IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert Glosson,	:	
Appellant	:	
	:	
v.	:	No. 1388 C.D. 2007
	:	Submitted: November 2, 2007
Bedminster Township	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge[1]
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE McCLOSKEY FILED: January 24, 2008

Robert Glosson (Appellant) appeals from an order of the Court of Common Pleas of Bucks County (the trial court), which affirmed a decision of a hearing officer (the Hearing Officer), thereby affirming the dismissal and/or discharge of Appellant by Bedminster Township (the Township). We now affirm.

Appellant became employed by the Township as Police Chief on January 10, 1996, following twenty-seven (27) years of service with the Pennsylvania State Police. The Township's Police Department employs four (4) officers, including Appellant. During the time period at issue, Appellant supervised Officers Ofner, McNally and Pfaff.

[1] The decision in this case was reached prior to the date that Judge Colins assumed the status of Senior Judge.

On November 26, 2003, the Township's Board of Supervisors (the Board) issued a Loudermill Notice[2] to Appellant, alleging improper conduct consisting of: falsifying permanent firearm records; disobeying a directive from the Board requiring Appellant to remain off-duty due to his workers' compensation injury; disobeying a directive from the Board regarding the police schedule; and falsifying his time sheets. The notice informed him that he may be subject to disciplinary action up to and including discharge. Appellant was formally notified by the Board on or about January 7, 2004, that he was suspended without pay from his employment with the Township, and that he was charged with violations of what is commonly referred to as the Police Tenure Act, Act of June 15, 1951, P.L. 586, as amended, 53 P.S. §§ 811-16.[3] Supervisor Morgan Cowperthwaite informed Appellant that he would recommend that the Board terminate his employment. Appellant then requested a hearing pursuant to the Police Tenure Act.

The parties ultimately agreed upon the appointment of the Hearing Officer to conduct the hearing in place of the Board. The Hearing Officer issued a decision, dated June 26, 2006, in which he addressed each alleged instance of improper conduct.

---

[2] In Cleveland Board of Education v. Loudermill, 470 U.S. 532, 546 (1985), the Supreme Court stated: "[t]he tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story."

[3] Section 2 of the Police Tenure Act allows a police officer to be suspended, removed or reduced in rank as a result of "neglect of violation of [an] official duty…." See Section 2 of the Police Tenure Act, 53 P.S. §812(2). It also provides that a police officer may be suspended, removed or reduced in rank as a result of "inefficiency, neglect, intemperance, disobedience of orders, or conduct unbecoming an officer…." See Section 2 of the Police Tenure Act, 53 P.S. §812(4).

First, the Hearing Officer addressed the allegations regarding falsification of firearm records. Relying on the testimony of Harry McCann, Jr., Director of Bucks County Law Enforcement Training, the Hearing Officer found that police officers must comply with the requirements established by the Municipal Police Officer's Education and Training Commission (the Commission). The Commission requires firearm certification on an annual basis. Mr. McCann testified that police officers in Pennsylvania must meet the minimum standards and pass a nationally-recognized course of fire with a certified firearm instructor. After a police officer has completed a firearm course, the instructor records whether or not the officer has successfully completed the course of fire. There is no statewide form for maintaining firearm records. Rather, local municipalities must keep in-house records to document and support information ultimately submitted on Commission forms. The information includes such items as dates of training and who performed the training.

The Hearing Officer considered the testimony of Appellant, Township officers, Township employees and Officer Bohdan Gol, a part-time Dublin Borough patrolman and full-time officer with the Bucks County Park Rangers, relating to the circumstances surrounding the firearm training of the Township's officers and Appellant's record-keeping of the training. At issue are the records relating to certification sessions that were conducted on September 11, 2003, and September 26, 2003.

The Hearing Officer found that on September 11, 2003, Appellant, who is a certified firearm instructor, and the other Township officers went to the Bucks County Police Association training facility to complete their certification in firearms. Officer Gol, who is also a certified firearm instructor, was also at the

training facility on that date. In connection with the training that occurred on that day, Appellant wrote on a form that the Township uses to record firearm training that Officer Gol had certified Appellant in several firearms, including a service revolver and shotgun. Appellant testified that Officer Gol had certified him on some weapons that day. However, Officer Gol testified that he did not certify Appellant on any weapons that day. The other Township officers testified that they did not recall Appellant firing any weapon and/or walking the course of fire with Officer Gol, which would have been necessary for Officer Gol to certify Appellant.

The Hearing Officer found that Appellant submitted the form to Lynn Malander, the Police Department Secretary, for purposes of typing and filing. Appellant admitted during the hearing that the form that he completed was inaccurate. The Hearing Officer did not find Appellant's explanation to be satisfactory as to how or why the inaccuracies occurred. In addition, the Hearing Officer found that Appellant presented false testimony when he testified that Officer Gol had walked him around the range and qualified him on certain weapons on September 11, 2003.

With regard to the certification session on September 26, 2003, the Hearing Officer found that Appellant again submitted a form to Ms. Malander for purposes of typing and filing that inaccurately indicated that Officer Gol had certified Appellant on certain firearms that day as well. The Hearing Officer also further found that Appellant and the Township both introduced a copy of the form that Appellant submitted to Ms. Malander, but that the forms differed in that the one introduced by the Township included a hand-written note by Appellant and the one introduced by the Appellant did not. The Hearing Officer found that Appellant

did not provide an adequate explanation regarding the inconsistency in his copy of the form and that Appellant altered and/or falsified the document.

Additionally, the Hearing Officer found that subsequent to the first certification session, Officer Ofner informed Officer Gol that his name was listed on Appellant's form as having qualified Appellant on September 11, 2003. Chief Thomas Supplee of Dublin Borough wrote a letter on September 24, 2003, to Appellant requesting that Appellant change the official paperwork to reflect that Gol did not re-qualify Appellant on September 11, 2003. Further, on October 26, 2003, Gol prepared a letter to the Board stating that he had not certified Appellant on September 11, 2003, and explaining what had occurred. Appellant then called Officer Ofner in November, 2003, and asked him to change the information on the forms.

Based upon the above, the Hearing Officer determined that Appellant knowingly and intentionally falsified his firearm record for September 11, 2003,[4] and September 26, 2003.

Second, the Hearing Officer addressed the allegation that Appellant disobeyed a directive from the Board regarding the police schedule. As background, the Township's Police Department does not operate twenty-four (24) hours a day. Instead, the Pennsylvania State Police handle emergency calls when no Township police officer is on duty to respond. The labor contract between the Township and its police officers requires that the work schedule be posted six (6)

[4] In finding of fact 59, the Hearing Officer stated that Appellant "knowingly and intentionally falsified his firearm record for September 22, 2003 and September 26, 2003." (Decision of Hearing Officer, dated June 26, 2006). It appears that the date "September 22" should have read "September 11," as no certification took place on September 22.

months in advance, with no changes permitted within twenty-eight (28) days unless there is an overtime occurrence, emergency or an officer agrees to it.

In 2003, Appellant and Officer Ofner generally were scheduled to work the day shift, and Officer Pfaff and McNally generally were scheduled to work during the afternoon/evening. The Hearing Officer found that, at times, Appellant would change the schedule, causing the appearance that he was reluctant to do basic police work himself, even though he was expected to do so on the small force. On January 10, 2003, and on May 15, 2003, the Board issued memoranda to Appellant regarding implementation of schedules for police officer shifts and coverage, with a specific schedule that Appellant was to follow. The Hearing Officer found that from April through September, 2003, Appellant disobeyed the Board's scheduling directive and created coverage issues at night by continuously removing Officer Pfaff from the night shift to day shift without proper notice.[5] On some occasions when Officer Pfaff was moved from night shift to day shift because Officer Ofner was sick or on vacation, the Township police coverage would be inadequate. This resulted in a violation of the Board's directive and the labor contract.

On August 18, 2003, the Board issued another memorandum to Appellant, informing him that he had repeatedly violated the scheduling directive that they had given him and that he should implement the schedule. Any changes should be reviewed by the Board. Moreover, the Board stated that failure to follow the schedule would be considered insubordination.

[5] Appellant claimed that Officer's Pfaff's schedule could be changed without the notice required by the contract because he was probationary, but the Police Benevolent Association disagreed.

The Hearing Officer found that the labor contract may have provided for changes in scheduling, but this did not excuse Appellant from complying with the directives of the Board. The Hearing Officer found that Appellant did not communicate to the Board any concerns about scheduling or that he could not comply with their directive and that his explanation regarding schedule changes was inadequate. The Hearing Officer determined that Appellant deliberately and intentionally disobeyed the Township's directive regarding scheduling.

Third, the Hearing Officer addressed the allegation that Appellant disobeyed a directive by the Board requiring him to remain off-duty due to his workers' compensation injury. The Hearing Officer found that on September 10, 2003, Appellant injured his ankle, knee, elbow and shoulder in a fall that occurred during work hours, and he began receiving Heart and Lung and workers' compensation benefits. On or about September 23, 2003, the Board sent a memo to Appellant directing him to remain off duty until his physician directed him to return to full duty. He was also instructed to appoint an officer-in-charge in his absence, ordered him to surrender his vehicle and informed him that his pay checks would be sent to him by mail. With regard to the firearm certification session scheduled for September 26, 2003, Appellant told Officer Ofner, the officer-in-charge during his absence, that he was going to attend. Appellant knew that he was not supposed to perform "official duties." The Hearing Officer found that Appellant attended the certification session on September 26, 2003, and was in charge of the Township's police officers that day, taking them and others through a firearm course even though he had been ordered by the Board to remain off duty. The Hearing Officer again concluded that Appellant deliberately and intentionally

disobeyed the directive of the Board when he did not remain off duty until his physician cleared him for full duty.

Fourth, the Hearing Officer addressed the allegation regarding the falsification of time sheets. The Hearing Officer heard testimony that on August 7, 2003, Appellant was at home most of the day because the septic system at his house had overflowed. However, Appellant's time sheet reflected that he worked an eight (8) hour day. Appellant took sick days on August 6 and 8, 2003. When questioned about the entry on the time sheet, Appellant stated that the time sheet was accurate and he did not correct it. The Hearing Officer determined that Appellant knowingly and intentionally falsified his time sheet for August 7, 2003.

Ultimately, the Hearing Officer concluded that the Board correctly, properly and rightfully terminated Appellant from his employment as Police Chief. Furthermore, the dismissal and/or discharge is consistent with the dictates of the Police Tenure Act.

Appellant appealed the Hearing Officer's decision to the trial court, which affirmed it by opinion and order dated June 21, 2007. Appellant then appealed the matter to this Court.

On appeal,[6] Appellant argues that the trial court erred in affirming the order of the Hearing Officer where critical findings of fact made by the Hearing Officer were not supported by competent substantial evidence of record. Appellant

[6] When considering disciplinary matters pursuant to the Police Tenure Act, where the trial court takes no additional evidence, the Commonwealth Court is limited to a determination of whether the township board of supervisors abused its discretion or committed an error of law in affirming the police officer's discharge. Skrzysowski v. Attardo, 438 A.2d 1031 (Pa. Cmwlth. 1982).

further argues that the trial court erred in affirming the order of the Hearing Officer with respect to charges of falsifying firearms qualifications records.

The employment rights of police officers employed by the Township are governed by the Police Tenure Act in matters of suspension, removal and demotion.[7] Appeal of Redo, 401 A.2d 394 (Pa. Cmwlth. 1979). In Soergel v. Board of Supervisors of Middlesex Township, 316 A.2d 89 (Pa. Cmwlth. 1974), the Court imposed a two-fold burden of proof upon the municipal employer by requiring it: (1) to present clear and convincing evidence to support the charges brought; and (2) to establish further that such charges proved were sufficient to warrant the discipline imposed. Under the Police Tenure Act, issues such as an officer's past record, effect of the conduct upon the morale of the police department, and the effect upon the public's perception and respect for law enforcement must be considered. Appeal of Redo.

As set forth in the Police Tenure Act, a police officer may be removed for "inefficiency, neglect, intemperance, disobedience of orders, or conduct unbecoming an officer." Section 2 of the Police Tenure Act, 53 P.S. §812(4). Conduct unbecoming an officer has been defined by this Court as "conduct tending to destroy public respect and confidence in the operation of municipal services or affecting the morale or efficiency of the police department." Andras v. Wyalusing Borough, 796 A.2d 1047 (Pa. Cmwlth), petition for allowance of appeal denied, 570 Pa. 688, 808 A.2d 573 (2002).

[7] The Township is a second-class township, and the Police Tenure Act is applicable to second-class townships. See Section 1 of the Police Tenure Act, 53 P.S. §811.

Where some, but not all of the charges upon which the penalty is assessed are sustained, a modification of that penalty is appropriate because the adjudicating body chose the penalty upon a faulty premise.[8] Clites v. Upper Yoder Township, 506 Pa. 349, 485 A.2d 724 (Pa. 1984).

The reviewing court must accept the credibility determinations made by the municipal body which hears the testimony, evaluates the credibility of the witnesses and serves as a fact finder. In re Thompson, 896 A.2d 659 (Pa. Cmwlth. 2006). The reviewing court is not to substitute its judgment on the merits for that of the municipal body. Id. Assuming the record demonstrates the existence of substantial evidence, the court is bound by the municipal body's findings which are the result of resolutions of credibility and conflicting testimony. Id.

First, we will address Appellant's argument that the trial court erred in affirming the order of the Hearing Officer because critical findings of fact were not supported by competent substantial evidence. Appellant takes issue with the findings of fact regarding changes to the police schedule and the alleged falsification of his time sheet for August 7, 2003.

With regard to the police schedule, Appellant argues that the Hearing Officer based his determination, in part, on the finding that "Glosson would change the schedule because there were recurring issues and Glosson appeared to be reluctant to do basic police work himself…." (Hearing Officer's decision at finding of fact no. 63, attached to Appellant's brief). The trial court agreed with

[8] Similarly, in Soergel, a demotion from the rank of Chief of Police to Patrolman was based upon a total of ten (10) charges, although only three (3) of the charges brought were sustained on appeal. Under those circumstances, a modification of the penalty was held to be warranted because the Board did not carry its burden of supporting all of the charges upon which the penalty was based.

the Hearing Officer, that the changes were made without a legitimate basis in that Appellant "continued to change Pfaff's schedule to suit his own personal desire to avoid taking or responding to police calls." (Trial court opinion at p. 3, attached to Appellant's brief at Appendix "A"). Appellant argues that given the relatively few number of calls received during the daylight shift, the trial court's conclusion that the schedule changes were made to avoid having to takes calls is clearly overreaching. Also, Appellant argues that consideration of Ms. Herstine's testimony as to why schedule changes were made was inappropriate because the testimony was mere speculation. Finally, Appellant notes that Officer Pfaff testified that every time Appellant changed his shift, it was voluntary on his part because of his preference for day shift.

Appellant's arguments on this issue all focus on whether substantial evidence exists to support a finding that Appellant made the schedule changes, in contravention of the Board's directives, based on a personal desire to avoid performing basic police work. First, we note that the Hearing Officer found that Appellant's actions created the <u>appearance</u> that he was reluctant to perform police work. The Hearing Officer did not actually find that Appellant was reluctant to perform police work. Second, the Hearing Officer's finding was supported by substantial evidence that numerous schedule changes were made so that Appellant rarely worked the day shift without another officer being available to respond to calls. Third, the disciplinary action taken against Appellant with regard to the schedule changes was based upon his intentional disobedience of the Board's directives, not a perception as to the reason for the schedule changes. Hence, we cannot conclude that the trial court erred when it determined that substantial

evidence exists to support the Hearing Officer's findings regarding Appellant's failure to follow the Board's directives as to scheduling.

With regard to the timesheet for August 7, 2003, Appellant argues that the trial court relied wholly on the speculative testimony of Mrs. Malander, which was erroneously characterized by the trial court as definitive, in concluding that Appellant falsified his timesheet. Appellant testified that he left work briefly to return to his home on August 7, 2003, to deal with a septic system overflow. Appellant contends that Nick Malander, Mrs. Malander's husband who was employed at the time to renovate Appellant's kitchen, similarly testified. The trial court rejected the testimony of Appellant and Mr. Malander and instead determined that "Lynn Malander testified that her husband observed [Appellant] at home most of the day." (Trial Court opinion at 4, attached to Appellant's brief as Appendix "A"). However, Appellant contends that the actual testimony by Mrs. Malander was that her husband said that Appellant was home for part of the day. (See R.R. at 832a).

We must disagree with Appellant's contention that the trial court erred when it concluded that substantial evidence existed to support a finding that Appellant falsified his time sheet. Our review of the record reveals that Appellant testified that on August 7, 2003, he spent a portion of the day at home dealing with a problem with his septic system. Moreover, Mrs. Malander essentially testified that Appellant had been at work in the morning, that he left the office prior to her arrival, that he arrived back at the office later that morning, was sweating profusely, stayed for a few minutes and then informed her that if she needed anything, he could be reached at home for the rest of the day. (R.R. at 769a-772a,

813a-822a, 829a-833a). Moreover, her husband informed her that during most or part of the day, Appellant was at home.

While Appellant may point to other evidence of record that may make plausible his contention that he worked eight (8) hours on August 7, 2003, the above described evidence constitutes substantial evidence of record to support a finding that Appellant worked less than eight (8) hours that day.

Next, we will address Appellant's argument that the trial court erred in affirming the order of the Hearing Officer with respect to charges of falsifying firearms certification records.

Appellant argues that the record established that he took inaccurate notes during firearms qualifications, and asked his secretary that they be typed. Once typed, the forms would be reviewed for mistakes and revised. (RR. at 516a). When they were re-typed and reviewed again, they would then be put into the permanent firearms record book. Appellant concedes that there is no question that the notes which he requested to be typed were inaccurate and contained mistakes for virtually every officer who sought to qualify. Appellant counters that the errors in the notes would have been rectified after the notes were typed and corrections made.

Appellant takes the position that these facts do not support a conclusion that Appellant generated false records. Rather, it was Officer Ofner who entered the typed notes into the Police Department's records while knowing they contained errors and then intercepted a letter to Appellant informing him of the errors. Moreover, under the Police Department's regulations, a document does not become an official record unless and until it is approved by the Chief of Police and physically entered in to the record book. Appellant took no such action.

The Township contends that the record is clear from all of the witness involved in the case that Appellant falsely and intentionally inserted Officer Gol's name on the Township's firearms records in an effort to meet the Commission's requirements for a police officer. Although Appellant argues in his brief that Officer Ofner should have notified Appellant as to the record errors, Officer Ofner testified that he had a duty to report such misconduct to his superior, the Board. Appellant's efforts to misdirect his own misbehavior and attribute it to Officer Ofner were rejected by the Hearing Officer. Moreover, the Township contends that Appellant's misconduct was further evidenced by his attempt to cover up the falsified firearms records after the fact, particularly his false testimony and presenting an altered and/or falsified document during the hearing. The Township notes that in Wesolek v. Shaler Township, 455 A.2d 1297 (Pa. Cmwlth. 1983), this Court upheld the termination of a police officer who deliberately submitted false reports regarding damage to his patrol car and attempted to cover up and minimize the seriousness of his actions afterward.

We must conclude that the trial court did not err when it affirmed the Hearing Officer's decision with regard to Appellant's attempt to falsify firearms certification forms. Appellant essentially asks this Court to reweigh the evidence and find his testimony to be more credible than that of all the other witnesses on this issue. As the reviewing court, we must defer to the Hearing Officer's credibility determinations. Appellant attempted to justify the errors on the firearm certification forms by stating that his notes were sloppy, that some of his notations were illegible and that if he had returned to work, he would have corrected the firearms certification forms once he uncovered the errors. However, the Hearing Officer specifically determined that Appellant's testimony was not credible and

that he failed to satisfactorily explain why false information was inserted on the forms. Additionally, it is irrelevant that Appellant never physically entered the forms into the Police Department's official records, as his attempt to falsify the records is sufficient to sustain a charge that he engaged in conduct unbecoming an officer.

Accordingly, we must affirm the order of the trial court.

JOSEPH F. McCLOSKEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert Glosson, Appellant	:	
v.	:	No. 1388 C.D. 2007
Bedminster Township	:	

O R D E R

AND NOW, this 24th day of January, 2008, the order of the Court of Common Pleas of Bucks County is hereby affirmed.

JOSEPH F. McCLOSKEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert Glosson,	:	
Appellant	:	
	:	
v.	:	No. 1388 C.D. 2007
	:	Submitted: November 2, 2007
Bedminster Township	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

DISSENTING OPINION
BY JUDGE PELLEGRINI FILED: January 24, 2008

Robert Glosson (Glosson) was terminated by Bedminster Township (Township) for falsifying permanent firearm records of one officer, falsifying his time sheets, disobeying the Board of Supervisors' directives that he remain off-duty because of a workers' compensation injury and another regarding officers' schedules, all of which constituted violations of the Police Tenure Act (Act).[1] While I agree with the majority that there was substantial evidence to support almost all of these charges, I disagree that there was sufficient evidence to

[1] Act of June 15, 1951, P.L. 586, *as amended*, 53 P.S. §812. Section 2 provides that a police officer may be suspended, removed or reduced in rank for "neglect or violation of any official duty" or "inefficiency, neglect, intemperance, disobedience of orders, or conduct unbecoming an officer."

establish that Glosson falsified permanent firearm records. Accordingly, I respectfully dissent to that portion of the majority opinion.

The undisputed evidence is that Glosson gave his secretary his handwritten notes of officer firearm scores from a two-day September 2003 weapons training session and asked that they be typed. The handwritten notes inaccurately indicated that an officer had certified him on certain firearms. The notes were typed, and along with his handwritten notes, placed by his secretary on his desk. His secretary then expected that Glosson would review them, make corrections, give them back to her for re-typing, and then following a second review, would then be entered in the record book. Instead, Sergeant Ofner, the Police Department's second in command, reviewed the typed forms, and even though he knew they were wrong, had them entered in the record books.

To make out a charge of falsifying a permanent firearm record, it has to be established that the person charged entered falsified scores on a permanent firearm record. Glosson never entered or placed an incorrect score in the permanent police record because those scores were entered into the record by Sergeant Ofner, who did so without Glosson reviewing or approving the forms on which the scores were noted. Because the Township failed to make out that charge that Glosson falsified permanent firearm records, I would remand the matter to the Township for imposition of an appropriate punishment without consideration of the charge of falsifying permanent firearm records. *See Bristol v. Downs*, 409 A.2d 467 (Pa. Cmwlth. 1979).

_____

DAN PELLEGRINI, JUDGE