

COOK COUNTY SHERRIFF'S MERIT BOARD

In the Matter of:

CORRECTIONAL OFFICER)

SHERRY JETER)

EMPLOYEE #)

STAR # 8164)

) Docket No. 1662

DECISION

This matter coming on to be heard, by hearing officer Vincent T. Winters, pursuant to notice, the Cook County Sherriff's Merit Board finds as follows:

The Respondent, Sherry Jeter, was appointed a Cook County Correctional Officer on May 3, 2004.

1. Respondent's position as an employee as a Cook County Correctional Officer involves duties and responsibilities to the public; and
2. Each member of the Cook County Sherriff'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
3. 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
4. Respondent was personally served with a copy of the Complaint against her as well as a 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 various hearing dates, status and ultimately trial.
5. 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

By complaint dated September 17, 2012 (Amended Complaint dated January 24, 2014), Sheriff Thomas J. Dart, sought termination of Respondent. The complaint alleges that Respondent violated certain General Orders and that such action is in violation of Rules and Regulations of the Cook County Sheriff Police Department and the Cook County Sheriff's Merit Board.

After the case was continued from time to time, and discovery completed, it was called for a formal hearing on June 30, 2014. 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 witnesses called on his behalf. Documents were introduced by Petitioner and Respondent and received into evidence. The Petitioner and Respondent made closing arguments addressing the issues in the hearing.

Issues Presented:

The Respondent was charged with violations of the Rules and Regulations and General Orders of the Cook County Department of Corrections, more specifically:

GENERAL ORDER 3.8

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.

GENERAL ORDER 3.29

D. Monitoring Procedures

1. Suspected abuse of Medical Time will be based on an identifiable pattern as determined by the reviewer include:

- e. Other regular/ routine patterns which cause the Superintendent or Unit Head to suspect abuse

G. Employees will receive discipline for Unauthorized Absences, in addition to payroll dock.

1. Although the CCDOC will use discipline to help correct abuse or misuse of Medical Time, the Superintendent or Unit Head should first try to counsel the employee on the proper use of benefit time. Counseling will be documented and will not be considered part of the Steps of Progressive Discipline. To be effective, counseling will occur before corrective action resulting in discipline is pursued.

2. The Steps of Progressive Discipline for the abuse or misuse of Medical time and for tardiness as listed in General Order 4.2, Disciplinary Action- Summary Punishment and General Order 4.2.1, Disciplinary Action- Major Cause, will be followed.

GENERAL ORDER 4.1

III REQUIREMENTS

A. Guidelines for SERIOUS CONDUCT include, but are not limited to:

11. More than FOUR (4) medical days absent provided that the employee does not have sufficient time to cover those medical absences or other absences within any consecutive twelve (12) month period, that cannot be documented as a major or chronic illness, disability or injury on duty. A doctor's statement will be required in individual instances where the Department has sufficient reasons to suspect that the individual did not have a valid reason for the absence.

GENERAL ORDER 4.2.1

DISCIPLINARY ACTION-MAJOR CAUSE

II. Policy

E. Disciplinary action for major cause infractions need not be progressive. Examples of major cause infractions include, but are not limited to the following misconduct by an Employee:

11. More than four (4) medical days absent provided that the employee does not have sufficient time to cover those medical absences or other absences within any consecutive twelve (12) month period, that cannot be documented as a major or chronic illness, disability or injury on duty. A doctor's statement will be required in individual instances where the Department has sufficient reasons to suspect that the individual did not have a valid health reason for the absence.

SHERIFF'S ORDER 07-3

III. RESPONSIBILITY

- B. It shall be the responsibility of the Cook County Sheriff's Office employee to obtain the current Family and Medical Leave of absence Packet from their respective Personnel Office. Employees must complete and submit all documentation required to apply for the Family and Medical leave of Absence. Any employee not returning to their position following the granted leave, or failing to request and be granted an Authorized Status before the expiration of the Family and Medical Leave will be disciplined up to and including termination.

SHERIFF'S ORDER 11.4.1.1 (effective date 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 Authorized Status(es) prior to or immediately after the need for the absence(s).

VII. DISCIPLINARY PROCEDURES FOR EMPLOYEES WITH UNAUTHORIZED ABSENCE(S)

C. Disciplinary process for employees with a Rolling Calendar clause in their 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 (10) days or eight (80) hours of Unauthorized Absences (not to be confused with Occurrences) in a rolling 365-day period will be recommended to the Merit Board for termination.

10. 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

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 Deputy Sheriff of the Cook County Sheriff's Court Services Department will:

2. Violate any of the general orders, special orders, directives or rules and regulations of the Cook County Sheriff's Office.

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 Sherry Jeter, Star 8164, did violate the above mentioned Rules and Regulations and General Orders of the Cook County Sheriff's Police Department as well as the above mentioned Cook County Sheriff's Department Merit Board Rules and Regulations.

Findings of Fact

Respondent filed a motion to dismiss or, in the alternative, motion for a directed finding based on the collective bargaining agreement between the Sheriff and the Union which states in part in Section 15.3

that "all employees will start at zero unauthorized absences for the rolling 365-day calendar on February 21, 2012." Based on the testimony that was given by both sides and hearing what both sides believed to be the intent of the 365 day rolling calendar we do not believe that the Respondent's unauthorized absences would be "zeroed out" and the motion to dismiss is denied.

An evidentiary hearing was held on May 16, 2014 and continued on June 26, 2014. Present was the Sheriff through counsel as well as the Respondent and Respondent's counsel. Testimony was taken from witnesses called on behalf of the Sheriff and Respondent. The Sheriff admitted Exhibits #1 thru #8 into evidence and Respondent admitted Exhibits #1 into evidence.

Sheriff presented the following witnesses:

██████████
██████████ testified that he is the Assistant Director of the Office of Professional Review (OPR) for the Cook County Sheriff and has held the position for approximately one year. ██████████ testified that he was the lead investigator for the Respondent's attendance-related misconduct investigation that was filed in January 2012. ██████████ testified that he reviewed the attendance records of the Respondent as well as interviewed the Respondent. ██████████ testified that upon completion of the investigation the allegations of unauthorized absences from January 2011 through February 2012 were sustained and termination was recommended. ██████████ testified that the evidence that he relied on to come to this conclusion of termination were the Respondent's attendance record from December 5, 2010 thru February 8, 2012; disciplinary action forms that were prepared regarding the Respondent's unauthorized absences which the Respondent signed; an OPR non-verbatim summary of the interview between ██████████ Investigator ██████████ and Respondent which the Respondent was represented by her union representatives and signed and his own investigative report. ██████████ testified that the number of absences that were initially considered were 62 days but that 13 days were discounted because Respondent was presented with disciplinary action forms for those days. This left 49 days that Respondent was in an unauthorized state that became the focus of ██████████ investigation covering January 2011 through the beginning of February 2012.

██████████ also testified about the two dates that Respondent came into OPR, the first being on February 15, 2012, which she was represented by ██████████, and the second on February 22, 2012, which she was represented by Officer ██████████. During the meetings with OPR it was clear and proven that the Respondent understood that FMLA was not available to her because she did not have enough time to qualify. It was also proven that the Respondent had been counseled regarding her unauthorized status because of her signature on the disciplinary forms where she was apprised of the number of unauthorized absences. ██████████ also testified about two documents dated February 28, 2011 and October 4, 2011, from Director of Personnel ██████████ to Respondent, advising her that her FMLA request was not approved because she had not worked the requisite 1250 hours during the prior 12-month period.

On cross-examination ██████████ testified that he received the complaint register (CR) in January 2012 and that he went back to the beginning of 2011 to look at the Respondent's unauthorized absences. ██████████

explained that the dates that were considered in his investigation for the unauthorized absences were the disciplinary action forms in which the Respondent did not sign. He answered that any disciplinary action forms that had the Respondent's signature on were not used in the investigation. [REDACTED] was asked if he took into consideration the hardship that the Respondent had, he testified that he included the hardship in his report but that fact does not alleviate the requirement that she needed to be in an authorized absence status.

[REDACTED]

[REDACTED] testified that she is a Deputy Director for the Cook County Department of Corrections and that her duties include personnel, human resources, timekeeping and payroll. [REDACTED] identified the Respondent's timesheet's from December 5, 2010 thru February 8, 2012 and testified that she made a determination that the Respondent had sixty-two (62) unauthorized absences during this time. [REDACTED] also identified Sheriff's Exhibit 3 which was the Respondent's time card from December 4, 2011 thru May 31, 2014 and testified that there were several unauthorized absences

[REDACTED]

[REDACTED] testified that he is currently the Chief of Staff at the Department of Corrections and that he has held that position for approximately one month; prior to this position [REDACTED] was the first assistant general counsel for the Sheriff's Office. [REDACTED] testified that he was the chief negotiator for the Sheriff when the collective bargaining agreement (CBA) was entered into between the Sheriff of Cook County/Cook County (as joint employers) and Teamsters Local 700. [REDACTED] testified about the CBA, specifically page 53, which consists of Section 15.3 Policy and the sentence "All employees will start at zero unauthorized absences for the rolling 365-day calendar on February 21, 2012. The rolling calendar, in [REDACTED] words, stemmed from two Appellate Court decisions in which the courts gave an example of a reasonable attendance policy. [REDACTED] explained that a rolling calendar works when an employee incurs an unauthorized absence and does not receive another one for a twelve month period the original occurrence drops off of the employee's record, so it essentially rewards employees who have long periods of good attendance without incurring unauthorized absences. [REDACTED] went on to testify that although there would be a rolling calendar there would still be progressive discipline and that the zeroing out only pertained to the rolling calendar. [REDACTED] also testified that it was well known on both sides throughout the course of negotiations that those employees who were already under investigation for attendance issues during negotiations were going to continue to be under investigation and that the language would not preclude the Sheriff to go after employees who were identified as having egregious attendance violations. [REDACTED] contradicted two Respondent witnesses, who testified to the effect that the language was to basically forgive all of the unexcused absences that existed for every employee up to that date. [REDACTED] explained that there were two avenues for discipline once this language went into place- one avenue was the rolling calendar and the other was progressive discipline.

Respondent presented the following witnesses:

██████████

██████████ (██████████) testified that he is currently the Commander in Division I in the Cook County Jail and that he is employed by the Cook County Sheriff and has known the Respondent for approximately seven months. ██████████ testified that when the Respondent comes to work she is a very good officer. ██████████ testified that he did not know her back in 2011 or 2012.

██████████

██████████ (██████████) testified that he is currently a lieutenant in Division I in the Cook County Jail and that he is employed by the Cook County Sheriff and that he is the Respondent's watch commander. ██████████ testified that he has known the Respondent for approximately 2 years and that she is a good officer.

██████████

██████████ (██████████) testified that he is an attorney for Teamsters Local 700 and has been their general counsel since January 1, 2010. ██████████ testified that he took over negotiations for the Teamsters in August 2010 and put on the interest arbitration case. ██████████ testified about the roll-out of 15.3 rolling calendar and the fact that the effective date continually changed because of the fact that both parties wanted to notify the employees of the change and according to ██████████ there were a number of employees still at the Board and in the investigatory pipeline that the Sheriff was investigation for attendance abuses. ██████████ testified that the union was adamant that whatever the effective date would be that all employees would be zeroed out. ██████████ belief was that there was no bearing on him one way or the other if anybody was currently being investigated by OPR because all of those investigations that were not filed and at the Board would be dropped and those employees would be zeroed out.

██████████ testified on cross examination that while the bulk of the contract was being negotiated, he was not at the negotiating table. ██████████ testified that he was aware that while the Teamsters and the Sheriff were negotiating the contract there were a number of attendance related issues with the correctional officers at the Department of Corrections.

On redirect, ██████████ again testified that he believed since Respondent's case was not before the Merit Board on February 21, 2012 that it was one of the cases in the pipeline that should have been wiped clean.

██████████

Mark ██████████ an officer at the Cook County Department of Corrections, testified that he was the chief union steward for Teamsters Local 700, a position that he has held since April 1, 2009. Officer ██████████ testified that he helped negotiate the language that is in the current collective bargaining agreement between the Teamsters Local 700 and the Sheriff of Cook County. Officer ██████████ testified that he had a conversation with ██████████ telling him that the Sheriff was jumping the gun on officers that had unauthorized attendance issues and what had been discussed at the table was that moving forward all

unauthorized attendance issues would be dealt with but he claims that the Sheriff could not go backwards to discipline. Officer [REDACTED] then went on to clarify the policy that had been in place was that officers could bring in a doctor's note to get out of discipline and that the County had accepted these documents for years. With the new collective bargaining agreement that would no longer be the practice and the Union wanted time to educate their members as well as the supervisors of the changes. Officer [REDACTED] went on to testify that this language "all employees will start at zero unauthorized absences..." was something that the union wanted put into the contract because of the former policy of bringing in doctors notes to get out of discipline, and the fact that the County or the Sheriff could not retroactively go back and punish officers for something they were not aware of at the time. Officer [REDACTED] also testified about a "hit list" of over 400 officers that had over 40 hours or more of unauthorized absences.

On cross examination Officer [REDACTED] testified that the issue of attendance was a major concern during the negotiations of the contract on behalf of the Sheriff. He also testified that he was aware that there were a number of cases regarding unauthorized absences in OPR's pipeline while the two sides were negotiating the new CBA but it was his understanding that any new investigations that began while the two sides were negotiating would have been negated and that the Sheriff would not go forward with any of those investigations.

DR [REDACTED]

Dr. [REDACTED] testified that he is the Respondent's child's pediatrician and that he has been [REDACTED]'s doctor since he was 4 years old. Dr. [REDACTED] testified that [REDACTED] has had problems with [REDACTED] and that young children with [REDACTED] need to be closely supervised.

RESPONDENT- SHERRY JETER

Officer Jeter testified that she has been working for the Cook County Department of Corrections for the past ten years and that she has three children aged 15, 13, and 7. [REDACTED] is 13. Ms. Jeter testified that she was working the 11:00 PM to 7:00 AM shift. Officer Jeter testified that in February 2011 she divorced and was living with her three children and that she did not own a vehicle. [REDACTED]

[REDACTED] Officer Jeter testified that she applied for FMLA in 2011 but was denied because she did not have enough hours worked from the year before. Officer Jeter testified that generally the reason that she missed so many days was because of [REDACTED] and that she couldn't leave him with his older sister and because she did not have a car to get home quick enough if something happened to him. Officer Jeter testified that she was never aware of any action being taken against her in 2011 and that she always brought in doctors notes. She testified that in February 2012 she qualified for FMLA and that [REDACTED]'s father started helping out more and that she got a car.

On cross examination Officer Jeter was shown a Cook County Department of Corrections Disciplinary Action Form dated May 10, 2011 in which Officer Jeter's signature was on the bottom. The disciplinary action form stated that "Officer Jeter failed to call the department within the prescribed time limits to explain her absence." Officer Jeter was shown a number of disciplinary action reports in which she had

signed in 2011 in which she was being advised that she did not have enough time on the books to take off. On June 1, 2011 the Sheriff requested that Officer Jeter receive a 5 day suspension because of another absence, on August 1, 2011 the Sheriff was seeking a 20 day suspension with options, and on August 24, 2011 the Sheriff was seeking a 29 day suspension with options. Officer Jeter testified that she was aware that the Sheriff was seeking this progressive discipline against her.

Also on cross examination Officer Jeter testified that during her OPR investigation she was advised that her attendance record for 2011 and 2012 showed approximately 62 instances of NST and unauthorized FMLA and that she acknowledged that she knew that she needed benefit time available before she was able to use this time. Officer Jeter also testified that she was familiar with the General Order 4.2.1 regarding major causes for discipline, the Sheriff's FMLA policy dated December 7, 2009, as well as the Sheriff's affirmative attendance policy.

On redirect Officer Jeter testified regarding her multiple write-ups as well as the discipline that she was to receive. Jeter testified that she was honest and truthful with OPR about her son's condition.

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 did violate the Rules and Regulations and General Orders of the Cook County Department of Corrections specifically: General Order 3.8 Section III A-4, D-7; General Order 3.29 D-1E, G-1, G-2; General Order 4.1 Section III A-11; General Order 4.2.1 Section III E-11; Sheriff's Order 07-3 Section III-B; Sheriff's Order 11.4.1.1 Section II, VII C-1a; and Cook County Sheriff's Merit Board Rules and Regulations Article X, Paragraph B 2

Wherefore, based on the foregoing, it is hereby ordered that the Respondent Sherry Jeter be terminated September 17, 2012.

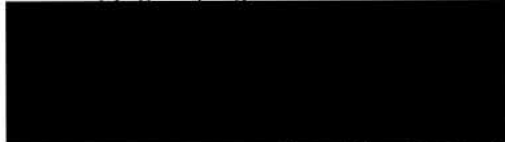
Sherry Jeter CO #1662



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John D. Licandro, Secretary



Vincent T. Winters, Board Member



Patrick Brady, Board Member

Date May 15, 2015