

COOK COUNTY SHERIFF'S MERIT BOARD

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| Sheriff of Cook County |) | |
| |) | |
| vs. |) | |
| |) | Docket No. 1854 |
| Jonathan P. Motley |) | |
| Correctional Officer |) | |
| Star # 16377 |) | |

DECISION

This matter coming on to be heard pursuant to notice before Kim R. Widup, Board Member, on July 13, 2016, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Jonathan P. Motley, hereinafter Respondent, was appointed a Correctional Officer for the Cook County Department of Corrections (CCDOC) on November 9, 2009. 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 November 9, 2009, the Respondent was appointed a Correctional Officer. On October 21, 2011, the Respondent was assigned to Division XI of the CCDOC, 3015 S. California Blvd, Chicago, IL. On August 26, 2013, the Respondent was assigned to Division VIII, CCDOC, 2800 S. California Ave.

On February 21, 2013, the Respondent failed to adequately secure his duty weapon (Glock Model 19, 9MM semi-automatic pistol, serial number [REDACTED]) by leaving it in a lock box inside an unattended vehicle. At approximately 11:00 hours, the Respondent put his duty weapon which was loaded (16 rounds) and an empty magazine in a black hard plastic lock box and placed the lock box in plain sight on the floor mat of his vehicle. The Respondent left the passenger door of his vehicle unlocked and went inside his residence, where he remained for

approximately thirty to forty minutes. The Respondent's duty weapon (Glock Model 19, 9MM semi-automatic pistol, serial number [REDACTED]) was stolen from his unattended vehicle at his residence, [REDACTED], [REDACTED], [REDACTED].

The Respondent had, on May 10, 2012, signed the Firearms Home and Range Safety Acknowledgement Form, acknowledging that he "understands that [his] duty weapon/alternate weapon must be stored and secured at home when weapon(s) is not on [his] person." Additionally, on May 10, 2012, the Firearms Home and Range Safety Acknowledgement Form, signed by the Respondent acknowledged that he "will take precautions to ensure [his] duty weapon/alternate weapon, keys and/or combinations are inaccessible to others."

On April 20, 2015, the Respondent was interviewed and provided a signed statement to investigators from the Cook County Sheriff's Office of Professional Review (OPR). The Respondent stated to investigators from OPR that he was notified by the [REDACTED] Police Department that his weapon had been recovered by the [REDACTED] Police Department ([REDACTED]), [REDACTED], on January 17, 2014. On April 20, 2015, the Respondent stated to investigators from OPR that he was aware of Sheriff's Order 09-01 which pertains to properly securing weapons. Investigators from OPR conducted a status inquiry of the Respondent's weapon and verified the Respondent's stolen weapon had been recovered by the [REDACTED] PD on January 17, 2014.

By complaint dated January 4, 2016, upon a finding of guilt, the Petitioner sought the suspension of the Respondent from the Cook County Sheriff's Department for a period of ninety days.

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, specifically:

Sheriff's Order 09-1, Securing Department Authorized Firearms, in its entirety, including but not limited to, the following subparts:

II. POLICY

It is the policy of the Cook County Sheriff's Office that all sworn employees authorized to carry a duty weapon will ensure that the weapon will be secured. No unauthorized person is afforded access to the member's duty weapon at any time. Furthermore, a duty weapon in any state either assembled or dismantled will not be considered "secure" in a vehicle or in a locked box concealed within a vehicle.

IV. RESPONSIBILITIES

Duty Weapons and Department Issued Weapons are NOT to be left in vehicles:

- A. At any time
- B. In any condition (including dismantled or unloaded firearms)
- C. Under any circumstance (including lock boxes)

VI. APPLICABILITY

This order applies to all Sheriff's Office sworn employees and is for strict compliance. Any conflicts should be resolved in the favor of this order.

Sheriff's Order 11.2.20.0 – Rules of Conduct, in its entirety, including but not limited to, the following subparts:

II. POLICY

The CCSO serves the citizens of Cook County by performing law enforcement functions in a professional manner, and it is to these citizens that the CCSO is ultimately responsible. Employees of the CCSO shall conduct themselves in a professional and ethical manner both on and off duty. Employees shall not engage in activities that reflect unfavorably on the CCSO but shall instead serve to further the mission of service.

III. APPLICABILITY

This order is applicable to all employees of the CCSO and is for strict compliance. Any violations of this Sheriff's Order may result in disciplinary action up to and including termination. Any conflicts with existing directives shall be resolved in favor of this order.

VI. RULES AND REGULATIONS FOR ALL SWORN AND CIVILIAN CCSO EMPLOYEES

A. Compliance with Laws, Ordinances, and Regulations

2. Employees shall comply with lawful rules, Sheriff's Office written directives, verbal orders, SEAM articles, and political prohibitions issued by the proper authorities.

Furthermore, the Respondent's actions violated the Rules and Regulations of the Cook County Sheriff's Merit Board, specifically:

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.

Findings of Fact

This matter was called for trial on July 13, 2016, after the case was continued on several occasions based upon the needs of the Petitioner (Sheriff) 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. Additionally, there were certain documents that were admitted as exhibits through agreed upon stipulations by both parties. The Sheriff and Respondent made closing arguments addressing issues in the trial.

Through stipulation between the parties, the following exhibits were introduced and admitted as joint exhibits: Sheriff's Order 11.2.20.0 Rules of Conduct (J-Exhibit 1); Article X of the Rules and Regulations of the Merit Board (J-Exhibit 2); Sheriff's Order 09-1, Securing Department Authorized Firearms (J-Exhibit 3); Alsip Police Department Report regarding the weapon (J-Exhibit 4); "To/From" memorandum from the Respondent to OPR (J-Exhibit 5); Signed OPR statement of the Respondent (J-Exhibit 6); OPR Investigation Initiation Form (J-Exhibit 7); Firearms Home and Range Safety Acknowledgement Form (J-Exhibit 9); and Firearms Qualification Form (J-Exhibit 10).

The Respondent requested that an investigation by OPR regarding Respondent [REDACTED] be introduced as a Respondent's exhibit (R-Exhibit 1) instead of as a joint exhibit (J-Exhibit 8). The Sheriff agreed to the foundation but not the relevance of the exhibit. It was initially marked for identification and later admitted.

After a brief opening statement by the Sheriff and the Respondent, the Sheriff called [REDACTED] Investigator, OPR, who testified that he had been with OPR for approximately a year and half. He testified he was a CCDOC officer five years before coming to OPR. Investigator [REDACTED] described the OPR investigative process and stated he assumed the investigation of the Respondent after it was initially conducted by Investigator [REDACTED] OPR, who retired.

Investigator [REDACTED] testified that he participated in the interview of the Respondent. He said the Respondent had sent a memorandum to OPR (J-Exhibit 5) notifying them that his duty weapon was stolen from his personal car parked in front of his house. He testified the Respondent provided a statement to OPR (J-Exhibit 6) regarding the theft of his duty weapon from his vehicle. Investigator [REDACTED] testified that the Respondent indicated he was aware of the prohibition against leaving his duty weapon in his vehicle and had previously signed an acknowledgment form of this prohibition (J-Exhibit 9). Investigator [REDACTED] testified that it is a violation of the Sheriff's orders if duty weapon was stolen from an employee who did not properly store the weapon. Investigator [REDACTED] testified that OPR determined the Respondent did not properly secure his duty weapon and it was stored in his vehicle, both of which were in violation of Sheriff's orders.

The Sheriff introduced a collection of documents that included the Respondent's waiver of rights and others (J-Exhibit 8).

On cross-examination, Investigator [REDACTED] testified that he did not interview the [REDACTED] police officer who took the report made by the Respondent (J-Exhibit 4) nor did OPR Investigator [REDACTED]. He testified the only person that he was aware of that was interviewed in the case was the Respondent. He testified that the Respondent followed proper procedure by sending the memorandum to OPR (J-Exhibit 5) regarding his missing duty weapon. Investigator

██████ testified that there was no indication that the Respondent provided any false information during the investigation.

After a brief redirect examination, the Sheriff rested.

The Respondent was called by his counsel and testified he had been with the CCDOC since February of 2009. The Respondent testified February 21, 2013, was a regular day off for him and he decided to go to the gun range. He was going to the ████████ Gun Range in the midafternoon. The Respondent testified that he had placed his weapon in a hard-locked case and secured it with a red lock. He testified that he placed the case with the weapon on the floor of his vehicle on the passenger side. He testified his vehicle was parked in the driveway of his residence. He received a phone call from his wife and had to return inside to his residence. After retuning inside the house, he said that he gathered some information together for his ████████ and then lost track of time. The Respondent testified that he started watching television and fell asleep for 40 minutes to an hour. After waking up he went back to his vehicle and noticed the weapon and its case were missing from the vehicle. He searched the vehicle and then called the ████████ Police Department (██████ PD) and reported the weapon as being missing. He filed a police report with the ████████ PD (J-Exhibit 4) and was informed he could obtain a copy in a few weeks.

The Respondent testified that he reported the missing weapon to his superintendent and sent a memorandum to OPR (J-Exhibit 5). The Respondent testified that he was interviewed by OPR regarding the incident and provided them with a statement (J-Exhibit 6). The Respondent testified that he was aware of the Sheriff's General Order on firearms (J-Exhibit 3). The Respondent admitted that he was in violation of the order by placing his weapon on the floor in the front seat of the passenger side of his vehicle and leaving it unattended. He testified that he regretted his actions. He was shown the Firearms Home and Range Safety Acknowledgement Form (J-Exhibit 9) and identified his signature. He testified that he knew it was his responsibility to keep his weapon secure and he failed to do so.

On cross-examination, the Respondent was asked if he told the ████████ PD, as documented in their report (J-Exhibit 4), that the passenger side door of his vehicle was left unlocked. The Respondent testified, *"I don't recall saying that. I see it in the report, but I don't recall saying that to the police department."* The Respondent was asked if he had been suspended previously by the CCDOC and he stated, *"I've never been suspended."* The Respondent was shown a copy of a Cook County Sheriff's Office OPR Officer Disciplinary History (Exhibit 1) with his name on it. He was asked if the report showed he had been suspended for a failure to complete a task. The Respondent testified the report did show he had been suspended but he had never been suspended.

On redirect examination, the Respondent testified that he had never been served with a notice of suspension. He testified that he could not recall ever attending any type of grievance hearing regarding his conduct. He testified that he could not recall ever being served with a written reprimand for "something." The Respondent testified that he was not shown the ████████ PD report after they prepared it nor did he ever sign it.

On re-cross examination, the Respondent was asked if he told OPR that the ████████ PD misstated what he told them. The Respondent testified that he could not recall.

On further redirect examination, the Respondent was asked if he was denying what he said to ████████ PD. The Respondent testified that he did not remember.

On further re-cross examination, the Respondent said he could not recall what he told OPR or if he told them that the [REDACTED] PD report was incorrect. He did agree that he signed the OPR statement.

After further attempts at clarification the witness was excused.

The Respondent argued comparative discipline on other cases and asked that Respondent's Exhibit 1 be used in deciding the appropriate discipline on this matter. The Board agreed to add Respondent's Exhibit 1 ([REDACTED] case from 1985) to the record but informed the Respondent this matter would be decided on by the facts regarding this Respondent and not another case.

The Respondent rested and both parties delivered their closings.

Decision

The Board finds by a preponderance of the evidence through the testimony of the witnesses; the [REDACTED] PD Police Report (J-Exhibit 4), the Respondent's memorandum to OPR (J-Exhibit 5); the Respondent's interview with OPR (J-Exhibit 6); and the supporting evidence that the Respondent left his loaded service weapon unattended in his unlocked vehicle and the weapon was stolen. The weapon was not recovered until almost a year later when it was discovered in the possession of another individual during their arrest by the [REDACTED] PD. The Respondent admitted to leaving his weapon in the vehicle unattended, admitted knowing it was his responsibility to maintain control of the weapon and admitted to having knowledge of the Sheriff's General Orders regarding firearms. The Board finds the Respondent to be negligent in his actions for failure to maintain control of his service weapon and for failure to store it properly. The Board takes note of the Respondent's willingness to take responsibility for his actions.

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 Jonathan P. Motley, Star Number 16377, CCDOC, did violate Sheriff's Order 09-1, Section II, Section IV, A-C and Section VI; Sheriffs Order 11.2.20.0, Sections II-III and VI 2; and Article X, Paragraph B3, of the Rules of the Cook County Sheriff's Merit Board.

Wherefore, based on the foregoing, it is hereby ordered that the Respondent Jonathan P. Motley, be suspended from duty for a period of 90 days effective January 4, 2016.



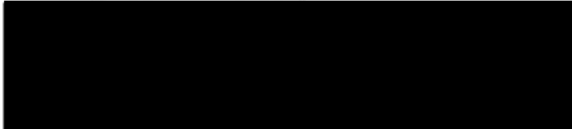
James P. Nally, Chairman



Byron Brazier, Vice Chairman



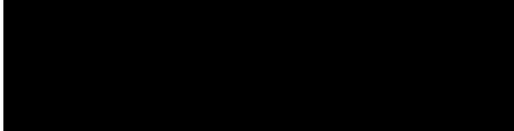
Gray Mateo-Harris, Board Member



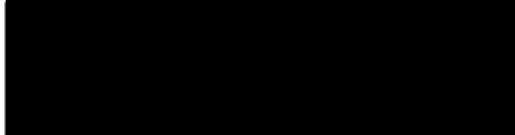
John J. Dalicandro, Secretary



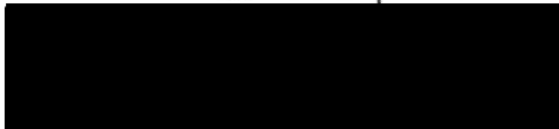
Jennifer E. Bae, Board Member



Kim R. Widup, Board Member



Patrick Brady, Board Member



Vincent T. Winters, Board Member

Dated:

March 7, 2017

