

COOK COUNTY SHERIFF'S MERIT BOARD

Thomas J. Dart,)
Sheriff of Cook County)
vs.) Docket # 1697
Sean Watson)
Cook County Correctional Officer)

DECISION

THIS MATTER COMING ON to be heard pursuant to notice, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction:

The Respondent's, Sean Watson, (hereinafter "Respondent") position as a Cook County Correctional Officer involves duties and responsibilities to the public; and Each member of the Cook County Sheriff's Merit Board, hereinafter "Board," has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; and The Board has jurisdiction of the subject matter and of the parties in accordance with Chapter 55 of the Illinois Compiled Statutes; and

The Respondent was personally served with a copy of the Complaint and Amended Complaint and Notice of Hearing and appeared before the Board to contest the charges contained in the amended complaint; and

The Board has heard the evidence presented by the Sheriff and the Respondent, and evaluated the credibility of the witnesses and supporting evidence. After considering the evidence, the Board finds as follows:

Background:

By initial complaint dated February 25, 2013, Sheriff Thomas J. Dart sought the separation from employment of Respondent. The complaint alleges Respondent was absent without authorization from work on multiple occasions. Respondent ignored requests from the Personnel Director to complete his application if he wished to apply for Family and Medical Leave Act time. The Complaint alleged this violated several rules and regulations of the Cook County Sheriff's Department, and the Cook County Sheriff's Merit Board, specifically: General Order 3.8 III paragraphs A. 4. and D. 7., General Order 4.1 paragraph A. 11., General Order 4.2.1 II paragraphs E. 11., Sheriff's Order 07-03 IV paragraph B., Sheriff's Order 11.4.1.0 VIII paragraph C. 1., and the Rules and Regulations of the Cook County Sheriff's Merit Board, Article X paragraph B 2.

Issues Presented: Whether the actions of the Respondent violated any of the General or Sheriff's orders or Merit Board Rule set forth above and what if any discipline is appropriate if a violation occurred.

Resolution of Issues Presented: The Merit Board finds that a violation of General Order 3.8 III paragraphs A. 4. and D. 7., General Order 4.1 paragraph A. 11., General Order 4.2.1 II paragraphs E. 11., Sheriff's Order 07-03 IV paragraph B., Sheriff's Order 11.4.1.0 VIII paragraph C. 1., and the Rules and Regulations of the Cook County Sheriff's Merit Board, Article X paragraph B 2. occurred.

Findings of Fact: An evidentiary hearing in this matter was held on June 13, 2014 and July 8, 2014, at the Cook County Administration Building, 69 West Washington Street, Room 1100, Chicago, Illinois before James P. Nally. Present were Petitioner by counsel and Respondent by counsel. Five witnesses testified for the Sheriff: Deputy Director of Human Resources Sharon Little, Sheriff's Audit Inspection Unit Inspector John Pate, OPR investigator Robert Miller, Director of Support Services Patricia Horne, and Human Resources FMLA Manager Wylola Shinnawi. The Respondent testified on his own behalf and called two witnesses: Department of Corrections Lt. Karen Jones Hayes and Department of Corrections Lt. Robert Dartt.

Joint Exhibits 1-3 were admitted into evidence.

Evidence:

Witness Sharon Little testified she is currently the Deputy Director of Human Resources on Labor Relations, Department of Corrections, for the Cook County Sheriff. As to the Respondent he was approved for FMLA from 5/6/2012 to 5/5/2013. He had unauthorized absences consisting of the following: 2/21/2103 Unauthorized FMLA for 8 hours; 2/22/2102 Absent late call for 8 hours; 2/29/2012 Unauthorized FMLA for 8 hours; 3/1/2012 No personal time for 8 hours; 3/4/2012 Absent no call for 8 hours; 3/7/2012 Unauthorized FMLA for 8 hours; 3/8/2012 Absent late call for 8 hours; 3/11/2012 No comp time for 1.5 hours; 3/13/2012 Unauthorized FMLA for 8 hours; 3/18/2012 No comp time for 2 hours; 3/20/2012 No vacation time for 8 hours; 3/25/2012 Tardy for 1.5 hours; 4/30/2012 Tardy for 1.5 hours; 5/1/2012 Tardy for 2.5 hours; 5/3/2012 Unauthorized FMLA for 1 hour; 6/4/2012 No vacation time for 8 hours; 6/12/2012 No vacation time for 8 hours; 6/13/2012 No vacation time for 8 hours for a total of 114.5 hours. The witness testified that Respondent was sent a memorandum on April 19, 2012 informing him of approval of FMLA contingent upon completion and clarifications of Sections 1 and 2. On cross the witness testified that there are three procedures that can be followed to verify accrual balances: by phone to their timekeeper; by form to their timekeeper; and by their "virtual time card record". On redirect the witness testified that once an employee's FMLA has been approved it is made retroactive to the date indicated on the FMLA request by the employee's doctor. On recross the witness testified that the date indicated by Respondent's doctor was February 9, 2012.

John Pate testified that he is a inspector with the Sheriff's Audit Inspection Unit. He testified that as a "prover" he was assigned to sit in on an interview of Respondent held on April 16, 2012. Officer Pate reviewed the copy of the signed statement of Respondent for that interview which has been made part of the record in Joint Exhibit 1. Officer Pate testified as to the

accuracy of Respondent's statements. Officer Pate read from the statement wherein Respondent indicated that, "C/O Watson was informed that he had in excess of 80 hours of unauthorized absence. He was provided with a copy of the relevant portion of his attendance record showing where absences were unauthorized." and that "...his mother passed away during February of 2012 and two days later he had a conversation with the Personnel FMLA coordinator who informed him that she did not think he had the 1250 hours prior work time during the previous year to qualify for FMLA...". Officer Pate testified that it is the employee's obligation to know how many hours they have on the books for vacation, sick or FMLA time.

Robert Miller testified that he is an OPR investigator who served as a "prover" at an interview of the Respondent on July 11, 2012. Officer Miller testified as to the accuracy of Respondent's statements. When asked whose obligation it is to know if time off for FMLA, vacation, sick or any other reason, Officer Miller testified that, "Any sworn or civilian employee's responsible for their time". On cross, Officer Miller was asked if Respondent had stated that he had been approved for FMLA. Officer Miller responded that Respondent stated that he had been approved for FMLA during March of 2012. However, Respondent also produced a memorandum dated April 19, 2012 that indicated he needed to submit additional information to complete the FMLA application process. On cross Officer Miller indicated in response to questions from Respondent's attorney that the March 15, 2012 counseling session covered 72 hours of unauthorized absence hours and that 80 hours of unauthorized absence hours could result in termination. On redirect Officer Miller indicated that Respondent's unauthorized absences after the counseling session continued the pattern of unauthorized absences exhibited prior to his counseling.

Patricia Horne testified that she is the Director of Support Services with the Cook County Sheriff and was assigned to the Department of Corrections. She testified that she met with Respondent on March 15, 2012 to counsel him on his unauthorized absences. The counseling session covered the 1st, 2nd, 3rd, and 4th occurrence of the violation of the attendance policy. She testified that March 15th was the first date that the Respondent was able to attend a counseling session. On cross the witness testified that Respondent indicated on his Response to Counseling Session form that he was applying for FMLA with a planned start date of February 2, 2012. On redirect the witness indicated that she informed Respondent, "...that as of his progress at that point that he should take seriously the fact that he was jeopardizing his job if he didn't comply with the rules and that if he didn't take steps to be in authorized status, which was the whole point of the counseling and then the subsequent occurrences, that, you know, he would lose his job.".

Wylola Shinnawi testified that she is the FMLA manager in Human Resources and that she processes FMLA applications. She testified that she would approve them or send them back for clarification. The witness testified that she processed Respondent's FMLA application and that she spoke to him three or four times between February and April of 2012. She testified that Respondent called her several times and that she informed him that he did not have enough hours to qualify for FMLA, that he was short of the required 1250 hours. Respondent eventually accrued sufficient hours on April 16, 2012. Respondent was informed at that time that he needed to complete two sections of his application and resubmit it.

Sean Watson was called as an adverse witness. Respondent testified that he had applied and was approved for FMLA leave in 2011 and that he was familiar with the process. On cross Respondent stated that he was never told by the medical call in staff that he was in an unauthorized status. Respondent testified that he was never notified that his application for FMLA leave was denied. He stated that he resubmitted his application for FMLA leave. Respondent testified that he followed the same procedures for the 2012 application as he did for the application submitted the year before. On redirect Respondent testified that he received a personnel department memorandum from Rosemarie Nolan dated April 19, 2012 indicating that approval of his FMLA application was contingent upon the completion and/or clarification of Sections 1 and 2. Respondent stated that he knew on April 19, 2012 that his FMLA had not been approved. He testified that the unauthorized absence days indicated on his counseling form were 8 hour days.

The Sheriff rested and the Respondent presented his case.

Karen Jones Hayes testified that she is a Lieutenant for the Cook County Department of Corrections and that Respondent was her subordinate for a “couple of years” and she has known him for nine or ten years. She testified that Respondent was a good employee who was able to multitask.

Robert Dartt testified that he is a lieutenant/shift commander for the Cook County Jail. He has been a lieutenant for 6 years and has been with the Sheriff’s Office since 2008. Lt. Dartt testified that he has known Respondent for 3 ½ to 4 years and Respondent was under his command at Division 11 before Respondent left almost a year ago. When questioned about Respondent’s work ethic, Lt. Dartt testified that, “He was good. He had a lot of personal issues going through his life at the particular time he was under my command, but when he was able to come to work, he was one of my best officers.” Lt. Dartt testified that he believed that a lot of the times he came in a little after roll call due to the fact that he was helping out his family members that were severely sick.

Findings:

The Board finds that the evidence shows that Respondent did violate all the General Orders and Merit Board rules as charged. The Respondent was absent from scheduled work shift and in an Unauthorized Status in excess of eighty (80) hours between February 21, 2012 and June 13, 2012. The evidence also shows that Respondent’s Attendance record reflects Unauthorized Absences for No Personal Time, No Compensatory Time, Unauthorized FMLA and Tardy. The Respondent ignored requests from the personnel director to complete his application if he wished to apply for Family and Medical Leave Act time. Certainly the Respondent was going through great personal difficulty and had multiple issues. However the record is clear that the Respondent did not avail himself of the options which would have given him authorization to be off work. The record shows that for at least 114.5 hours he was off work without authorization. It is clear that he violated the General Orders by failing to appear for work.

Conclusions of Law: Based on the evidence presented, and after assessing the credibility of witnesses and the weight given to the evidence in the record, the Merit Board finds that the

Respondent did violate all aforementioned General Orders of the Cook County Sheriff, and Merit Board Rule X B 2.

Order: Wherefore, based on the foregoing, it is hereby ordered that the Respondent Sean Watson be separated from employment February 25, 2013.

[REDACTED]
James P. Nally, Chairman

[REDACTED]
Byron Brazier, Vice Chair

[REDACTED]
John Dalicandro, Secretary

[REDACTED]
Brian J. Riordan, Board Member

[REDACTED]
Kim R. Widup, Board Member

[REDACTED]
Vincent T. Winters, Board
Member

[REDACTED]
Jennifer E. Bae, Board Member

[REDACTED]
Patrick Brady, Board Member

Dated October 15, 2015