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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

RICHARD CROWELL,	)	
Appellant,	)	Filed February 22, 1979
v.	)	
CIVIL SERVICE COMMISSION OF	)	12
THE CITY OF MASON CITY, IOWA,	)	<u>2-61629</u>
Appellee.	)	

Appeal from Cerro Gordo District Court - J. W. Frye, Judge.

Police officer appeals his suspension for misconduct alleging insufficiency of evidence and denial of a fair hearing. - Affirmed.

William Pappas, Mason City, for Appellant.

B. Michael Dunn, Mason City, for Appellee.

Submitted to Oxberger, C. J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiff Richard Crowell appeals trial court decree affirming the decision of defendant Civil Service Commission to suspend plaintiff from his employment as a police officer. Crowell contends there was insufficient evidence to support the charges against him and he was denied a fair hearing due to commission members' bias and prejudice. We affirm.

Under § 400.19, The Code, civil service employees may be disciplined for neglect of duty, disobedience of orders, misconduct, or failure to properly perform duties. Crowell was discharged in April, 1976, by the Mason City Police Chief for "conduct unbecoming an officer" allegedly because he impeded the investigation of a known felon and failed to report the location of property subject to a police investigation. On appeal, the commission found sufficient evidence of misconduct and suspended Crowell for six months. Trial court affirmed Crowell's suspension.

Our review is de novo. *Millsap v. Cedar Rapids Civil Service Commission*, 249 N.W.2d 679, 683 (Iowa 1977). The record shows that Crowell was personally acquainted with Vernon Van de Walker who was suspected by Mason City police of criminal involvement in a stolen C.B. radio ring. One of Crowell's fellow officers reported to his superiors that he suspected Crowell was tipping off Van de Walker and thus impeding a police investigation. As a result of this report, Crowell was asked to submit to a polygraph examination, which he did. The BCI agent who administered the test opined that Crowell had not told the complete truth when asked questions which related to his furnishing Van de Walker with police information, receiving stolen C.B.'s and other property, being involved with illegal activities, and attempting to withhold information from the examiner. Police Chief Greenan admitted that his decision to fire Crowell was based almost completely on the results of the polygraph test. Crowell has not asserted on appeal that this evidence was inadmissible. We have therefore considered the results of the polygraph examination as part of the totality of circumstances. A police officer may be disciplined for conduct which is less than criminal, and evidence of this conduct need not be proved beyond a reasonable doubt. See *Fronsdahl v. Civil Service Commission*, 189 Iowa 1344, 1347, 179 N.W. 874, 876 (1920). We think the

record contains sufficient evidence of misconduct to warrant Crowell's suspension.

Crowell also contends that the commission members were biased against him and that they failed to conduct an impartial hearing. It is true that the commissioners individually examined some of the witnesses who were called to testify. We disagree with Crowell's assertion, however, that these examinations were designed to elicit only evidence which was unfavorable to Crowell. Neither can it be said that the commissioners became the advocates of the police department's position. This is not a case where the commission acted both as prosecutor and decision-maker. See Sandahl v. City of Des Moines, 227 Iowa 1310, 290 N.W. 697 (1940).

We affirm trial court's decree.