

DORNER v. LOS ANGELES POLICE DEPARTMENT

CHRISTOPHER DORNER, Plaintiff and Appellant,

v.

LOS ANGELES POLICE DEPARTMENT et al., Defendants and Respondents.

No. B225674.

Court of Appeals of California, Second District, Division Four.

Filed October 3, 2011.

Law Office of David J. Duchrow, Jill A. Piano and David J. Duchrow for Plaintiff and Appellant. Carmen A. Trutanich, City Attorney, Claudia McGee Henry, Assistant City Attorney, and Gregory P. Orland, Deputy City Attorney, for Defendants and Respondents.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

Appellant Christopher Dorner, an officer with the Los Angeles Police Department (LAPD), made a complaint against his field training officer, Sergeant Teresa Evans, accusing her of kicking a suspect, Christopher Gettler (Gettler). The Los Angeles Police Department Board of Rights (Board) found that appellant's complaint was false and therefore terminated his employment for making false statements. Appellant filed a petition for a writ of administrative mandamus in the superior court pursuant to Code of Civil Procedure section 1094.5, seeking to overturn the decision of the Board. The superior court denied his petition, and he now appeals. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant was charged in a formal written complaint with three counts: count 1, on August 10, 2007, making false statements to Sergeant D. Deming, who was conducting an official investigation; count 2, on October 9, 2007, making false statements to Detectives S. Gallegos and T. Lai, who were conducting an official investigation; count 3, on August 10, 2007, making a personnel complaint that he knew or should have known was false. The Board held a series of hearings at which the following witnesses testified: appellant, Captain Donald Deming, Sergeant Evans, Sergeant Leonard Perez, Sergeant Eddie Hernandez of the Los Angeles Port Police, Sergeant Phil Jackson, Sergeant Julie McInnis, Detective Shelly Villanueva (formerly Gallegos), Christopher Adrid, Ashlye Perez, Christopher Gettler, and Richard Gettler.

Testimony of Captain Deming⁴

In August 2007, Captain Deming was a sergeant assigned as an assistant watch commander at the Harbor Division of the LAPD. On August 10, 2007, appellant spoke with Captain Deming about an incident on July 28, 2007, involving the use of force during Gettler's arrest at a DoubleTree Hotel in San Pedro.

Appellant told Captain Deming he had something bad to report, and he "expressed remorse that he failed to report what he believed to be misconduct (unnecessary kicks applied to an arrestee) that he witnessed approximately two weeks prior." Appellant said that he had handcuffed the suspect and was struggling with him when Sergeant Evans (Officer Evans, at the time) kicked the suspect twice in the left shoulder area and once in the face. Appellant had

not told Sergeant Jackson about the kicks when Sergeant Jackson conducted a use of force investigation, and Sergeant Evans later discouraged appellant from disclosing she had kicked the suspect. Appellant was unsure what to write about the incident on the arrest report, so Sergeant Evans completed the report, "omitting any reference to the kicks." Appellant was visibly upset when he spoke with Captain Deming, and Captain Deming believed this was caused by fear of repercussions for reporting misconduct by a training officer. Because of his fear of repercussions, appellant told Captain Deming, "Promise me you won't do anything." Appellant testified that the reason he asked Captain Deming not to do anything was that he knew Sergeant Evans had a child to support and he did not want her to lose her job.

After Captain Deming retired from the LAPD, appellant called to tell him he was being investigated for false statements. Captain Deming expressed surprise, and appellant told him, "No matter what happens, I just want you to know I never lied to you." Captain Deming testified that appellant's performance was satisfactory while he was under his supervision.

Following appellant's complaint about Sergeant Evans, appellant believed someone urinated on his equipment bag at the police station. Appellant thought this was in retaliation for his complaint against Sergeant Evans and filed a complaint about this incident. However, an analysis of the unknown substance on appellant's jacket revealed that the substance was not urine.

Testimony of Sergeant Evans

Sergeant Evans was the field training officer assigned to train appellant, who was a probationary employee. She testified that appellant had expressed to her the need for reintegration training because he had been away for a long time during his military deployment.²

Sergeant Evans and appellant responded to a call around 8:46 a.m. on July 28, 2007. When they arrived, they saw the subject sitting on a bench outside the main door of the hotel. Based on the subject's demeanor and gaze, the officers thought he was either suffering from mental illness or under the influence, so they discussed a plan to isolate him from the numerous pedestrians in the area.

Appellant told the subject to stand up, but he did not comply, so appellant placed his hand on the subject's arm and helped him stand. When appellant and the subject were walking near a planter box on the sidewalk, the subject suddenly swung at appellant and said, "fuck you." Sergeant Evans took a taser from appellant's duty belt and called for backup.

While appellant was trying to gain control of the suspect, Sergeant Evans told the subject to stop or she would use the taser. Appellant and the suspect fell into the bushes in the planter box, and the suspect's arm was wedged against a wall. After Sergeant Evans shot Gettler twice with the taser, appellant was able to control Gettler's left wrist and place handcuffs on him. Sergeant Evans went behind the bushes and crouched down to help appellant control Gettler's right arm. After about 30 seconds of struggling, Gettler let the officers handcuff him and said, "Is that what you wanted? Here you go." Sergeant Evans denied kicking Gettler in the face or the shoulder area.

Appellant then helped Gettler stand and placed him in a police car. Sergeant Evans noticed that Gettler had a laceration on his cheek, but no other injuries. There were no boot marks on Gettler's face or shirt and no bruising on his face. When Gettler was taken to the police station, he did not tell the watch commander or a physician, who treated his facial injuries, that he was kicked in the face.

After Gettler was in custody, other officers arrived, including Sergeant Phil Jackson. Sergeant Jackson interviewed Sergeant Evans about the use of force and interviewed other witnesses at the scene.

Sergeant Evans and appellant discussed the incident so appellant could write the arrest report, but she stated that appellant took too long to write the report. Appellant asked Sergeant Evans several questions about how to complete the use of force section, which underwent about three revisions by Sergeant Evans and Sergeant Jackson. Sergeant Evans testified that

the revisions were mainly to articulate what specific actions the officers took during the incident because appellant was unfamiliar with the "specific verbiage" used to describe their actions. Appellant reviewed the report before it was turned in to Sergeant Jackson for approval. The use of force report stated that Gettler's injury was consistent with the use of force involved in arresting him and did not state that Sergeant Evans kicked Gettler.

Sergeant Evans previously had told appellant that he needed to take less time in writing arrest reports. She also had indicated in an evaluation that appellant needed to improve in the areas of officer safety and common sense and good judgment. Appellant received the evaluation on August 9, 2007.

Testimony of Christopher Adrid

Adrid was working as a bellman at the DoubleTree Hotel on the date of the incident. He saw Gettler on a bench in the lobby, talking to himself, so he asked Gettler if he was a hotel guest. When Gettler said he was not staying at the hotel, Adrid asked him to sit on a bench outside the hotel.

When appellant and Sergeant Evans arrived, Adrid saw them ask Gettler to take his hands out of his pockets and approach them. Gettler stood up and walked toward the officers, but when he tried to run away, appellant tackled him. Adrid testified that he saw Gettler and appellant fall into the bushes, which were about four feet high, although in an earlier interview, he had said he did not see appellant tackle Gettler. Adrid testified that Sergeant Evans was telling Gettler to put his hands behind his back or else she would use the taser. Gettler did not comply, so Sergeant Evans shot him with the taser, and then he complied and was handcuffed. Sergeant Evans stepped into the planter and helped appellant and Gettler get up. Adrid did not see Sergeant Evans crouch in the bushes or kick Gettler. He said that Sergeant Evans had one foot in the planter and one on the sidewalk and never had both feet in the planter. Adrid saw the cut on Gettler's nose but did not see any other injuries.

Testimony of Sergeant Perez

Sergeant Perez met appellant in 2004 or 2005, when they were both in the United States Navy Reserves. While appellant was in the police academy, he told Sergeant Perez that a classmate had used a racial epithet against him (appellant is black) and continued doing so after appellant asked him to stop. Appellant reported the incident to a supervisor.

In August 2007, Sergeant Perez was camping at a lake when he noticed he had received several phone calls from appellant; he tried calling him back, but service was intermittent. Over a series of five or six calls, appellant told Sergeant Perez that he was not getting along with Sergeant Evans and that Sergeant Evans had kicked a suspect who was either handcuffed or had one handcuff on. Appellant asked Sergeant Perez if he needed to report the incident, and Sergeant Perez said appellant needed to tell a supervisor immediately or else Sergeant Perez would do it himself. Sergeant Perez asked appellant about the arrest report, and appellant alluded to Sergeant Evans having changed the report or told appellant to change it. When appellant started telling Sergeant Perez about the incident, Sergeant Perez stopped appellant because Sergeant Perez knew he might become a witness in any investigation. A few days later, appellant told Sergeant Perez he had reported the incident to Captain Deming.

Testimony of Sergeant Hernandez

Sergeant Hernandez was an officer with the Port Police at the time of the incident. He responded to the DoubleTree Hotel when he heard a call that an officer needed help. When Sergeant Hernandez arrived, he saw "two officers crouched over, half in the bush and half not," struggling with a suspect and trying to handcuff him. As he ran up to them, he saw them get the second handcuff on the suspect and saw appellant pick the suspect up. Sergeant Hernandez testified that appellant was wearing a dress uniform with a tie that was messed up, so he told appellant to fix his tie while he held the suspect for him. It was subsequently established that appellant was not wearing a dress uniform or a tie, based on testimony and a photo.

Sergeant Hernandez thought that Sergeant Evans had one foot in the planter and one on the sidewalk, and he never saw her in or behind the bushes. Sergeant Hernandez did not see Sergeant Evans taser Gettler or kick him.

Testimony of Ashlye Perez

Ashlye Perez was working at the DoubleTree as a bellhop on July 28, 2007. She was in the lobby of the hotel when she saw appellant and Sergeant Evans arrive at the hotel. The hotel doors were open, so she heard the officers ask Gettler to stand and ask if he was a guest at the hotel. After Perez went outside to try to usher hotel guests inside, she heard Gettler start yelling and saw the officers grab him to stop him from running away. She did not remember exactly what happened, but she saw Sergeant Evans use the taser, and she saw Gettler fall headfirst into the bushes. She noticed that some branches were broken when Gettler hit the bushes. Perez did not see Sergeant Evans go into the bushes or kick Gettler. Perez went back into the hotel, so she did not see the officers handcuff Gettler, but she saw Gettler struggling while the officers tried to get him out of the bushes. She noticed that Gettler had a cut on his face, which she thought was from hitting his face on the bushes.

Testimony of Sergeant Jackson

When Sergeant Jackson arrived, he saw appellant, Sergeant Evans, Sergeant Hernandez, a few other officers, and Gettler in custody inside the police car. After learning from Sergeant Evans that use of force was involved, Sergeant Jackson began to interview people regarding the use of force. He interviewed the officers and the other witnesses individually and did not recall any of the witnesses reporting that kicks were used. When he inspected Gettler's injury, he saw blood on Gettler's face that he thought was from the bushes, but he did not see any bruising or other indication that Gettler had been kicked. Sergeant Jackson read several revisions of the arrest report prepared by appellant and Sergeant Evans, and he noticed Sergeant Evans becoming frustrated with the amount of time it was taking to prepare the report.

Testimony of Appellant

Appellant testified that he graduated from the police academy in February 2006, but he left for a 13-month military deployment in November 2006. When he returned to the LAPD in July 2007, he was still on probation and was assigned to the San Pedro area with Sergeant Evans.

On July 28, 2007, appellant and Sergeant Evans received a call about a man refusing to leave the DoubleTree Hotel. When they arrived, they saw Gettler sitting on a bench, and appellant noticed a lot of people standing in front of the hotel. Appellant wanted to move Gettler away from the other people, so he asked Gettler to come speak with him, but he got no response. After asking Gettler several times, appellant placed his hand onto Gettler's wrist and pulled Gettler up from the bench.

Appellant and Gettler walked about 15 feet away, with Sergeant Evans a little behind them and on Gettler's left side. Gettler suddenly stopped, turned to Sergeant Evans and yelled at her, at which point Sergeant Evans took appellant's taser. Appellant thought Gettler was about to hit Sergeant Evans, so he tried to drag Gettler to the ground and ended up pushing Gettler toward the bushes. Gettler turned around and started pushing appellant in an attempt to get away, so appellant pushed back, and they both fell in the planter box. Appellant was trying to straddle Gettler to gain control of his hands, and after he got Gettler's left hand he heard two taser bursts.

Appellant was trying to grab Gettler's right arm, which was pressed against the wall, but Gettler did not comply. Sergeant Evans went into the bushes, between the bushes and the wall, lifted Gettler by his hair, and told him to give appellant his arm. Appellant testified that Gettler did not have blood on his face at that point. Sergeant Evans then stood up and kicked Gettler twice in the left clavicle. Gettler yelled, and then Sergeant Evans kicked him on the left cheek, causing him to start bleeding. Gettler said, "Is this all you want?" and gave appellant his right arm to be handcuffed. Sergeant Hernandez then drove up, got out of his car, asked if they needed help, and helped pick Gettler up.

Sergeant Jackson arrived and began his investigation. He asked what appellant did during the use of force, so appellant told him that force was used to try to gain control of the suspect's hands and that he thought he heard Sergeant Evans use a taser. Appellant did not report the kicks by Sergeant Evans because Sergeant Jackson asked him only what his own involvement was.

Appellant testified that Sergeant Jackson spoke with Sergeant Evans first and that after Sergeant Jackson spoke with appellant, appellant heard him say that appellant's story was consistent with Sergeant Evans's. When appellant heard Sergeant Jackson say that his story was consistent with Sergeant Evans's, he knew that Sergeant Evans had not reported the kicks, so he thought about saying something then, but he did not. He did not feel comfortable speaking with Sergeant Jackson because Sergeant Jackson and Sergeant Evans got along well.

Appellant also testified that he was hesitant to report the kicks because when he was in the police academy, he had reported an incident in which two recruits were using a racial epithet against another recruit. He had been shunned by other recruits after that, so he did not want to speak up again.

Appellant stated that he did not think the kicks were necessary and that he would not have kicked the suspect, but he thought they might have fallen within the use of force policy. Appellant was not sure if the kicks were wrong because he had been away for over a year during his military deployment and had not received reintegration training, despite his request for the training.

After Gettler was arrested, Sergeant Evans and appellant presented him to the watch commander, Lieutenant Andrea Grossman. Appellant did not report the kicks to Lieutenant Grossman because he was not asked and he knew that probationary officers did not speak to Lieutenant Grossman unless spoken to. He also was hesitant because he knew that Sergeant Evans and Lieutenant Grossman were friends. Gettler did not report being kicked. The medical form filled out by appellant asked if the arrestee had any injuries or medical problems, and appellant had written that Gettler had a minor scratch on his face.

When appellant and Sergeant Evans were in the car later, Sergeant Evans asked appellant if he was comfortable with the use of force, and appellant replied that he was. Sergeant Evans then stated that they would not mention the kicks in the report. Appellant did not reply because he was trying to avoid conflict with her. He said that Sergeant Evans previously had told him she was trying to limit the number of use of force incidents she had because she was on a list to become a sergeant.

When they began writing the use of force report, appellant felt that he was struggling with an ethical dilemma about the use of force, but he had forgotten some of the use of force policies because of his long military deployment. He acknowledged writing the first part of the arrest report but testified that he and Sergeant Evans disagreed about the report and that she deleted what he had written and wrote it herself. Appellant also acknowledged that he reviewed the report but reiterated that he was hesitant to report misconduct because he was afraid of retaliation. When he realized the kicks were not in the report, he decided to report them to Sergeant Perez.

Appellant testified that he called Sergeant Perez because he wanted to speak with someone who worked in Internal Affairs before reporting the incident. Sergeant Perez stopped him from telling him about the incident and instead urged him to report it to his supervisor, telling appellant that he would report it if appellant did not. Sergeant Perez followed up by calling appellant to be sure he had reported it.

Appellant had asked Sergeant Evans several times for reintegration training after his deployment and had spoken with other officers about it, but he was told that probationary officers did not receive reintegration training. On July 28, 2007, appellant gave Lieutenant Grossman a request for the training, and she said that he could attend. Appellant asked to go to

reintegration training at the academy because he did not want to work with Sergeant Evans any more.

Appellant testified that Sergeant Evans had not given him unsatisfactory evaluations, but he thought that personal issues she had told him about were affecting her work and causing her to be angry and difficult to approach. For example, he said that Sergeant Evans had slapped his hand on two occasions. Sergeant Evans had told appellant that she was having difficulties at home regarding a domestic violence incident and was having financial difficulties. Appellant did not report the difficulties in his relationship with Sergeant Evans because he was still on probation and did not want to cause problems.

Appellant received a weekly evaluation report dated July 29 to August 4, 2007, in which Sergeant Evans indicated that appellant needed to improve in the areas of report writing, officer safety, suspects, prisoners, and use of common sense and good judgment. He testified that the evaluation did not bother him because he had received similar reports from other officers but had never received an unsatisfactory evaluation, which he described as "a silver bullet."

Testimony of Richard Gettler

Richard Gettler testified that his son was schizophrenic with severe dementia. He explained that his son sometimes was verbal and able to respond, but other days he was not responsive. Gettler sometimes wandered from home, but his father usually did not report him as missing because he knew the police always brought him home.

Gettler's father stated that when the officers brought his son home on July 28, 2007, he asked Gettler if he had been in a fight because his face was puffy. Gettler told him that he was kicked at the hotel, so they drove around until Gettler directed his father to the DoubleTree, where Gettler pointed to the wall and indicated the incident happened near there. Gettler told his father he was kicked in the chest twice by a police officer, but his father decided not to report it because he assumed it was an accident and Gettler was not hurt.

Testimony of Detective Villanueva

Detective Villanueva worked in the Internal Affairs Criminal Section of the LAPD and investigated the excessive force complaint against Sergeant Evans. During her investigation, she tried to interview Gettler, but she was told by Gettler's grandmother and father that Gettler probably would be unable to answer simple questions because of his severe mental illness. She did not ask Gettler's father about the incident at the DoubleTree Hotel.

Based on Detective Villanueva's interviews of three DoubleTree employees and Sergeant Evans, she concluded that appellant falsely accused Sergeant Evans of kicking Gettler. Her investigation did not reveal any evidence to support appellant's allegation that Sergeant Evans intentionally kicked Gettler.

Testimony of Christopher Gettler

The Board brought Gettler in to question him during the administrative hearing, but his responses generally were incoherent and nonresponsive. A videotaped interview of Gettler, taken on December 8, 2008, was shown at the administrative hearing.

Decision of the Board

The Board stated that the primary issue in the case was whether Sergeant Evans actually kicked Gettler or not. After reviewing all the evidence, the Board stated that it could not find that the kicks occurred. The Board pointed out that, although Gettler's clothes were soiled, consistent with testimony that he and appellant fell in the bushes, there was no "visible dirt transfer" on Gettler's white shirt to support the allegation that Sergeant Evans kicked him in the shoulder or chest area.

The Board reasoned that, although there were inconsistencies in the testimony, the testimony of Adrid, Sergeant Perez, and Sergeant Hernandez was consistent with the original report by appellant and Sergeant Evans. Although Richard Gettler's testimony supported appellant's assertion that Sergeant Evans kicked Gettler, the Board found his testimony not credible because it was inconsistent with his son's testimony. The Board also noted that

Gettler's mental illness affected his ability to give an accurate account of the incident and found that Gettler's videotaped statement, alleging one kick, was not credible.

The Board found that appellant had failed to report the alleged kicks, despite numerous opportunities to do so, and that his testimony regarding his reasons for not reporting the kicks was not credible. The Board also found that the injury to Gettler's face was caused when he fell into the bushes.

The Board found there was evidence that appellant had a motive to make a false complaint, citing Sergeant Evans's testimony that appellant was going to receive an unsatisfactory probationary rating if he did not improve his performance and that the kicks were reported the day after appellant received an evaluation. The Board concluded that appellant was not credible and found him guilty of the charges against him.

Decision of the Trial Court

Appellant filed a petition for writ of administrative mandamus, which the trial court denied. The court stated that, after an independent review of the administrative record, the court was "uncertain whether the training officer kicked the suspect or not." Because the court was not convinced that the administrative findings were wrong, the court found that appellant failed to carry his burden of establishing that the administrative findings were contrary to the weight of the evidence. The court also rejected appellant's contention that the Board shifted the burden of proof by requiring him to prove the training officer kicked the suspect. Finally, the court rejected appellant's contention that the Board members were biased. The court reasoned that no other witness testified that Sergeant Evans kicked Gettler and that the issue came down to a determination of the relative credibility of appellant and Sergeant Evans. The court thus denied appellant's petition for writ of mandate and entered judgment in favor of respondents. Appellant filed a timely notice of appeal.

DISCUSSION

"Pursuant to Code of Civil Procedure section 1094.5, when the trial court reviews an administrative decision that substantially affects a fundamental vested right, the trial court `not only examines the administrative record for errors of law but also exercises its independent judgment upon the evidence' [Citations.]" (*Sarka v. Regents of University of California* (2006) [146 Cal.App.4th 261](#), 270 (*Sarka*)). The right to practice one's trade or profession is a fundamental vested right. (*Bixby v. Pierno* (1971) [4 Cal.3d 130](#), 143; see also *Barber v. Long Beach Civil Service Com.* (1996) [45 Cal.App.4th 652](#), 658 [stating that the trial court is required to exercise its independent judgment where a case involves a police officer's vested property interest in his employment].)

"Under the independent-judgment standard, `the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence.' [Citation.] `[The] trial court must accord a "strong presumption of . . . correctness" to administrative findings' [Citation.] The trial court begins its review with the presumption that the administrative findings are correct, and then, after according the respect due these findings, the court exercises independent judgment in making its own findings. [Citation.] . . . [¶] On appeal, we review a trial court's exercise of independent review of an agency determination for substantial evidence. [Citation.]" (*Sarka, supra*, 146 Cal.App.4th at pp. 270-271.) "[O]ur review of the record is limited to a determination whether substantial evidence supports the trial court's conclusions and, in making that determination, we must resolve all conflicts and indulge all reasonable inferences in favor of the party who prevailed in the trial court. [Citations.]" (*Wences v. City of Los Angeles* (2009) [177 Cal.App.4th 305](#), 318.) We review independently any legal interpretations made by the administrative agency and the trial court. (*Breslin v. City and County of San Francisco* (2007) [146 Cal.App.4th 1064](#), 1077 (*Breslin*)).

I. Burden of Proof

Appellant's first contention is that the trial court erred in rejecting his argument that the Board improperly shifted the burden of proof from the employer to him. Whether the Board shifted the burden of proof is a legal question reviewed de novo. (*Breslin, supra*, 146 Cal.App.4th at p. 1077.) We conclude that the Board did not improperly shift the burden of proof.

The parties agree that respondents had the burden of proving the charges against appellant. (See *California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) [10 Cal.4th 1133](#), 1167 [explaining that a public employee's interest in his employment is protected by due process, which requires an administrative hearing at which "the burden of proving the charges rests upon the party making the charges"].) Thus, here, the LAPD was required to prove that appellant made a complaint he knew or should have known was false and that he made false statements during the investigation.

In arguing that the Board improperly shifted the burden of proof, appellant focuses on the Board's statement that, after reviewing all the evidence, it could not "make a factual finding that the kicks occurred." Neither this statement nor anything else in the Board's decision indicates that the Board shifted the burden to appellant.

In order to prove that appellant made false statements and a false complaint, the LAPD needed to prove that Sergeant Evans did not kick Gettler. The LAPD accordingly presented witnesses and other evidence tending to show that the kicks did not occur, and the Board found its evidence persuasive. The Board's statement that it could not find evidence to support appellant's claim that Sergeant Evans kicked Gettler does not mean that appellant had the burden of proving his statements were not false. Rather, it indicates that the LAPD bore its burden of convincing the Board that the kicks did not occur. The trial court did not err in rejecting appellant's argument.

II. Substantial Evidence

Appellant's second contention is that the trial court erred in upholding the Board's factual findings because they were not supported by substantial evidence.³ As stated above, on appeal, "we may not reweigh the evidence, but consider that evidence in the light most favorable to the trial court, indulging in every reasonable inference in favor of the trial court's findings and resolving all conflicts in its favor." (*Breslin, supra*, 146 Cal.App.4th at p. 1078.)

Appellant argues that the trial court did not understand that it was required to exercise its independent judgment, pursuant to *Fukuda v. City of Angels* (1999) [20 Cal.4th 805](#) (*Fukuda*), and that the court instead merely "rubber-stamped" the Board's decision. Contrary to appellant's claim, the trial court specifically stated that it had independently reviewed the administrative record and, based on that review, it was uncertain whether Evans had kicked Gettler. Appellant therefore had failed to carry his burden of convincing the court that the administrative findings were contrary to the weight of the evidence. (*Fukuda, supra*, 20 Cal.4th at p. 817; *Breslin, supra*, 146 Cal.App.4th at p. 1077.) The trial court did not fail to exercise its independent judgment.

Appellant further contends that the findings made by the Board were so lacking in evidentiary support as to be inherently improbable and unreasonable. We disagree.

The Board's findings relied on physical evidence and the testimony of several eyewitnesses who testified that they did not see Sergeant Evans kick Gettler. Sergeant Hernandez and the two DoubleTree employees who witnessed the incident, Adrid and Perez, did not see any kicks. The Board also noted that the photo of Gettler did not show any dirt on his white shirt that would have indicated he was kicked in the clavicle area. The Board also relied on appellant's failure to report the kicks despite several opportunities to do so, citing Sergeant Jackson's testimony that appellant did not report the kicks when he was first interviewed about the use of force, as well as appellant's failure to report the kicks to Lieutenant Grossman. In addition, the Board found that appellant had a motive to make false allegations against Sergeant Evans, based on her testimony that appellant would receive an unsatisfactory rating if he did not improve his performance.

Even if the Board had not found the evidence listed above persuasive, Sergeant Evans herself testified that she did not kick Gettler. Her testimony alone would have been sufficient to support the Board's findings. (See *People v. Fierro* (2010) [180 Cal.App.4th 1342](#), 1347 (*Fierro*) [stating that "unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction"].)

There is substantial evidence in the record to support the Board's finding. The Board simply found appellant not credible and thus implicitly found Sergeant Evans credible. Credibility determinations are within the province of the trier of fact. (*Fierro, supra*, 180 Cal.App.4th at p. 1347.)

DISPOSITION

The judgment of the trial court, denying appellant's petition for a writ of administrative mandamus, is affirmed. Respondents shall recover their costs on appeal.

MANELLA, J. and SUZUKAWA, J., concurs.

Footnotes

1. At the time of the hearing, he was a captain with the Lompoc Police Department.

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2. Appellant left for a 13-month military deployment shortly after his graduation from the police academy.

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3. Because we find the findings supported by substantial evidence, we need not consider respondents' assertion that appellant waived the substantial evidence issue.

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