

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)	
)	
vs.)	Docket # 1680
)	
Daniel Cypser)	
Correctional Officer)	

DECISION

THIS MATTER COMING ON to be heard on August 8, 2014 before Merit Board Member John J. Dalicandro pursuant to notice, the Cook County Sheriff's Merit Board finds as follows

Jurisdiction: The Respondent, Daniel Cypser, hereinafter "Respondent". 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 did not appear before the Board to contest the charges contained in the 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 January 17, 2013, Sheriff Thomas J. Dart, sought the termination of Correctional Officer Daniel Cypser. The complaint states

1. That on April 18, 2005, the Respondent was appointed a Correctional Officer.
2. That on April 15, 2009, the Respondent was assigned to Division X, 2700 S. California Chicago Illinois.
3. That Respondent was absent from scheduled work shifts and in an unauthorized status for those absences five (5) times between January 31, 2012 and February 6, 2012.
4. That Respondent was absent from scheduled work shifts and had a total of forty-three (43) unauthorized absences (344 hours), in excess of eighty (80) hours between March 17, 2012 and May 29, 2012.
5. That Respondent continued to incur unauthorized absences in excess of eighty (80) hours from the workplace between June 1, 2012 and July 9, 2014, for a total of five hundred eighteen (518) days (4,144 hours). Specifically, Respondent was Absent No Call ("ANC") for a total of four hundred seventy (470) days between September 21, 2012 and July 9, 2014.
6. That from September 21, 2012 through and including July 9, 2014, Respondent failed to report for work or contact the Cook County Sheriff's Personnel Department about returning to work, abandoning his employment with the Cook County Sheriff's Office.
7. That on June 15, 2012, Respondent was interviewed and stated to investigators from the Cook County Sheriff's Office of Professional Review ("OPR") that he was counseled on February 7, 2012 by the Cook

County Sheriff's Attendance Review Unit ("ARU") while his union representative was present and he was advised that failure to comply with Sheriff's Office attendance policies could result in his termination.

8. That on June 15, 2012, Respondent stated to investigators from the OPR that he made no formal application for Family Medical Leave of Absence because he was aware that he did not qualify for the benefit. Respondent told investigators from the OPR that his 2012 absences were as the result of work-related injuries and that a prior workman's compensation claim was paid. Respondent stated that his second workman's compensation claim was denied and that he was placed in an unauthorized unpaid status for over one (1) year.

9. That Respondent is an employee of the Cook County Department of Corrections and has a Rolling Calendar clause in his applicable Collective Bargaining Agreement ("CBA").

10. That by his actions, Respondent violated the Rules and Regulations and General Orders of the Cook County Department of Corrections, specifically:

GENERAL ORDER 3.8

ETHICS AND STANDARDS OF CONDUCT, in its entirety, including but not limited to, the following subparts:

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

AFFIRMATIVE ATTENDANCE, in its entirety, including but not limited to, the following subparts:

III. PROCEDURES

Monitoring Procedures

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

e. Other patterns which cause the Superintendent/Unit Head or designee to suspect abuse of Medical Time

2. The Superintendent/Unit Head or designee will meet with the employee to discuss attendance concerns and corrective measures. The counseling must be documented on a "CDOC Affirmative Attendance Counseling" form.

E. Proof Status

1. Employees previously counseled for suspected abuse of Medical Time and have continued to show a pattern of abuse of Medical Time will be placed on Proof Status.

10. The steps of progressive discipline for the abuse or misuse of Medical Time 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

INTERNAL INVESTIGATIONS, in its entirety, including but not limited to, the following subparts:

Guidelines for SERIOUS MISCONDUCT 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 health reason for the absence.

GENERAL ORDER 4.2.1

DISCIPLINARY ACTION – MAJOR CAUSE, in its entirety, including but not limited to, the following subparts:

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:
 - 9. Absence of three (3) consecutive work days without notifying the office of the Chief of Security.
 - 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 11.4.1.0 (effective February 20, 2012)

UNAUTHORIZED ABSENCE, in its entirety, including but not limited to, the following subparts:

- VIII. Disciplinary Procedures for Employees with Unauthorized Absence(s)
 - B. Disciplinary Process for Employees with a Rolling Calendar Clause in their applicable CBA: The following shall apply only to employees that incur an Unauthorized Absence(s) and have a CBA Rolling Calendar Clause:
 - 1. Rolling 365-day calendar:
 - a. Any employee with a CBA with a Rolling Calendar clause who incurs ten (10) days or eighty (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.

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 applicable CBA: The following shall apply to employees that incur an Unauthorized Absence(s) and have a CBA Rolling Calendar clause:
 - Rolling 365-day calendar:
 - a. Any employee under a CBA with a Rolling Calendar clause who incurs ten (10) days or eighty (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.

SHERIFF’S ORDER 11.2.20.0 (effective January 25, 2013)

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.

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.
- E. Duty functions.
 - CCSO employees shall:
 - 1. Maintain sufficient competence to properly perform the duties and responsibilities of their positions. Unsatisfactory performance shall not be allowed.
 - b. Unsatisfactory performance may be demonstrated by:
 - vi. Absence without leave.

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:

- 3. 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 if any discipline is appropriate if a violation occurred.

Findings of Fact: Evidentiary hearing on this matter was held on August 8, 2014. Present were Assistant State's Attorney Colleen Cavanaugh on behalf of the Sheriff. Kevin Camden appeared on behalf of Respondent Daniel Cypser. Respondent was not present.

Three witnesses testified for the Sheriff, [REDACTED] and [REDACTED]

DIRECT EXAMINATION

Witness [REDACTED] testified at the relevant times. She is the Deputy Director of Human Resources. Her responsibilities include timekeeping and attendance as well as legal and labor affairs. She did review the attendance time cards of Daniel Cypser.

The attendance records of Mr. Cypser's absences as reflected in his time cards for the years 2012, 2013, and 2014 were reviewed. The codes are as follows: NST, no sick time, the employee called in on the medical line and didn't have medical time to cover. ANC, Absent no call, the employee never called the department to validate his absence. ALC, Absent late call, the employee didn't call in enough time. He called in on the medical line but did not call in the allotted time frame.

Mr. Cypser had unauthorized absences during that period of March 17th of 2012 to May 29th of 2012 the time cards reflect that Mr. Cypser had 43 unauthorized absences, 39 coded as no sick time, 3 were coded as absent no call, and one was recorded as absent late call. From, June 1st of 2012 to September 18th of 2012, Mr. Cypser have 48 unauthorized absences, one coded as absent no call, three coded as absent late call, and 44 coded as no sick time. From the period of time of September 21st of 2012 to July 9th of 2014. Mr. Cypser had 470 unauthorized absences and all of them were coded as absent no call. In terms of 365-day rolling calendar years. March 17th of 2012 to March 17th of 2013, Mr. Cypser had 219 unauthorized absences. March 18th of 2013 to March 18th of 2014, Mr. Cypser had 262 days of unauthorized absences. March 19th of 2014 to the period of July 9th of 2014, Mr. Cypser had 80 days of unauthorized absences. From March 17th of 2012 to July 9th of 2014, Mr. Cypser had 561 days of unauthorized absences.

CROSS EXAMINATION

Witness [REDACTED] testified she was not aware of any workers' compensation claim that were pending for Mr. Cypser. She was not directly involved any counseling of Mr. Cypser regarding why he wasn't in the workplace. He was not eligible for FMLA because he didn't work enough hours. Mr. Cypser never applied for compassionate leave.

June 1st of 2012 Mr. Cypser received a note from the county doctor saying he was fit to return to work. He did not report. He continued to call in medical. The last day he worked was June 4, 2012.

DIRECT EXAMINATION

Witness [REDACTED] testified at the relevant time. [REDACTED] is an Investigator with the Cook County Sheriff's Office of Professional Review. She assisted on the investigation of a Mr. Daniel Cypser. She also interviewed Mr. Cypser on June 15, 2012. Mr. Cypser and his Union Representative [REDACTED] were at the interview at the Office of Professional Review. Mr. Cypser during the interview admitted he knew he had no sick time to cover his absences. He was also stated he was counseled by the attendance review unit.

Mr. Cypser stated that he applied for workmen's compensation benefits and that he had been denied benefits.

[REDACTED] testified that she reviewed "Officer Disciplinary History," summary for Mr. Cypser. Mr. Cypser was issued reprimands and issued suspensions for not having medical time over his past history.

DIRECT EXAMINATION

Witness [REDACTED] testified at the relevant time. [REDACTED] Director of Support Services for the Sheriff's Office. She was the initial supervisor of the attendance review unit. She counseled Daniel Cypser. Her unit took part in the procedure that was set forth under the attendance policy general order, and began implementation of that order through a pilot program that involved Divisions 5, 9 and 10. Under that pilot program, department heads were notified by the attendance review unit to send employees who had violated the attendance policy. Mr. Cypser was counseled by Sergeant [REDACTED], on February 7, 2012 following an absence of several days.

CROSS EXAMINATION

Witness [REDACTED] testified she did not tell Mr. Cypser that if he was able to come back to work it wouldn't matter because his case was already going to the Merit Board.

REDIRECT EXAMINATION

[REDACTED] testified that when they did the counseling sessions, they followed a script. A script that they made available to all of the parties. They would never deviate from that script. The sole purpose of the attendance review unit was to ensure that the employee was notified of the policy, of the options to apply for various types of authorized absence if it was available to them.

Conclusions of Law: Based on the evidence presented, and after assessing the credibility of witnesses and the weight given by the evidence in the record, the Merit Board finds that the Respondent did violate the following:

GENERAL ORDER 3.8 III. REQUIREMENTS A. 4, D 7.

GENERAL ORDER 3.29 III 1. E, 1. and 10.

GENERAL ORDER 4.1 II.REQUIREMENTS A 11.

SHERIFF'S ORDER 11.4.1.0, 11.4.1.1 and 11.2.20.0.

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.

Order: Wherefore, based on the foregoing, it is hereby ordered that the Daniel Cypser be separated from office effective January 17, 2013.

[Redacted]
James P. Nally, Chairman

[Redacted]
Kim R. Widup, Board Member

[Redacted]
Vincent T. Winters, Board Member

[Redacted]
Byron T. Brazier, Vice Chairman

[Redacted]
John R. Resales, Board Member

[Redacted]
Jennifer E. Bae, Board Member

[Redacted]
Brian J. Riordan, Board Member

[Redacted]
John M. Licandro, Secretary

Dated:

January 12, 2015