 N.W.2d 176 (Minn. App. 1992). In *Barneson*, an arbitrator was deemed to have lost jurisdiction to make a decision when he did so after the 30-day time limit imposed upon him by Minnesota Rules of No-Fault Arbitration. *Id.* at 177. The language contained in that rule was that "the arbitrator may for good cause extend any period of time established by these rules, *except the time for making the award*." *Id.* at 178. The court concluded that the language at issue in *Barneson* was clearly jurisdictional, thus circumscribing the arbitrator's authority to act. *Id.* There is nothing similar in rule 11.07D.

Even though the violation of a directory time limit does not render action taken invalid and does not require a reversal, such violation can support relief upon the showing of prejudice. "If a statutory rule is directory, generally prejudice must be shown before the failure to comply with that rule potentially warrants relief." *Riehm*, 745 N.W.2d at 876. Prejudice could take the form of loss of pay, benefits, and seniority, which we address below. And while it is possible that a delay as long as this one can be prejudicial, Nelson has shown no specific prejudice other than his uncertainty as to his

employment with the department. It is lamentable that Nelson had to wait so long for a declaration of certainty about his future as a Minneapolis police officer and surely he suffered "prejudice" in the broad sense of the term. But he has pointed to no tangible prejudice that he allegedly suffered because of the delay. He did not forgo other employment that he could have had but cannot obtain because it is no longer available. He did not suffer any particular identifiable loss of any sort. While we find this delay deplorable and do not find that the commission's rationalization that "nearly all" of its decisions are timely makes it any less egregious, we will not invalidate the commission's decision solely on the basis of the extraordinarily long delay because the language is directory, and Nelson showed no prejudice.

Nelson cites *State by Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695 (Minn. 1996), for the proposition that excessive delay is per se prejudicial. In that human rights act case involving a charge of unlawful sex discrimination, more than 35 months passed between the filing of the charge and the commissioner's probable cause determination. *Id.* This violated a statute requiring that the Minnesota Department of Human Rights (MDHR) make its probable cause determination within 12 months of the filing of a charge. *Id.* at 701. The supreme court held that untimely action frustrates the purposes of the human rights act:

> The legislature's clear purpose in enacting section 363.06, subdivision 4(1), was to expedite the resolution of discrimination charges filed with the MDHR. When the MDHR's probable cause determinations are delayed, that purpose is frustrated. In addition, such delays make resolution of discrimination charges more difficult: evidence

> and witnesses may disappear, memories may fade, assets may be wasted, and damages may continue to accrue.

Id. at 702. The court held that the delay was not a jurisdictional defect but that prejudice had to be assessed. The court then made a ruling that applied to the parties and all prospective human rights cases, namely, that a 31-month delay is per se prejudicial and requires dismissal of the charge. *Id.* at 703.

We conclude that *Beaulieu* was unique to human rights act claims. Although we by no means condone the delay in Nelson's case, we do not find the same policies involved here as with human rights claims. Nor has Nelson shown any of the types of prejudice the *Beaulieu* court identified.

We are bound by the precedent discussed above regarding directory time-limit rules. Thus, we decline to hold that the egregious delay in this case requires a reversal of the commissioner's decision.

Back Pay Eligibility

Nelson contends that the commission erred in finding him ineligible to receive pay for the time he spent on leave. Nelson relies on section 24.8 of the department's labor agreement that states:

> At such time as the Department determines that an employee shall be required to submit to a fitness for duty evaluation and/or during the time any controversy concerning the employee's fitness for duty is being resolved, the Department may reassign the employee to other duties or relieve the employee from duty in its sole discretion. In the latter event, the employee shall be placed on paid leave of absence status which may be revoked if the employee fails to fully cooperate with the Department or its examining physicians and/or other licensed medical providers.

Nelson points out that while the hearing officer found that he failed to cooperate, the commission relied on the fact that, because Nelson had not returned from leave, he was not "relieved of duty." Nelson argues that both determinations are in error and that he is entitled to payment under section 24.8. The department argues that the commission properly denied him paid leave because section 24.8 of the labor agreement does not apply to Nelson because he never returned to duty as a police officer, and even if section 24.8 did apply, Nelson still failed to comply with the process outlined in that rule. However, the commission's decision appropriately set forth the various ways Nelson did not cooperate, and also included in its ruling that section 24.8 did not apply to him. "When reviewing agency decisions we adhere to the fundamental concept that decisions of administrative agencies enjoy a presumption of correctness, and deference should be shown by courts to the agencies' expertise and their special knowledge in the field of their technical training, education, and experience." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001) (quotation omitted).

The record supports the finding that Nelson failed to cooperate fully with the department in resolving his employment status and this failure contributed to the protracted and problematic nature of the process. Most instances of Nelson's lack of cooperation involve the department's efforts to obtain a fitness-for-duty psychological examination. They include missed appointments, refusal to authorize the release of medical information, failure to reply to correspondence from the department, repeated refusals to return to work, and refusal to work even light-capacity duty.

Nelson contends that the language in section 24.8 uses "shall," which means that he must be paid. But the provision predicates payment upon cooperation. The record substantiates the litany of instances of Nelson's lack of cooperation, outlined in the hearing officer's findings of fact, conclusions of law, and recommendation to the commission. We defer to those findings.

Nelson also argues that the commission erred in denying back pay when it concluded that section 24.8 does not apply to him. "While this court is not bound by an agency's conclusions of law, the manner in which an agency has construed a statute may be entitled to some weight when the statutory language is technical in nature and the agency's interpretation is one of longstanding application." *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 375 (Minn. 1996). But if the language "is clear and capable of understanding, interpretation of the rule presents a question of law reviewed de novo." *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002). Nelson's argument seems to be that the department "relieved" him of duty because it conditioned his return on the completion of a psychological examination. But the word "relieve" is not technical in nature, so this court will not defer to the agency's interpretation of the language in the labor agreement. When a word in a contract has no special definition or technical meaning, it is to be understood in its ordinary sense. *Smith v. St. Paul Fire & Marine Ins. Co.*, 353 N.W.2d 130, 132 (Minn. 1984). The word "relieve" has a clear meaning: "To lessen or alleviate . . . [t]o free from a specified duty or obligation, esp[ecially] by providing a substitute." *The American Heritage Dictionary* 706 (3d ed. 1992). Similarly, Webster's dictionary defines the term "relieve" as "to set free from a

burden" and "to set free from duty or work by replacing." *Webster's New World College Dictionary* 1210 (4th ed. 2002).

Applying these ordinary definitions to the facts at hand, the commission did not clearly err, as a matter of law, in finding that section 24.8 did not apply to Nelson because Nelson was not working in the first place and thus could not be relieved. The reasonable conclusion here is that Nelson failed to cooperate, as required by section 24.8, and he also was incapable of being "relieved from duty" because he was not on duty, nor had he been on duty since 2002.

Evidence to Support Termination

Nelson asserts that the commission's affirmation of the department's termination was not supported by substantial evidence. On review, this court may reverse or modify an agency's decision if a petitioner's substantial rights "may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are . . . unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 14.69(e) (2006). This court may apply the standard of review articulated in section 14.69 to this case, although the Administrative Procedure Act does not apply to municipal agencies. *In re Proposed Discharge of Larkin*, 415 N.W.2d 79, 81 (Minn. App. 1987). "With respect to factual findings made by the agency in its judicial capacity, if the record contains substantial evidence supporting a factual finding, the agency's decision must be affirmed." *City of Moorhead v. Minn. Pub. Utils. Comm'n*, 343 N.W.2d 843, 846 (Minn. 1984). Substantial evidence is defined as "1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; 2) more than a

scintilla of evidence; 3) more than some evidence; 4) more than any evidence; and 5) evidence considered in its entirety." *In re Appeal of O'Boyle*, 655 N.W.2d 331, 334 (Minn. App. 2002) (quotation omitted).

Nelson argues that the department relied solely on Dr. Campion's evaluation in terminating him and such reliance was arbitrary, unreasonable, and contrary to the law. He contends that Dr. Campion's report cannot support his termination because the police department deviated from all required procedures in obtaining that report.

Section 24.5 of the department's labor agreement provides that the department may require a psychological examination if recommended by the department's examining physician. Dr. Marshall, the department's examining physician, recommended a psychological evaluation. This led to the evaluations by Dr. Fischler, Dr. Campion, and Schumacher, the licensed psychologist. Nelson contends that a number of rules were violated during the process of obtaining psychological evaluations, and that the department was required to comply with the labor agreement in this matter.

It appears that the department sufficiently complied with section 24.5. But if there were irregularities, Nelson waived them by himself failing to comply with the labor agreement that directs an "employee [who] disagrees that a reasonable basis exists for the required psychological evaluation . . . to file a grievance contesting the requirement that he/she submit to the examination."

Nelson's challenge to his termination is based principally on allegations of procedural irregularities, which we hold he waived by failing to file grievances. He does not challenge the substantive evidence that he is psychologically unfit for the job as a

police officer. The sole contradictory evidence he offered is the simple, conclusory statement by Schumacher that Nelson is fit for duty. The Schumacher "report" disclosed no evidence of testing or any basis for his conclusion. It was appropriate that the commission rejected that report as unreliable.

Affirmed.