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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CARLOS MARTIN,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES et al.,

Defendants and Respondents.

B272167

Los Angeles County
Super. Ct. No. BS154140

APPEAL from a judgment of the Superior Court of
Los Angeles County, James C. Chalfant, Judge. Affirmed.

Rains Lucia Stern St. Phalle & Silver and Jacob A.
Kalinski for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Blithe S. Bock,
Managing Assistant City Attorney, Paul L. Winnemore,
Deputy City Attorney for Defendants and Respondents.

INTRODUCTION

Carlos Martin is a sworn peace officer with the Los Angeles Police Department (Department or LAPD). The Department selected Martin to participate in its Air Support Division (ASD) command training program and placed him in the bonus position of Police Officer II+6 while he trained to become an LAPD helicopter pilot. After extending Martin's training time to address recurring shortcomings, the Department deselected him from the bonus position primarily due to deficiencies in aeronautical decision making and situational awareness. Martin challenged his deselection in an administrative appeal. After a two-day evidentiary hearing, the hearing officer upheld the Department's decision.

Martin petitioned the superior court for a writ of mandate commanding the City to set aside the Department's decision deselecting him from the bonus position. He maintained the hearing officer transgressed the law and denied him a fair hearing by precluding the introduction of certain evidence during the administrative appeal. He also argued the weight of the evidence was insufficient to support the Department's decision. The trial court denied the portion of Martin's petition seeking to set aside the decision.¹ Martin appeals the ruling. We affirm.

¹ The trial court granted the portion of Martin's petition asserting the Department violated his rights under *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194 and ordered the City to provide Martin backpay for the relevant period.

FACTS AND PROCEDURAL BACKGROUND

1. *The Command Pilot Training Program*

In February 2013, the Department selected Martin for the Police Officer II+6 bonus position and ASD's command pilot training program. The program's stated goal is to "produce a highly skilled and safe police aviator." Its syllabus describes the program's rigorous standards:

"This is a very intense training program, the standards are high; the primary training is broken into nine Phases. This takes the student through his/her [Federal Aviation Administration (FAA)] Commercial checkride. . . . Should the student fall behind in a particular phase, he/she will be required to take a Phase check with the Chief Pilot, who will determine whether a 'reasonable' amount of additional training will allow the student to complete that phase or whether termination [will] be recommended."

While the program tracks FAA regulations for helicopter pilot certification, several instructors described the ASD's standards as more demanding due to the unique challenges posed by a police pilot's mission, including low altitude and low airspeed flying over densely populated areas. As the ASD's former Chief Pilot explained, the program's goal is not merely to qualify an officer as a private commercial pilot capable of flying from point A to point B, but to qualify the officer as a police pilot capable of quickly responding to changing situations in a law enforcement context. Thus, even officers who already have an

FAA license must demonstrate in the program that they are capable of performing the duties of a police pilot.

To document progress through the training phases, flight instructors prepare a “grade slip,” assigning a “satisfactory” or “unsatisfactory” grade for each maneuver and area of competency. The instructors also provide comments on the trainee’s performance and an overall grade on the flight.

Among the areas of competency that instructors assess are the trainee’s aeronautical decision making and situational awareness. These competencies complement each other and address the pilot’s ability to maintain awareness of “any and all things in the air,” to “see and avoid and communicate with other aircrafts,” and to make “deconflicting” decisions at a moment’s notice. As the ASD’s Assistant Commanding Officer, Lieutenant Phillip Smith, explained, aeronautical decision making and situational awareness are vitally important given the low air speed, low altitude conditions police pilots fly under. While a “normal helicopter pilot” generally flies at an altitude of 1,500 to 2,000 feet, police pilots fly as low as 350 feet where there is little time to react to a changing or “catastrophic” situation. According to Smith, under those conditions, it is not enough for a police pilot to be “right 99 out of a [hundred] times because the one time you’re wrong, you’re dead.”

2. *Martin’s Training*

Martin began his flight training on October 7, 2013. Officer Coley Maddigan, a 16-year LAPD helicopter pilot, was Martin’s primary instructor. Martin also trained with the program’s other two flight instructors, Officers Sean Malachi and Kevin Gallagher, as well as the former Chief Pilot, Officer Robert Price.

From October 7, 2013 to December 3, 2013, Martin flew a total of 27 training flights. He received satisfactory grades for each flight, maneuver, and area of competency, including aeronautical decision making and situational awareness.

On December 3, 2013, Chief Pilot Price conducted a pattern solo flight evaluation of Martin. The Chief Pilot terminated the flight early due to Martin's inability to perform the required maneuvers to standard. Price also evaluated Martin's performance as unsatisfactory in the areas of "Judg[ment] & Common Sense" and "Situational Awareness." On the grade sheet, Price explained: "I understand that in pilot training there will be many good days and bad days. This is normal and expected. The key to success is to learn from your bad days, obtain the remedial training and not repeat the same mistakes." The Chief Pilot recommended five hours of remedial training.

On December 10, 2013, after Martin had completed three successful remediation training flights, the Chief Pilot conducted another pattern solo flight evaluation. This time Martin received a satisfactory grade.

On January 10, 2014, Martin had a training flight with his primary instructor, Officer Maddigan. Maddigan graded the flight unsatisfactory overall and in the area of situational awareness. Maddigan commented that Martin's situational awareness and decision making were "unsatisfactory," in part due to his decision to violate Van Nuys airspace without communicating with the control tower. Lieutenant Smith discussed the unsatisfactory grade slip with Martin and advised him that failure to improve in the area of situational awareness "may result in your deselection from the flight training program."

Later that day, Martin had an airspace training flight to address the unsatisfactory performance. He received an overall satisfactory grade, including in the area of situational awareness. He had four more satisfactory flights the next week.

On January 16, 2014, Maddigan again graded Martin's training flight as unsatisfactory overall, including in the areas of "Judg[ment] & Common Sense" and "Situational Awareness." In the comments, Maddigan noted several issues of concern, including Martin's "violat[ion of] Hawthorne airspace without communicating with the tower or being aware that [he was] within the airspace." The ASD training support section officer-in-charge added:

"The rating for this date was deemed unsatisfactory by Martin's flight instructor. After reviewing the rating, it appears that situational awareness and airspace issues are the primary factors of concern. . . . [¶] . . . This is the second time that airspace violation issues have been discussed with you. After the first incident remedial training geared to correct this behavior was provided. Beyond providing training, our options on correcting this issue become very difficult. Again you are being directed to receive remedial training in the area identified. That being said[,] the issues appear to be a lack of situational awareness and difficult if not impossible to [e]ffectively address by instruction."

Per the Chief Pilot's recommendation, Martin had his next three training flights with Officer Gallagher. Gallagher graded

the flights satisfactory and discussed techniques with Martin for maintaining situational awareness and making good aeronautical decisions “with emphasis on considering only pertinent information.” Martin had a successful solo flight and three more satisfactory training flights with Maddigan.

On February 3, 2014, Martin had another flight with Maddigan. Maddigan initially gave Martin a satisfactory grade, but later revised the grade sheet to give Martin an overall unsatisfactory rating and unsatisfactory marks on “Traffic Pattern / Procedures,” “Power Recovery,” and “Situational Awareness.”

On both grade sheets, Maddigan commented that Martin had “struggled with the power recoveries,” due to his “lack of attitude and rotor control,” and that “[p]ower recoveries should not be too difficult . . . at this stage in training.” However, while the initial satisfactory grade sheet observed that “[a]ny power recovery lower tha[n] those performed today would be considered unsatisfactory,” the revised grade sheet stated Martin’s performance was “well below the private pilot standard and would have caused you to fail the checkride.” Maddigan also added the following comment to the revised grade sheet:

“Today’s flight takes you over the allowed time for this phase of training. At this phase of training, it is required that you be prepared for and proficient to take the Private Pilot Practical Test. Based upon your inconsistent performance, recent unsatisfactory ratings and today’s flight, I am not willing to endorse you to take your practical test. As a result, I am recommending you receive 5 hours of additional

training and a change of primary flight instructors.”

The ASD training support section officer-in-charge concurred with Maddigan’s recommendation and warned Martin that failure to demonstrate his ability to make piloting decisions consistent with his training in routine and emergency operations would “lead to de-selection.”

On February 5, 2014, Martin had a remediation flight with Officer Malachi. Malachi gave Martin unsatisfactory grades on several competency areas, including “Power Recovery” and “Situational Awareness.” After detailing Martin’s numerous failures to identify and compensate for wind conditions during the flight, Malachi offered the following assessment:

“This rating documents critical flight situations and identifies your inability to correlate multiple flight concepts and [e]ffect the appropriate outcome. Although you have demonstrated you possess an adequate level of academic concepts . . . , I do not think you have the ability to apply that knowledge in the flight arena. Operating a helicopter can be very stressful and requires the ability to cognitively identify hazardous situations and act quickly and appropriately. Your inability to quickly identify variable situations in flight concerns me and jeopardizes the safety of the flight crew. Your knowledge base versus your ability to assess, act and perform safe flight concepts differs greatly as demonstrated in your training. Therefore, based on the prior ratings

from Officer Maddigan, along with the deficiencies identified during this flight, it is my recommendation that you do not continue with the remaining 2.8 hours of the extended training time. Based on your performance and my experience, I have made the determination that continuing with training would not yield any favorable results.”

The support section officer-in-charge concurred with Malachi’s assessment, observing, “[i]t is clear that your lack of situational awareness . . . outlined in previous ratings continue[s] to pose a serious safety of flight issue.” The Assistant Commanding Officer, Lieutenant Smith, concurred with the recommendation to deselect Martin from the program. He explained:

“It is clear to the command that the 2.8 hours left on your extension beyond the syllabus hours will be insufficient to rectify deficiencies exhibited while in training. In fact, your Instructor Pilots have delineated that your deficiencies relate to aeronautical decision-making (ADM) and situational awareness. These deficiencies cannot be rectified in the time allotted, including extension time, and at the conclusion of those hours, you still will not be anywhere near successfully flying to the ascribed [Practical Test Standards] for successfully completing a practical flight and oral evaluation for a private pilot’s certificate from a [FAA] Examiner. [¶] As such, de-

selection from the [ASD] Student Pilot curriculum has been initiated.”

3. *Martin’s Deselection*

On March 18, 2014, Captain Gary Walters, the ASD’s Commanding Officer, prepared an intradepartmental memorandum, in consultation with Lieutenant Smith and Chief Pilot Price, requesting Martin’s deselection from the Police Officer II+6 bonus position. The memorandum stated in relevant part:

“Martin failed to master the operation of the helicopter to established standards. He was provided with remedial training and was unable to overcome his deficiencies. [¶] Officer Martin was provided the opportunity to fly with all three of the flight instructors and the Chief Pilot. They all agreed that his progression was unsatisfactory and posed a safety hazard to himself and others if [he were] allowed to operate the helicopter alone.”

Martin did not sign the memorandum. However, in a conversation with Lieutenant Smith regarding the Department’s decision, Martin reportedly told Smith he understood the basis for his deselection, but he would not voluntarily deselect from the program because he was “‘not a quitter.’”

On May 16, 2014, Deputy Chief Sandy Jo MacArthur made a final decision to deselect Martin from the bonus position, effective June 15, 2014. After his deselection, and before the administrative appeal hearing, Martin obtained a FAA private pilot’s license.

4. *Administrative Appeal Hearing*

On June 30, 2014, Martin filed an administrative appeal challenging his deselection. In October 2014, the assigned hearing officer conducted a two-day evidentiary hearing on Martin's appeal.

Chief Pilot Price and Officers Maddigan and Malachi gave testimony largely consistent with their comments on Martin's grade sheets. Price said Martin was very smart and did well in oral evaluations, but he struggled with making quick decisions, and his ability to manage unscripted changing situations in a dynamic environment did not improve with remedial training. Price believed Martin was competent to be a private pilot, but he was not suited to confront the unique challenges faced by police pilots.

Maddigan similarly testified that Martin did not show sufficient improvement between flights and that, in Maddigan's opinion, it would not have been possible to train Martin to a satisfactory level in situational awareness and aeronautical decision making without far exceeding the time permitted by the program's syllabus. Malachi concurred in Maddigan's assessment that there was not sufficient time to remediate Martin's recurring problems with situational awareness.

Officer Gallagher offered a contrary view. He disagreed with his fellow instructors and testified aeronautical decision making and situational awareness are "very teachable." He flew with Martin three times for just over four hours, and did not notice any deficiencies with either competency. Gallagher believed he could have helped Martin improve in those areas, but he was not asked to do so. He testified decisions about remediation were made by supervisors and chief pilots.

Gallagher also contradicted the statement in Captain Walters's intradepartmental memorandum regarding the unanimity of the instructors' decision to deselect Martin from the program. Contrary to the memorandum's statement, Gallagher testified that he was not consulted about Martin's progress and he did not share the opinion that Martin "posed a safety hazard to himself and others if allowed to operate the helicopter alone." Gallagher said he was not in a position to say whether he agreed or disagreed with the decision to deselect Martin, as he had "only flown with him for 4.1 hours."

Captain Walters admitted, contrary to the statement in his memorandum, that he did not consult with the instructors about Martin's deselection. He said he consulted with Lieutenant Smith and Chief Pilot Price, and he reviewed all the grade sheets the instructors prepared in the course of Martin's training. Walters said the statement about the instructors' view of Martin's progress had been based upon the grade sheets and not consultations with the individual instructors.

Lieutenant Smith confirmed that he provided all the grade sheets and information from the instructors to Captain Walters. Smith testified that all the instructors, including Gallagher, agreed Martin was unable to perform to ASD standards. He also testified that Walters does not have an aviation background, and therefore defers to the combined expertise of his subordinates. Smith confirmed that he prepared the intradepartmental memorandum at Walters's direction.

Martin sought to call Sergeant P. Gillies to address some of the comments about Martin's deficiencies and to refute the Department's position that the ASD's standards differed from the FAA's. Gillies was an ASD pilot for 14 years, but he was not an

instructor and he had been out of the ASD for just under two years. According to Martin's offer of proof, Gillies would testify that the ASD has its own "requirements" and "expectations," but its "standards" are the same as those of the FAA. The hearing officer excluded Gillies, reasoning the ASD's standards "could have changed" in the 14 years since Gillies went through the command pilot training program and that his testimony would not "have sufficient weight" to "negate" the Department's evidence regarding the ASD's more rigorous requirements.

Martin also sought to call Officer Bolanos as a rebuttal witness. Bolanos had never flown with Martin; however, since Martin's deselection, Bolanos had assumed the role of Acting Chief Pilot following Price's retirement. According to Martin's offer of proof, Bolanos would testify there were additional resources the Department could have used to help Martin overcome his deficiencies. The hearing officer excluded Bolanos, as the Department's position had been only that the remaining remediation hours were insufficient and none of its witnesses had been asked whether there were additional resources that could have been utilized if Martin's remediation hours were further extended.

The hearing officer found there was sufficient cause to support Martin's deselection. Although he acknowledged there was a "discrepancy in the discussions and decision making" among the instructor pilots and their chain of command, the hearing officer concluded Martin had "clearly demonstrated deficiencies" that supported the recommendation to deselect him from the training program.

The Chief of Police adopted the hearing officer's recommendation to uphold the deselection decision.

5. *Writ Petition*

Martin filed a petition for a writ of mandate compelling the City to set aside its decision deselecting Martin from the bonus position. In pertinent part, the petition alleged the Department abused its discretion by precluding Martin from calling two witnesses and preventing him from examining witnesses in detail regarding individual grade slips. The petition also asserted the weight of the evidence was insufficient to support the finding that he was unable to perform the duties of the bonus position.

The trial court denied the petition. The court agreed with the hearing officer's decision to exclude Officer Bolanos's testimony and found no error with respect to the grade slips. However, the court concluded Sergeant Gillies should have been allowed to testify about the equivalence between the FAA and the ASD standards. Nonetheless, the court determined the error was harmless, because Gillies's testimony would not have rebutted the evidence showing that police pilots' unique duties require them to demonstrate skills that are not demanded of private pilots with an FAA license. Because the weight of the evidence showed Martin repeatedly fell short of demonstrating those skills, the court concluded the Department did not abuse its discretion in deselecting Martin from the bonus position.

DISCUSSION

1. *Legal Principles and Standard of Review*

Administrative mandamus is available to obtain judicial review of a public agency "decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer." (Code Civ. Proc., § 1094.5,

subd. (a).) In a proceeding for administrative mandate, the judicial inquiry extends to whether the public agency “has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion.” (Code Civ. Proc., § 1094.5, subd. (b).) An abuse of discretion is established if the public 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.” (*Ibid.*)

The conditions under which the Department may deselect an officer from a bonus position are set forth in the Los Angeles Police Department Manual (Department Manual). (See *Los Angeles Police Protective League v. City of Los Angeles* (2002) 102 Cal.App.4th 85, 88 & fn. 1 (*Los Angeles Police Protective League*).) Section 763.55 of the Department Manual provides that an officer may be deselected from a bonus position and reassigned to a nonbonus position when “[a] commanding officer, in his/her discretion, decides that reassignment is appropriate after determining that a subordinate officer has been unwilling or unable to perform the duties of the position.”

Under the Public Safety Officers Procedural Bill of Rights Act (Gov. Code, § 3300 et seq. (POBRA)), a public agency must provide a nonprobationary officer with an opportunity for administrative appeal from any punitive action. (Gov. Code, § 3304, subd. (b).) Deselection from a bonus position constitutes a punitive action within the meaning of this section. (See *Los Angeles Police Protective League, supra*, 102 Cal.App.4th at p. 88.) The POBRA provides that “[a]n administrative appeal instituted by a public safety officer under this chapter shall be

conducted in conformance with rules and procedures adopted by the local public agency.” (Gov. Code, § 3304.5.)

Consistent with this mandate, the City and Chief of Police promulgated Administrative Order No. 6, which sets forth the procedures governing an administrative appeal challenging the Department’s decision to deselect an officer from a bonus position. Administrative Order No. 6 revised Administrative Order No. 15 to conform the administrative appeal hearing process to the constitutional requirements outlined in *Los Angeles Police Protective League, supra*, 102 Cal.App.4th 85 and *Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155 (*Brown*).²

Martin argues the hearing officer’s evidentiary rulings denied him a “fair and meaningful” administrative hearing and thus transgressed the “Due Process Clauses of the Federal and State Constitutions.” Because his argument implicates constitutional due process, Martin contends our review of the evidentiary rulings should be de novo. (See, e.g., *Brown, supra*,

² The *Los Angeles Police Protective League* and *Brown* decisions concluded the procedures set out in Administrative Order No. 15 failed to satisfy procedural due process requirements because they (1) lacked any requirement that the hearing officer apply the criteria established by the Department Manual for a reduction in paygrade; (2) relieved the Department of any burden of proof regarding the justification for its action; (3) relieved the Department of the obligation to present evidence in support of its action; and (4) failed to require adjudication by a neutral final decisionmaker. (*Los Angeles Police Protective League, supra*, 102 Cal.App.4th at pp. 93-94; *Brown, supra*, 102 Cal.App.4th at p. 178.) Administrative Order No. 6 cured these deficiencies. (See fn. 3, *post*.)

102 Cal.App.4th at p. 168.) We disagree. The problem with Martin's attempt to cast his objections to discrete evidentiary rulings as procedural due process challenges is that Administrative Order No. 6 establishes procedures that meet the minimum requirements of constitutional due process.³ Thus, the

³ As Martin acknowledges, when a punitive action affecting an officer's property interest in a bonus position is implicated, minimum due process requires " 'written notice of the grounds for the disciplinary measures; disclosure of the evidence supporting the disciplinary grounds; the right to present witnesses and to confront adverse witnesses; the right to be represented by counsel; a fair and impartial decisionmaker; and a written statement from the fact finder listing the evidence relied upon and the reasons for the determination made.' " (*Brown, supra*, 102 Cal.App.4th at p. 175, quoting *Burrell v. City of Los Angeles* (1989) 209 Cal.App.3d 568, 577.) As a corollary to these requirements, the *Brown* court concluded the Department also must bear the burden of proving the grounds for the disciplinary action and it must have the obligation to produce evidence for that purpose. (*Brown*, at p. 175; accord *Los Angeles Police Protective League, supra*, 102 Cal.App.4th at p. 92.) Consistent with these requirements, Administrative Order No. 6 mandates notice to the officer through a written "Transfer Order"; discovery of "all reports and materials used to substantiate the [officer's] . . . deselection"; and a "complete list of witnesses . . . delivered to the [officer] no later than seven days before the hearing." It mandates that the Department "shall bear the burden of proving the grounds for . . . deselection" and it affords the officer "the right to an Administrative Appeal Representative . . . or legal counsel" and "the right to call and cross-examine witnesses, whose testimony shall be given under oath." Administrative Order No. 6 requires a neutral hearing officer who must prepare a written report "stating whether the Department has established, by a preponderance of the evidence,

question for this court is not, as it was in *Los Angeles Police Protective League* and *Brown*, whether the procedures governing Martin’s administrative appeal were constitutionally infirm; rather, we must decide whether the hearing officer’s evidentiary rulings complied with the administrative order’s procedural mandates: That is, whether the hearing officer abused the discretion conferred upon him by Administrative Order No. 6, and, if so, whether the abuse of discretion prejudicially denied Martin a fair hearing. (Code Civ. Proc., § 1094.5, subd. (b).)

Administrative Order No. 6 vests the hearing officer with “discretion to exclude evidence that is irrelevant or the presentation of which will otherwise consume undue time.” The procedure conforms to minimum due process standards. It is well settled that a hearing officer, like a trial court acting under a similar mandate, “ ‘has broad discretion to determine the relevance of evidence’ ” and the exercise of that discretion will only be disturbed if the hearing officer “ ‘acted in an arbitrary, capricious or patently absurd manner.’ ” (*Coffey v. Shiimoto* (2015) 60 Cal.4th 1198, 1213.) Judicial discretion to preclude the presentation of evidence having limited probative value that would result in the undue consumption of time is likewise consistent with procedural due process, as a party does not have “ ‘a constitutional right to present all relevant evidence in his favor, no matter how limited in probative value such evidence will be.’ ” (*People v. Babbitt* (1988) 45 Cal.3d 660, 684 [discussing Evidence Code section 352, observing constitutional due process is implicated only where a court abuses its discretion by denying

the requirements for . . . deselection from a bonus position as set forth in the provisions of the Department Manual.”

a party the “ ‘right to present all relevant evidence of *significant* probative value’ ”]; accord, *People v. Cunningham* (2001) 25 Cal.4th 926, 998-999.) We must therefore review the hearing officer’s evidentiary rulings under the familiar abuse of discretion standard. (See *Coffey*, at p. 1213.)

Even when the record reveals an abuse of discretion, we cannot reverse the decision of an administrative agency unless the petitioner establishes the error prejudicially affected his substantial rights. (Code Civ. Proc., § 1094.5, subd. (b); see also *Thornbrough v. Western Placer Unified School Dist.* (2013) 223 Cal.App.4th 169, 200 [observing, even “ ‘procedural due process violations . . . are subject to a harmless error analysis’ ”].) Specifically, “it is well settled that the improper admission or rejection of evidence at an administrative hearing does not provide ‘grounds for reversal unless the error has resulted in a miscarriage of justice. [Citation.] In other words, it must be reasonably probable a more favorable result would have been reached absent the error.’ ” (*Thornbrough*, at p. 200; see also *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1054 [“An administrative agency is not required to observe the strict rules of evidence enforced in the courts, and the admission or rejection of evidence is not ground for reversal unless there has been a denial of justice.”].)

To the extent Martin challenges the trial court’s determination that the Department’s decision was supported by the weight of the evidence, we apply the substantial evidence standard of review. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 824 (*Fukuda*) [“when, as here, the trial court is required to review an administrative decision under the independent judgment standard of review, the standard of review on appeal of

the trial court’s determination is the substantial evidence test”].) Thus, we “view the evidence in the light most favorable to the judgment and accept as true all evidence tending to support the judgment, including all facts that reasonably can be deduced from the evidence.” (*Pedro v. City of Los Angeles* (2014) 229 Cal.App.4th 87, 99.) The judgment must be affirmed if, viewed in this light, the record discloses substantial evidence to support the trial court’s conclusion. (See *San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1461.)

2. *The Hearing Officer Reasonably Exercised His Discretion to Limit Questions Regarding Individual Grade Slips*

Martin argues the hearing officer abused his discretion by effectively precluding his representative from asking detailed questions about individual grade slips. At the administrative appeal hearing, all the grade slips—satisfactory and unsatisfactory—were admitted into evidence; however, the hearing officer directed the parties to focus their witness examinations on the unsatisfactory grade slips that “turned the Department around” and caused the Commanding Officer to determine Martin was unable to perform the duties of the bonus position. On appeal, Martin contends this limitation deprived him of a fair hearing. We disagree.

Martin argues the Department offered his grade slips into evidence to prove he was unable to perform the duties of the bonus position and, in fairness, his representative therefore should have been permitted to ask detailed question about “any of the grade [slips] he believed were relevant to show that . . . the Department failed to meet its burden of proving that Martin was

unable to perform the duties of his position.” He maintains this examination was relevant because all the training flights memorialized in the grade slips influenced the ASD instructors’ opinions about his competence to perform the duties of a police pilot. But, as the trial court recognized, testimony about Martin’s satisfactory training flights, while “not completely irrelevant,” was not of significant probative value, because the issue for the Commanding Officer in exercising discretion under section 763.55 of the Department Manual was “not how many times Martin performed satisfactorily; but, when he performed unsatisfactorily, what was wrong and could it be corrected.”

The hearing officer had discretion under Administrative Order No. 6 to preclude examination that would elicit testimony of limited probative value and consume undue time. We agree with the trial court that the hearing officer reasonably exercised that discretion in directing the parties to focus their examinations on the unsatisfactory grade slips. As the trial court noted, Lieutenant Smith had testified that, in the view of the ASD’s unique mission, it would not be sufficient to be “right 99 out of a [hundred] times because the one time you’re wrong, you’re dead.” Based on that testimony, and other evidence showing the Commanding Officer based his deselection decision on the contents of the unsatisfactory grade slips, the hearing officer reasonably concluded detailed examination and testimony regarding discrete components of the satisfactory grade slips would have been of limited probative value and would have consumed undue time. The hearing officer permitted Martin to extensively question Smith and the other instructors about each of the five unsatisfactory grade slips and to test the credibility of the unsatisfactory ratings. To the extent the hearing officer

precluded detailed examination about the satisfactory grade slips, that decision did not deny Martin a fair hearing.⁴

3. *The Exclusion of Martin's Rebuttal Witnesses Did Not Deprive Martin of a Fair Hearing*

Martin contends he was denied a fair hearing because the hearing officer precluded him from calling Officer Bolanos and Sergeant Gillies to testify as rebuttal witnesses regarding the ASD's standards and additional training that might have rectified Martin's reported deficiencies. The trial court rejected Martin's contentions, reasoning that the proffered testimony would have been largely irrelevant as neither Bolanos nor Gillies had ever flown with Martin. Additionally, in the one area where the trial court deemed the proffered testimony sufficiently

⁴ The trial court also noted that the record did not disclose "any instance where [Martin's] representative was prevented from asking specific questions about the Satisfactory grade slips." Although not necessary to our resolution of this issue, we likewise could not find an instance where Martin was precluded from asking about a satisfactory grade slip. Indeed, when the Department objected that Martin's examination of his primary instructor had veered into "dissecting every single line" of a grade slip without eliciting information to "contradict" the unsatisfactory ratings, Martin's representative stated explicitly: "We're not going to go through the positives because the positives speak volumes. They support themselves. We got no argument. Our only argument of evidence is the ones that led to his deselection." The Department's representative granted that the Department had no quarrel with "specific questions for the instructor regarding the unsatisfactory flight." And, Martin's representative agreed the examination should be confined to specific questions that caused the instructor to deem Martin's performance unsatisfactory.

probative—the equivalence of ASD versus FAA standards—the court concluded the erroneous exclusion of the testimony was not prejudicial. We agree with the court’s analysis.

a. *Officer Bolanos*

Officer Bolanos had assumed the role of the ASD’s Acting Chief Pilot following Officer Price’s retirement. According to Martin’s offer of proof, Bolanos would rebut the Department’s assertion that Martin’s remaining 2.8 hours of remediation time would have been insufficient to correct his deficiencies. He also would testify that there were additional resources the Department could have used to help Martin overcome his recurring issues with situational awareness and aeronautical decision making. Martin’s representative conceded that Bolanos had never flown with Martin and thus had no percipient knowledge of Martin’s piloting ability.

The trial court concluded the hearing officer reasonably exercised his discretion to exclude Bolanos’s testimony. As the court explained, although the possibility of remediation was “certainly a material issue,” Bolanos “never flew with Martin and could have no percipient knowledge of Martin’s inability to rectify his deficiencies.” More to the point, the court observed that, given Bolanos’s lack of percipient knowledge, he could not “provide *persuasive* testimony that the remaining 2.8 hours in remedial time would be sufficient.” (*Italics added.*) Notably, Martin had already offered testimony from Officer Gallagher, who, consistent with the offer of proof for Bolanos, had testified training options were available to help Martin improve in the areas of situational awareness and aeronautical decision making. But, critically, Gallagher testified he could not opine on whether he agreed or disagreed with the decision to deselect Martin,

because Gallagher had “only flown with him for 4.1 hours.” Given that Bolanos had *never* flown with Martin, the hearing officer had a reasonable basis to expect Bolanos’s testimony would be of limited probative value and largely duplicative of testimony already in evidence.

Martin also complains that the trial court did not consider whether Bolanos should have been permitted to testify generally about the ASD’s standards, the protocol for grade slips, and specifically about the February 3, 2014 grade slip that Maddigan changed from satisfactory to unsatisfactory. However, the trial court presumably did not address the contention because Martin failed to raise it in his supporting memorandum of points and authorities, where his argument focused exclusively on Bolanos’s proffered testimony about “whether [Martin] was ‘salvageable.’” Similarly, before the hearing officer, although Martin’s representative noted the other issues, he made clear that Bolanos’s testimony would “*primarily* involve . . . what was available for remediation.” (Italics added.) In any event, because Bolanos was not directly involved in Martin’s training, or the preparation or alteration of Martin’s grade slips, the hearing officer could reasonably conclude his testimony would be of limited probative value on these admittedly secondary issues.

b. *Sergeant Gillies*

Sergeant Gillies was an ASD pilot for 14 years and a Black Hawk pilot for the U.S. Army. He was never an instructor pilot and had been out of the ASD for just under two years at the time of Martin’s administrative appeal. Martin proffered Gillies as a subject matter expert to rebut testimony about Martin’s unsatisfactory ratings and his deficiencies in the areas of situational awareness and aeronautical decision making. He also

proffered Gillies to rebut testimony suggesting the ASD had a different standard for pilot proficiency than the FAA.

With respect to Martin's unsatisfactory ratings, the trial court concluded the hearing officer reasonably excluded Gillies's proffered testimony. As with Bolanos, the court reasoned that Gillies could not offer probative evidence on whether the Commanding Officer had sufficient cause to deselect Martin, because Gillies had no percipient knowledge of Martin's deficiencies in the areas of situational awareness and aeronautical decision making. We likewise find no basis on this record to disturb the hearing officer's exercise of discretion with respect to this portion of Gillies's proffered testimony.

As discussed above, Gallagher had already offered testimony, based on his expertise and *firsthand* observations of Martin's flying, to the effect that Martin could be taught situational awareness and aeronautical decision making. But Gallagher acknowledged he was ill equipped to offer an opinion about whether the Department had cause to deselect Martin, because his percipient knowledge of Martin's abilities was limited to only four hours of flight time. Because Gillies was never an ASD instructor and had never flown with Martin, the hearing officer had a reasonable basis to conclude his testimony would be of limited probative value to the central question of whether the Department followed section 763.55 of the Department Manual in deselecting Martin from the bonus position.

Moreover, the admission of Gallagher's testimony distinguishes this case from *Sinaiko v. Superior Court* (2004) 122 Cal.App.4th 1133. The *Sinaiko* court held a medical board's wholesale exclusion of a physician's proffered experts constituted a prejudicial abuse of discretion, as a matter of law, because a

critical issue in the disciplinary hearing was the applicable standard of care. (*Id.* at pp. 1142, 1146.) Unlike in *Sinaiko*, here, Martin was able to offer evidence through Gallagher to rebut the other instructors' assertions that Martin could not be taught situational awareness or aeronautical decision making. Indeed, Martin's representative made a point to highlight the fact that Gallagher had the "most credentials or certificates out of the [instructor] pilots" and that his "master's degree in aeronautical science with a specialization in aviation safety" gave him unique "expertise" to opine on the subject. And, as discussed, it was reasonable for the hearing officer to regard Gallagher's testimony as more probative than that of Bolanos or Gillies, since Gallagher had actually flown with Martin and observed firsthand his capacity to learn situational awareness and aeronautical decision making. Thus, *Sinaiko* does not support Martin's claim that the exclusion of Bolanos's and Gillies's testimony deprived him of a fair trial.

As for whether the ASD had a different standard than the FAA for helicopter pilots, the trial court concluded the hearing officer erred in precluding Gillies's testimony. In doing so, the court focused on the hearing officer's comment that Gillies was not qualified to testify regarding the current state of the ASD's standards since those standards " 'could have changed' " in the 14 years since Gillies went through the command pilot training program. We agree with the trial court that this "speculative" assumption was not a reasonable basis to exclude Gillies's testimony.

We note, however, that the hearing officer also seems to have based his ruling on the limited probative value of Gillies's proffered testimony. According to Martin's representative, Gillies

would rebut the suggestion that there is “an FAA standard and LAPD standards” by testifying there are “‘*requirements* that the department has,’” but there are “‘no *standards* as far as the department’” is concerned. (Italics added.) The hearing officer deemed that testimony to be of limited probative value, because it did not purport to address the actual distinction the Department’s witnesses had drawn. The hearing officer explained: “I don’t think [Gillies is] going to add to the point that, like you stated, there’s only one standard. And that’s FAA standard. To pass a test and become a pilot is FAA, and *that is understood*. Now the department has declared that *in order for them to present a student to . . . FAA*, [the student must] meet the department standards. And that is where the department has [the] ability[] to make that decision for . . . their instructors and for their students.” (Italics added.) Martin’s offer of proof suggested Gillies’s testimony would be largely consistent with the hearing officer’s understanding that the FAA sets the standards for licensing pilots, but the ASD has its own “requirements” for presenting a student to the FAA. As such, the hearing officer could have reasonably concluded Gillies’s testimony would have limited probative value.

In any event, we agree with the trial court that any error in excluding Gillies’s testimony was harmless. Although Gillies’s proffered testimony was arguably relevant, since Martin subsequently obtained his FAA license, it was not reasonably probable that its admission would have produced a more favorable outcome for Martin. As the trial court explained, the overwhelming weight of the evidence showed the Department deselected Martin because he failed to demonstrate he could perform “*his duties* of a command pilot within the requisite

period,” not because his instructors doubted he eventually would be able to pass the FAA pilot exam. (*Italics added.*) Indeed, Lieutenant Smith acknowledged Martin probably would pass his FAA exam. But Smith testified ASD pilots must show they can apply their skills under conditions that differ from those the FAA tests, because police pilots have a unique mission that includes, among other things, low altitude and low airspeed flying over densely populated areas. Consistent with Smith’s account, Chief Pilot Price testified that even officers who already have an FAA license must undergo ASD training and demonstrate the capacity to apply their skills in the dynamic, tactical situations that police pilots regularly encounter. The record demonstrates the hearing officer and the trial court accepted there was a difference between FAA *standards* and ASD *duties*. Thus, even if Gillies’s testimony about the equivalence of the *standards* had been admitted, it is not reasonably probable that it would have made any difference in the outcome of the administrative appeal. If there was any error in excluding the evidence, it was harmless.

4. *Substantial Evidence Supports the Judgment*

Martin contends the Department’s decision to deselect him was “based on information *so lacking in credibility*,” that we should find the judgment was “not supported by substantial evidence.” (*Italics added.*) As he did when attacking the weight of the evidence in the trial court, Martin contends the disputed statement in the intradepartmental memorandum recommending his deselection—that “all” flight instructors and the Chief Pilot agreed Martin “posed a safety hazard to himself and others if allowed to operate the helicopter alone”—was insufficient to support the Commanding Officer’s decision because Gallagher testified he disagreed with the statement and that he was not

consulted regarding Martin's abilities. Martin also emphasizes that the "overwhelming majority of his grade sheets were 'Satisfactory' including [his] individual ratings for 'Situational Awareness,'" and that Gallagher testified, contrary to the other instructors, that situational awareness and aeronautical decision making could be taught. He continues to dispute Smith's and Price's testimony regarding the ASD's "higher standard" for presenting a pilot to the FAA, and he contends the Department's recommendation for deselection was "seriously undercut by its suspicious explanation as to how Martin's February 3, 2014 grade sheet went from an initial overall rating of 'Satisfactory' to a subsequent revision to 'Unsatisfactory.'"

Martin's contentions attack the weight of the evidence, not its sufficiency. As noted above, "when, as here, the trial court is required to review an administrative decision under the independent judgment standard of review, the standard of review on appeal of the trial court's determination is the substantial evidence test." (*Fukuda, supra*, 20 Cal.4th at p. 824.) In other words, after the trial court has exercised its independent judgment on the weight of the evidence, our function is solely to decide whether credible, competent evidence supports the trial court's judgment. (*Broney v. California Com. on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 472 (*Broney*).) In rejecting the same contentions that Martin now advances on appeal, the trial court assessed the credibility of the conflicting evidence and, exercising its independent judgment, found Martin's "criticisms do not undermine the weight of the evidence" supporting the Department's exercise of discretion.

For competent evidence supporting the court's judgment we need look no further than the grade slip for Martin's final

unsatisfactory remediation flight on February 5, 2014. Officer Malachi, who had been assigned to evaluate Martin's flying and assess the suitability of providing additional training time, noted multiple occasions during the flight in which Martin failed to identify and compensate for wind conditions that "put the aircraft and crew [in] extremely hazardous situations." Malachi's comments explained that, although Martin had demonstrated "an adequate level of academic concepts," he had not shown the "ability to apply that knowledge in the flight arena," and Martin's "inability to quickly identify variable situations in flight" raised concerns for the "safety of the flight crew." The ASD training support section officer-in-charge concurred that Martin's "lack of situational awareness [as] outlined in previous ratings continue[d] to pose a serious safety" issue in flight. And, Lieutenant Smith's comments stated that, after consulting with Martin's instructors, he agreed Martin's deficiencies related to situational awareness and aeronautical decision making could not be rectified in the time allotted for the training program. These observations were corroborated by testimony and other evidence admitted at the hearing. Notwithstanding conflicts in that evidence, it was plainly sufficient to support the trial court's judgment. (See *Broney, supra*, 184 Cal.App.4th at pp. 477-479 [notwithstanding conflicting evidence and disputes about witness credibility, substantial evidence supported trial court's findings with respect to suspension of teacher's credential on account of her drunk driving convictions].)

DISPOSITION

The judgment is affirmed. The City is entitled to its costs, if any.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

EDMON, P. J.

LAVIN, J.