

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)
)
)
vs.) **Docket # 1689**
)
Malachy M. Farrell)
Cook County Correctional Officer)

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, Malachy M. Farrell, (hereinafter "Respondent") position as a Cook County 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 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 initial complaint dated February 5, 2013, the Cook County Sheriff Sheriff Thomas J. Dart sought the separation from employment of Respondent. The complaint alleges Respondent was absent without authorization from work on multiple occasions. By an Amended Complaint filed January 28, 2014, it was specifically alleged that the Respondent was absent from scheduled work shifts and the absences were unauthorized in excess of 80 hours between February 22, 2012 to August 12, 2012, for total of 12 days. The complaint alleged that the Respondent was counseled regarding these absences, and that none of the absences were covered by Family Medical Leave Act time. The complaint further alleges that that in December of 2012 the Respondent was interviewed by the Office of Professional Review and acknowledged he was aware of the attendance regulations and general orders. The amended complaint further alleges that after this the Respondent was again absent from scheduled work shifts without authorization between June 30, 2013 and December 29, 2013 for total 121 hours. The Amended Complaint

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 3.8 III paragraphs A. 4., Sheriff's Order 11.2.2.2 0.0 VI E 1b vi, Sheriff's Order 11.4.1.0 VIII paragraph B. 1., Sheriff's Order 11.4.1.1 VII C 1 a, 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 3.8 III paragraphs A. 4., Sheriff's Order 11.2.2.2 0.0 VI E 1b vi, Sheriff's Order 11.4.1.0 VIII paragraph B. 1., Sheriff's Order 11.4.1.1 VII C 1 a, and the Rules and Regulations of the Cook County Sheriff's Merit Board, Article X paragraph B 3. occurred.

Findings of Fact: An evidentiary hearing in this matter was held on June 16, 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] and [REDACTED]. The Respondent testified on his own behalf.

Joint Exhibits 1-13 and Respondents Exhibits 1 – 3 were admitted into evidence.

Evidence:

[REDACTED] testified that he is investigator for the Office of Professional Review and had been assigned to the Medical Absence Unit for approximately 2 1/2 years. He was familiar with and most of the investigations regarded Sheriff Order 11.4.1. His normal procedure was that when he received a complaint regarding absences he would gather statistical facts, interview the accused and any witnesses, and look at the history of the accused as well. He testified that the Respondent here was initially investigated regarding late notifications of absences but on further review evidence regarding unauthorized absences occurring usually around his regular days off or vacation or compensatory time occurred forming a pattern. The witness identified joint Exhibit 1. He testified that in interviewing the Respondent he had given him notice of the interview and the Respondent told him he was aware of the regulations regarding absences and had received a copy of Sheriff's Order 11.4.1. The witness testified that the Respondent was given the opportunity to submit any supporting documentation or other evidence regarding the allegation of unauthorized absences but he did not bring any. The Respondent was interviewed in December of 2012 regarding these unauthorized absences. The parties stipulated in the record as to the dates of the absences. The witness testified the Respondent signed his OPR statement on December 7, 2012. The Respondent made a hand written notation that he had grievances pending and was told by his timekeeper that he had vacation time. The witness testified the Respondent offered no witnesses or evidence in defense of his unauthorized absences. The witness acknowledged that the Respondent had told him that he suffered from a medical condition, and that the witness did not offer to supply HIPPA forms to allow the witness to obtain medical records. The witness also testified that the handwritten time records, timecard and payroll

records sometimes did not square up although this had gotten better over recent years. The witness testified that there were no discrepancies in the time records of this Respondent. The witness also testified that the Respondent had at no time told him he was disabled. The witness testified that he had gone over the various options to obtain authorized time off with the Respondent.

Witness [REDACTED] testified that he was a supervisor in administration and prior to that had been a sergeant in the attendance review unit. He testified a pilot program was begun in December, 2011 to get officers in compliance with attendance. He helped write the order and procedures relating to this. He testified generally that the attendance review unit contacted people with unauthorized absence issues and gave notifications and progressive discipline while working with their union. They did not look at medical documents but offered employees information on how to get into authorized status. This included assisting with grievance numbers and information about FMLA, Personnel department phone numbers and various leave options. The witness testified that this Respondent was called in for counseling and filed several grievances related to his unauthorized absences. The witness testified that unauthorized absences at the jail were causing excessive overtime costs in the millions of dollars and also hurt training and the ability to conduct normal jail operations such as searches. The witness testified that the attendance review unit would refer files to OPR once the unauthorized absences had reached 80 hours. The witness then testified in relation to several documents admitted into evidence regarding the attendance of this particular Respondent and identifying the particular dates of unauthorized absences related to this Respondent. The witness testified that the Respondent did tell him he had a medical condition but that that was not something the attendance unit was allowed to discuss. The witness did identify several counseling session acknowledgments signed by the Respondent as well as a receipt for an information packet containing information on FMLA and other leave options signed by the Respondent. The records reviewed by the witness contained multiple documents showing the dates of counseling sessions attended by the Respondent regarding his attendance. The witness testified that the records were reviewed for accuracy and in the Respondent's case a particular date for May 10, 2012 was deleted from the unauthorized absence list since a further review of records showed that this was not correct. The witness testified that at no time did they discuss the ADA during the attendance review counseling. The witness testified that employees are upset about mandated overtime necessitated by unauthorized absences where employees must work an extra shift. As an administrator he is hands-on and speaks to employees about this. He reiterated that unauthorized absences are costing millions of dollars in overtime to the Sheriff's office.

Witness [REDACTED] testified she is currently the Deputy Director of Human Resources, Department of Corrections. She previously worked in payroll overseeing timekeeping and attendance. She testified that the records admitted into evidence as joint exhibits were true and correct records for the Respondent's attendance. She reviewed numerous documents related to the attendance of the Respondent. She noted that on June 7, 2011 the Respondent had received a letter from the Sheriff's personnel office informing him he did not have FMLA time since he had not accrued 1250 hours worked. She testified that the Respondent was approved for FMLA time on June 28, 2012 and took several dates in July and August, 2012 of FMLA time, at the same

time he was also accruing unauthorized absences. The witness reviewed the records indicating that between February 22, 2012 and August 12, 2012 the Respondent was absent no call on March 4, 2012 April 1, 2012 May 12 and 25, 2012 and June 10, 2012. The witness also testified in regard to the record showing the Respondent was absolutely late call on June 24, 2012, absent with no sick time on February 22, 2012 and June 9, 2012 and absent no vacation time on August 4, 11 and 12, 2012. His FMLA time expired one year from the date it was approved, June 28, 2013. The witness testified in relation to documents showing that between June 30, 2013 and December 29, 2013 the Respondent was absent from scheduled work shifts without authorization for 121 hours, absent no call on June 30 and August 25, 2013. Respondent was absent late call on September 16 December 23 and December 29, 2013. The Respondent was absent no sick time on July 3 and 4, August 11, September 9, 15 and 29, October 15 and 20, November 4 and December 1, 2013. Respondent was tardy on July 6, 2013. The witness was shown Respondent's Exhibit 3 which was a pay stub from Cook County showing 200 hours of sick time 158 hours of vacation time and 11.84 hours of personal time. The witness testified that those numbers are generated by the County Comptroller but that the true and actual time records of the Respondent were contained on the hard card, time cards that are updated daily at the Sheriff's Office. The witness testified that any employee can contact the Sheriff's personnel office and get correct amounts of benefit time, and can also check with their timekeeper or check their timecard.

The Respondent testified on his own behalf that he had been employed for 9 1/2 years at the Department of Corrections working external operations, division 5, division 9 and currently in RTU. In RTU he deals with inmates of medium security who will probably be released within a couple months, as opposed to division 9 where the inmates are more long-term. He also testified that RTU has inmates with mental disabilities and that he had received specialized training for that. He testified that he had a chronic medical condition, [REDACTED]. The Respondent identified a letter from his doctor as Respondent Exhibit 1 confirming this since 2007. The condition caused him [REDACTED] and affected his ability to go to work when he would have these [REDACTED] since they were extremely short staffed, but better in RTU. In RTU he could count on backup within 10 to 15 minutes where's in division nine go half an hour to 40 minutes without anyone coming. He testified he did not reapply for FMLA in 2013 because he wanted to be normal and be able to come to work like everyone else. He testified he did speak to Superintendent [REDACTED] about FMLA and the problems he was having with his attendance at work. He identified Respondent Exhibit 2, putting him on a new medication for his [REDACTED]. He's been taking this medication since January, 2014 and has not had any real problems. He attributed to this condition his absences and late calls. If he had a sudden flareup of this condition, he sometimes would have to return home due to a [REDACTED]. He testified that if he called later than 45 minutes into the shift it was like you didn't call at all. [REDACTED]. He testified that he has a family and needs to keep working and that the less stressful work environment he is now in and the new medication means he has not had absences occurring in 2014. He also testified that he had used and was familiar with FMLA but that there is a stigma at the jail associated with using FMLA and his chronic condition is embarrassing. He further testified that record showing that he was absent with no call were often the result of calling in more than an hour into the shift where it was shown as no call. He

believed that everyone he talked to about his situation said the same thing that if he got approved for FMLA these occurrences would be taken off as unauthorized attendance, and he would stay under 80 hours. He testified he understood that the hearing he was participating in identified approximately 112 hours of unauthorized absences in 2012 and 121 hours of unauthorized absences and 2013.

Findings:

The Board finds that the evidence shows that Respondent did violate all the General Orders and Merit Board rules as charged. The Respondent was absent from scheduled work shifts and in an Unauthorized Status in excess of eighty (80) hours between February 22, 2012 and August 12, 2012. Further, after counseling, including being advised of the various options for authorized leave and time off, and having the ability to take FMLA time, which the Respondent sometimes availed himself of, he was still absent over 80 hours between June 30 and December 29 of 2013. While there is no doubt that the Respondent suffered from a chronic medical condition, he did not avail himself of the options which would have given him authorization to be off work. He testified that he did not always avail himself for example of FMLA time because there was a stigma attached to it at work and he did not want to have to explain his chronic medical problems. While the Respondent undoubtedly had to deal with personal medical issues as well as family sickness, the testimony of Superintendent [REDACTED] makes clear the deleterious effect that excessive absences have on the operations at the jail: Millions of dollars in overtime, inability to do training, and interference with normal jail procedures such as conducting searches, as well as morale problems that face employees that do appear regularly for work and must do mandatory overtime to compensate for employees who failed to appear at work clearly affect the well-being of the employees and inmates of the jail. Unauthorized absences of the degree shown here cannot be tolerated. It is clear that Respondent violated the Sheriffs Orders, General Orders and Merit Board rules and regulations by failing to appear for work.

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 of the Cook County Sheriff, and Merit Board Rule X B 2.

Order: Wherefore, based on the foregoing, it is hereby ordered that the Respondent Malachy M. Farrell be separated from employment February 5, 2013.



James P. Nally, Chairman



Kim R. Widup, Board Member



Byron Brazier, Vice Chair



Vincent T. Winters, Board Member



John Dalicandro, Secretary



Jennifer E. Bae, Board Member



Brian J. Riordan, Board Member



Patrick Brady, Board Member

Dated October 15, 2015