

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)
)
vs.)
) **Docket No. 2283**
POLICE OFFICER)
DORIAN SWAIN)
STAR #16579)

DECISION

This matter to be heard pursuant to notice before Kimberly Pate Godden, Board Member, on June 9, 2023, and June 16, 2023. Both Parties were represented by counsel and had a full and fair opportunity to present evidence. The Cook County Sheriff's Merit Board finds as follows:

JURISDICTION

Dorian Swain, hereinafter referred to as Respondent, was appointed a Cook County Correctional Officer in 2010 and promoted as a Police Officer in 2019. Respondent's position as a Police Officer involves duties and responsibilities to the public; 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; the Board has jurisdiction of the subject matter of the parties in accordance with 55 ILCS 5/3-7001, *et seq.*; and Respondent was served with a copy of the Complaint and notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint.

BACKGROUND

The Sheriff (Petitioner) filed a Complaint on April 15, 2022, and an amended Complaint on May 10, 2023. The Petitioner is seeking removal/termination of Respondent. After the case was continued from time to time, and discovery completed, it was called for a formal hearing held on June 9, 2023, and June 16, 2023. At the hearing, court reporter being present, all witnesses sworn under oath, testimony was taken from witnesses called by the Sheriff as well as testimony from the Respondent and a witness. Documents were introduced by Petitioner and Respondent and received into evidence. Respondent and Petitioner submitted Findings of Fact.

STATEMENT OF FACTS

Respondent has been with the Cook County Sheriff's Office since November 2010. (Tr. 187) In August 2020 Respondent was involved in an incident involving his [REDACTED] who was a participant in the Cook County Electronic Monitoring Unit (EMU) which resulted in the investigation which led up to Petitioner's recommendation for termination. The incident involved Respondent's [REDACTED] allegedly leaving his residence without authorization and subsequently being apprehended by Respondent who contacted Cook County Sheriff's Police. (Tr. 249-251) On the evening of the incident, at the scene, Respondent told the EMU Field Investigator that [REDACTED] was his [REDACTED] (Tr.252) The Field Investigator notified his supervisor and told his supervisor that [REDACTED] was in custody, Respondent was present, and [REDACTED] was Respondent's [REDACTED] (Tr.252). Respondent notified his superior of the incident (Tr.252).

Respondent testified that in 2017, when he was working in the EMU, that he verbally notified his supervisor that his [REDACTED] was a was in the EMU program. (Tr. 204) Respondent said that his supervisor did not instruct him to take any specific steps or action due to his [REDACTED] being in

the EMU program and that there were not any written policies in place requiring him to notify his employer that his [REDACTED] was in the EMU program. (Tr. 205) When a participant is enrolled into the EMU program, a Verification Form is filled out by EMU Investigators which includes information as to the identity of the participant's [REDACTED] (Tr.162). The Verification Form is kept in file and stored in a file cabinet in the EM Unit (Tr.203, Respondent Exhibit #2).

On the day that Respondent's [REDACTED] was programmed into EMU, EMU Investigator [REDACTED] was present and handling the intake of new participants (Tr.173). [REDACTED] testified that he learned that [REDACTED] was the [REDACTED] of Respondent and contacted his Lieutenant who made the decision to get Respondent's [REDACTED] processed and delivered first, before the other 30-50 inmates were delivered to EMU for processing (Tr.173).

Respondent testified that he was aware of policies in place requiring notification if a family member was in custody but that he did not consider EMU custody. (Tr. 207, 264). Respondent testified that he approved movement changes for his [REDACTED] when he worked in EMU and when his [REDACTED] was in the program (Tr. 208, 254). Although EMU participants are on home arrest, the EMU Program allows them to continue to go to work or and/or attend school. Participants requesting movement must get the approval for movement from an EMU Investigator (Tr.192). Whenever an EMU Investigator logs into the computer system to review a request, records reflect that review (Tr.195). Respondent testified that he frequently reviewed his [REDACTED] protocol history and approved a schedule change for his [REDACTED] while operating in the EMU as a field officer. (Tr. 236, 273).

Director [REDACTED] a 27-year-old employee who is currently with the Cook County Sheriff's Fugitive Apprehension Unit who has previously has been a correctional officer, investigator in the Electronic Monitoring Unit ("EMU"), a supervising investigator in EMU,

Deputy Chief in EMU, Chief of EMU, Director and Chief of EMU. (Tr. 12-13) conducted an investigation and testified that when an employee had a family member or a person with a personal relationship that was a participant in EMU, the employee was expected to submit a memorandum to Director [REDACTED] stating that there may be a conflict of interest to ensure that the employee did not immediately supervise or have anything to do with the person that on house arrest. (Tr. 14-15) Director [REDACTED] was Director when Respondent worked for EMU and stated that Respondent never notified him that there was a family member that was a participant in EMU. (Tr. 15)

As part of Director [REDACTED] investigation, he reviewed documents and testified that Respondent approved EMU movement for his [REDACTED] when Respondent was assigned to a street assignment that would not normally require someone to approve movement for somebody that was on house arrest as well as when assigned to units in EMU. (Tr. 22-37, Sheriff's Exhibits 3&5)

CONCLUSION

Respondent engaged in behavior that reflects negatively on the Cook County Sheriff's Office ("CCSO") and was unbecoming of an officer of the CCSO when he abused his position and approved movement for his [REDACTED]. By his actions, Respondent violated the Rules and Regulations and policies of the Cook County Sheriff's Office and the Cook County Court Services Department, specifically: Respondent violated Policy 100 and 173 of the Cook County Department of Corrections Custody Manual.

COOK COUNTY DEPARTMENT OF CORRECTIONS CUSTODY MANUAL

POLICY 100

CONDUCT, in its entirety, including but not limited to, the following subparts:

100.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the Cook County Sheriff's Office and are expected of all department members. This policy applies to all Sheriff's Office members.

100.2 POLICY

Members of the Sheriff's Office shall conduct themselves in a professional and ethical manner, both on- and off-duty. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions, but they do identify many of the important matters concerning member conduct. Every member is also subject to the provisions contained throughout this policy and applicable written directives, as well as any additional guidance on conduct that may be disseminated by the Sheriff's Office or the member's supervisors.

100.3 COMPLIANCE WITH ALL LAWS, ORDINANCES AND REGULATIONS

Members shall respect and protect the civil and legal rights of all individuals; uphold the constitutions of the United States and the State of Illinois; obey all applicable federal, state and local laws; comply with court decisions and orders of courts having jurisdiction; and comply with lawful rules, written or verbal orders, Sheriff's Office Employment Action Manual (SEAM) articles, and policies and procedures issued by the Sheriff's Office or any supervisor.

100.4 CONDUCT POLICY

The continued employment or retention of every Sheriff's Office member shall be based on conduct that reasonably conforms to the guidelines set forth herein.

Failure of any member to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action, up to and including termination.

A member's off-duty conduct shall be governed by this policy to the extent that it is related to any act that may affect or arise from the member's ability to perform official duties, or to the extent that it may be indicative of unfitness for his/her position.

100.5 CONDUCT THAT MAY RESULT IN DISCIPLINE

The following list of causes for disciplinary action constitutes a portion of the Sheriff's Office disciplinary standards. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for specific action or inaction that is detrimental to efficient service. Conduct which may result in discipline includes, but is not limited to, the following:

100.5.5 PERFORMANCE

(h) The wrongful or unlawful exercise of authority on the part of any member for malicious purpose, personal gain, willful deceit or any other improper purpose.

(ab) Any knowing or negligent violation of the provisions of a policy, operating procedure or other written directive of an authorized supervisor.

1. Members are responsible for reading and becoming familiar

with the contents of applicable policies and procedures and are responsible for compliance with the content contained therein.

(ad) Criminal, dishonest, infamous or disgraceful conduct adversely affecting the employee/employer relationship (including applicable members) whether on- or off-duty.

(as) Any other on- or off-duty conduct which a member knows or reasonably should know is unbecoming a member of the Sheriff's Office; which is contrary to good order, efficiency or morale; or which tends to reflect unfavorably upon the Sheriff's Office or its members.

COOK COUNTY DEPARTMENT OF CORRECTIONS CUSTODY MANUAL

POLICY 173

NEPOTISM AND CONFLICTING RELATIONSHIPS, in its entirety, including but not limited to, the following subparts:

173.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure equal opportunity and effective employment practices to include recruiting, testing, hiring, compensation, assignment, use of facilities, access to training opportunities, supervision, performance appraisal, discipline, and workplace safety and security, while maintaining positive morale by avoiding actual or perceived favoritism, discrimination, or other actual or potential conflicts of interest by or between members of the Cook County Sheriff's Office.

Violations of this policy may constitute official misconduct by a public officer or employee if he/she, while in his/her official capacity (720 ILCS 5/33-3):

- (a) Intentionally or recklessly fails to perform any mandatory duty as required by law.
- (b) Knowingly performs an act which he/she knows is forbidden by law to perform.
- (c) With intent to obtain a personal advantage for him/herself or another, he/she performs an act in excess of his/her lawful authority.
- (d) Solicits or knowingly accepts for the performance of any act a fee or reward which he/she knows is not authorized by law.

173.1.1 ISSUANCE/EFFECTIVE DATE

This policy was issued on May 1, 2018 and shall become effective upon issuance.

173.1.2 DEFINITIONS

Conflict of interest – any actual, perceived or potential conflict of interest in which it reasonably appears that a Sheriff's Office employee's action, inaction, or decisions are or may be influenced by the employee's personal or business relationship.

173.2.1 EMPLOYEE'S RESPONSIBILITY

Prior to entering into any personal or business relationship or other circumstance which the employee knows or reasonably should know could create an actual or perceived conflict of interest or other violation of this policy, the employee shall promptly notify his/her uninvolved, next highest level of supervisor.

Whenever any employee is placed in circumstances that would require the employee to take enforcement action or provide official information or services to any relative or individual with whom the employee is involved in a personal or business

relationship, the employee shall promptly notify his/her uninvolved, immediate supervisor. In the event that no uninvolved supervisor is immediately available, the employee shall promptly notify the Communications Center or other appropriate dispatch center to have another uninvolved employee either relieve the involved employee or minimally remain present to witness the action.

COOK COUNTY SHERIFF'S DEPARTMENT MERIT BOARD RULES AND REGULATIONS, in its entirety, including but not limited to, the following subparts:

Article X, Paragraph B

No Police Officer, Police Sergeant, Police Lieutenant of the Cook County Sheriff's Police Department, Correctional Officer, Correctional Sergeant, Correctional Lieutenant, Correctional Captain of the Cook County Department of Corrections or Deputy Sheriff, Deputy Sergeant, Deputy Lieutenant of the Cook County Sheriff's Court Services Department will:

3. Violate any of the Sheriff's Executive Orders, General Orders, Special Orders, Directives or Rules and Regulations of the Cook County Sheriff's Department or Cook County Sheriff's Merit Board Rules and Regulations.

ORDER

Wherefore, based on the evidence for the asserted charges, it is hereby ordered that Dorian Swain shall be terminated effective April 15, 2022.

JOHN J. DALICANDRO, Chairman
BYRON BRAZIER, Vice-Chairman
VINCENT T. WINTERS, Secretary
KIMBERLY PATE GODDEN, Board Member
TERRENCE J. WALSH, Board Member
MARLA M. KAIDEN, Board Member
WADE INGRAM SR., Board Member
JAMES J. SEXTON, Board Member



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ROBERT F. HOGAN, Hearing Officer

**COOK COUNTY
SHERIFF'S MERIT BOARD
69 West Washington - Suite 1100
Chicago, IL 60602**

DOCKET NO. 2283
POLICE OFFICER
DORIAN SWAIN
STAR # 16579

This Decision is adopted and entered by a majority of the Members of the Merit Board:

Voted Yes:

John J. Dalicandro, Byron Brazier, Vincent T. Winters, Kimberly Pate Godden, Terrence J. Walsh,
Marla M. Kaiden, Wade Ingram Sr. and James J. Sexton

Voted No: None

Not Present: None

DATED AT COUNTY OF COOK, STATE OF ILLINOIS, THIS 12th DAY OF OCTOBER, 2023.