

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0054**

In the Matter of the Peace Officer License
of Thomas Andrew Winsell, License No. 18612.

**Filed September 30, 2024
Affirmed
Slieter, Judge**

Board of Peace Officer Standards and Training
File No. PB 21-036

Mark Schneider, Law Enforcement Labor Services, Inc., Brooklyn Center, Minnesota (for relator Thomas Andrew Winsell)

Keith Ellison, Attorney General, Christopher M. Kaisershot, Assistant Attorney General, St. Paul, Minnesota (for respondent Board of Peace Officer Standards and Training)

Considered and decided by Reyes, Presiding Judge; Slieter, Judge; and Kirk, Judge.*

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this certiorari appeal, relator Thomas Andrew Winsell challenges a decision by respondent Minnesota Board of Peace Officer Standards and Training to revoke Winsell's peace officer license based on its determination that Winsell used unauthorized deadly force during a vehicle pursuit. Winsell argues that the board's deadly-force determination was based on legal error and unsupported by substantial evidence, and that its decision to

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

revoke his license was arbitrary and capricious. Based upon the evidence in the record and the deference we must afford the board, we conclude that the board's unauthorized deadly-force determination is supported by substantial evidence, consistent with the law, and not arbitrary or capricious. Therefore, we affirm.

FACTS

Winsell was a licensed peace officer working for the St. Peter Police Department (SPPD). Shortly before midnight on September 16, 2021, SPPD received a report of a possible burglary at a campground and Winsell responded. Because the report was a possible burglary of an occupied camper, Winsell believed it could “possibly involv[e] a crime of violence.” He observed two individuals by the reported camper and recognized one of the individuals, B.M. Winsell got out of his squad car and started talking to her. Two additional officers arrived while Winsell was talking to B.M. The other individual, N.G., whom Winsell did not recognize, was standing by the driver's side door of a nearby vehicle. N.G. entered the vehicle and sped off. Winsell got into his squad car and pursued N.G.

Winsell followed N.G., traveling more than double the speed limit in a 35-mile-per-hour zone. He proceeded to follow N.G. northbound on Highway 169, reaching a maximum speed of 133 miles per hour. After a few minutes, N.G. crossed into oncoming traffic and continued traveling northbound in the southbound lanes. Winsell followed N.G. into oncoming traffic. After N.G. started braking, Winsell rammed his squad car into N.G.'s vehicle. Winsell struck N.G.'s vehicle four times as the two were

faced northbound in the southbound lanes of traffic. N.G.'s brake lights were on during each strike. No one was seriously injured in the pursuit or the collision.

The board initiated disciplinary action against Winsell for using deadly force without authorization. An evidentiary hearing was held before an administrative-law judge (ALJ). The ALJ issued findings of fact, conclusions of law, and a recommendation. The ALJ determined that Winsell used unauthorized deadly force and recommended that the board take action regarding Winsell's peace officer license for using deadly force without authorization. Although not tasked with providing a discipline recommendation, the ALJ opined that license revocation would be "draconian." After receiving the ALJ's report, the board heard arguments, the contested-case record closed, and the board considered the issue.

The board issued findings of fact, conclusions of law, and an order which accepted, with minor modifications, the ALJ's findings and conclusions, including that Winsell "used deadly force unreasonably and excessively, and for that discipline is justified." The board determined that license revocation, although a "severe consequence and one that the Board does not take lightly, protects the public by preventing [Winsell] from, once again, using deadly force without authorization" and "provide[s] a significant deterrent effect on other licensees from using deadly force without authorization."

Winsell appeals by writ of certiorari.

DECISION

An administrative agency's decision is presumed correct. *In re Cities of Annandale & Maple Lake NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 513 (Minn. 2007). We

review an agency's final decision in a contested case in accordance with the Minnesota Administrative Procedure Act (MAPA), Minn. Stat. §§ 14.001-.69 (2022). *Eneh v. Minn. Dep't of Health*, 906 N.W.2d 611, 613 (Minn. App. 2019). When reviewing an agency decision, we may affirm, remand, reverse, or modify the agency's decision if it: (a) violates a constitutional provision, (b) exceeds the statutory authority or jurisdiction of the agency, (c) is made upon unlawful procedure, (d) is affected by other error of law, (e) is unsupported by substantial evidence, or (f) is arbitrary and capricious. Minn. Stat. § 14.69.

I. The board's determination that Winsell used deadly force without authorization is supported by substantial evidence and is not contrary to law.

A. Substantial Evidence

“With respect to factual findings made by the agency in its judicial capacity, if the record contains substantial evidence supporting a factual finding, the agency's decision must be affirmed.” *In re Excelsior Energy*, 782 N.W.2d 282, 290 (Minn. App. 2010) (quotation omitted). Substantial evidence is that which “a reasonable mind might accept as adequate to support a conclusion.” *Cannon v. Minneapolis Police Dep't*, 783 N.W.2d 182, 189 (Minn. App. 2010) (quotation omitted). We defer to the agency's determinations “regarding conflicts in testimony, the weight given to expert testimony, and the inferences to be drawn from testimony.” *Id.* And, absent a manifest injustice, inferences drawn from the evidence by an agency must be accepted by a reviewing court “even though it may appear that contrary inferences would be better supported or that the reviewing court would be inclined to reach a different result were it the trier of fact.” *Ellis v. Minneapolis Comm'n on C.R.*, 295 N.W.2d 523, 525 (Minn. 1980).

Winsell argues that the board’s deadly-force determination is not supported by substantial evidence. He agrees that the use of his squad car to strike N.G.’s vehicle constituted deadly force, *see* Minn. Stat. § 609.066, subd. 1 (Supp. 2023) (defining “deadly force”), but he claims that the evidence shows that his use of force was authorized by statute and, therefore, justified.

An officer in the line of duty is justified in using deadly force only when it is necessary,

(1) to protect the peace officer or another from death or great bodily harm . . . or (2) to effect the arrest or capture, or prevent the escape, of a person whom . . . has committed or attempted to commit a felony and the officer reasonably believes that the person will cause death or great bodily harm to another person . . . unless immediately apprehended.

Minn. Stat. § 609.066, subd. 2 (Supp. 2023). “The contours of the standard are further delineated in the [involved department’s] training materials.” *Baker v. Chaplin*, 517 N.W.2d 911, 915 (Minn. 1994).

Despite acknowledging that the board’s findings “arguably support its conclusions,” Winsell argues that the board’s findings are incomplete or contradicted by other record evidence. He claims that many of the board’s findings are misleading, that the board ignored N.G.’s speed while he exited the campground, and that N.G. committed a crime by fleeing. These challenges, however, are rooted in the board’s weighing of the evidence rather than a lack of evidence supporting the board’s findings and conclusions. Again, we defer to the board regarding conflicting evidence, *Cannon*, 783 N.W.2d at 189, and we accept the inferences drawn from the evidence by the board, *Ellis*, 295 N.W.2d at 525.

Substantial evidence supports the board's determination that a reasonable officer in Winsell's position would not have believed that deadly force was justified. The record shows that the report of a potential burglary did not indicate the presence of weapons; nor did Winsell observe any weapons. And when Winsell arrived on scene, there was no indication that the camper which the two suspects were standing near had been broken into. Winsell initially pursued N.G. through a residential area, reaching a maximum speed of approximately 80 miles per hour. Winsell continued the pursuit onto Highway 169 where his vehicle reached a maximum speed of 133 miles per hour. And, although other officers were responding to the area, Winsell pursued N.G. at a high rate of speed into oncoming traffic which is when, according to the board's expert, the risk of danger was too great to continue the pursuit. When asked whether he considered terminating the pursuit, Winsell stated that he intended to end the pursuit by striking N.G.'s vehicle.

The record further shows that N.G.'s vehicle's brake lights activated, indicating the vehicle was slowing before Winsell rammed his squad car into N.G.'s vehicle. Substantial evidence, therefore, supports the board's determination that, under the totality of these circumstances, a reasonable officer in Winsell's position would not have believed that deadly force was justified.

B. Contrary to Law

Winsell claims that, because his use of deadly force was authorized as a matter of law, the board's determination was contrary to law. As the board notes, Winsell relies on cases in which injured persons claimed an officer's use of force violated constitutional rights. *See, e.g., Plumhoff v. Rickard*, 572 U.S. 765 (2014) (rejecting an estate's claim that

an officer's use of force violated the decedent's Fourth Amendment right against unreasonable seizures); *Scott v. Harris*, 550 U.S. 372 (2007) (rejecting a motorist's claim that an officer violated his Fourth Amendment rights during a high-speed chase). But this appeal does not involve a constitutional claim, and Winsell provides no authority supporting his contention that he was authorized to use deadly force as a matter of law in this context. *Excelsior Energy*, 782 N.W.2d at 289 (noting that the party challenging an agency decision has the burden of proof).

As we have explained, substantial evidence supports the board's determination that Winsell's use of deadly force was not necessary to prevent death or great bodily harm to him or another officer, nor to effectuate the capture of a person believed to have committed a felony whom Winsell believed would cause death or great bodily harm to another unless apprehended. *See* Minn. Stat. § 609.066, subd. 2. And although Winsell suggests that it was necessary to strike N.G.'s vehicle to effectuate N.G.'s capture, the evidence shows that N.G.'s vehicle was braking before Winsell decided to use his squad car to strike it. This court defers to the inferences drawn from evidence "even though it may appear that contrary inferences would be better supported or that the reviewing court would be inclined to reach a different result were it the trier of fact." *Ellis*, 295 N.W.2d at 525. We, therefore, conclude that the board's determination that Winsell used deadly force without authorization was not contrary to law. *Excelsior Energy*, 782 N.W.2d at 289.

II. The board's decision to revoke Winsell's peace officer license was not arbitrary or capricious.

Winsell claims that the board's decision to revoke his peace officer license was arbitrary and capricious because the board failed to consider mitigating factors and because it was contrary to the ALJ's opinion.¹

A decision is arbitrary and capricious if it is based “on factors not intended by the legislature”; “fail[s] to consider an important aspect of the problem”; “offer[s] an explanation that runs counter to the evidence”; or is “so implausible that it could not be explained as a difference in view or the result of the agency's expertise.” *Citizens Advocating Responsible Dev. v. Kandiyohi County Bd. of Comm'rs*, 713 N.W.2d 817, 832 (Minn. 2006). An agency's determinations are not arbitrary or capricious so long as there is a “rational connection between the facts found and the choice made.” *In re Rev. of 2005 Ann. Automatic Adjustment of Charges for All Elec. & Gas Utils.*, 768 N.W.2d 112, 120 (Minn. 2009) (quotation omitted). “If there is room for two opinions on a matter, the [c]ommission's decision is not arbitrary and capricious, even though the court may believe that an erroneous conclusion was reached.” *Id.*

Winsell claims that the board's decision to revoke his license failed to consider mitigating factors, including his long career in law enforcement and the department's deficient policies and training on those policies. The record belies Winsell's argument.

¹ Winsell also claims that the board's revocation determination was arbitrary and capricious because it was based on an erroneous deadly-force determination. Because we have already affirmed the board's determination that Winsell used deadly force without authorization, we do not further address the issue here.

The board's findings of fact outline Winsell's employment history beginning in 2000 and note that this is the first time he has faced licensing discipline. During the evidentiary hearing, the SPPD chief testified that he could not rehire Winsell because of his dangerous conduct and poor judgment. The board adopted the ALJ's determination that the chief's testimony "was credible and compelling, all the more so because his fondness for Officer Winsell was evident." The board's findings of fact also devote three pages to the department's policies and training, and it found that the policies were consistent with standard practice. The board also observed that the expert investigator retained by the department testified that Winsell received training and notice of policy changes, and it found that he received notice and training of relevant policies. The board addressed his employment history and the department's relevant policies and trainings, which suggests that the board considered this evidence before making its determination. Because the record demonstrates that the board considered the evidence and exercised its judgment when determining whether to revoke Winsell's license, its decision to revoke was not arbitrary or capricious. *Id.*

Finally, Winsell claims that the board's discipline decision was arbitrary and capricious because license revocation was contrary to the ALJ's opinion that such a discipline was "draconian." We are not persuaded.

The ALJ recommended that the board take action against Winsell's peace officer license for using deadly force without authorization. Despite recognizing that the sole issue before the ALJ was whether Winsell used deadly force without authorization, warranting discipline against his peace officer license, the ALJ proceeded to the next step in the

board's inquiry and opined on the type of discipline that should not be imposed (license revocation). Minnesota law authorizes the board to revoke a peace officer's license for certain causes. Minn. Stat. § 626.8432, subd. 1 (Supp. 2023); Minn. R. 6700.1710, subp. 2 (2023) (allowing the board to act against a peace officer's license). Because the legislature vested the board with the authority to determine the type of discipline to impose, the board owed the ALJ's opinion on the matter no deference. *Padilla v. Minn. State Bd. of Med. Exam'rs*, 382 N.W.2d 876, 887 (Minn. App. 1986) ("The legislature has conferred upon this Board, and not upon the ALJ, a discretion to determine the type of discipline to impose."), *rev. denied* (Minn. Apr. 24, 1986); *see also In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 274-75 (Minn. 2001) (noting that an agency exercises its own judgment, independent of the hearing examiner). As a result, its decision to revoke Winsell's license was not arbitrary or capricious though it was contrary to the ALJ's opinion.

Affirmed.