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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CONSTANCE D. ODEN, Plaintiff and Appellant, v. LONG BEACH CIVIL SERVICE COMMISSION, Defendant and Respondent; PATRICK H. WEST, Real Party in Interest and Respondent.	B272396 Los Angeles County Super. Ct. No. BS156111

APPEAL from a judgment of the Superior Court of Los Angeles County, Mary H. Strobel, Judge. Affirmed.

Law Offices of Anita Grace Edwards and Anita Grace Edwards for Plaintiff and Appellant.

Charles Parkin, City Attorney, Gary J. Anderson, Principal Deputy City Attorney, for Defendants and Respondents.

INTRODUCTION

Appellant Constance Oden appeals from the trial court's judgment denying her petition for administrative mandate after the Long Beach Civil Service Commission (Commission) upheld her discharge by the City of Long Beach (City) from her position as a community service supervisor with the City's Department of Parks, Recreation and Marine (Department). Oden was the supervisor of Bixby Park, which ran City youth programs. In upholding her discharge, the Commission found, among other things, that Oden had allowed two former City employees to interact with children at Bixby Park before they had cleared mandatory background checks and then lied about it. The trial court found the weight of the evidence supported the Commission's findings and the City's decision to fire Oden was not an abuse of discretion. Oden assigns multiple errors to the trial court's judgment. For the reasons stated below, we affirm.

BACKGROUND

Under the substantial evidence standard of review, "[w]e are bound by the trial court's factual findings as long as they are supported by substantial evidence. We indulge every reasonable inference and presumption in favor of the trial court's findings." (*Deegan v. City of Mountain View* (1999) 72 Cal.App.4th 37, 40 (*Deegan*) [citing *Barber v. Long Beach Civil Service Com.* (1996) 45 Cal.App.4th 652, 659-660 (*Barber*)].) Consistent with this standard of review, we state the relevant facts and evidence in the light most favorable to the court's ruling. We discuss the details of the testimony at issue in our Discussion.

A. *Oden's employment with the City*

Oden began working for the City in 1980 as a recreation leader and was promoted to community service supervisor in 1987. As a community service supervisor, Oden hired, trained, and supervised staff. In 2007, she was assigned to supervise

recreation activities at Bixby Park. Oden had never been disciplined during her 35 years with the City before the proceedings leading to this appeal.

B. ***Recruitment of Christina Bermudez and Renee Brown***

In late June 2013, Oden learned she needed to hire four additional staff for the City's new Be S.A.F.E. program.[1] She called Christina Bermudez to see if she would be interested in the position, and later interviewed her in person. Oden knew Bermudez had worked for the recreation department previously. Bermudez completed an application, dated July 9, 2013, for a recreation leader position. Oden introduced Bermudez to a recreational aid in the arts and crafts room at Bixby Park on July 9, 2013.

Oden also recruited Renee Brown, a close family friend, in June 2103 for the Be S.A.F.E. program. Brown also previously worked for the City in the parks and recreation department and had been a teacher's aide at a local high school. The City made Brown a conditional offer of employment on July 2, 2013, subject to completion of a fingerprint background clearance by the Department of Justice (DOJ), among other things. On July 15, 2013, Oden introduced Brown to a recreation aide, stating that she was " 'going to be the lead staff for summer fun days.' "

Oden testified she searched for people for the Be S.A.F.E. program who had been on the City's payroll. Oden believed Brown was "still on payroll." Neither Bermudez nor Brown were on the City's payroll in June 2013 and both were required to complete the usual hiring process, including fingerprinting.

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[1] The Be S.A.F.E. program is an evening program designed to keep kids off the street and provide recreational activities for them.

Brown was fingerprinted on July 11, 2013 and cleared by the DOJ on July 18, 2013. The Bureau Manager signed the employee personnel transaction request for Bermudez on July 20, 2013.

C. ***Investigation based on Bermudez's and Brown's interactions with children at Bixby Park***

Marc Gutfeld, Oden's supervisor at the time, visited Bixby Park on July 16, 2013. While at the park, he saw a person he did not recognize who turned out to be Brown. After Brown introduced herself, Gutfeld recalled he had signed her employee paperwork recently and asked Brown if she was on payroll already. Brown responded, " 'sort of.' " Gutfeld then asked Brown when she started work, and she said on July 15. Gutfeld went to Oden and told her Brown could not be working because she had not completed orientation. Oden told Gutfeld that she did not know Brown was there.

The City subsequently conducted an investigation. During the investigation by Kenneth Campbell, Personnel Officer for the City's Department of Parks, Recreation and Marine, the City obtained statements from Bixby Park recreation staff members that they had observed both Brown and Bermudez interacting with children before their background checks were complete. The City also obtained evidence that Oden permitted the company Herbalife to use Bixby Park facilities without the required permit and that she used her City computer to conduct personal business.

D. ***Termination and appeal to Commission***

On April 4, 2014, the City notified Oden that she was being considered for termination based on 14 charges. After a *Skelly* hearing,[2] the City notified Oden on April 22, 2014, that she had been discharged from her employment based on the following 10 charges:

> "1. Between July 8, 2013, through July 12, 2013, you were negligent for allowing [Bermudez] to serve as a volunteer and interact with children at Bixby Park without the required identification and fingerprinting. [¶]
>
> 2. On July 12, 15, and 16, 2013, you were negligent for allowing [Brown] to supervise and interact with children prior to receiving her fingerprint background check clearance. [¶]
>
> 3. On September 4, 2013, you were dishonest in an interview with Kenneth Campbell, Personnel Officer, Department of Parks, Recreation and Marine, when you stated that [Brown] did not work at Bixby Park on July 12, 2013. [¶]
>
> 4. On September 4, 2013, you were dishonest in an interview with [Campbell] when you stated that [Brown] did not work at Bixby Park on July 15, 2013. [¶]
>
> 5. On September 4, 2013, you were dishonest in an interview with [Campbell] when you stated that [Brown] did not work at Bixby Park on July 16, 2013. [¶]

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[2] Before a civil service employee can be fired for cause, the employee is entitled to a "probable-cause-type proceeding," known as a *Skelly* hearing, after our Supreme Court's announcement of this right in *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 215-216. (Asimow et al., Cal. Practice Guide: Administrative Law (The Rutter Group 2017) ¶ 3:196.)

6. On July 16, 2013, you were dishonest to your superintendent, Marc Gutfeld, when you told him that you did not know that [Brown] was at Bixby Park on July 15 and 16, 2013. [¶]

7. On or about July 16, 2013, you instructed three (3) of your subordinate employees to be untruthful about [Brown's] presence at Bixby Park. [¶]

8. On September 4, 2013, you were dishonest in an interview with [Campbell] when you denied telling and/or instructing three (3) of your subordinate employees, on July 16, 2013, to lie about [Brown's] presence at Bixby Park. [¶]

9. On various dates in 2013, you misused City property by authorizing two Herbalife groups to use the Bixby Park Community Center without their having obtained the required permits and/or paying the required fees. [¶]

10. On various dates from 2010 to 2013, you misused the City's computer by using it for personal, non-City related business purposes."

Oden appealed her discharge to the Commission and administrative hearings were held on March 4, 11, and 18, 2015. The Commission found by unanimous vote that Oden had committed the acts constituting the 10 charges stated in her termination letter. The Commission also unanimously sustained the City Manager's decision to discharge Oden. On April 1, 2015, the Commission sent Oden a copy of its minutes, which set forth its findings on the charges and the evidence it considered in reaching its decision.

E. ***Petition for writ of administrative mandate***

On June 16, 2015, Oden filed a petition for writ of mandate under Code of Civil Procedure section 1094.5 (section 1094.5) seeking review of the Commission's decision. The trial court received the administrative record submitted by the parties into

evidence. At Oden's request, the court also took judicial notice of the City of Long Beach Department of Parks, Recreation and Marine Fingerprinting Policy number 1.22 (Fingerprinting Policy) and the Commission's Civil Service Rules and Regulations, Article VII.[3]

Oden's petition was heard on April 5, 2016. After hearing argument from counsel, the trial court denied Oden's petition and adopted its 17-page tentative decision as its final decision. Judgment was entered on April 22, 2016.

Oden timely appealed.

DISCUSSION

1. *Oden's Contentions*

Oden assigns several points of error to the lower court's decision. She contends she was denied a fair administrative hearing because: she was denied an opportunity to be heard, neither the Commission nor the trial court weighed the credibility of the witnesses, neither the Commission nor the trial court considered her contention that her discharge was motivated by her filing a discrimination complaint against the City, the Commission failed to make adequate findings, and the Commission's findings were not based on the record. She also contends the trial court failed to determine whether the Commission's decision was supported by the evidence, the trial court's findings are not supported by substantial evidence, and the penalty of termination was an abuse of discretion.

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[3] The court denied Oden's request for judicial notice of the complaint she filed against the City on June 11, 2013 as irrelevant to the petition. The court also denied Oden's request to take judicial notice of a published court of appeal case, which Oden could cite in her papers.

2. ***Standard of Review***

Section 1094.5 governs judicial review by administrative mandate of any final decision or order entered by an administrative agency. Under that section, the reviewing court considers whether the agency "has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the [agency] has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (§ 1094.5, subd. (b).) When an administrative decision affects a fundamental vested right, as it does here, the trial court must exercise its independent judgment in reviewing that decision to determine if it is supported by the weight of the evidence. (§ 1094.5, subd. (c); *Strumsky v. San Diego Cty. Employees Retire. Ass'n* (1974) 11 Cal.3d 28, 44 (*Strumsky*).) "In exercising its independent judgment, a trial court must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision"—here, Oden—"bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence." (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817 (*Fukuda*).) Thus, the trial court reweighs the evidence, including the credibility of witnesses, and after "giving due respect to the agency's findings," may "substitute its own findings" for that of the agency. (*Id.* at p. 818.)

We, in turn, review the trial court's findings, rather than the agency's findings, for substantial evidence. (*Duarte v. State Teachers' Retirement System* (2014) 232 Cal.App.4th 370, 383-384 (*Duarte*).) Thus, "our 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." (*Barber, supra*, 45 Cal.App.4th at p. 659.) "Further, we cannot reweigh the evidence. Thus, we do not determine whether substantial evidence would have supported a contrary judgment, but only whether substantial evidence supports the judgment actually made by the trial court." (*Duarte*, at p. 384.) Substantial evidence is "evidence of ' "ponderable legal significance . . . reasonable in nature, credible, and of solid value." ' " (*Ofsevit v. Trustees of Cal. State University* (1978) 21 Cal.3d 763, 773, fn. 9.) " 'We uphold the trial court's findings unless they so lack evidentiary support that they are unreasonable.' " (*Duarte,* at p. 384.)

We review the trial court's legal conclusions, including as to whether the agency proceeding was fair, de novo. (*Melkonians v. Los Angeles County Civil Service Com.* (2009) 174 Cal.App.4th 1159, 1168; see *Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155, 168.) We also review the agency's choice of penalty de novo to determine whether it abused its discretion. (*Cassidy v. California Bd. of Accountancy* (2013) 220 Cal.App.4th 620, 627 (*Cassidy*).) We may not, however, substitute our discretion for that of the agency concerning the degree of punishment imposed, absent " ' "an arbitrary, capricious or patently abusive exercise of discretion." ' " (*Id.* at pp. 627-628.)

3. ***Oden's administrative hearing was fair***

a. *Oden had an opportunity to be heard*

Relying on Government Code section 11513, subdivision (b), Oden initially contends she was not given the opportunity to be heard at the administrative hearing because she was subject to cross-examination before testifying on her own behalf. That section, which governs the rules of evidence in administrative hearings, states, "If respondent does not testify in his or her own

behalf he or she may be called and examined as if under cross-examination." (Gov. Code, § 11513, subd. (b).) At the administrative hearing, the City called Oden as a witness in its direct case and examined her as if she were under cross-examination. Oden subsequently testified on her own behalf in her direct case, after which she was cross-examined.

As the trial court noted, Government Code section 11513, subdivision (b) assumes direct examination will occur first, but does not expressly prohibit the parties from changing the order of testimony. None of the authorities cited by Oden, to the trial court or on appeal, holds that an employee's due process rights are violated if she is examined by opposing counsel in an administrative proceeding before providing her direct examination. Even if Oden should not have been examined by the City's counsel until after she testified on her own behalf,[4] she has not demonstrated she was prejudiced. She was represented by counsel at the hearing and was not prevented from testifying on her own behalf; she was able to present "[her] side of the story." (*Mohilef v. Janovici* (1996) 51 Cal.App.4th 267, 287, relied on by Oden [due process in an administrative hearing requires an opportunity to be heard].) In any event, her trial counsel never objected to the order in which Oden was called as a witness, and

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[4] In a 1948 advisory opinion, the California Attorney General's office concluded: "The respondent in an administrative hearing may not be called as a witness by the department under the provisions of Government Code section 11513 until he has had opportunity to testify in his own behalf and has failed to do so. When so called he may be examined as if under cross-examination." (11 Ops. Cal. Atty. Gen. 116 (1948).) That opinion answered a question about the order of calling the disciplined party; it did not consider whether a witness had been deprived of her due process rights. Nor is that decision binding on us.

therefore Oden has forfeited this challenge on appeal. (*In re Carrie W.* (2003) 110 Cal.App.4th 746, 755 [" ' " 'An appellate court will ordinarily not consider procedural defects or erroneous rulings, in connection with relief sought or defenses asserted, where an objection could have been but was not presented to the [trial] court by some appropriate method.' " ' "].)

b. *The Commission made sufficient findings*

Oden also argued below and on appeal that the Commission failed to make sufficient findings "to bridge the analytic gap between the raw evidence and ultimate decision," relying on *Topanga Ass'n, Scenic Com. v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 (*Topanga I*). In *Topanga I*, our Supreme Court held that section 1094.5 requires the administrative agency to "render findings sufficient both to enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise a reviewing court of the basis for the board's action." (*Topanga I*, at p. 514.)

We agree with the trial court's assessment that the Commission's findings complied with *Topanga I.* In *Topanga I*, the planning commission's decision to grant a conditional use permit was defective because it did not include findings of how the subject property compared to surrounding properties to demonstrate a variance was warranted. (*Topanga I, supra*, 11 Cal.3d at pp. 520-522.) Here, however, the Commission detailed the evidence it considered in sustaining each of the charges brought against Oden in eight pages of its 12-page decision; it did not simply summarize its findings in the terms of the relevant statute or regulation. (*Id.* at p. 517, fn. 16; but see *Levi Family Partnership, L.P. v. City of Los Angeles* (2015) 241 Cal.App.4th 123, 132 [explaining *Topanga I* does not bar an agency from

stating findings in the language of the zoning ordinance or require the agency to articulate sub-findings].)

The trial court was able, as are we, to understand the Commission's "mode of analysis" when reading the Commission's discussion of the evidence in the context of the charges, and able to "bridge the analytic gap between the raw evidence and ultimate decision." This is all *Topanga I* requires. *Topanga I* does not require the Commission to state its findings " 'with the formality required in judicial proceedings,' " but only to "expose the board's mode of analysis." (*Topanga I, supra*, 11 Cal.3d at p. 517, fn. 16.) Further, " 'findings are to be liberally construed to support rather than defeat the decision under review.' " (*Young v. City of Coronado* (2017) 10 Cal.App.5th 408, 421.)

We address Oden's contention that the Commission's findings were not supported by the record below in our discussion of whether substantial evidence supports the trial court's findings.

c. *The Commission and trial court weighed the credibility of witnesses*

Oden makes two arguments concerning credibility determinations. First, Oden contends *the Commission* failed to make credibility determinations. Second, Oden contends the *trial court* failed independently to weigh the credibility of the witnesses.

i. *The trial court could infer the Commission considered and weighed the testimony presented*

As to the Commission's assessment of witness credibility, substantial evidence supports the trial court's determination that the Commission weighed the credibility of witnesses. The Commission did not explicitly state its credibility assessments in its decision. But, as the trial court concluded, those assessments reasonably could be inferred from the Commission's discussion of

the evidence. The Commission's written analysis shows that it gave more weight to the testimony it cited in detail and less weight to conflicting testimony. As to each charge, the decision states the Commission found that "it was proven by a preponderance of the evidence, including testimony." The Commission then states that it "considered, among other evidence, the following evidence in support of [the charge]," and provides in detail the testimony and evidence it found supported the charge. Finally, at the conclusion of its discussion of the charges, the Commission found, "[a]fter considering *all the testimony* and evidence presented[,]" that Oden had "committed the acts which constitute" all 10 charges by a preponderance of the evidence. (Italics added.)

These statements together with the evidence discussed support a reasonable inference that the Commission weighed the evidence before it, including testimony. Thus, the trial court reasonably could infer from the Commission's written decision that it ultimately gave less weight to Oden's testimony versus the testimony of other witnesses and resolved conflicts in the testimony against Oden. (*Barber, supra*, 45 Cal.App.4th at p. 659 [court of appeal "indulge[s] all reasonable inferences in favor of the party who prevailed in the trial court"].)

ii. *The trial court performed its duty to weigh the evidence, including the credibility of witnesses*

Oden also argues the trial court failed independently to assess the witnesses' credibility, citing the trial court's conclusion that the Commission's "written analysis shows that it necessarily gave more weight to the testimony it cited, and less weight to [Oden's] conflicting testimony. The court finds this credibility determination was supported by the weight of the evidence." Oden is mistaken. As we said above, that statement addressed Oden's argument that the *Commission* failed to make credibility

determinations. The trial court rejected Oden's argument and determined that, "Although Respondent did not explicitly state its credibility assessments, Respondent set forth in detail the evidence that it considered most heavily in its decision." The trial court then concluded the Commission's written analysis demonstrated it credited other witnesses' testimony over Oden's testimony—in other words, the court concluded the Commission had weighed the testimony. And, contrary to Oden's characterization of the trial court's statement, the court's final conclusion that "*the weight of the evidence*" supported the Commission's credibility determination demonstrates that it independently weighed the evidence, including testimony. (Italics added.)

Oden relies on *Guymon v. Board of Accountancy* (1976) 55 Cal.App.3d 1010 to support her opposing view. There, however, the court of appeal merely found the trial court had the power to determine the credibility of witnesses and was not bound by the board's credibility findings. (*Id.* at pp. 1011-1012.) Oden also relies on *Barber, supra,* 45 Cal.App.4th 652. But, there, the court of appeal reversed the denial of a petition for administrative mandate because the trial court mistakenly believed it could not consider witness credibility. In *Barber*, the basis for the charges against a fired police officer hinged on the conflicting testimony of the officer and one other witness. (*Id.* at p. 657.) The court of appeal found the trial court erred because it did not "reweigh the evidence by examining the credibility of witnesses." (*Id.* at p. 658.) Contrary to Oden's contention, the trial court here did exactly that: it examined the testimony in the record and found the Commission's credibility determinations were supported by its independent review.

In contrast, the trial court in *Barber* refused to determine the credibility of the witnesses. It stated, "[W]e can't reweigh the

evidence. We [do not] deal with whether we think the credibility is different than the tribunal did." (*Barber*, *supra*, 45 Cal.App.4th at p. 659, italics omitted.) Because the trial court failed to consider the credibility of witnesses at all, the court of appeal remanded the matter to the trial court to conduct a new trial on the petition. (*Id.* at p. 660.) Here, the trial court correctly articulated and applied the independent judgment standard, explaining that it "must draw its own reasonable inferences from the evidence and make its own credibility determinations." Accordingly, the trial court's agreement that the evidence supported the Commission's discrediting of Oden's testimony while crediting the testimony of other witnesses does not demonstrate the trial court did not reweigh the evidence, as the court in *Barber* failed to do.[5]

Indeed, the trial court articulated its independent findings of credibility throughout its written decision. For example, the trial court described witnesses as having "testified credibly" and agreed with the Commission that specific testimony was "credible," described testimony as "consistent with the more specific testimony" of another witness, addressed Oden's arguments about conflicting testimony, interpreted conflicting testimony and assessed whether testimony contradicted the Commission's findings, referred to Oden's admissions and denials, discussed testimony in response to cross-examination by Oden's counsel, weighed one witness's testimony as failing to "rebut the more specific testimony of [other] witnesses," and drew inferences from the testimony. The trial court also found the evidence did *not* support one of the Commission's factual

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[5] We address Oden's arguments about the credibility of witnesses and their bias in our discussion of whether substantial evidence supports the trial court's findings, *post*.

findings. The trial court further confirmed its independent review of the record at the hearing on Oden's petition: "I am looking at the weight of the evidence. And, although there is certain conflicting testimony in the record, I find that the weight of the evidence supports the findings."

Finally, the trial court also properly noted that " 'in exercising its independent judgment, a trial court must afford a strong presumption of correctness concerning the administrative findings, and 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.' " Thus, while according the administrative findings "a strong presumption of correctness," as it was required to do, the trial court independently reviewed and considered the evidence in the record to determine whether those findings were supported by *the weight of the evidence*. (*Strumsky, supra*, 11 Cal.3d at p. 44 [trial court "must exercise its independent judgment on the evidence and find an abuse of discretion [under section 1094.5] if the findings are not supported by the weight of the evidence"]; *Fukuda, supra*, 20 Cal.4th at p. 817.)

d. *The Commission was not required to make specific findings regarding Oden's contention that she was fired for filing a discrimination complaint; nor did the trial court err when it denied Oden's request to take judicial notice of that complaint*

i. *Oden was not entitled to specific findings*

Oden also contends she did not receive a fair trial because neither the Commission nor the trial court considered her "contention that her termination was motivated by her filing a discrimination complaint." Relying on *Bekiaris v. Board of Education of City of Modesto* (1972) 6 Cal.3d 575 (*Bekiaris*), Oden essentially argues that the Commission was required to

determine whether her termination was motivated by her filing her discrimination complaint against the City, and the trial court erred when it failed independently to determine "whether Oden's termination was motivated by her filing a civil complaint of discrimination against the City." We find no error.

In *Bekiaris*, a probationary teacher, who received a notice he would not be rehired, contended the "true reason" for this action was the school's "dissatisfaction with his political activities." (*Bekiaris, supra*, 6 Cal.3d at p. 582.) When the teacher attempted to elicit testimony from the assistant principal to prove his contention on cross-examination, the school board objected. The hearing officer ruled the school's motivations were irrelevant if the facts justified the disciplinary action, but also ruled testimony concerning those motivations would be material " 'if it ha[d] a direct bearing upon the credibility of' " the evidence supporting the charges. (*Id.* at pp. 582-583.) Evidence relating to the teacher's political activities as the impetus for refusing to re-hire him then was admitted for impeachment purposes only. (*Id.* at p. 583.) In his proposed decision of the matter, the hearing officer did not reach the teacher's contention that he had been dismissed for exercising his constitutional rights because the hearing officer found the evidence insufficient to support the charges for not re-hiring the teacher. (*Id.* at p. 584.) The school board, however, did not adopt the hearing officer's proposed decision, instead finding certain charges were both supported by the evidence and sufficient to justify the decision not to re-hire the teacher. (*Ibid.*)

The teacher filed a petition for writ of mandate to set the board's decision aside, which the trial court denied. (*Bekiaris*, 6 Cal.3d at p. 585.) Our Supreme Court reversed the judgment, holding, "When, as in the instant case, the teacher seeks to present evidence to show that he was dismissed for the exercise

of constitutional rights . . . that evidence must be received substantively and a determination made." (*Id.* at pp. 587-588.) The Court directed the trial court to issue a writ of mandate "ordering the Board to receive all evidence offered to show the real reason or reasons for [the teacher's] dismissal and to make a finding as to whether the cause for petitioner's dismissal was official dissatisfaction with his exercise of constitutional rights." (*Id.* at p. 594.)

Bekiaris is not applicable to the situation here. First, Oden never was precluded from introducing evidence relating to the City's motivation. On direct examination, Oden testified she had filed a lawsuit against the City on June 13, 2013, and learned she had been put under surveillance on June 24, 2013, in response to complaints about her whereabouts during working hours. She also testified she had never been disciplined until this case, alluding to a conspiracy that developed after she filed her lawsuit: "Why would I just start arbitrarily doing all this illegal stuff and . . . staff has never had a problem with me. In 35 years and all of a sudden, I file a lawsuit that specifically names Ken Campbell and Gladys Kaiser in it and I go out on medical leave and they get in cahoots with Wesley [Guess]. [Guess] gets three of his colleagues to join him and they develop all these things, lies, for lack of a better term." Oden's counsel also argued in his closing argument to the Commission about the timing of the City's investigation of Oden: "Two weeks after she filed a lawsuit, the city started following her. . . . So we come in here with these charges. But it all started two weeks later. I just find that incredible. [¶] . . . [¶] Two weeks later. I can't get past that. No matter what I do, I can't get past the fact 34 years and 50 weeks, you don't have a problem and then bang you do and you're out the door, fired, goodbye."

But, unlike the teacher in *Bekiaris*, Oden never attempted to introduce *evidence* of the City's "true" motivation, other than her own testimony as to what she believed. She did not elicit testimony on cross-examination or call any witnesses to prove the charges against her were a pretext for firing her in retaliation for the complaint. The teacher in *Bekiaris*, on the other hand, called a witness who testified the teacher's personnel file contained material relating to his political activities and that the personnel office had asked county counsel if a teacher could be fired for "writing letters to newspapers." (*Bekiaris, supra*, 6 Cal.3d at pp. 583-584.) The teacher also himself testified to statements the principal had made to him after the teacher had participated in a political demonstration. (*Id.* at p. 583.) Yet, the hearing officer limited this evidence to impeachment.

Second, Oden did not ask the Commission to find her termination was motivated by her exercise of her constitutional rights—at least the record does not reflect that she did so. Counsel for the teacher in *Bekiaris* specifically argued this point and submitted written points and authorities on the issue. (*Bekiaris*, *supra*, 6 cal.3d at pp. 584-585.) Rather, Oden's contention is more like that of the appellants in *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167 (*Rutherford*), relied on by the City.

In *Rutherford*, two nurses argued they were denied due process when they were not permitted to introduce evidence on constitutional issues, citing *Bekiaris*. (*Rutherford*, *supra*, 64 Cal.App.3d at p. 175.) In affirming the trial court's denial of their petition for writ of mandate, the court of appeal explained, citing *Bekiaris*, "Although a dismissed public employee is entitled to a judicial determination of the true reason for his dismissal when he presents evidence tending to show he was dismissed for the exercise of his constitutional rights, . . . there is no showing

that appellants were claiming that the reason for dismissal was specifically because appellants were 'exercising constitutional rights.' " (*Rutherford*, at p. 175.) As we have said, Oden did not present evidence that the true reason she was terminated was because she exercised her constitutional right to file a complaint. The thrust of Oden's defense was that the charges against her were untrue—that the City's witnesses were lying. Further, the trial court in *Rutherford* had found there was no conspiracy to terminate the nurses based on their prior litigation. (*Id.* at p. 176.) Here, the trial court also found the Commission's implied rejection of Oden's argument that the witnesses conspired to lie because Oden had filed a lawsuit against the City, was "based on credible evidence and supported by the weight of the evidence."

In short, Oden was not entitled to specific findings by the Commission on her argument the City fired her in retaliation for her filing a lawsuit because Oden never made that specific claim in her appeal of the City's decision to the Commission.

ii. *The trial court did not err in denying Oden's request for judicial notice*

Oden also argues the trial court erred in this same vein by denying her request to take judicial notice of the complaint she filed against the City on June 11, 2013. The trial court denied Oden's request, finding the complaint was not relevant to the writ petition: Oden had not introduced it in the administrative proceedings, despite its availability, and the specific allegations in it had not been discussed in that proceeding. We agree.

As we have said, Oden testified that she filed a lawsuit against the City and named Kaiser and Campbell in the complaint. Oden never presented the physical complaint as evidence during the administrative proceedings; thus, it was not part of the administrative record. As Oden correctly notes, the trial court may consider evidence outside of the administrative

record to determine whether the proceedings were conducted fairly. (*Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1170, fn. 17.) Oden has not demonstrated how the complaint itself would have aided the trial court in determining whether Oden received a fair hearing, however. Further, the trial court correctly found the complaint not relevant to the writ petition. Oden's testimony that she had filed a lawsuit and the timing between the filing of the complaint and her termination was before the Commission; the details of the complaint were not. Thus, the trial court did not err when it denied Oden's request for judicial notice of the complaint. (Evid. Code, § 350 [only relevant evidence is admissible]; *People v. Rowland* (1992) 4 Cal.4th 238, 268, fn. 6 [denying request for judicial notice of court records admissible under Evid. Code, § 452, subd. (d) because records were irrelevant].)

4. ***Substantial evidence supports the trial court's findings***

Oden contends substantial evidence does not support the trial court's findings (and that the Commission's findings were not supported by the evidence). As an initial matter, we note that much of Oden's argument is premised on the ground that the witnesses who testified against her— Kelisha Gonzales, Wesley Guess, Jesus Hernandez, and Stephen Scott—were not credible. Oden contends the trial court disregarded their bias against her and inconsistencies in their testimony. The trial court, however, considered Oden's arguments that these witnesses, and the investigator Campbell, lied because Oden had filed a discrimination lawsuit against the City, and that her subordinates were "disgruntled" because they believed she overlooked promoting them in favor of hiring Brown. The trial court reviewed the entire record and found the Commission had based its decision on credible testimony supported by the record.

In essence, Oden is asking us to reweigh the evidence and the credibility of the witnesses. That, we are not empowered to do. (*Yellen v. Board of Medical Quality Assurance* (1985) 174 Cal.App.3d 1040, 1056; *Duarte, supra*, 232 Cal.App.4th at p. 384.) Further, "neither conflicts in the evidence nor ' "testimony which is subject to justifiable suspicion . . . justifi[ies] the reversal of a judgment." ' " (*Oldham v. Kizer* (1991) 235 Cal.App.3d 1046, 1065 (*Oldham*).) Rather, testimony believed by the trial court "may be rejected only when it is inherently improbable or incredible, i.e., ' "unbelievable *per se*," ' physically impossible or ' "wholly unacceptable to reasonable minds." ' " (*Ibid.*)

We have reviewed the testimony in the administrative record. Although the testimony of some of the City's witnesses could be subject to justifiable suspicion,[6] we find none of it was inherently improbable or wholly unreasonable. Thus, we accept the trial court's credibility determinations in assessing whether substantial evidence supports the trial court's findings. (See *Oldham, supra*, 235 Cal.App.3d at p. 1066.)

Oden also contends the Commission's findings were not supported by the record and the trial court failed to determine whether they were. As we conclude below, substantial evidence

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[6] In her reply brief, Oden cited to testimony that she argued demonstrated the City's witnesses were lying, biased against her, and/or had a motive to lie, rendering their testimony not credible. We have read the testimony and presume the trial court did too when it determined the witnesses were credible. (*Denham v. Superior Court of Los Angeles County* (1970) 2 Cal.3d 557, 564 [" 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent.' "].) We do not find the testimony reasonably could not be believed, even if the witnesses had a motive to lie or were biased against Oden as she argues.

supports the trial court's determination that the weight of the evidence supported the Commission's findings. True, the Commission may have stated a fact inaccurately, see, e.g., footnote 14 *post*, but in our review of the record, we have found any purported inaccuracies or inconsistencies were negligible and did not detract from the Commission's findings or the trial court's ultimate conclusion that those findings were supported by the weight of the evidence.[7]

We now turn to the trial court's findings with respect to each Charge to determine if they are supported by substantial evidence, mindful of our obligation to " 'uphold the trial court's findings unless they so lack evidentiary support that they are unreasonable.' " (*Duarte, supra*, 232 Cal.App.4th at p. 384.)

a. *Charge 1*

The Commission found Oden was negligent for allowing Bermudez "to serve as a volunteer and interact with children at Bixby Park without the required identification and fingerprinting" between July 8 through July 12, 2013. The Commission has the discretion to find grounds for the discipline, including discharge, of an employee who commits any of the violations identified in Article VII, section 84 of the Civil Service Rules and Regulations. The Commission found that Oden's conduct alleged in Charge 1 violated Article VII, section 84,

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[7] Many of the findings that Oden contends are not supported by the record relate to the interpretation of the evidence, not a lack of evidence. As we find below, the trial court reasonably could interpret the evidence as it did.

subsections (1), (4), and (15) of the Civil Service Rules and Regulations,[8] and the Fingerprinting Policy.

Civil Service Rule (1) permits the City to discharge an employee who violates "any provision of the Charter of the City, the Rules and Regulations of the Commission, or any written departmental or citywide policy, procedure, rule, regulation, or directive"; Rule (4), titled "Inexcusable Neglect of Duty," permits the discharge of an employee who commits an "[i]ntentional or grossly negligent failure to exercise due diligence in the performance of a known official duty"; and Rule (15) permits the discharge of an employee for "[o]ther failure of good behavior either during or outside of duty hours, which is of such a nature that it causes discredit to the appointing authority or the person's employment."

The Department's Fingerprinting Policy states that "[a]ll volunteers, contract class instructors, and contract consultants with supervisory or disciplinary roles over youth . . . will be fingerprinted." It also provides that "[s]taff is responsible for not allowing unfingerprinted individuals to supervise youth in any capacity."

The trial court concluded the Commission's factual findings for Charge 1 were supported by the weight of the evidence. The trial court also concluded that Oden's alleged violations of Civil Service Rules (4) and (15) and the Fingerprinting Policy, which in turn would support a violation of Civil Service Rule (1), "were alternative grounds for sustaining Charge 1." The court determined the weight of the evidence supported the

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[8] For ease of reference, from this point forward we refer to the Civil Service Rules the City alleged Oden violated by their subsection number, e.g., "Civil Service Rule (1)" or "Rule (1)."

Commission's findings that Oden violated Civil Service Rule (1), the Fingerprinting Policy, and Civil Service Rule (4).

Oden contends the evidence is insufficient to establish Oden violated the Fingerprinting Policy because Bermudez did not "supervise" children. She also contends the evidence is insufficient to demonstrate Oden acted intentionally or with gross negligence with respect to Bermudez's interaction with children before her fingerprinting had been completed. We disagree. Substantial evidence supports the trial court's finding that the weight of the evidence established Oden was aware of the Fingerprinting Policy, knew Bermudez had not completed the fingerprinting process yet, and knew Bermudez was "supervising children in arts and crafts activities before the fingerprinting process was completed."

i. *The undisputed evidence demonstrates Oden knew Bermudez had not been fingerprinted*

Oden does not dispute that Bermudez had not been fingerprinted as of the week of July 8, 2013. Bermudez's employment application is dated July 9, 2013. Oden did not sign an employee personnel transaction request, requesting Bermudez be re-hired, until July 15, 2013. And, Oden admitted she did not have Bermudez clear her fingerprint background check.

ii. *Substantial evidence supports the finding Bermudez was supervising and interacting with children the week of July 8, 2013*

There was substantial evidence before the trial court that Bermudez was supervising and interacting with children before she was fingerprinted and that Oden knew about it. Bixby Park staff Kelisha Gonzales, Kaly Askew, and Wesley Guess all testified they observed Bermudez interacting with children at Bixby Park during the week of July 8, 2013.

Gonzales, a recreation staff member, testified she saw Bermudez, wearing a staff shirt inside out, "helping kids make flowers" in the game room on either July 9 or July 10. She had seen Bermudez the day before in Oden's office. She also testified she saw Oden and Bermudez talking in the game room sometime during the week of July 8.[9]

Askew, a recreational aid and youth opportunity center worker, testified she met Bermudez on July 9, when they both were assigned to arts and crafts. She characterized Bermudez as a "worker" at Bixby Park. Askew testified Bermudez was wearing an inside-out shirt and that Oden asked Bermudez why she was "wearing that shirt again." According to Askew, on July 9, Bermudez was helping children inside play pool and make arts and crafts. Askew said that between them, Bermudez primarily was in charge of the activities. Askew further testified that Oden and another employee came in and out of the arts and crafts room to check on Bermudez, Askew, and another worker, while they were with the children.

When asked on cross-examination why Askew believed Bermudez "was working and supervising the children," Askew testified that Bermudez introduced herself, and told Askew that she had been working with the children before Askew arrived. Bermudez also had told Askew "what to do and . . . how to do it." Askew further testified that when Oden walked into the room where the arts and crafts were being performed, she introduced Askew to Bermudez and told Askew she would be working with Bermudez for the evening. Askew testified she also worked with Bermudez on July 10 and July 11 and on those days Bermudez

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[9] Specifically, Gonzales testified that conversation took place before the trip to the beach or aquarium. The trip to the aquarium was Monday, July 15, 2013.

interacted with the children in the same type of arts and crafts activities as on July 9.

Guess, a recreation specialist whose last working day at Bixby Park was July 9, 2013, testified Oden introduced Bermudez to him on July 8, 2013, as working at Bixby Park for the Be S.A.F.E. program. Bermudez was wearing a staff shirt. Guess helped her get arts and crafts supplies to make banners for the Be S.A.F.E. program. He also saw Bermudez on July 9, 2013, in the activity room at Bixby Park working with children in the crafts area at the table. He testified that Bermudez wore her staff shirt inside out. Guess also testified that Oden was at Bixby Park on July 9.

Other witnesses did not observe Bermudez actually working with children. Ernesto Garcia, a recreation leader at Bixby Park, did not see Bermudez working with children. Jesus Hernandez also testified he did not see Bermudez working with children. The trial court found their testimony was consistent with the more specific testimony of Gonzales, Askew, and Guess. We agree. Although Garcia and Hernandez did not see Bermudez working with children, as the trial court noted, neither testified Bermudez did not work with children. Garcia also testified Bermudez was wearing a staff shirt. And, Hernandez testified he observed Oden showing Bermudez the arts and crafts in the game room and bringing them out for Bermudez to set up for the Be S.A.F.E. program that started at 4:00 p.m. He also saw Bermudez "going into cabinets, cleaning up stuff while she was wearing a staff shirt." This testimony supports that of Gonzales, Askew, and Guess that Bermudez interacted with children making arts and crafts on July 9, 10, and 11, 2013.

Further, Oden admitted to Campbell when he interviewed her that she had evaluated Bermudez "volunteering with the children" before Bermudez's application had been processed.

Oden recanted that statement at the administrative hearing, admitting it was a lie. Oden testified Bermudez was helping her get ready for the Be S.A.F.E. program, but Oden did not instruct Bermudez to work with the children before she had completed the hiring process. She testified she was unaware Bermudez was working with children, but admitted she saw Bermudez wearing a staff shirt at Bixby Park; she told her to take it off. [10]

We find this evidence substantially supports the trial court's conclusion that Bermudez, who had not completed the fingerprinting process, supervised children in arts and crafts activities during the week of July 8 with Oden's knowledge. The Commission and trial court found credible the testimony of Gonzales, Askew, and Guess that Oden observed Bermudez with children and resolved Oden's conflicting testimony in favor of the City. Oden's conflicting statements support the trial court's finding that the Commission did not credit Oden's testimony, and the trial court's own finding that Oden was aware Bermudez was working with children. We cannot say the testimony of Gonzales, Askew, and Guess was inherently improbable or wholly unacceptable, thus we accept the trial court's determination to weigh their testimony as credible over Oden's.

iii. *Substantial evidence supports the finding Oden knew the Fingerprinting Policy applied to Bermudez's activities*

Oden contends the evidence does not support her violation of the Fingerprinting Policy because the charge did not state Oden allowed Bermudez to *supervise* children and the Commission did not make a finding that Bermudez acted in a supervisory or disciplinary role. From the evidence discussed,

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[10] Travis Harlin testified he gave Bermudez the staff shirt the day he was in charge.

however, the trial court reasonably could infer the Commission found Bermudez was supervising children and Oden knew Bermudez must first be fingerprinted before engaging in the activities she did.

Stephen Scott, who served as the *Skelly* officer and represented the Department at the administrative hearing, testified that the City's Fingerprinting Policy included volunteers interacting with children. Oden confirmed she knew that before adults could work with children at the park they had to be fingerprinted and cleared by the DOJ. Oden also understood the Fingerprinting Policy applied to volunteers. In response to a Commissioner's question, Oden testified that "the volunteers that came in and worked specifically with kids or with youth did have to have a background check and [be] fingerprinted and all that." Further, as we have said, the Fingerprinting Policy requires staff to prevent unfingerprinted individuals, including volunteers, from supervising youth *in any capacity*.

Thus, we reject Oden's argument that she could not have violated the Fingerprinting Policy because Bermudez did not work in a "supervisory or disciplinary role," and Oden did not allow Bermudez to supervise children. The trial court (and Commission) reasonably could infer Bermudez was "supervising" children based on the testimony describing Bermudez's interaction with the children on July 9, 10, and 11, 2013– Bermudez engaged with children in activities, made arts and crafts with them, and oversaw their crafts as she worked at the craft table. Askew also testified Bermudez told her what to do with the children. This evidence is sufficient to demonstrate Bermudez supervised, e.g., watched over, children.

Also, Scott's and Oden's testimony that volunteers must be fingerprinted before working with children supports the trial court's implied conclusion that the Fingerprinting Policy's

requirement that staff prevent unfingerprinted individuals from supervising youth in any capacity includes individuals working with or watching over youth even if they are not a designated "supervisor."[11]

Thus, substantial evidence supports the trial court's conclusion that the weight of the evidence established Bermudez supervised children in arts and crafts on July 9, 10, and 11,[12] and Oden knew Bermudez was doing so without having completed the fingerprinting process. This evidence in turn substantially supports the finding that Oden violated Civil Service Rule (1) and the Fingerprinting Policy. As the trial court concluded, the Commission's findings Oden violated Civil Service Rule (1) and the Fingerprinting Policy were sufficient grounds to sustain Charge 1, and thus, the trial court's conclusion those findings were supported by the weight of the evidence, also is sufficient to affirm Charge 1.

iv. *Substantial evidence supports the finding Oden acted intentionally or with gross negligence*

The trial court also found that the weight of the evidence supported the Commission's finding that Oden alternatively violated Civil Service Rule (4) through her "[i]ntentional or

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[11] When used in the context of children, "supervise" includes the meaning, "To watch over or look after." (Oxford English Dict. (3d ed. June 2012) <http://www.oed.com/view/Entry/194556?rskey=35aOLw&result=2#eid> [as of June 6, 2018].)

[12] We agree with Oden, however, that substantial evidence does not support a finding that Bermudez supervised children on July 8 or July 12. But, we find no prejudicial error. The finding Bermudez supervised children on July 9, 10, and 11, is sufficient to sustain the charge Oden violated the Fingerprinting Policy, Rule (1), or alternatively, Rule (4).

grossly negligent failure to exercise due diligence in the performance of a known official duty"—here, the duty to ensure unfingerprinted individuals not supervise youth in any capacity. Oden argues the Commission failed to make a finding of gross negligence. The Commission, however, specifically found Oden violated Civil Service Rule (4), which necessarily included a finding of gross negligence or intentional conduct.

Oden further contends substantial evidence does not demonstrate that she was grossly negligent or that her conduct was an "extreme departure from the ordinary standard of conduct," and thus cannot support a violation of Civil Service Rule (4). (See *Van Meter v. Bent Construction Company* (1956) 46 Cal.2d 588, 594 (*Van Meter*) [referring to gross negligence as "the want of even scant care or an extreme departure from the ordinary standard of conduct"], relied on by Oden.)

We disagree.

Based on the record as a whole, the trial court could infer the Commission determined that Oden's conduct was an "extreme departure from the ordinary standard of conduct." Oden knew Bermudez had not been fingerprinted as of the week of July 8, 2013. She knew Bermudez was wearing a staff shirt at the park, and while she instructed her to take it off, she did not take any other action to ensure Bermudez would not supervise children in their activities. Scott testified that "the staff shirt really symbolizes to the community, to our customer or patrons, that this is somebody who is credentialed and has gone through the requisite process and is somebody that can be trusted." Yet, when Oden saw Bermudez was wearing the staff shirt inside out the next day, she did not take any action other than to ask her about it. Nor is there any evidence that Oden told her staff that Bermudez was not to work with children or that Oden sent Bermudez home when she saw her with children.

This evidence combined with Oden's knowledge that Bermudez interacted with children, discussed *ante*, and Oden's knowledge of the Fingerprinting Policy and its purpose to protect children, substantially supports the conclusion Oden's failure to prevent Bermudez from supervising children in any capacity before clearing her fingerprinting and background check, was intentional or an extreme departure from the ordinary standard of conduct expected from a supervisor.

Oden also argues that she could not have violated the Fingerprinting Policy or acted with gross negligence because the trial court could infer the City had a custom of using volunteers and potential new hires at the Park before they completed the fingerprinting process. Oden refers to testimony that the bureau manager, Gladys Kaiser, learned on July 9, 2013, that Bermudez was working in the Be S.A.F.E. program at Bixby Park. Gonzales testified that Kaiser was at the park on July 9 and when she saw Bermudez in a staff shirt, which was inside out, Kaiser asked who she was. Gonzales told Kaiser that Bermudez was working in the Be S.A.F.E. program. Oden asserts Kaiser knew that Bermudez was at Bixby Park, but did not take immediate employment action against Oden. Oden contends that Kaiser's inaction supports Oden's testimony that the City had a custom and practice of allowing volunteers and new hires at the park before they completed the fingerprinting process.[13] Oden reasons this evidence, coupled with her testimony that she told Bermudez

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[13] Oden testified parents volunteer "all the time" without having been fingerprinted. We find a practice of allowing parents to volunteer in activities involving their own children is not synonymous with a practice of allowing adult volunteer "staff" to interact with and supervise children without first clearing a background check.

to take off the staff shirt, demonstrates Oden was not grossly negligent.

Oden's reasoning is flawed. First, we do not review the record to determine if the evidence would have supported Oden's position; rather, we determine "whether substantial evidence supports the judgment actually made by the trial court." (*Duarte, supra*, 232 Cal.App.4th at p. 384.) Thus, we draw all reasonable inferences in favor of the prevailing party, not Oden. Second, the trial court considered and rejected Oden's interpretation of the testimony. We agree with the trial court that the evidence that Kaiser saw Bermudez wearing a staff shirt inside out on July 9 does not demonstrate a custom and practice of using volunteers without fingerprinting. Oden submitted no evidence to the trial court that Kaiser ratified such a practice. Further, as the trial court noted, Oden herself testified that all volunteers who worked with youth had to be fingerprinted and have a background check. Thus, Oden was aware the Fingerprinting Policy applied to volunteers at the park.

v. *The trial court did not find Oden's conduct discredited the City*

The trial court did not make any findings as to the Commission's conclusion that Oden's conduct described in Charge 1 also violated Rule (15) ("Other failure of good behavior either during or outside of duty hours, which is of such a nature that it causes discredit to the appointing authority or the person's employment."). Because Rule (15) was an alternative ground for sustaining Charge 1 (and Oden did not raise it on appeal) we find no prejudice.

b. *Charge 2*

Charge 2 alleged Oden was negligent for "allowing [Brown] to supervise and interact with children" on July 12, 15, and 16, 2013, before receiving her fingerprint background check and

clearance. As with Charge 1, the Commission found Oden committed the acts alleged in Charge 2, and her conduct violated Civil Service Rules (1) (violation of policy), (4) (intentional or grossly negligent failure of duty), and (15) (failure of good behavior causing discredit), and the Fingerprinting Policy. Substantial evidence supports the trial court's conclusion that the weight of the evidence supported the Commission's findings.

i. *Brown had not cleared her fingerprinting background check before July 18, 2013*

The evidence established Brown did not complete her fingerprinting background check clearance until July 18, 2013. On June 26, 2013, Oden signed an employee personnel transaction request to *rehire* Brown as a recreation leader at Bixby Park. As of June 26, therefore, Oden knew Brown currently was not on the department's payroll. The City made Brown a conditional offer of employment on July 2, 2013. The offer was contingent on, among other things, the City receiving the results of Brown's criminal background fingerprint check from the DOJ. Brown was fingerprinted on July 11, 2013 and her background was cleared by the DOJ on July 18, 2013. Thus, the earliest Brown could have worked with children at Bixby Park was July 18.

Oden testified she believed Brown had completed the background process except for orientation, but had no documentation demonstrating Brown had done so. As we discuss below, even if Oden were unclear as to whether Brown already had completed the fingerprinting background check, substantial evidence supports the finding that she violated Civil Service Rule (1) and the Fingerprinting Policy because Brown had not in fact been cleared by the DOJ, Oden failed to take steps to confirm Brown had completed the hiring process, and Oden failed to prevent Brown from working with children.

ii. *Substantial evidence supports the finding Brown supervised children on July 12, 15, and 16, 2013*

(a) *July 12, 2013*

Gonzales, Hernandez, and Garcia all testified Brown was working at Bixby Park on July 12, 2013. All three testified Brown wore a staff shirt. Hernandez and Garcia both testified that Brown worked directly with children. Hernandez saw Brown playing "capture the flag" outside with the children and other recreation staff, and Garcia testified Brown helped children on an arts and crafts project with him for about 15-20 minutes. Gonzales testified that Brown watched her and the other staff playing with the children. All three witnesses also saw Brown working on Oden's computer in Oden's office on July 12, 2013.

The testimony of Gonzales and Hernandez also established Oden knew Brown was at Bixby Park on July 12, 2013, although Oden was not at the park that day. Gonzales testified that when she arrived at the park on July 12, 2013, Brown asked her for the key to Oden's office. Gonzales then contacted Hernandez, who had a key. He tried to reach Oden by phone; when Oden did not answer, Brown called Oden, who picked up. Brown relayed Oden's instruction to Gonzales and Hernandez to open her office for Brown and handed the phone to Hernandez. Hernandez took the phone and then told Gonzales that Oden told him to open the door. According to Gonzales, Brown then spent about an hour and a half in Oden's office working on the calendar for the summer program.

Hernandez corroborated Gonzales's account. He also testified he tried to call Oden for permission to let Brown into Oden's office. When he could not reach Oden, Brown called Oden on her cell phone and gave Hernandez the phone. Hernandez testified Oden gave him permission over the phone to let Brown

into Oden's office and told him, " '[Brown] knows what she's going to do. Let her in please.' " He then observed Brown log on to Oden's computer with the password and open the calendars for the children's schedules.

Also, Guess, who saw Brown at Bixby Park within the two weeks before he left—specifically, in early July 2013—testified that Oden told him Brown would be coming in on July 12 to run the summer program.[14]

Oden, on the other hand, testified that at the time of her interview, she did not know whether Brown was at the park on July 12. She denied giving permission to Brown to enter her office on July 12 or giving Brown her password, and did not recall receiving a phone call about it. Oden also denied telling Guess that Brown was going to start at Bixby Park on July 12, 2013.

Multiple witnesses also testified that on July 15 and 16, 2013, Brown supervised children at Bixby Park, and on field trips off park grounds, with Oden's knowledge.

(b) *July 15, 2013*

Gonzales testified that on Monday, July 15, 2013, Oden introduced Gonzales to Brown, stating that Brown was " 'going to be the lead staff for summer fun days.' " Gonzales and Brown worked together that day at Bixby Park. Brown wore a staff shirt and took children from the park to the aquarium and on a harbor cruise. Gonzales testified that she and Brown supervised

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[14] The Commission's findings state Guess testified he saw Brown at Bixby Park on July 12, 2013. This was an error. The trial court's findings correctly state Guess's testimony that he saw Brown at the park in early July 2013 and that Oden told him Brown would start on July 12. The Commission's misstatement does not affect the trial court's finding that the weight of the evidence supported Charge 2.

a group of approximately 45 students; Brown took responsibility for about half of them. Volunteer youth opportunity center workers accompanied them on the field trip. Brown and Gonzales supervised the children from 9:00 a.m. to 4:00 p.m. Gonzales also testified that Oden was at the park when they all got onto the bus and left.

Askew also attended the field trip on July 15. She testified that Brown was on the bus with her, wore a staff shirt, and supervised children. She confirmed Oden was at the park that morning watching kids arrive, but did not go on the field trip. Askew also testified Oden was there standing outside of the offices; she did not check in children or perform any task. Hernandez did not go on the field trip, but testified Oden introduced Brown that morning to him and others as their "new lead staff." He confirmed Brown went on the field trip and Oden stayed behind at the park.

(c) *July 16, 2013*

Gonzales testified she and Brown again worked together at the park on Tuesday, July 16, 2013, and Brown again wore a staff shirt. They took a group of children to the beach after lunch, and Brown led the front of the line. She testified that Oden later drove down to the beach to drop off another staff member to help Gonzales and Brown, but did not get out of the car. Brown did not go to Oden's car.

Garcia testified that when he arrived at Bixby Park on July 16, he saw Brown in a staff shirt leading the children in morning stretches outside. Garcia did not see Oden until later in the day when he returned from lunch; she told him there were enough staff at the beach and to stay behind at the park. He testified Oden was not outside while Brown was lining up the children to go to the beach. Garcia also saw Brown leading the line of children back from the beach.

Hernandez also testified Oden and Brown both were at Bixby Park on July 16, 2013. Like Garcia, he first saw Brown, wearing a staff shirt, leading children in exercises and games before lunch. Hernandez testified that he, Oden, Gonzales, and Brown discussed staff placement for the afternoon, and Oden sent Gonzales, Brown, and another staff member to the beach, but had Garcia and Hernandez stay behind. Oden then left to buy supplies at Smart & Final and returned at about 3:15 p.m. Hernandez helped her unload the groceries in the kitchen. Through the kitchen window where he was unloading groceries, Hernandez saw the children return from the beach and pointed them out to Oden. Hernandez testified that he saw Oden look out the window in the direction of where Brown was leading the children back to the park.

(d) *Oden's testimony regarding July 15–July 16, 2013*

In her testimony, Oden denied having ever seen Brown interacting with children at the park. She admitted that she introduced Brown to Gonzales on July 15, 2013, but denied referring to Brown as "lead staff." Oden recalled Brown was wearing a staff shirt that day. She testified she called to see if Brown's fingerprints had cleared and was told they had not. She then left the park to run errands. When asked what she told Brown, Oden responded she told Brown she should not work because her fingerprints had not cleared. Oden confirmed she did not tell any staff members that Brown was not an employee and should not be at the park or wear a staff shirt. Nor did she tell Brown to remove her staff shirt.

Oden also admitted she saw Brown wearing a staff shirt on July 16, 2013, when Brown came back from the beach, but denied seeing her in a staff shirt in the morning. She did not recall telling Hernandez that Brown and Gonzales would be taking the

children to the beach and that he and Garcia should stay behind. Oden did not recall Hernandez pointing out the children returning from the beach to her on July 16, 2013. She testified that at that time, she did not know Brown was at the beach with the children.

Oden confirmed that one of her key responsibilities as supervisor of Bixby Park was to ensure children were properly supervised for off-park events. In response to a commissioner's questions, Oden agreed that she had full responsibility for all of the activities at Bixby Park but did not know what was going on at the park on July 15 and July 16, 2013.

We find this evidence substantially supports the finding Oden was negligent in allowing Brown to interact with and supervise youth before Brown cleared her fingerprint background check, and that Oden violated the Fingerprint Policy and Civil Service Rule (1) in doing so, as we discussed in detail in Charge 1.

Although Oden's testimony conflicted with a number of other witnesses, the trial court resolved that conflict in favor of the City. It concluded the Commission gave little or no weight to Oden's conflicting version of events and found that credibility determination was supported by the weight of the evidence. Specifically, the trial court found credible the multiple other witnesses who testified that Oden instructed Hernandez to allow Brown to use her office on July 12; introduced Brown as "lead staff"; and observed Brown interacting with children on July 15 and July 16.[15] We do not find their testimony inherently improbable.

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[15] The trial court also considered Travis Harlin's testimony that he did not see Oden in a room with Brown when Brown was interacting with children. The trial court gave little weight to

In addition, we find the trial court and Commission reasonably discounted Oden's testimony that she did not know what was going on at Bixby Park on July 15 and July 16 despite her responsibility to oversee the safety of the children and their activities. The trial court's conclusion is supported by substantial evidence and its resolution of the conflicting testimony in the City's favor was reasonable. (*Kazensky v. City of Merced* (1998) 65 Cal.App.4th 44, 52 (*Kazensky*) [appellate court must resolve all conflicts in the evidence in favor of the prevailing party, giving that party the benefit of every reasonable inference in support of the judgment].) The Commission and trial court reasonably could interpret the evidence to find Oden knew Brown was working with children.

iii. *Substantial evidence supports the finding Oden acted with gross negligence*

Also, as with Charge 1, the Commission specifically found Oden's conduct in Charge 2 constituted a grossly negligent or intentional failure to exercise due diligence in the performance of her duty to ensure unfingerprinted individuals not supervise youth in any capacity. Viewing the evidence in the light most favorable to the City as the prevailing party, we find substantial evidence also supports the trial court's conclusion that this finding was supported by the weight of the evidence sufficient to sustain a violation of Civil Service Rule (4).

The trial court reasonably could conclude Oden's conduct was an "extreme departure from the ordinary standard of conduct." (*Van Meter*, *supra*, 46 Cal.2d at p. 594.) As we have

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that testimony, finding it did not rebut the more specific testimony of the witnesses described above who did see Oden with Brown or observed Brown on July 15 and July 16. The trial court's interpretation was reasonable.

said, Oden knew the Fingerprinting Policy was designed to protect children. She knew Brown was at Bixby Park in a staff shirt that signaled to the community that she had been approved to work with children by the City. Yet, Oden did not tell Brown to remove the shirt or advise her staff that Brown was not to work with children, despite confirming on July 15 that Brown's fingerprints had not cleared. She took no steps to ensure Brown would not supervise children, resulting in Brown supervising children not only at the park, but on two field trips on July 15 and July 16.[16] That Brown had previously worked for the Department and had been a teacher's aide does not diminish Oden's disregard for the Fingerprinting Policy, and thus, the safety of the children under her care.

Finally, we agree with the trial court that the evidence that Oden allowed Brown—a family friend she recruited—to lead two groups of children off the park facility despite having not completed her fingerprint background check, supports the finding

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[16] We do not find substantial evidence supports a finding that Oden was grossly negligent in her failure to ensure Brown did not work with children on July 12. Unlike July 15 and July 16, Oden was not at the park on July 12 to observe Brown working with children. Thus, while substantial evidence supports Oden violated the Fingerprinting Policy on July 12 by not preventing Brown from supervising children, it does not support a finding that she was grossly negligent. We find no prejudicial error, however, because the finding Oden violated Civil Service Rule (4) is supported by substantial evidence based on her conduct on July 15 and July 16. In addition, Civil Service Rule (4) was an alternative ground to sustain Charge 2.

that Oden's conduct was a "failure of good behavior . . . caus[ing] discredit to the [City]," in violation of Rule (15).[17]

c. *Charges 3, 4, and 5*

In Charges 3, 4, and 5, the City alleged Oden was dishonest in her September 4, 2013 interview with Campbell when she stated Brown did not work at Bixby Park on July 12, 15, and 16, 2013. The Commission sustained those charges and found Oden's conduct violated Civil Service Rule (1), previously discussed, and Civil Service Rule (6), titled "Dishonesty," which permits the discharge of an employee who makes an "[i]ntentional misrepresentation of known facts, or omission of facts, which the employee has a duty to disclose." The trial court concluded the weight of the evidence supported the Commission's findings.

Oden argues the Commission did not find that she intentionally misrepresented a known fact or that a reasonable person could infer that she did so based on the Commission's findings and the evidence. As the trial court noted, the Commission specifically found Oden's conduct violated Civil Service Rule (6); therefore, it did find Oden intentionally misrepresented to Campbell that Brown was not working.

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[17] In her reply brief, Oden contends a "failure of good behavior" must be known to the public "to cause discredit," relying on *Nightingale v. State Personnel Board* (1971) 20 Cal.App.3d 992 [98 Cal.Rptr. 93], where the court interpreted Government Code section 19572, subdivision (t), which is similar to Civil Service Rule (15). Oden argues that because any misconduct by Oden was not known to the public it could not discredit the City. Oden's contention is meritless. That opinion was vacated by our Supreme Court in *Nightingale v. State Personnel Board* (1972) 7 Cal.3d 507, 513-514, where the Court rejected this interpretation.

i. *Oden understood the meaning of "work"*

Oden also contends substantial evidence does not support the conclusion Oden was dishonest when she told Campbell that Brown did not work on July 12, 15, or 16, 2013, because "she believed 'work' meant engaging in an activity for money"; thus, she was not intentionally dishonest.

We reject Oden's contention she believed "work" meant engaging in an activity for money when Campbell questioned her. In response to Oden's argument that Campbell did not define "work," the trial court noted the following exchange between Campbell and Oden, read back during the administrative hearing:

> "[City's attorney]: . . . Question by Mr. Campbell, 'So the employee that told me that Kelisha [Gonzales] and Renee Brown went [to the aquarium] was incorrect?'
>
> "Answer, 'Yes. Renee Brown is not on payroll. She is not working.'
>
> "Mr. Campbell says, 'I understand she's not on payroll.'
>
> "And your answer was, 'She's not working. You understand that too?'
>
> "That was your response to Mr. Campbell. Do you remember that?
>
> " [Oden]: Yes."

From this exchange, the trial court reasonably could infer that Oden understood Campbell's question about "work" was not about whether Brown was on payroll, meaning, doing work for money, but whether she was performing the activities recreation

staff normally would perform at Bixby Park.[18] The exchange demonstrates Oden was stating both that Brown was not on payroll *and* she was not working. The point of the investigation, of course, was that Brown was working at Bixby Park when she was *not* on the payroll. If she was not on the payroll, she was not being paid for the work she was doing, but volunteering to do the work. Thus, the trial court reasonably could infer that Oden's reference to both not being on payroll and "not working" demonstrated Oden's understanding that Campbell was asking whether Brown was engaged in recreation staff work activities at Bixby Park.

ii. *Substantial evidence supports the trial court's finding Oden intentionally misrepresented that Brown was not at work*

With this understanding of what Campbell meant by "work," substantial evidence supports a finding that Oden intentionally misrepresented a known fact. As we discussed in Charge 2, credible evidence supports the conclusion Oden *knew* that Brown was performing recreation staff work activities on July 12, 15, and 16, 2013. The trial court found witnesses credibly testified that Oden introduced Brown as "lead staff," that Oden knew Brown went on field trips on July 15 and July 16, and that Oden knew Brown was doing park business on Oden's computer on July 12.

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[18] At Oden's request, we took judicial notice of the definition of "work" from https://www.merriam-webster.com/dictionary/work. The term "work" includes multiple definitions, one of which is "activity that a person engages in regularly to earn a livelihood." However, "work" also is defined as "a specific task, duty, function, or assignment often being a part or phase of some larger activity." This latter definition supports the trial court's inference.

The trial court considered that some of the evidence demonstrating Oden knew Brown was working on July 16 was circumstantial, but after independently reviewing the evidence, concluded it was "strong." The trial court concluded Gonzales's testimony that Oden introduced her to Brown on July 15, stating Brown was "going to be the lead staff for summer fun days," suggested Oden also approved Brown to work with children on July 16. We find this inference reasonable based on the record. The trial court also credited Hernandez's testimony that on July 16, Oden assigned Gonzales and Brown to take the children from the park to the beach and that Oden could see Brown returning from the beach with the children. The trial court's credibility determinations were reasonable, and this evidence also supports the trial court's finding that Oden knew Brown was working on July 16.

In addition to the evidence discussed in Charge 2, the trial court also considered evidence introduced by the City that Brown "signed in" for work on those dates. The "red book" is a date book kept in the Bixby Park office where staff members sign in and out for their shifts. The red book entries dated July 12, July 15, and July 16, 2013 bear Brown's name. Hernandez testified he took a photograph of the July 15 and July 16 pages after Oden told him on July 16 to tell anyone who asked that Brown was not working. He saw Brown's name on those pages when he signed in on July 15 and July 16. When Hernandez tried to sign in on July 17, he could not because 15 pages had been ripped out of the book, including the pages for July 12-16. He took a photograph of the gap in the book's pages. Later that day, the book was missing.

The trial court noted that although the Commission did not explicitly find Oden removed the pages from the red book that included Brown's "time entry," the Commission could reasonably infer someone removed the pages to conceal evidence Brown was

acting as if she were a City employee. That evidence combined with the testimony of several other witnesses, which the trial court found credible, supports the conclusion that Oden knew Brown was performing work functions.

The trial court also considered and rejected Oden's argument that Scott's testimony demonstrated she did not lie. Scott testified that it was difficult for him to say whether Oden knew Brown was working or not. But, as the trial court stated, Scott's statement reflected his own interpretation of the evidence, which the Commission interpreted differently. The trial court further noted that Scott also testified that the City had "staff testimony that . . . Brown, was working," which was consistent with the Commission's findings on Charges 3 to 5 that Oden lied to Campbell when she said Brown was not working.

Based on the record as a whole and drawing all reasonable inferences in favor of the City, the evidence substantially supports the trial court's conclusion that the weight of the evidence established Oden intentionally misrepresented a known fact when she told Campbell that Brown was not working on July 12, 15, or 16, in violation of Civil Service Rules (1) and (6).

d. *Charge 6*

The Commission found the City proved its sixth charge that on July16, 2013, Oden was dishonest to her superintendent, Marc Gutfeld, "when she told him that she did not know that [Brown] was at Bixby Park on July 15 and 16." The Commission found this conduct violated Civil Service Rules (1) and (6) (dishonesty). The trial court found the weight of the evidence established Oden was dishonest when she told Gutfeld she did not know Brown was at the park on July 16, but did not support a finding that Oden told Gutfeld she did not know Brown was at the park on July 15. Substantial evidence supports the trial court's findings.

Marc Gutfeld visited Bixby Park on the afternoon of July 16, 2013. He testified he saw Brown there (wearing a staff shirt) while Oden was at the park. When Gutfeld questioned Brown about whether she was on "payroll," Brown answered " 'kind of' " or ' "sort of.' " She told him she began work the previous day and had not completed orientation. After speaking to Brown, Gutfeld found Oden in the kitchen and asked her why Brown was there. Gutfeld testified Oden responded that she did not know Brown was at Bixby Park.

The testimony already discussed for Charges 2 through 5 supports the finding that Oden knew that Brown was at Bixby Park on both July 15 and July 16 and that Brown interacted with children on both dates. Gutfeld's testimony combined with this evidence substantially supports the trial court's finding that Oden intentionally misrepresented a known fact when she told Gutfeld she did not know Brown was at Bixby Park on July 16, 2013.

When Gutfeld asked Oden about Brown's comment that she had worked on July 15, however, Gutfeld testified that Oden told him Brown only had stopped by the park, but did not work. Thus, substantial evidence supports the trial court's finding that Oden did not tell Gutfeld she did not know Brown was at the park on July 15, 2013.

We concur with the trial court's conclusion that the Commission's erroneous finding was not a prejudicial abuse of discretion. Oden's dishonest statement to Gutfeld about Brown's presence at the park on July 16 alone supports the charge of dishonesty and the conclusion Oden violated Civil Service Rules (1) and (6).

e. *Charges 7 and 8*

In Charge 7 the City alleged that on July 16, 2013, Oden instructed three employees to be untruthful about Brown's

presence at Bixby Park. Charge 8 in turn alleges Oden was dishonest in her September 4, 2013 interview with Campbell "when she denied telling and/or instructing" those employees "to lie" about Brown's presence at Bixby Park.

i. *Oden's instruction to her employees*

In finding the weight of the evidence supported the Commission's finding as to Charge 7, the trial court weighed the credibility of the employees' testimony and found them credible.

Gonzales testified that Oden told her on July 16, 2013, "[I]f anyone asked [about Brown], she just stopped by, she wasn't working today." Gonzales understood Oden's comment to mean Oden wanted Gonzales to lie for her.

Garcia testified that as he and Hernandez were leaving for the day on July 16, he overheard Oden tell Hernandez, "if they ask anything, say she just came by," referring to Brown. Hernandez then told Garcia, " 'She just asked us to lie.' " Garcia wrote down the time, 4:25 p.m., that Oden gave that instruction.

Hernandez corroborated Garcia's account. He testified that after Gutfeld pulled Oden aside to speak to her about Brown on July 16, Oden called out to Hernandez and Garcia, as they were walking out. Hernandez testified Oden told him, " 'Oh, if they ask anything about [Brown], say that she isn't working here and that she's just a volunteer, but that she never worked here.' " Hernandez interpreted Oden's statement as an instruction to lie and relayed the statement to Garcia. He then took the photographs of Brown's name in the red book.

Oden testified that on July 16, 2013, she told her staff: " 'If you know something, if you know why she's here, then you have to say it. But if you don't know why [Brown] is here, you have to say you don't know.' " She denied telling her staff to lie.

Although the trial court did not mention it, Hernandez, testified that the next day, July 17, Oden told him, " 'You know,

I told you and [Garcia] not to say anything, but now, you know, I don't care.' " Hernandez testified he was "[s]peechless." From this testimony the trial court reasonably could infer Oden knew she had instructed Hernandez and Garcia to lie on July 16 and regretted having done so on July 17.

The trial court found credible the testimony of Gonzales, Garcia, and Hernandez. In crediting their testimony, the trial court acknowledged their versions were not identical, but found they testified consistently that Oden instructed them to say Brown was not working at Bixby Park if asked. The trial court also concluded the inconsistencies in Oden's testimony, previously discussed, gave the Commission reason to conclude she was not credible. We agree and do not disturb the trial court's credibility findings, which were not based on inherently improbable testimony.

The trial court also examined the additional evidence on which the Commission relied to sustain this charge: that Oden knew Brown was at Bixby Park interacting with children on July 15 and 16; that Brown's name appeared in the red book for those dates and then went missing after those pages had been torn out; and that Oden had recruited Brown, a family friend. The trial court concluded the totality of the evidence had established Brown worked at the park on July 12, 15, and 16, and the weight of the evidence supported the Commission's finding Oden had instructed her employees to be untruthful.

We find substantial evidence supports the trial court's finding. The trial court also could infer Oden had an additional motive to instruct her employees to lie because Gutfeld, her superintendant, had just gone (in Oden's words) "ballistic" about Brown being at the park with children on July 16, before she had cleared her background check.

We also note that although Oden did not directly tell Garcia to be dishonest about Brown's presence, the trial court reasonably could infer Oden knew Hernandez would pass the instruction on to Garcia based on Hernandez's testimony that she had called out both of their names and Hernandez and Garcia were walking out together. Even if Garcia were not directly instructed to be untruthful, Oden's instruction to Gonzales and Hernandez supports the trial court's finding that the weight of the evidence supported Charge 7.

The Commission found Oden's instruction to her subordinates to be untruthful violated Civil Service Rules (1), (4) (grossly negligent or intentional failure of duty), (6) (dishonesty), and (15) (failure of good behavior).[19] The trial court did not make specific findings as to whether Oden's conduct violated these policies. We find the trial court's finding that Oden instructed her employees to say Brown was not working at Bixby Park supports these violations. Brown's instruction constituted an intentional failure to exercise due diligence in supervising her employees (Rules (1) and (4)), an intentional misrepresentation of a known fact, as we discussed with Charges 3 through 5, (Rules (1) and (6)), and a failure of good behavior that caused discredit to both the Department and Oden's employment (Rules (1) and (15)). As with the other charges, each violation is an alternative basis to sustain Charge 7.

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[19] We note the Commission's minutes indicate it found the conduct alleged in Charge 7 violated the Fingerprinting Policy. This was an error. The City's notification of discharge did not state Oden violated the Fingerprinting Policy with respect to Charge 7, nor do we find she did.

ii. *Oden's denial she instructed her employees to lie*

As we said above, at the administrative hearing Oden denied telling her employees to lie about Brown's presence at Bixby Park. In her interview with Campbell she also denied giving this instruction. The trial court found the same evidence that supported Charge 7 also supported Charge 8.

We agree that because substantial evidence supports the finding Oden instructed her employees to be dishonest, it also supports the finding that when she denied giving that instruction to her employees in her interview, she was making an intentional misrepresentation of material fact to Campbell, and thus violated Civil Service Rules (1) and (6).

f. *Charge 9*

The Commission found the City proved Charge 9, that on various dates in 2013, Oden "misused City property" by authorizing two groups from Herbalife to use the Bixby Park Community Center without a permit and/or without having paid the required fees. The Commission found this conduct violated Civil Service Rules (1), (4), (11), and (15). Rule (11) allows the City to discipline an employee for "[d]estruction, misuse, misappropriation, unauthorized use of or unauthorized possession of City property." The Commission also found Oden violated Administrative Regulation AR8-15 (Administration of Permits for Activities in City Facilities) and Long Beach Municipal Code, section 2.54.005. The regulation and code section were not part of the record before the trial court nor are they part of the record on appeal. As the trial court noted, testimony established that a permit was required for Herbalife to use the Bixby Park facilities. The trial court concluded the weight of the evidence supported the Commission's findings on Charge 9.

Substantial evidence supports the finding that Oden intentionally allowed Herbalife to use the Bixby Park facilities without the required permit and without paying the necessary fees. As the trial court discussed, Oden admitted, on both direct and cross-examination, that she allowed Herbalife to use the Bixby Park facilities, without a permit, to make nutritional shakes for seniors, among other things. She testified Herbalife used the facilities for over a year. Oden, who had worked as a community service supervisor for 27 years, admitted she was the person responsible for Bixby Park.

Guess testified that two Herbalife groups would regularly use the Bixby Park facilities with Oden's permission. One group used the facilities on Monday/Wednesday and the second group on Tuesday/Thursday. Herbalife originally approached Guess about using the facilities; he testified that he directed them to Oden because "[s]he was the only one who had the authorization to use the building." He testified the groups used the activity room and kitchen, where they made shakes and teas, and also stored their products in the facilities. Although the trial court did not mention it, Guess also testified that Oden became a member of Herbalife.

Garcia also testified that Herbalife used the kitchen, art supply room, and a youth room area at the park. He observed Herbalife had a money box with some change in it. Garcia testified he sometimes had to clean up the facilities after Herbalife had used them.

Scott testified that Oden did not have authority to waive the permit requirement or fee payment policy. He testified that Oden also had not requested insurance for Herbalife to use the facilities and that during the investigation, Oden stated she did not know if Herbalife had obtained the required health permits to use the kitchen and distribute shakes to the public. Oden also

did not have the authority to waive the health department permit requirements or insurance requirements.

In weighing the evidence, the trial court considered and rejected Oden's arguments that the Commission had not made a finding that Oden engaged in intentional misconduct or benefitted from Herbalife's use of the park facilities; that the City had continued to allow Herbalife to use the facilities after she left; that Oden was not fully aware of the permit policies; and that it had been her practice over her career to allow certain groups to use the Bixby Park facilities without a permit if she was at the park.

The testimony, including Oden's, substantially supports the finding that Oden knew Herbalife was subject to the permit and fee requirements, but intentionally allowed Herbalife to use the facilities without a permit (or insurance) and without paying any fees to the City. In response to a Commissioner's question, Oden testified she was aware persons using the park facility had to obtain permits. She also testified she was not aware of whether there were exceptions *in the City policy* to the permitting requirement, but that there were exceptions. The Commissioner clarified his question, "I'm asking, after 27 years, you are not fully aware of the policies in which you are to operate as for all intents and purposes, a facility manager, is that what I'm hearing?" Oden responded, "Yes."

Scott confirmed that as a park supervisor with over two decades of experience, she was trained on the proper procedure as to how to rent out city property to outside community groups. The trial court reasonably could infer from Oden's and Scott's testimony, and Oden's 27-year experience as a park supervisor, that Oden knew the permit policy and procedures applied to Herbalife, an outside community group. The trial court evidently weighed more heavily this evidence than Oden's statement to the

Commissioner that she was not fully aware of the policies. And, under our standard of review, we must resolve conflicts in the evidence in favor of the City.

The trial court also found that given Oden was the supervisor responsible for Bixby Park, her failure to obtain permits for Herbalife's use of the facilities supported the conclusion that she violated Civil Service Rule (4) for intentional failure of her duty, and Rule (15) for other failure of good behavior that causes discredit to the City. We find substantial evidence supports these findings, as well.

Oden testified that her practice—the way she had been "brought up through the ranks"—was to allow groups to use the facilities if "it does not cost the city any money." She testified no supervisor had told her to stop that practice. [20] The trial court considered this testimony and was not persuaded.

We do not reweigh the evidence and cannot say that Oden's testimony of her practice, or testimony that Herbalife continued to operate after she left, renders the evidence that she intentionally failed to exercise her duty to require Herbalife to obtain a permit unreasonable or inadequate to support the trial court's conclusion. This is especially true given Oden's responsibility for the park and the evidence that Herbalife used the Bixby Park facilities four times a week for over a year and served beverages to the public without a health permit. Herbalife's regular use of the facility, therefore, was not like that

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[20] Oden also pointed to Gutfeld's testimony that he had seen Herbalife at the park and did not recall there being any issues with them being there. He also testified, however, that he did not know whether Herbalife had a permit or not and had not been involved in any conversations about Herbalife during the investigation.

described by Oden, of allowing someone in the community to use an empty room in the facility. Further, the trial court could have inferred that Herbalife's use of the facility did cost the City money considering City-paid staff had to clean the facility after Herbalife used it. The trial court also reasonably could have inferred that allowing a group regularly to use the facility to serve beverages without a facility permit or health permit, paying a fee, or providing insurance, caused the City discredit.

Finally, the trial court concluded the weight of the evidence supported a finding that Oden misused City property in violation of Civil Service Rule (11) by allowing Herbalife to use Bixby Park and serve beverages to consumers without a permit. Oden seems to contend she did not violate Rule (11) because she personally did not use the facility or benefit financially from allowing Herbalife to do so. The record is silent as to the meaning of "misuse of City property." Given Oden was a supervisor in charge of managing the facilities at Bixby Park and the evidence discussed above, we find reasonable the trial court's conclusion that Oden misused City property by allowing Herbalife to use the facilities for a year without a permit.

g. *Charge 10*

The City's last charge against Oden alleged that she misused the City's computer by using it for personal, non-City related purposes, between 2010 to 2013. The Commission found this allegation true and that Oden violated Civil Service Rules (1), (11), and (15); Administrative Regulation AR 8-30 (Use of City Computers and Related Equipment and Use of E-mail and Internet); and Personnel Policies and Procedures Number 1.11 (City Computer, E-mail and Internet Use Policy). The trial court concluded the weight of the evidence supported the Commission's findings. Substantial evidence supports the trial court's findings.

Administrative Regulation AR 8-30 (AR 8-30) sets forth the City's policy regarding use of City computers and systems. It prohibits employees from using City computers "to engage in Non-City related charitable or social activities, political activities . . . or other activities outside of their job scope without appropriate authorization." The policy also provides that any use of computer equipment for personal purposes "shall be limited to brief, infrequent usage dealing with personal family matters that can only be addressed during work hours." Nor may employees access personal email accounts on City computers. Individuals who violate the policy "may be subject to disciplinary action, up to and including termination."

Oden testified she was aware of AR 8-30. Oden admitted that she used the City's computer in her office at Bixby Park for personal use. The City introduced several personal documents Oden created on the City computer, including documents of a religious, charitable, and/or political nature. Guess also testified that Oden asked him to help her create personal documents using the City's computer at Bixby Park during work hours. This evidence supports the trial court's finding that Oden violated AR 8-30, Procedure Number 1.11,[21] and Civil Service Rule (1). The evidence also demonstrates Oden misused City property in violation of Rule (11) by using a city computer for purposes prohibited by AR 8-30. Finally, we find the trial court reasonably could find that because Oden was a supervisor charged with enforcing AR 8-30, her violation of that policy and direction to Guess to help her use the City computer for personal purposes

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[21] Policy Number 1.11 (City Computer, E-mail and Internet Use Policy) is not part of the appellate record. That policy, however, is referenced in AR 8-30.

demonstrated a failure of good behavior causing discredit to the City in violation of Civil Service Rule (15).

5. ***The Commission did not abuse its discretion when it upheld Oden's discharge***

Oden contends the Commission abused its discretion when it upheld her discharge. As we have said, we independently review an agency's choice of penalty to determine whether it abused its discretion. (*Cassidy, supra*, 220 Cal.App.4th at p. 627.) We may not substitute our judgment for that of the agency concerning the appropriate degree of discipline—even if we would have been more lenient—absent a manifest abuse of discretion. (*Kazensky*, *supra*, 65 Cal.App.4th at pp. 53-54.) If "reasonable minds may differ as to the propriety of the penalty imposed," we must find no abuse of discretion. (*Lake v. Civil Service Commission* (1975) 47 Cal.App.3d 224, 228; *Deegan, supra*, 72 Cal.App.4th at p. 46.) While we do not "rubberstamp" an agency's choice of penalty (*Hankla v. Long Beach Civil Service Com.* (1995) 34 Cal.App.4th 1216, 1222), we must keep in mind the principle that " ' "[c]ourts should let administrative boards and officers work out their problems with as little judicial interference as possible." ' " (*Kazensky*, at p. 54.)

Here, the Commission unanimously concurred with the City's decision to discharge Oden. While we are sympathetic to Oden's argument that she had no prior record of discipline, we do not find Oden's discharge an abuse of discretion given the totality of the circumstances.

We find *Kazensky*, relied on by the City, instructive. There, the court of appeal reversed a trial court's writ of mandate overturning a city manager's decision to terminate two city mechanics finding the City had not abused its discretion in firing them. (*Kazensky, supra*, 65 Cal.App.4th at pp. 48-49.) A hidden camera installed to discover the cause of vandalism instead

caught the employees taking excessive breaks and captured one of them engaging in other inappropriate behavior, among other things, reading another employee's mail and working on his own lawn mower in the city's shop. (*Id.* at p. 50.) That employee also went home early but reported he had worked a full day. (*Ibid.*) The trial court found the employees did take excessive breaks and the employee charged with engaging in other inappropriate behaviors had done so. (*Id.* at p. 49.) The trial court, however, found the employees' discharge " 'excessive as a matter of law,' " and concluded the City was required to use progressive discipline. (*Id.* at p. 72.)

The court of appeal disagreed, finding no progressive discipline policy existed, and noting that some board members and the city manager had found termination an appropriate penalty, demonstrating that reasonable minds differed over the penalty to impose. (*Kazensky, supra*, 65 Cal.App.4th at pp. 73-75.) The court also concluded a reasonable manager could find discharge appropriate for the employees' acts of dishonesty, such as when one left work early but was paid for a full shift, and another punched out a different employee's time card at the end of his shift, when he in fact had left early. (*Id.* at pp. 74-76.)

Although Oden did not benefit financially from her dishonesty, as one of the employees in *Kazensky* apparently did, the City reasonably could hold her to a high standard as a supervisor, and Scott testified the City did hold supervisors to a higher standard. Scott testified to the basis for the City's decision to fire Oden. He explained Oden's violation of the Fingerprinting Policy by allowing Bermudez and Brown to interact with children was significant. He described the Fingerprinting Policy as "critical to who we are as a department. It is critical to the trust that we build up with the community and one that is extraordinarily important to our process." He also

cited Oden's dishonesty and violations of the permit fee and computer usage regulations as adding to the decision. Scott continued to explain the City's rationale:

> "And, you know, this is a trust issue. . . . [T]rust is an important component of who we are in our relationship with the community and our feeling was that this trust had been violated. So, therefore, the department made a business decision to take this action [referring to Oden's discharge] and felt that, . . . she cannot be trusted by the community, by the staff and we cannot continue to have her in our workplace."

Like the court in *Kazensky*, given the totality of the circumstances, we cannot say that a reasonable manager would not fire a supervisor who had been found to be dishonest with the City and to have violated policies designed to protect children under the City's care, even where the supervisor had no prior record of discipline.

Oden also has presented no evidence of a "clear [C]ity policy calling for the application of progressive discipline" that the City failed to follow. (*Kazensky, supra*, 65 Cal.App.4th at p. 73 [explaining court "would have no difficulty finding an abuse of discretion" if such a policy existed and applied to the terminated employees' factual situation but was not followed].) Nor has she argued such a policy existed.

Oden has argued she was "set up" and terminated in retaliation for filing a complaint against the City. In light of the substantial evidence supporting the multiple charges against Oden discussed above, Oden has failed to show the City's decision to fire her was unrelated to her misconduct or an " ' "arbitrary, capricious or patently abusive exercise of discretion." ' " (*Cassidy, supra*, 220 Cal.App.4th at pp. 627-628.)

DISPOSITION

The trial court's judgment denying the petition for writ of mandate is affirmed. The parties each shall bear their own costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

EDMON, P. J.

KALRA, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.