

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)
)
vs.)
) **Docket No. 2203**
Fernando Dominguez)
Correctional Officer)
Star # 14715)

DECISION

This matter coming on to be heard pursuant to notice before Kim R. Widup, Board Member, on November 21, 2019, through a “prove-up hearing,” the Cook County Sheriff’s Merit Board finds as follows:

Jurisdiction

Fernando Dominguez, hereinafter Respondent, was appointed a Correctional Officer on June 12, 1995, for the Cook County Department of Corrections (CCDOC). Respondent’s position as a Correctional 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 the 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.

As a threshold matter, a proceeding before the Merit Board is initiated at the time the Sheriff files a written charge with the Merit Board, 55 ILCS 5/3-7012. A document is considered filed, in this case with the Merit Board, “when it is deposited with and passes into the exclusive control and custody of the [Merit Board administrative staff], who understandingly receives the same in order that it may become a part of the permanent records of his office.” *See Dooley v. James A. Dooley Associates Employees Retirement Plan*, 100 Ill.App.3d 389, 395 (1981) (quoting *Gietl v. Commissioners of Drainage District No. One*, 384 Ill. 499, 501-502 (1943) and citing *Hamilton v. Beardslee*, 51 Ill. 478 (1869)); accord *People ex rel. Pignatelli v. Ward*, 404 Ill. 240, 245 (1949); *in re Annex Certain Terr. To the Village of Lemont*, 2017 IL App (1st) 170941, ¶ 18; *Illinois State Toll Highway Authority v. Marathon Oil Co.*, Ill. App. 3d 836 (1990) (“A ‘filing’ implies delivery of a document to the appropriate party with the intent of having such document kept on file by that party in the appropriate place.” (quoting *Sherman v. Board of Fire & Police Commissioners*, 111 Ill. App. 3d 1001, 1007 (1982)); *Hawkyard v. Suttle*, 188 Ill. App. 168, 171 (1914 (“A paper is considered filed when it is delivered to the clerk for that purpose”).

The original Complaint in this matter was filed with the Merit Board’s administrative staff on September 4, 2019. Regardless of whether or not Merit Board Members were properly appointed

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during a given term, the Merit Board, as a quasi-judicial body and statutorily created legal entity, maintained at all times a clerical staff not unlike the Clerk of the Circuit Court (Administrative Staff). These Administrative Staff members receive and date stamp complaints, open a case file, assign a case number, and perform all of the functions typically handled by the circuit clerk's office. Just as a timely filed complaint would be accepted by the circuit clerk even if there were no properly appointed judges sitting on that particular day, so too was the instant Complaint with the Administrative Staff of the Merit Board. Accordingly, the Complaint filed on September 4, 2019, commenced the instant action, was properly filed, and will be accepted as the controlling document for calculating time in this case.

Background

The Sheriff filed a complaint on September 4, 2019, against the Respondent requesting termination of the Respondent's employment from the Cook County Sheriff's Office (CCSO).

The complaint alleged, in summary: that the Respondent was absent from his scheduled work shifts, the absences were unauthorized, and were in excess of eighty (80) hours in a rolling 365-day period between June 9, 2019, and July 8, 2019. These absences were in violation of the CCSO policies. The Respondent incurred unauthorized absences on the following dates: June 9-13, 17-20, 23-27, 30, 2019, and July 1-3, 7- 8, 2019, for a total of one hundred sixty (160) hours.

On September 27, 2017 (prior to the absences above), the Respondent had been counseled by the Attendance Review Unit (ARU), CCSO, supervisor, regarding an absence which occurred on September 2, 2017. During this counseling session, the Respondent was counseled on Sheriff's Order 11.4.1.1, Unauthorized Absence Policy, as well as on the steps regarding the levels of progressive discipline and available leave options.

The complaint further alleged the Respondent is an employee of the CCDOC and has a *rolling calendar clause* in his applicable collective bargaining agreement. By his actions, the Respondent violated the Rules and Regulations and General Orders of the CCSO and the CCDOC, specifically; **CCDOC Manual Procedure 113, Unauthorized Absence** – Section 113.1, Section 113.1.1, Section 113.1.2 *occurrence* (a) (b)1-3, *rolling 365 period* (a) (b)1-2 (c), and *unauthorized absences* (a) (b), Section 113.2, Section 113.4 (a) *rolling 365 calendar* (a), (c) *mitigation* 3-4, and (d); **CCDOC Manual Procedure 101, Conduct** – Section 101.1, Section 101.1.1, Section 101.2, Section 101.3, Section 101.4, Section 101.5, Section 101.5.1 (b) (d) (f), Section 101.5.5 (ab)1; and Article X, Paragraph B3, of the **Rules of the Cook County Sheriff's Merit Board**.

On December 13, 2019, the Petitioner (Sheriff) prepared and submitted to the Board their findings of fact as *Petitioner's Proposed Findings of Fact*.

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On November 21, 2019, a "prove-up" hearing was conducted in this matter as the Respondent made no attempts to present their response to the allegations made against them in the complaint of September 4, 2019.

The Sheriff introduced into evidence copies the Respondent's time sheets and audit report (Exhibit 1); the Respondent's Disciplinary Action Forms regarding his work attendance (Exhibit 2); the Respondent's disciplinary history (Exhibit 3); the CCDOC procedure regarding unauthorized absences (Exhibit 4); the CCDOC Conduct Policy (Exhibit 5); and the Article X of the CCSO Merit Board Rules and Regulations (Exhibit .

Findings of Fact

██████████, Payroll Supervisor (Sup ██████████), CCSO, testified his job responsibilities are making sure employees of the CCSO are properly paid, the management of timekeepers, and to keep track of absences and benefit time (R4). Additionally, he is responsible to ensure employees are in an authorized status when not in the workplace for when they use their benefit time, personal time, and other situations such as FMLA or disability (R5). He testified the County uses a biometric system in which an employee utilizes their fingerprints to clock in and clock out to verify that they are at work (R5).

He testified when an employee cannot report to work, they are supposed to call into the Interactive Voice Response Absence Reporting System (IVR system) (R6). In the IVR system, an employee would call in and verify their identity with their JDE (employee number), and confirm with a four-digit security passcode, which would be their date of birth (R6). He testified if an employee did not report to work and put in their thumbprint or alternatively call into the IVR system, they are considered to be on unauthorized status unless they have pre-approved time off (R6). As a payroll supervisor, he is able to see if an employee called into the IVR system (R6).

Sup ██████████ identified a copy of the Respondent's timesheet (Exhibit 1) as well as an audit report (R7). He testified on the audit report the fifth column on the report (Exhibit 1) represented the daily absences for the Respondent (R7). The report showed the Respondent was "absent, no call" on June 9, 10, 11, 12, 13, 17, 18, 19, 20, 23, 24, 25, 26, 27, and 30, 2019 and July 1, 2, 3, 4, 7, and 8, 2019 (R7-9). Sup ██████████ testified that "absent, no call" means the employee has not shown up for work and did not call into the IVR system (R9). He testified that vacation and/or comp time need to be pre-approved and cannot be requested by calling in through the IVR system (R9).

Sup ██████████ testified that he is familiar with the Unauthorized Attendance policy with the CCSO (Exhibit 2) which states that if an employee is absent (without an approved absence) more than 80 hours within a 365-day time period that is cause for termination (R9-10). Sup ██████████ testified the Respondent was absent for well over 80 hours during a one-year time period (R10). He testified the Respondent's Disciplinary Action Forms (Exhibit 2) were additional documents that reflected the

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same information as the audit regarding the Respondent's attendance with no calls made by the Respondent (R13).

Sup [REDACTED] testified that he is knowledgeable regarding the CCSO unauthorized absence procedure (Exhibit 4). He testified the definition for an unauthorized absence in the unauthorized attendance policy (Exhibit 4), is when an employee is absent from work but does not have the requested benefit time available for the absence or is not in an authorized status that excuses the absence (R14-15). He said section 113.4 of the procedures (Exhibit 4) is the disciplinary procedures for the violations of the policy. It identifies the 365-day rolling calendar where an employee is absent for more than 80 hours in which their employment can be terminated (R15). Sup [REDACTED] testified the Respondent was absent for more than 80 hours in the rolling calendar period (R15). He stated the Respondent was absent for 20 eight-hour days which equaled a total of 160 hours (R15).

Sup [REDACTED] testified the CCSO Conduct policy (Exhibit 5) states that an employee can be disciplined for attendance issues such as unexcused or unauthorized absences and failing to report to work (R16). He testified that not showing up for work is both a violation of the Conduct policy as well as the Unauthorized Attendance policy (R16). He testified the responsibility is 100% on the employee to make sure they are in an authorized status all of the time or to obtain the proper pre-approval and report any absences (R17).

Conclusion

The Board finds by a preponderance of the evidence through the testimony of the witness; the time sheets and the audit of the Respondent's work schedule during the 365-day time period (Exhibit 1); the Respondent's Disciplinary Action Forms regarding his work attendance (Exhibit 2) and the Respondent's disciplinary history (Exhibit 3) that the Respondent was in an unauthorized status for more than 80 hours in a 365-day rolling time period - in that he was absent from duty for 20 duty days which equated to 160 hours that he was in an unauthorized work status. The evidence showed the Respondent was "*absent, no call*" on June 9, 10, 11, 12, 13, 17, 18, 19, 20, 23, 24, 25, 26, 27, and 30, 2019 and July 1, 2, 3, 4, 7, and 8, 2019.

Additionally, prior to the time period of the absences in this matter, on September 27, 2017, the Respondent had been counseled by the Attendance Review Unit, CCSO, supervisor, regarding an absence which occurred on September 2, 2017. During this counseling session, the Respondent was counseled on Sheriff's Order 11.4.1.1, Unauthorized Absence Policy, as well as on the steps regarding the levels of progressive discipline and available leave options.

The Board further finds that Respondent, Fernando Dominguez, did violate CCDOC Manual Procedure 113, Unauthorized Absence – Section 113.1, Section 113.1.1, Section 113.1.2 *occurrence* (a) (b)1-3, *rolling 365 period* (a) (b)1-2 (c), and *unauthorized absences* (a) (b), Section 113.2, Section 113.4 (a) *rolling 365 calendar* (a), (c) *mitigation* 3-4, and (d); CCDOC Manual Procedure 101, Conduct – Section 101.1, Section 101.1.1, Section 101.2, Section 101.3, Section 101.4, Section 101.5, Section 101.5.1 (b) (d) (f), Section 101.5.5 (ab)1; and Article X, Paragraph B3, of the Rules of the Cook County Sheriff's Merit Board.

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Order

Wherefore, based on the foregoing, it is hereby ordered that Respondent Fernando Dominguez, CCDOC, Star number 14715, be separated from the Cook County Sheriff's Office effective September 4, 2019.

JOHN J. DALICANDRO, Chairman
BYRON BRAZIER, Vice-Chairman
VINCENT T. WINTERS, Secretary
KIM R. WIDUP, Board Member
JUAN L. BALTIERRES, Board Member
KIMBERLY PATE GODDEN, Board Member
ELENI P. SIANIS, Board Member



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This Final Order is adopted and entered by a majority of the members of the Merit Board:

John J. Dalicandro, Vincent T. Winters, Kim R. Widup, Juan L. Baltierres, Kimberly Pate Godden and Eleni Polalis Sianis.

Not Present: Byron Brazier

DISSENT

The following Members of the Merit Board dissent from the Findings and Decision of the majority of the Board.

[NONE]

DATED AT COUNTY OF COOK, STATE OF ILLINOIS, THIS 23rd DAY OF JANUARY, 2020.