FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

RICHARD KELLAR,
Appellant,
vs.
CIVIL SERVICE COMMISSION OF THE CITY OF MASON CITY, IOWA,
Appellee,
CITY OF MASON CITY, IOWA,
Intervenor-Appellant.

Filed December 21, 1978

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2-61604

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

Plaintiff appeals suspension from police force for misconduct. - Reversed.

Robert E. Conley, of Conley, Conley & Crawford, Des Moines, for Appellant.

B. Michael Dunn, Mason City, for Appellee and Intervenor-Appellant.

Submitted to Oxberger, C. J., and Snell and Carter, JJ. Donielson, J., takes no part.

PER CURIAM

Plaintiff Richard Kellar appeals trial court decree affirming defendant Civil Service Commission's decision to suspend plaintiff for misconduct pursuant to §§ 400.19 - .27, The Code. We reverse.

Kellar, a Mason City police officer, was discharged from employment on April 13, 1976, by the city's chief of police. His firing was affirmed by the mayor and an appeal was taken to the defendant commission. Thereafter, the city filed specification of charges against Kellar. The commission set aside the discharge but found sufficient evidence of misconduct to warrant a four month suspension without pay. Trial court affirmed the suspension based on its finding that Kellar had failed to report to his superiors concerning an investigation he had undertaken.

In September, 1975, Kellar's superior officer verbally authorized him to investigate a case concerning stolen C. B. radios. According to the plan, Kellar would attempt to purchase radios from the police department's prime suspect. Several days after receiving permission to investigate, Kellar informed his superior that he had been unable to make the purchase. At that point, the superior considered the plan completed although he never told Kellar to discontinue his investigation. In November, 1975, Kellar again reported to his superior that the "deal" regarding the purchase of the C. B.'s had fallen through allegedly because the suspect had been tipped off by another Mason City police officer. After consultation with the deputy chief, Kellar's superior asked him to prepare a written report of the incident. In the report, Kellar stated that the suspect refused to sell the radios because he had been told by another officer that Kellar intended to "burn" him. Kellar concluded his report by mentioning that the suspect and the fellow officer were good friends and that the officer had a stolen air conditioner in his possession.

Our review of the instant case is de novo. Millsap v. Cedar Rapids Civil Service Commission, 249 N.W.2d 679, 683 (Iowa 1977). In its specification of charges, the city alleged that Kellar was guilty of misconduct by (1) failing to timely report another officer's possession of stolen property, (2) conducting an unauthorized investigation, and (3) submitting a misleading report. We agree with

the trial court that there is insufficient evidence in the record to support charges 1 and 3. We also find, however, insufficient evidence to prove that Kellar conducted an unauthorized investigation. Kellar's superior officers testified they were unaware of his second attempt to buy the radios until after the fact. According to the chief, once the September "deal" fell through, Kellar should have brought up the matter again before attempting to make another purchase and should have known he had no right to proceed without backup support. Under the circumstances of the case, however, Kellar's conduct appears perfectly reasonable. He received permission to make purchases of C. B. radios from a certain suspect; the manner in which he did so was apparently left to his own discretion; no back-up personnel were involved in the first attempted purchase; no one ever advised him to discontinue his inquiry.

Based on the record before the commission, we find insufficient evidence to support a conclusion that Kellar's November activities were unauthorized. The statute at issue lists the grounds for which civil employees may be peremptorily suspended, demoted, or discharged. Section 400.19, The Code. Finding insufficient evidence to support the charges against Kellar, it follows that none of the statutory grounds for suspension have been established. Accordingly, we reverse the suspension and order Kellar reinstated as of the date of said suspension with compensation from the date thereof. Section 400.27, The Code.