

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)	
)	
vs.)	Docket # 1594
)	
Anthony Nomellini)	
Cook County Deputy Sheriff)	

DECISION

THIS MATTER COMING ON to be heard pursuant to notice, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction:

The Respondent's, Anthony Nomellini, (hereinafter "Respondent") position as a Cook County Deputy Sheriff 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 and 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 Amended Complaint and Notice of Hearing and appeared before the Board to contest the charges contained in the amended complaint; and The Board has heard the evidence presented by the Sheriff and the Respondent, and evaluated the credibility of the witnesses and supporting evidence. After considering the evidence, the Board finds as follows:

Background:

By complaint dated March 30, 2011, the Cook County Sheriff Thomas J. Dart sought the separation from employment of Respondent. The complaint alleges Respondent was absent without authorization from work on multiple occasions. It alleges that the Respondent has been absent no call and/or absent no sick time from October 2, 2006 through and including January, 2011 and failed to provide any documentation for any of these absences. It further alleges that the Respondent has been in an unauthorized no pay status since October 2, 2006. The complaint alleges the Respondent failed to respond to or obey a direct order on two occasions to report to the Cook County Medical unit by October 17, 2006. It alleges that the Respondent abandoned his employment when he failed to appear for work from October 2, 2006 through and including January 2011. It further alleges that the Respondent engaged in unauthorized secondary employment and failed to have approved secondary employment on file with the Cook County Sheriff's Department. It alleges that the Respondent provided false statements to investigators at

the Office of Professional Review on December 22, 2010. It is alleged this violated several rules and regulations of the Cook County Sheriff's Department, and the Cook County Sheriff's Merit Board, specifically: General Order 3101.2 II, V A 1-5, V B , General Order 3401.1 V B 1, C 1,3 a,b and c, I 1, L 2, U 1, 2, Sheriff's Office General Order 06 – 01 IV 5 A, B, C, D, 6 a and b, Sheriff's order 07 – 2 VI A and X , and the Rules and Regulations of the Cook County Sheriff's Merit Board, Article X paragraph B 3.

Issues Presented: Whether the actions of the Respondent violated any of the General or Sheriff's orders or Merit Board Rule set forth above and what if any discipline is appropriate if a violation occurred.

Resolution of Issues Presented: The Merit Board finds that a violation of General Order 3101.2 II, V A 1-5, V B , General Order 3401.1 V B 1, C 3 a,b and c, I 1, L 2, U 1, 2, Sheriff's Office General Order 06 – 01 IV 5 A, B, C, D, 6 a and b, Sheriff's order 07 – 2 VI A and X , and the Rules and Regulations of the Cook County Sheriff's Merit Board, Article X paragraph B 3.

Findings of Fact: An evidentiary hearing in this matter was held on August 25, 2014 at the Cook County Administration Building, 69 West Washington Street, Room 1100, Chicago, Illinois before James P. Nally. Present were Petitioner by counsel and Respondent by counsel. Three witnesses testified for the Sheriff: [REDACTED] [REDACTED] and [REDACTED]. The Respondent testified on his own behalf.

Sheriff's Exhibits 1-21 and Respondents Exhibits 1A, 2, 3, G4, G5, 5A, 7, G 8, G 9, 10, G 11, G 12, G 13, G 14, G 15 A, G 15 B, 16 and 17 were admitted into evidence.

Evidence:

[REDACTED] testified he was currently employed for the Sheriff's Office Intelligence Center as an asset forfeiture investigator. He testified he was assigned to investigate the Respondent regarding allegations of being off work in an unauthorized pay status and also regarding unauthorized secondary employment. In the course the investigation he testified he interviewed a number of witnesses and recognized the Respondent. He testified he was giving notice to the Respondent of the need for him to appear at the OPR and located him at [REDACTED] car dealership. The witness identified several exhibits including time and attendance records for the Respondent. One of those documents was a copy of the statement given by the Respondent to OPR on December 22, 2010. At the OPR interview he was shown several letters giving him notice regarding allegations he was in an unauthorized no pay status beginning with letters in September of 2006. He could not recall all of the documents in the course of the interview he stated that he was told in August 2006 by the County doctor and his doctor he was unable to go to work. He stated that spoke with his chief [REDACTED] who " told me I didn't have to come to work." The records at the interview indicated that the Respondent was in unauthorized no pay status from April 18, 2007 to present. The witness testified that the Respondent again reiterated in the interview that he was told by his chief it was unsafe for him to return to work and he did not have to return to work until he was better. He said he was shocked he was carried for three years absent no call. He stated during the interview that he is not been paid since 2006 but was getting healthcare from the County. In the interview he told the witness that he owns [REDACTED]

██████████, a wholesale auto business from which he received compensation. It was established around March 2010. In the interview he also acknowledged he did not have approved secondary employment for ██████████ with the Sheriff since he had not been employed by anyone since 2006. He did testify he had other compensation since 2006. A number of the general orders were introduced into evidence relating to attendance in the use of benefit time and also secondary employment. The witness on cross examination indicated that some of the statements that were read during his testimony were not the complete statements contained in the interview summary. The witness testified that he never examined any records relative to a pending workers compensation case or medical records for the Respondent.

Witness ██████████ testified that she is chief of the civil division for the Cook County Sheriff's Office and in 2006 was the assistant chief at Maywood. At that time the Respondent was under her supervision. She was aware of an incident on February 26, 2006 where the Respondent stated he was involved in a duty workplace accident falling out of a chair. She was aware of the settlement of his duty disability claim with the Illinois Industrial Commission but did not know the exact dates covered. On or about August 30, 2006 she received notification from the personnel division that the Respondent was cleared to come back to work. She identified documents indicating the County physician had cleared the Respondent to come back to work as of August 30, 2006. She identified documents indicating February 26, 2006 to August 29, 2006 that the Respondent was on injured on duty status. The only options for the Respondent to use sick days would be to call in or have it pre-approved in writing. She testified that the documents showed they Respondent used vacation time and FMLA time after his return to work date of August 30, 2006 but that on October 2, 2006 he had exhausted his benefit time. She reviewed the records up until November 27, 2006 showing that the Respondent was absent with no pay. Beginning on November 27, 2006 the records indicated absent no call meaning that the Sheriff's Office had seen no correspondence from the Respondent "on what his intent is, what he's doing, if he's medically ill, if he's anything." The witness identified a memo she created indicating that on October 22, 2006 the Respondent stopped calling in, which was not permitted. She denied she ever told the Respondent he did not have to return to work, and based upon the County physician clearing him to return to work on August 30, 2006, she would've expected him to return to work the next day. The witness testified about how time records are kept at the Sheriff's office and the various designations for authorized and sick time. She also identified the letters ANC is identifying absent with no call. She identified Respondent's exhibit showing notations that after evaluation on 8/30/2006 workers compensation was discontinued. She believed a monthly affirmative attendance review form was done for the Respondent. The witness did not recall meeting with the Respondent on August 30, 2006 or at all. She believed the records show he was AWOL from October 22, 2006. She believed in speaking to the personnel director that the respondent had been sent several certified letters and there was no response. She further testified it would be impossible to give an employee counseling regarding absenteeism if they were physically never able to have contact with them.

Witness ██████████ testified in February 2006 she was Director of Personnel for the Cook County Sheriff's Office responsible for hiring and payroll for 7000 employees. She identified copies of official timecards for the Respondent from 2006 through 2014 which were maintained in the ordinary course of business. She testified that the record showed that on August 30, 2006 the Respondent came into the personnel department after you been cleared by the Cook County

Medical Unit and he was medically cleared for full duty. She testified that the Respondent used vacation and FMLA time that he had from August 30 to September 29, 2006. She identified notations contained in his records showing his unauthorized no pay status. She identified a letter she had sent the respondent on September 26, 2006 informing him he was in unauthorized no pay status of September 20, 2006 and that he was required to report to the medical unit by October 3, 2006. She also indicated that that letter informed him that if he was not able to return he had the option to apply for disability once you completed the medical release process. She testified that the Respondent reported to her office on October 3, 2006 and she advised him he could apply for FMLA leave for a block of time or ordinary disability giving him a deadline to do so by October 17, 2006. He did not report to the medical unit October 17. She testified that the record showed while the Respondent did go to the medical section and apply for ordinary disability he was never approved for that and in February of 2008 Personnel department notified the Inspector General that the Respondent was in unauthorized absence status. She also testified that employees are required to annually submit documentation regarding secondary employment and he failed to do so. She identified a document showing that he was found disabled by the medical unit on February 26, 2006, which document indicated an unknown return to work date.

The Respondent testified on his own behalf. He testified on February 25, 2006 he suffered a work-related injury falling off a chair. [REDACTED]

[REDACTED] He testified he filed a workers compensation claim and applied for disability pension at the pension board. He testified that his pension claim was deferred based on his pending workers compensation claim. He received workers compensation up through August 29, 2006 when the case was settled. This worker's compensation benefits were terminated due to independent medical examinations stating that he had reached maximum medical improvement. The Respondent identified a medical evaluation of April 12, 2006 stating that he needs to be monitored on a regular basis and may not be able to return to his previous level of employment. He stated no one had found him physically able to return to work. He identified multiple applications filed at the pension board for disability. He identified a document dated May 3, 2012 indicating all applicable pension benefit credit was applied to his account from March 2, 2006 through August 29, 2006. The witness testified he followed the protocol that was given to him to apply for duty disability or ordinary disability and reported this to his chief. Additional documents reviewed by the Respondent shows that a duty disability benefit was denied in his second application for duty disability because he was no longer an employee of Cook County at the time he made the application. He testified as to the secondary employment form that he had received it and submitted it, but did not submit a leave of absence or dual employment form while he thought he was on a leave of absence. He specified that sometime in March of 2010 he began employment since he had to feed his family. The Respondent further testified that prior to February 26, 2006 he had a non-duty related accident when he was hit by a car. [REDACTED] He was never found to be disabled by that accident. The Respondent insisted that Chief [REDACTED] had told him he could not return to work because he was not cleared. He testified that he established [REDACTED] [REDACTED] in March of 2010 but never obtained any secondary employment clearance through the Cook County Sheriff. He believed he was on leave and did not think was necessary to file for secondary employment. The Respondent testified that he believed he was still unable to return to work based on his disability due to the need to interact with prisoners and physical

confrontation. He also testified that Sgt. [REDACTED] told him he did not have to call in everyday.


Findings:


The Board finds that the evidence shows that Respondent did violate all the General Orders, Sheriffs Orders and Merit Board rules as charged except for General Order 3401.1 V C 1, as the evidence did not support a finding that the Respondent failed to obey an order from a superior. The conversation with the Director of Personnel on October 3, 2006 wherein she advised him to appear at the medical department in order to apply for FMLA or other benefits was not in the nature of a direct order but rather advice to him if he wished to pursue such benefits. The Respondent was clearly aware that he was medically cleared to return to work by August 30, 2006. He knew this because between that date and early October of 2006 he exercised other types of benefits such as FMLA or vacation time in order to stay in an authorized nonworking status. The evidence shows no later than October 3, 2006 (or perhaps as early as September 20, 2006) he had run out of authorized benefit time. The evidence further shows that he was advised of the procedures to follow to get authorized and while he did attempt the procedures, none of his requests were timely approved. Merely applying for duty disability or other benefits does not excuse the Respondent from appearing for work until such time as such benefits were approved. The testimony of the Respondent was incredible to think that he was still somehow employed from 2006 through 2011 when he had not appeared at work since Fall, 2006 in any capacity. Further his multiple applications for pension benefits disability demonstrate that he was aware of an issue with his employment status. The records submitted by the Respondent show that on at least one of these applications which was denied, the basis given for the denial was that he was no longer an employee of Cook County. Certainly that put him on notice of an issue with his employment status. The Respondent was certainly aware that he would have to call in if he had time coming and simply stopped calling in when he knew he had no compensatory time to use. The idea that a Sgt. would have told him that he did not have to call him in the face of the detailed rules and regulations regarding absences is not supported in the record. Further, it is clear that he was not truthful with OPR in his December, 2010 statement when he stated that Chief [REDACTED] had told him he did not have to come to work. The testimony of Chief [REDACTED] was unequivocal that no such conversation ever took place. Although there certainly should have been some question in the Respondent's mind whether he was still a valid employee of the Cook County Sheriff, the fact remains if that is what he believed he was required to file a secondary employment request when he began working in the [REDACTED] business he created. There is no record of such a secondary employment approval request being filed.

Conclusions of Law: Based on the evidence presented, and after assessing the credibility of witnesses and the weight given to the evidence in the record, the Merit Board finds that the Respondent did violate all aforementioned General Orders, Sheriffs General Orders and Merit Board Rules and Regulations except for General Order 3401.1 V C 1.


Order: Wherefore, based on the foregoing, it is hereby ordered that the Respondent Anthony Nomellini be separated from employment March 30, 2011.


ANTHONY NOMEILLINI # 1594



James P. Nally, Chairman


Byron Brazier, Vice Chair



John Dalicandro, Secretary


Brian J. Riordan, Board Member


Kim R. Widup, Board Member


Vincent T. Winters, Board Member


Jennifer E. Bae, Board Member


Patrick Brady, Board Member

Dated October 15, 2015