

**COOK COUNTY SHERIFF'S
MERIT BOARD**

SHERIFF OF COOK COUNTY

vs.

CORRECTIONAL OFFICER
KELVIN BARNES

████████████████████
████████████████████
EMPLOYEE ██████████
STAR # 16229

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Docket #1829

DECISION

THIS MATTER COMING ON to be heard pursuant to notice before Vincent T. Winters, a Board Member, and the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction:

1. The Respondent, Kelvin Barnes, was appointed a Correctional Officer on October 15, 2007.
2. On August 25, 2013 the Respondent was assigned to Division VIII of the Cook County Department of Corrections ("CCDOC"), located at 2750 S. California Avenue, Chicago, Illinois 60608.
3. Respondent's position as a Correctional Officer involves duties and responsibilities to the public; and
4. 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
5. The Board has jurisdiction of the subject matter over this proceeding as well as the parties in accordance with Chapter 55 of the Illinois Compiled Statutes; and

6. Respondent was personally served with a copy of the Complaint against him as well as Notice of Hearing and appeared before the Board to originally contest the charges contained in the Complaint with counsel as well as appearing for the hearing date, status, and ultimately trail; and
7. The Board has heard the evidence presented by the Sheriff and the Respondent, and evaluated the credibility of the witnesses and supporting documents.

Background:

By complaint dated July 15, 2015, the Sheriff Thomas J. Dart, sought termination of the Respondent. The complaint alleges that Respondent violated the Rules and Regulations and General Orders of the Cook County Department of Corrections and Rules and Regulations of the Cook County Merit Board, specifically: Sheriff's Order 11.2.23.0 CCSO Drug-Free Workplace Policy II., A., B. 1, 2, 3 and 4; III., IV., VIII.; Sheriff's Order 11.2.20.1 Conduct Policy II., III., IV., V. A and B, VI. D. 1 and 3, E. 23, 26, 29 and 43; as well as the Cook County Sheriff's Department Merit Board Rules and Regulations Article X, Paragraph B 1, 2, and 3.

Issues Presented:

Whether the actions of the Respondent violated any of the General Orders and Rules and Regulations set forth above and what discipline is warranted if a violation occurred.

Resolution of Issues:

We the Board find that Respondent did violate the Rules and Regulations and General Orders of the Cook County Department of Corrections and Rules and Regulations of the Cook County Merit Board, specifically: Sheriff's Order 11.2.23.0 CCSO Drug-Free Workplace Policy II., A., B. 1, 2, 3 and 4; III., IV., VIII.; Sheriff's Order 11.2.20.1 Conduct Policy II., III., IV., V. A and B, VI. D. 1 and 3, E. 23, 26, 29 and 43; as well as the Cook County Sheriff's Department Merit Board Rules and Regulations Article X, Paragraph B 1, 2, and 3.

Factual Background

An evidentiary hearing was held on November 12, 2015. Present was the Sheriff through counsel as well as the Respondent and Respondent's counsel. Testimony was taken from the Respondent, Kelvin Barnes, as well as other witnesses called on behalf of the Sheriff. The Sheriff admitted Exhibits # 1, 2, 3, 4, 12, 13, 14, 15, and 16 into evidence.

Sheriff's Case

██████████

The Sheriff called ██████████ a supervisor in the Cook County Sheriff's Office in the Drug Testing Unit, who testified that the testing unit collects urine specimens from Cook County Sheriff's for random and mandatory testing. ██████████ testified that mandatory testing is required when employees return to work after being off for 15 or more days. Employees are notified thru human resources that they need to submit to a mandatory drug test. ██████████ testified that all of his technicians are required to go thru an introductory period before they can begin testing employees.

██████████ testified that Respondent Barnes was required to submit to a mandatory drug test on May 12, 2015 and that an employee under ██████████ ██████████ was the technician that collected the Respondent's specimen. ██████████ testified that all policies and procedures regarding the collection and submission of the Respondent's specimen were followed and that it was then submitted to Phamatech Laboratories located in San Diego, California. Once Phamatech completes their testing they send the results back and ██████████ testified that the Respondent's specimen was positive for cocaine. At that point ██████████ testified that he prepared documents to open up a case through the Office of Professional Review. Once this is done then an employee can submit any medications they are on and ██████████ testified that he would send the list to Phamatech's scientist, ██████████, which he did in this case.

██████████ testified that Phamatech sent him back a filled out sheet indicating that none of the medications that the Respondent submitted are known to cause a positive test for cocaine.

Cross-examination:

██████████ was asked if he authored page 1 Sheriff's Exhibit 3, which he answered in the affirmative. ██████████ testified that he did not talk to anyone at Phamatech regarding their testing and what causes positive tests for cocaine. ██████████ testified that he did not specifically handle the Respondent's specimen but that he spoke with the technician, ██████████ and nothing out of the ordinary took place. ██████████ was asked who splits the specimen into an A and a B bottle to which he testified that they do not split any specimen. ██████████ went on to testify that once specimens are collected they are placed into a refrigerator by the technician in charge of the test. The technician checks the temperature inside the refrigerator by looking and recording the temperature on the thermometer inside the refrigerator. ██████████ then testified that the specimens are kept in the same refrigerator until 5:00 pm when a UPS courier picks them up. ██████████ testified that the proper protocol that must be followed is that the courier and the technician will together go to the refrigerator where the technician will unlock the refrigerator, take out the specimen and then fill out the chain of custody affidavit. ██████████ testified that the specimen is put into a sealed bottle which has a label with a barcode on it and then sealed in a pouch. ██████████ testified that Phamatech supplies these bottles and they already have bar codes and numbers on them when the Drug Testing Department receives them. Each bottle has a number below the barcode that ██████████ testified is the specimen ID. ██████████ testified that the donor, in this case the Respondent, would choose which bottle he

would use and then would put his specimen into the bottle with the chain of custody form and package it up in a sealed pouch and put it in the refrigerator.

██████████

██████████ testified that he has worked for the Cook County Sheriff's Department Drug Testing Unit for the past 11 ½ years as a drug testing technician where he tests random and mandatory drug tests. ██████████ went on to testify the process of what happens an individual comes into give a specimen. First, the individual gives the technician a notification form, the technician checks the form for accuracy, then the technician gets a chain of custody and control form that is furnished to the testing unit by Phamatech. After this, the individual is escorted into a testing room where they select a specimen collection bottle. Once a bottle is selected the technician puts the number from the chain of custody form onto the bottle. ██████████ testified that the number that the technician writes on the bottle is the Cook County Sheriff's Department Drug testing unit interoffice number. Once the individual provides his ID, the technician checks the chain of custody form and explains the different steps- the collection and the sealing process and the refrigeration process. Then the individual, along with the technician inspect the bottle to make sure it has not been tampered with and that the seal had not been broken. ██████████ testified if the bottle was not tampered with then the individual breaks the seal and inspects the inside of the bottle and then the technician writes the Sheriff's interoffice number on it. At this point the, the individual then washes his hands and the technician pours a bluing agent into the toilet so that individuals can not dilute their specimen. At this point the individual gives his sample, once he is finished the technician checks the temperature strip on the bottle to make sure that the sample is between 90 and 100 degrees, which tells that the specimen came from the individual's

body. The technician and the individual go back to the office, place the bottle on the tray and then go through the process of sealing the bottle with the tamper-evident tape that is provided on the chain of custody form. [REDACTED] testified that all of these steps are documented on the chain of custody form with the time that they occurred. The next step is to fill out the affidavit that indicates that the individual has witnessed the technician seal up the bottle, the technician places the bottle in a pouch and then they both walk over to the refrigerator and then place the pouch into the locked refrigerator. The last step is for the individual to record the time the specimen went into the refrigerator. [REDACTED] was shown Sheriff's exhibit #4 which is the Drug Testing Unit Affidavit form along with the chain of custody control form that was furnished by Phamtech and testified that the Respondent's initials were on it. [REDACTED] also testified to the three different parts of the affidavit form.

[REDACTED]

[REDACTED] currently is employed at the Cook County Sheriff's Office of Professional Review ("OPR") as a senior investigator who was assigned to investigate the Respondent's case. [REDACTED] testified that his first step after receiving the assignment was to notify the officer of the findings of a positive drug test for cocaine and to ask the officer if there are any prescriptions that would justify the positive test. Respondent Barnes, with [REDACTED], went to OPR on May 26th of 2015 and was interviewed by [REDACTED] and Investigator [REDACTED] from OPR and was asked if there was any reason cocaine would show up in his system. [REDACTED] testified that Barnes told him that he did not ingest or smoke cocaine but that he did eat some brownies from his girlfriend's cousin but didn't believe that there was cocaine in them. Barnes brought in some over the counter hair cream, tonic water, Aleve and Benadryl allergy ultra tabs, which

Investigator [REDACTED] took pictures of and sent to [REDACTED] in the Drug Testing Unit. Also at the meeting Barnes choose not to have his specimen re-tested. [REDACTED] testified that he received notification from the Drug Testing Unit that none of the medications are known to cause a positive test for cocaine. After receiving the results from the Drug Testing Unit [REDACTED] sustained the charges that Respondent Barnes violated the Sheriff's Orders.

Cross-examination:

[REDACTED] testified that he did not have any formal education in toxicology and that he relied solely on the drug testing laboratory report.

[REDACTED]

[REDACTED] testified that he is the vice-president of Phamatech and that he has held that position for 12 years and that his job duties include overseeing all laboratory operations, employment, licensing, production, test development and for all laboratory services. [REDACTED] went on to acknowledge that Sheriff's # 11 was a true and accurate copy of his curriculum vitae. Respondent's attorney then stipulated that [REDACTED] is an expert in the area of toxicology. [REDACTED] testified that he is in charge of making sure his employees are trained in the proper policies and procedures through initial training, reevaluations on a yearly basis and continuing education. [REDACTED] also testified that he is in charge of ensuring that all of the equipment Phamatech uses functions properly through their standard operating procedure manual. This manual is updated as needed and the equipment routinely gets calibrated. Phamatech is certified by California, CLIA, CAP, SAMHSA, Oklahoma, Maryland, Hawaii and Texas. In order to maintain their certifications groups do on-site inspections, some every six months when they come in to the

laboratory to test the equipment. [REDACTED] testified that [REDACTED] previously worked for Phamatech as the laboratory director but that he no longer works there.

[REDACTED] testified that samples arrive at the laboratory either by UPS overnight shipment or by a courier. All the samples are delivered in sealed bags referred to as BioBag, which contains both the sample and the chain of custody documents that are associated with the specific sample. If a sample was received in which the seal was broken, the sample would be cancelled. [REDACTED] went on to discuss the chain of custody document and how each individual sample has its own specimen identification number and internal tracking number that is unique and created by Phamatech. [REDACTED] went on to discuss that each sample is received by an employee who signs the chain of custody. The Respondent's sample was received by an individual named, [REDACTED] which was mailed out on May 12th of 2015 from Cook County and received by Phamatech on May 13th of 2015. The sample was received intact in the BioBag which was sealed as was the sample. Once the sample gets to the laboratory it is sent to the appropriate accessioner in the sealed condition who then opens the [REDACTED] scans the specimen ID number at the top of the form. They also scan the barcodes on the bottle to make sure that they match, if they do not match the computer will not let the individual accession or process the sample. As long as the barcodes match they then are allowed to scan the code that's in the middle top of the form and that number tells the computer system what drugs and what cutoffs to test and who to report the sample to. They then break the seal and pour a small portion of the urine into an aliquot tube, which is barcoded with the laboratory specimen ID, and that aliquot is sent to another room via the chain of custody to be initially screened. [REDACTED] testified that Respondent's sample did test positive for cocaine metabolite and that the machine that was used to test the Respondent's sample was properly calibrated. After the machine was tested to make sure it was properly

calibrated the laboratory tests the controls on the machine to make sure the accuracy is correct which they were. [REDACTED] testified that the all of the equipment was working properly on the date of the Respondent's test. [REDACTED] also testified that based on his experience, education, and being an expert in the area of toxicology Aleve, Canada Dry tonic water, Benadryl, coconut oil hair conditioner, antibiotic ointment, nor any over the counter medication could cause the presence of cocaine metabolite at the level that was present.

Cross-Examination:

[REDACTED] was asked if he investigated both the active and inactive ingredients of the creams that the Repondent submitted to the Cook County Sheriff. [REDACTED] testified that he participates in the federal drug testing program and is an expert witness for them and that he has a series of documents, books and references that provides the laboratory what drugs and compounds contain benzoylecgonine, which is the cocaine metabolite that was tested for. [REDACTED] was also asked if he had checked the most recent version of the list regarding the over the counter medications and he answered that because he has a DEA license he would have been notified immediately if any new drugs are released which contain restricted compounds. Respondent's attorney continued to press the witness about whether he tested all of the inactive ingredients that might render a positive for cocaine metabolite and [REDACTED] continued to explain that he knows what compounds contain cocaine and none of the Respondent's skin topical lotions contained them.

Respondent's Case:

Kelvin Barnes:

Barnes testified that he was hired as a Cook County Correctional Officer on October 15th of 2007 and had been assigned to different divisions in the Cook County Jail. Barnes testified

that he had been subjected to two or three prior drug tests and that he never tested positive on any of the other tests and that he never used cocaine nor any other illicit drugs in his life. Barnes described how he was notified of his test on May 15th of 2015, how he went to the Drug Testing Unit and how he gave a specimen. Barnes told us that [REDACTED] put some blue liquid in the bottle before he had to give his specimen. After Barnes gave his sample he testified that he was called into OPR sometime later and notified that he had failed his drug test. When he was at OPR he testified that [REDACTED] offered him the opportunity to have his specimen re-tested but that he refused because he could not afford it. Barnes answered questions regarding his OPR investigation and re-iterated that he denied ever ingesting, possessing or using cocaine. He went on to explain that the reason he brought certain over the counter medications to OPR was to see if any of them could have caused the positive test. Barnes testified that he was using a topical skin cream for approximately two weeks prior to the drug test and that he would rub a quarter size amount across his arm three times a day for a rash.

Cross-Examination

Barnes testified that he had been off work for one year and two months prior to coming back to the Sheriff's Department and that he was immediately required to submit to a mandatory drug test. Barnes went on to answer that the Sheriff's Exhibit #4, the Cook County Sheriff's Office Drug Testing Unit Affidavit with the control No. [REDACTED] has his initials on it, that he delivered his urine specimen to Phillip [REDACTED] and that he witnessed [REDACTED] seal the bottle with the tamper-evident tape which was placed across the cap and down the sides of the specimen bottle. Barnes then testified that he initialed the tamper-evident tape on the bottle and observed it being placed into a pouch and that all the information on the form was correct.

Conclusion of the Law:

Based on the evidence presented, and after assessing the credibility of witnesses and the weight given to the evidence including all the exhibits that were admitted, the Board finds that the Respondent did violate Sheriff's Order 11.2.23.0 CCSO Drug-Free Workplace Policy II. A, B 1, 2, 3, and 4, III, VI, VIII; Sheriff's Order 11.2.20.1 Conduct Policy II, III, IV, V A and B, VI. D 1 and 3, E. 23, 26, 29, and 43; as well as the Cook County Sheriff's Department Merit Board Rules and Regulations Article X, Paragraph B 1, 2, and 3.

Order:

Wherefore, based on the foregoing, it is hereby order that the Sheriff's request to remove the Respondent, Kelvin Barnes, is granted and the Respondent shall be removed as of July 28, 2015.

Kelvin Barnes CO #1829

[Redacted]

[Redacted] Chairman

[Redacted]

Brian J. Riordan - Hearing Officer

[Redacted]

John Dalicandro, Secretary

[Redacted]

Kim R. Widup, Board Member

[Redacted]

Vincent T. Winters, Board Member

[Redacted]

Jennifer E. Bae, Board Member

[Redacted]

Patrick Brady, Board Member

[Redacted]

Gray Mateo - Harris, Board Member

Date March 10, 2016