

FILED
DEC 30 1981
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

RONALD L. PEXA,	)	
Plaintiff-Appellant,	)	Filed December 30, 1981
vs.	)	
CIVIL SERVICE COMMISSION OF THE	)	1-319
CITY OF CEDAR RAPIDS, IOWA,	)	<u>2-66308</u>
Defendant-Appellee.	)	

Appeal from Linn District Court - Thomas M. Horan, Judge.

Plaintiff appeals from a district court decision which affirmed a decision of the Cedar Rapids Civil Service Commission terminating his employment as a police officer.
AFFIRMED.

Neil A. Barrick of Robert E. Conley, P.C., Des Moines, for plaintiff-appellant.

Lynda Thomsen, Assistant City Attorney, Cedar Rapids, for defendant-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONELSON, J.

Plaintiff appeals from a district court decision which affirmed a decision of the Cedar Rapids Civil Service Commission terminating his employment as a police officer. He asserts that the evidence was insufficient to support termination. We affirm. Pursuant to section 400.27, The Code 1979, civil service appeals are equitable actions and are reviewed de novo. While we give weight to the findings of the civil service commission and the trial court, we are not bound by them. Millsap v. Cedar Rapids Civil Service Commission, 249 N.W.2d 679, 683 (Iowa 1977).

The Cedar Rapids police chief terminated plaintiff's employment for the following reasons: (1) excessive use of force in connection with the arrest of a seventeen-year-old male juvenile; (2) insubordination with regard to his questioning of an order by a superior officer to transport the juvenile to a hospital; (3) use of force against another officer in an unrelated, off-duty incident; (4) a prior incident where plaintiff was formally disciplined for excessive use of force and warned that any repetition would result in dismissal. Plaintiff's termination was affirmed by the Cedar Rapids Civil Service Commission and the trial court.

The only issue on appeal is sufficiency of evidence. Incidents 1 and 4 discussed below are sufficient on their own to justify dismissal, if supported by substantial evidence. For this reason, while we find the other reasons for dismissal, numbers 2 and 3, are supported by substantial evidence, we shall not review them in detail.

Officer Hanse testified that the juvenile was handcuffed and uncooperative, and that he observed plaintiff ram the juvenile's head against a wire window at the police station. The juvenile testified he was slammed against the window, but did not see who did it. Officer Meyers testified he had been looking at the ground and did not see the incident, but his testimony as to what he heard supports the testimony of Officer Hanse and the juvenile. Plaintiff, however, claims the juvenile lost his balance and fell against the window. We find the testimony of all those involved, other than plaintiff, to be cumulative, consistent, and substantial evidence of excessive force to support plaintiff's termination. Plaintiff's termination was justified in light of both the above incident, and the prior warning that any repetition of excessive force would result in his dismissal. We affirm plaintiff's dismissal.

AFFIRMED.