

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO: 16-2022-AP-2

DIVISION: AP-A

JACKSONVILLE SHERIFF'S OFFICE,
Petitioner,

v.

NICHOLAS GIFFORD,
Respondent.

_____ /

Petition for Writ of Certiorari from the decision of the Jacksonville Civil Service Board

January 19, 2024

PER CURIAM

Nicholas Gifford started drinking Vodka at 6 p.m. on a Tuesday. The next morning, he got into his work issued vehicle and tried to report to the gun range for firearms training. Other officers noticed his inebriation and confronted him. His blood alcohol content was .316. The Jacksonville Sheriff's Office (JSO) terminated him, but the Civil Service Board determined Gifford should have been suspended instead. JSO challenges that decision, arguing that the Board erred by lessening the disciplinary action.

A decision of a local board or agency not subject to the Administrative Procedure Act is reviewable as a common-law petition for certiorari. Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 530 (Fla. 1995) (citing De Groot v. Sheffield, 95 So. 2d 912 (Fla. 1957)). On certiorari review,

this Court “is not entitled to reweigh the evidence or substitute its judgment for that of the agency.” Id. (citing Educ. Dev. Ctr., Inc. v. City of West Palm Beach Zoning Bd. of Appeals, 541 So. 2d 106, 108 (Fla. 1989)). Instead, this Court must apply the following three-part standard of review: (1) whether procedural due process is accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence. Id. (citing City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 625-26 (Fla. 1982)).

When determining if the Board followed the essential requirements of the law,¹ this Court is essentially tasked with determining if the Board applied the correct law. At the hearing, the Board enunciated the correct standard of review, noting that Gifford had to present evidence showing that dismissal was manifestly unjust after JSO presented evidence that there was cause for discipline. Further, the Civil Service and Personnel Rules and Regulations gives the Board the authority to modify a termination if *they* find a manifest injustice:

If the Civil Service Board determines, after review, that the disciplinary action is inconsistent with the provisions of the City Charter or the Civil Service and Personnel Rules and Regulations, or is manifestly unjust, it shall order the modification of the disciplinary action or provide such relief as it deems appropriate, including the reinstatement to a former position, payment of forfeited pay, reinstatement to a former level of compensation, and the removal of reprimands from the employee's personnel file.

Though JSO claims to take issue with the Board’s process, it is really challenging the result. The Board, vested with the authority to do so, found that Gifford’s dismissal was unjust. Were this

¹ The Board conducted a full hearing, so procedural due process was afforded. See generally Massey v. Charlotte Cnty., 842 So. 2d 142, 146 (Fla. 2d DCA 2003) (“Procedural due process requires both fair notice and a real opportunity to be heard.”).

Court sitting in a different capacity, then it would not find Gifford's termination a manifest injustice. However, this Court cannot substitute its conscience for the Board's. Because the Board applied the correct law before coming to its decision, this Court must abide by it.²

That leaves the question of whether the Board's findings were supported by competent, substantial evidence. At the hearing, those members voting in favor of suspension emphasized the mitigating evidence presented by Gifford. One member stated, "[T]his gentleman over here has been a stellar, outstanding as far as what I heard anyway, and will be a great member of the . . . SWAT team." Another said, "The lack of any prior discipline of the employee is weighing on my mind as well in supporting [the motion to modify punishment]." The Board also considered Gifford's preemptive efforts to treat his addiction. Because the Board's decision was supported by competent, substantial evidence, this Court will not overturn it. Accordingly, the Petition is **DENIED**.³

Aho, Kalil, and Wallace, JJ., concur.

Sonya Harrell., counsel for Petitioner

Paul Daragjati, counsel for Respondent.

² The rules do not mandate a termination for being under the influence while on duty.

³ Petitioner's Motion for Oral Argument is **DENIED**.