

**COOK COUNTY SHERIFF'S MERIT BOARD**

**Sheriff of Cook County** )  
)  
**vs.** )  
) **Docket # 1749**  
**Joseph Acevedo** )  
**Correctional Officer** )  
**Star #3205** )

**DECISION**

This matter coming on to be heard pursuant to notice before Kim R. Widup, Board Member, on August 5, 2014, the Cook County Sheriff's Merit Board finds as follows:

**Jurisdiction**

Joseph Acevedo, hereinafter "Respondent," was appointed a Correctional Officer on December 27, 1999. Respondent's position as a 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 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 notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint; and

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

## **Background**

On April 4, 2010, the Respondent was assigned to the Central Kitchen at the Cook County Department of Corrections (CCDOC), 2700 South California, Chicago, IL.

The Respondent was absent from scheduled work shifts and the absences were unauthorized for a total of 120 hours (corrected at trial by the Petitioner from 128 hours). These absences were in excess of 80 hours between September 19, 2012, and September 15, 2013.

The Respondent was Absent/No Sick Time (NST) on September 19, 2012; December 23, 2012; April 10, 2013; May 11, 2013; July 9, 10, 14, 28 & 31, 2013; August 18 & 24, 2013; and September 15, 2013, for a total of 96 hours. The Respondent was Absent/No Compensatory Time (NCET) on November 3, 2012, for a total of eight hours. The Respondent was Absent Late Call (ALC) on April 13, 2013, for a total of eight hours. The Respondent was Absent/No Vacation Time (NVT) on April 14, 2013 and June 19, 2013, for a total of 16 hours.

In addition, the Respondent incurred another unauthorized absence on September 23, 2013, NST, which was outside the rolling calendar period covered in this complaint.

On December 3, 2012, the Respondent was counseled by Attendance Review Unit (ARU) supervisor, Sergeant [REDACTED] regarding unauthorized absences of Absences No Call (ANC) that occurred on September 1-4, 2012; NST that occurred on September 19, 2012; and NCET that occurred on November 3, 2012. At this counseling session the Respondent was informed of the steps in the level of progressive discipline related to Unauthorized Absences.

On January 7, 2013, the Respondent was served an Unauthorized Absence Disciplinary Action Form (SPR 12-2889) imposing a written reprimand for a NST that occurred on December 23, 2012. Additionally, on April 15, 2013, the Respondent was served another Unauthorized Absence Disciplinary Action Form (SPR 13-0875) imposing a one-day suspension for a NST that occurred on April 10, 2013 and an ALC that occurred on April 13, 2013.

On May 8, 2013, the Respondent stated to investigators from OPR that he had never been advised of Sheriff's Order 11.4.1.1, Unauthorized Absences, prior to his counseling session with ARU on December 3, 2012.

The Respondent currently has an additional case pending before the Cook County Sheriff's Merit Board, Docket Number 1665, for which separation was recommended. Finally, the Respondent is an employee of the Cook County Department of Corrections and has a rolling calendar clause in his applicable Collective Bargaining Agreement (CBA).

By complaint dated January 30, 2014, upon a finding of guilt, the Petitioner sought the removal of the Respondent from employment with the CCSO.

## Issues Presented

The Respondent was charged based on his actions detailed above with violations of the Rules and Regulations and General Orders of the Cook County Sheriff's Department of Corrections, specifically:

Sheriff's Order 11.4.1.1 (effective July 1, 2012) Unauthorized Absence, in its entirety, including, but not limited to, the following subparts:

### II. Policy

It is the policy of the Cook County Sheriff's Office (CCSO) to prohibit CCSO employees from incurring Unauthorized Absences. Unauthorized Absences exacerbate absenteeism problems and strain the operations and employees of the CCSO. CCSO employees receive benefit time and have a variety of leave options available to cover the need for short-term and long-term absences. Therefore, even if an employee is legitimately ill or has some other reasonable excuse for being absent, the employee must obtain an appropriate Authorize Status(es) prior to or immediately after the need for the absence(s).

### VII. Disciplinary Process for Employees with Unauthorized Absences

C. Disciplinary process for employees with a Rolling Calendar clause in their applicable CBA:

The following shall apply to employees that incur an Unauthorized Absence(s) and have a CBA Rolling Calendar Clause:

1. Rolling 365-day calendar:
  - a. Any employee under a CBA with a Rolling Calendar clause who incurs ten days or eighty hours of Unauthorized Absences (not to be confused with Occurrences) in a rolling 365-period will be recommended to the Merit Board for termination.

## General Order 3.8 Ethics and Standards of Conduct

### III. Requirements

A. Compliance with Laws and Regulations

4. Employees will comply with lawful department rules, written procedures, directives, bulletins, and verbal orders issued by the proper authorities

D. Professional Conduct

7. Employees will utilize properly all benefit time leave categories.

Sheriff's Order 11.2.20.0 (effective date January 25, 2013) Rules of Conduct, in its entirety, including, but not limited to, the following subparts:

VI. Rules and Regulations for All Sworn and Civilian CCSO Employees

E. Duty Functions

CCSO employees shall:

1. Maintain sufficient competence to properly perform the duties and responsibilities of their positions. Unsatisfactory performance shall not be allowed.

b. Unsatisfactory performance may be demonstrated by:

vi. Absence without leave.

Finally, the Respondent was charged with a violation of the Rules and Regulations of the Cook County Sheriff's Merit Board, specifically:

Article X, Paragraph B:

No Police Officer of the Cook County Sheriff's Police Department, Correctional Officer of the Cook County Department of Corrections, or any Deputy Sheriff of the Cook County Sheriff's Court Services Department shall:

3. Violate any of the General Orders, special orders, directives, or rules and regulations of the Cook County Sheriff's Office.

## Findings of Fact

This matter was called for trial on August 5, 2014, after the case was continued on several occasions based upon the needs of the Petitioner and/or the Respondent's request through counsel, and the completion of all discovery matters. At the trial, with a court reporter being present, all witnesses were sworn under oath. The Respondent did testify. During the trial documents were introduced by the Sheriff and the Respondent that were received into evidence. The Sheriff and Respondent made closings arguments addressing issues in the trial.

The first witness called by the Sheriff was [REDACTED] ([REDACTED]), Superintendent for Administration, CCSO. [REDACTED] was part of the team that created the CCSO Attendance Revenue Unit in 2011. This unit started the progressive discipline system for the CCSO and issued orders on attendance-related matters.

[REDACTED] testified that he had a counseling session with the Respondent on December 3, 2012. The purpose of the counseling session was regarding the Respondent's unauthorized activity. During this session [REDACTED] provided the Respondent with a copy of Sheriff's order 11.4.1.1, which was an attendance-related order. The counseling session was directed at the Respondent's absent no call on September 1 through 4, 2012, for 32 hours; eight hours of no sick time on September 19, 2012; and for eight hours of no compensatory time on November 3, 2012, for a total of 48 hours of unauthorized activity. On January 7, 2013, the Respondent was issued an additional Unauthorized Absence Disciplinary Action Form for unauthorized activity that was for no sick time on December 23, 2012. The recommended discipline was a written reprimand. The Respondent was issued an additional Unauthorized Absence Disciplinary Action Form on April 15, 2013, for no sick time for the dates of April 10 and 13, 2013, for a total of 16 hours. The recommended discipline for this occurrence was a one-day suspension. The Respondent signed the disciplinary action forms described above and were marked as part of Exhibit 1.

The Respondent was issued a final Unauthorized Absence Disciplinary Action Form for 80 hours of unauthorized activity that was forwarded to OPR with a complaint register. This final Unauthorized Absence Disciplinary Action Form contained a recommendation of termination that was in accordance with the progressive discipline standard.

On cross-examination [REDACTED] said the Respondent filed a grievance on each of the Unauthorized Absence Disciplinary Action Forms described above. He did not know the outcomes of the grievances. [REDACTED] did not know that the Respondent was placed on fitness for duty between February 2012 and September of 2012. On re-direct it was pointed out that the Respondents' grievances were denied.

[REDACTED] ([REDACTED]), Deputy Director of Human Resources at Labor Relations, CCSO, testified and identified the Respondent's time card (Exhibit 3). The period of time covered by the time cards was from December 4, 2011 to November 30, 2013. These dates showed the Respondent had a total of 160 hours in authorized absences. The time card contained different notations as to the types of absences that [REDACTED] described in more detail.

For ease of review the times absent as reflected on the Respondent's time card (Exhibit 3) for the period of September 9, 2012 to September 23, 2012 (128 hours) are charted below:

Date Absent	Type of Absence	Number Hours
09/19/12	NST (no sick time)	08
11/03/12	NPT (no personal time)	08
12/23/12	NST	08
04/10/13	NST	08
04/13/13	ALC (absent late call)	08
04/14/13	NVT (no vacation time)	08
05/11/13	NVT	08
06/19/13	NVT	08
07/09/13	NST	08
07/10/13	NST	08
07/14/13	NST	08
07/28/13	NST	08
07/31/13	NST	08
08/18/13	NST	08
08/24/13	NST	08
09/23/13	NST	08

█ testified that the Respondent had thirteen dates of unauthorized absences after being counseled on January 7, 2013, regarding his being absent (Exhibit 1). She further testified after the Respondent was interviewed on May 8, 2013 (by OPR) that the respondent had ten dates of unauthorized absences. █ said the Respondent was on ordinary disability from February 4, 2012, through August 29, 2012 (Exhibit 3). He was not charged with any unauthorized time during this time period as he was on approved authorized leave.

On cross-examination █ was asked if she knew that the Respondent was placed on █ between February 2012 and September 2012. She responded that she did not know. She was aware that the process existed but had no knowledge of how it applied to the Respondent, if it did. █

█ She stated that the Family Medical Leave Act (FMLA) only applies to employees that have met the 1250-hour duty time requirement. █ was asked on redirect if the eight hours the respondent was absent on September 23, 2013, was outside the date of the complaint which was why the complaint was incorrect at 128 hours and should be 120 hours.

█ (█), Investigator, Office of Professional Review (OPR), CCSO, testified that she conducted the investigation of the Respondent for unauthorized absence. She prepared a statement for the Respondent, which the Respondent signed on May 8, 2013, and was also signed by her (Exhibit 1). █ said the Respondent told her that he had a recurring medical condition that was impacting his ability to return to work. The Respondent told her that he had been approved for disability benefits but

had a hard time coming back to work because of the availability of the County Doctor. He further told her that he was not able to get FMLA benefits. [REDACTED] interviewed the Respondent again on September 25, 2013, and took an additional statement (Exhibit 1) as the respondent had accumulated additional absences and to further discuss his disability. She said the Respondent had an additional 80 hours in absences from May 9, 2013, to September 18, 2013. The Respondent also signed this statement.

On cross-examination [REDACTED] said the Respondent informed her that he was [REDACTED] from February 2, 2012, to September 14, 2012. [REDACTED]  
[REDACTED] She stated that she believed an officer who qualifies for FMLA could get approved for 128 hours absence.

The Petitioner called the Respondent as an adverse witness. He said that he was aware that he did not have enough hours to qualify for FMLA as shown on Respondent's Exhibit 3. The Respondent identified his signature on the absence counseling form dated November 28, 2012 (Exhibit 1). He further identified his signature on the form dated December 3, 2012. The Respondent identified his signature on two separate disciplinary action forms bates stamped 0031 and 0032 (Exhibit 1). The Respondent said that he did file a grievance on all of the aforementioned forms, which were ultimately denied. The Respondent admitted that he continued to accrue unauthorized absences after December 3, 2012.

On cross-examination the Respondent said the principal reason for his absences was that he was suffering from [REDACTED]. He said that he had numerous medical procedures to include [REDACTED]. He stated that all of the time he missed work was directly related to his [REDACTED] except on September 19, 2012, when he needed an extra day when his grandmother passed away.

### **Decision**

The Board finds by a preponderance of the evidence through the testimony of the witnesses and the supporting evidence that the Respondent was absent from scheduled work shifts and the absences were unauthorized for a total of 120 hours (corrected at trial by the Petitioner from 128 hours). These absences were in excess of 80 hours between September 19, 2012, and September 15, 2013. The board did find that the Respondent had a history of medical issues and was placed on disability leave for a period of time prior to the dates of the unauthorized absences. The Respondent had been counseled on several occasions and went through a progressive disciplinary system that gave him plenty of notice that he was putting his position with the CCSO at risk by his continued absences. He was vigorously represented by counsel who caused the board to examine the facts but ultimately came to the conclusion that the Respondent was found to be in violation of standing Orders.

**Conclusions of Law**

Based on the evidence presented and after assessing the credibility of the witnesses and the weight to be given the evidence in the record, The Board finds that Respondent Joseph Acevedo, Star #3205, did violate Sheriffs Order 11.4.1.1, Section II and VII, C1 a; General Order 3.8, Section III, A4 and D7; Sheriffs Order 11.2.20.0, Section VI, E1, b-vi; and Article X, Paragraph B of the Rules of the Cook County Sheriff's Merit Board.

Wherefore, based on the foregoing, it is hereby ordered that the Respondent Joseph Acevedo, be and is separated from employment with the Cook County Sheriff's Office effective January 30, 2014.

[Redacted Signature]

**James P. Nally, Chairman**

[Redacted Signature]

**Byron Brazier, Vice Chairman**

[Redacted Signature]

**Brian J Riordan, Board Member**

[Redacted Signature]

**John V. Dalicandro, Secretary**

**Dated:**

January 12, 2015

[Redacted Signature]

**Jennifer E. Bag, Board Member**

[Redacted Signature]

**Kim R. Widup, Board Member**

[Redacted Signature]

**John R. Rosales, Board Member**

[Redacted Signature]

**Vincent T. Winters, Board Member**