

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

KEVIN SCHNELL,)	
)	
Petitioner,)	
)	
vs.)	Case No. 0816-CV-18338
)	
KARL ZOBRIST, et al.,)	Division 13
)	
Respondents.)	

JUDGMENT

NOW on this _____ day of July, 2009, after hearing the oral arguments of counsel on April 21, 2009 and having reviewed the entire record filed with the Court, and the Briefs of the parties, and being fully advised in the premises, the Court hereby affirms the decision of Kansas City, Missouri Board of Police Commissioners (“Board”) to terminate the employment of Officer Kevin Schnell (“Schnell”) from the Kansas City, Missouri Police Department (“Department”).

FINDINGS OF FACT

1. On February 5, 2006, Officer Schnell and Officer Spencer stopped Sophia Salva as part of a traffic stop for a fake temporary tag in the window of her car. As he approached Ms. Salva's vehicle, Officer Schnell told Ms. Salva that she had been stopped for displaying a fraudulent temporary license tag.

2. Within thirty seconds of the initial conversation, Ms. Salva told Officer Schnell: “I am having a miscarriage.” Less than a minute into the stop, Ms. Salva stated, “I have a problem. I am bleeding. I took this car, and I want to go to the hospital.”

3. Officer Schnell asked Ms. Salva to produce her driver's license. Ms. Salva did not respond to Officer Schnell and did not produce a driver's license.

4. Ms. Salva asked "Can the lady [referring to Officer Spencer] check me? I'm bleeding. I have three month baby inside." Officer Schnell then summoned Officer Spencer to the vehicle. Ms. Salva told both officers that she wanted to go to the emergency room.

5. Officer Schnell told Officer Spencer that Ms. Salva was giving him "a long line of excuses, says she's bleeding [and that] you can check."

6. Ms. Salva, again, requested that Officer Spencer check her person to confirm that she was bleeding and Officer Schnell responded that "[s]he's not a doctor," referring to Officer Spencer.

7. Officer Schnell continued his questioning by asking Ms. Salva if she had identification with her and she responded that she did not. Officer Schnell requested that Ms. Salva exit her vehicle and Ms. Salva did so.

8. Officer Schnell told Officer Spencer that Ms. Salva claimed to be three months pregnant, and Ms. Salva added "I'm three months pregnant and I'm bleeding." During the next fourteen minutes of the stop, Ms. Salva asked to go to the hospital eleven more times, told both officers she was bleeding seven times, said she was pregnant four more times and on one occasion told them she had stomach pain.

9. After one of Ms. Salva's requests to go to the hospital, Officer Schnell said "[y]ou can go to the hospital when we're done with you. Because you're obviously not telling us everything here."

10. In compliance with Officer Spencer's instructions, Ms. Salva was sitting on the

street curb while Officer Schnell searched her car. Ms. Salva tried to get up once but both officers told her to sit down. Specifically, Officer Schnell instructed Ms. Salva to “[s]tay seated or you will go in handcuffs.” Ms. Salva responded “[i]f I die here you will take care of it? If I die here?” Officer Schnell replied “[f]air enough.”

11. Shortly thereafter, Officer Schnell asked Ms. Salva where she was from originally, and she responded that she was from Sudan. Officer Schnell replied “Sudan. If I was from Sudan and I did drugs, what kind of drugs would I do in Sudan? I’m just curious. Do you have drugs there? Do you do like cocaine?”

12. When Officer Schnell and Officer Spencer later obtained Ms. Salva’s correct identifying information, they learned that Ms. Salva had numerous municipal warrants and placed her under arrest.

13. During the course of the traffic stop, Officer Schnell conducted a search of the vehicle Ms. Salva had been driving. Officer Schnell did not recover the counterfeit temporary tag that prompted the stop.

14. At no time did either Officer Schnell or Officer Spencer procure transportation for Ms. Salva to be taken to a hospital. The Department transportation wagon took Ms. Salva to Department Headquarters where she was incarcerated.

15. Officer Schnell’s and Officer Spencer’s duty shift ended at 12:00 a.m. While waiting for the transportation wagon, Officer Schnell and Officer Spencer discussed that Ms. Salva’s arrest and detention could interfere with completing their work before the end of their shift.

15. When the Department transportation wagon first arrived at the scene of the vehicle check, Ms. Salva asked Officer Schnell and Officer Spencer if they could report her bleeding.

Officer Schnell responded “[w]ill do. When we take you to the station we’ll be able to report all that. We’ll get this stuff taken care of . . .” Officer Spencer added “[a]nd they’ll be able to give you a product to help you stop that [referring to the bleeding].” Officer Schnell said “[b]ig product too no less.”

16. While still incarcerated during the morning hours of February 6, 2006, Ms. Salva passed at least one blood clot, leaked blood and bodily fluid, and experienced abdominal cramping.

17. On that same day, at approximately 9:00 a.m., Ms. Salva was transported by MAST ambulance from Department Headquarters to Truman Medical Center. Several hours after arriving at Truman Medical Center, Ms. Salva delivered a very premature baby that did not survive.

18. On February 20, 2007, Police Chief James Corwin filed Charges and Specifications against Officer Schnell alleging violations of three Department policies, specifically, Department Procedural Instruction 98-7, Department Personnel Policy 210-7 and Procedural Instruction 011-4, Annex B, Paragraph G (1). Violations of those three policies were 1) failing to call for an ambulance when one had been requested, 2) being rude and discourteous to Ms. Salva during the traffic stop, and 3) failing to recover the fake temporary tag.

19. Procedural Instruction 98-7 provides under Section II, subsection C. that “Officers will procure transportation for a sick or injured person when requested or appropriate.” The Board found that Schnell acted unreasonably and thus failed to exercise sound discretion by improperly carrying out PI 98-7 by refusing to call an ambulance despite Ms. Salva’s repeated requests. The Board further found that Schnell’s decision not to seek medical attention for Ms.

Salva demonstrates a dangerous lack of concern for public safety, and that Schnell lacks the judgment necessary to appropriately apply PI 98-7.

20. Personnel Policy 210-7 requires “[m]embers will conduct themselves with dignity, courtesy and efficiency.” The Board made numerous factual findings of statements made to or about Ms. Salva which the Board considered to be rude and discourteous, specifically, telling Officer Spencer that Ms. Salva’s references to her bleeding were just “a long line of excuses,” responding to Ms. Salva’s question “if I die here you will take care of it?” by saying “Fair enough,” asking her what kinds of drugs she did in Sudan, and indicating that the feminine hygiene product Ms. Salva would be provided with would be a “big one.” The Board concluded that “Schnell spoke to and about Salva in a disrespectful manner” and that Schnell’s treatment of Ms. Salva was discourteous, undignified, and derogatory in violation of PI 201-7.

21. The Board found that “Officer Schnell’s failure to recover the allegedly counterfeit temporary tag from Ms. Salva’s vehicle is in direct violation of Procedural Instruction 011-4, Annex B, paragraph G(1), which requires any officer who encounters a motor vehicle with counterfeit tags to recover the tag and forward it to the Property and Evidence Section.”

22. The Board found that he violated all three of the Department policies for which he had been charged, and determined that “termination of Department employment is an appropriate remedy for Officer Schnell’s actions.”

CONCLUSIONS OF LAW

Article V, section 18, of the Missouri Constitution provides for judicial review of administrative actions to determine whether the agency actions are authorized by law, and in cases in which a hearing is required by law, whether the same are supported by competent and

substantial evidence upon the whole record. *Mo. Const. Article V, Section 18*. In accordance with the Constitution, Section 536.140 provides for judicial review of the administrative ruling to determine whether the administrative action: (1) Is in violation of constitutional provisions; (2) Is in excess of the statutory authority or jurisdiction of the agency; (3) Is unsupported by competent and substantial evidence upon the whole record; (4) Is, for any reason, unauthorized by law; (5) Is made upon unlawful procedure or without a fair trial; (6) Is arbitrary, capricious or unreasonable; or (7) Involves an abuse of discretion. Section 536.140.2 RSMo.

The standard of review of this Court is the same standard of review the Court of Appeals would apply to the judicial review of an agency's decision. *Lagud v. Kansas City Bd. of Police Com'rs*, 136 S.W.3d 786, 790-91 (Mo.banc 2004). The decision by the Board must be supported by competent and substantial evidence upon the whole record, as opposed to an earlier standard¹ rejected by the Missouri Supreme Court in *Lagud*.

While this Court is not bound by the Board's decisions on questions of law, it gives due weight to the expertise and experience of the Board and its opportunity to observe the witnesses. *Fleming Foods of Missouri, Inc. v. Runyan*, 634 S.W.2d 183, 184 (Mo.banc 1982). The fact finding function rests with the Board, and if the evidence would warrant either of two opposed findings, the reviewing court must uphold the factual determinations the agency has made. *Overland Outdoor Advertising Co., Inc. v. Missouri State Highway Comm'n.*, 616 S.W.2d 563, 566 (Mo.App.1981). This Court may reverse the findings of an administrative agency if it is determined that the decision is not supported by competent and substantial evidence on the whole record, or if the decision constitutes an abuse of discretion, or is unauthorized by law, or is

¹ The prior standard of review was that the Court should view the evidence and all reasonable inferences drawn therefrom in the light most favorable to the agency's decision. *Curtis v. Bd. of Police Comm'rs of Kansas City*, 841 S.W.2d 259, 261 (Mo.App. W.D.1992).

arbitrary and capricious. *Fritzhall v. Board of Police Com'rs*, 886 S.W.2d 20, 23 (Mo.App. [W.D.] 1994).

In this case, the decision of May 23, 2008 by the Board is supported by competent and substantial evidence upon the record as a whole, was not an abuse of discretion, was not unauthorized by law, and was not arbitrary and capricious.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Findings of Fact, Conclusions of Law and Order of May 23, 2008 which terminated the employment of Petitioner, Kevin Schnell are hereby affirmed.

COSTS are assessed to Petitioner.

Date

JUDGE JAY A. DAUGHERTY
Jackson County Circuit Judge, Division 13

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