

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)
)
vs.)
) **Docket No. 2208**
CORRECTIONAL OFFICER)
NAKEEA BUCHANAN SMITH)
STAR #15401)

DECISION

This matter to be heard pursuant to notice before Dr. Byron T. Brazier, Board Member, on May 24, 2022 and May 25, 2022, the Merit Board finds as follows:

Jurisdiction

Nakeea Buchanan-Smith, hereinafter referred to as the Respondent, was appointed a Cook County Correctional Officer on March 10, 2003. Respondent's position as a Correctional Officer involves duties and responsibilities to the public; 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; the Board has jurisdiction of the subject matter of the parties in accordance with 55 ILCS 5/3-7001, *et seq*; and the Respondent was served with a copy of the Complaint and notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint.

As a threshold matter, a proceeding before the Merit Board is initiated at the time the Sheriff files a written charge with the Merit Board. 55 ILCS 5/3-7012. A document is considered filed,

in this case with the Merit Board, “when it is deposited with and passes into the exclusive control and custody of the [Merit Board administrative staff], who understandingly receives the same in order that it may become a part of the permanent records of his office.” See *Dooley v. James A. Dooley Associates Employees Retirement Plan*, 100 Ill.App.3d 389, 395 (1981) (quoting *Gietl v. Commissioners of Drainage District No. One*, 384 Ill. 499, 501-502 (1943) and citing *Hamilton v. Beardslee*, 51 Ill. 478 (1869)); accord *People ex rel. Pignatelli v. Ward*, 404 Ill. 240, 245 (1949); *in re Annex Certain Terr. To the Village of Lemont*, 2017 IL App (1st) 170941, ¶ 18; *Illinois State Toll Highway Authority v. Marathon Oil Co.*, Ill. App. 3d 836 (1990) (“A ‘filing’ implies delivery of a document to the appropriate party with the intent of having such document kept on file by that party in the appropriate place.” (quoting *Sherman v. Board of Fire & Police Commissioners*, 111 Ill. App. 3d 1001, 1007 (1982))); *Hawkyard v. Suttle*, 188 Ill. App. 168, 171 (1914 (“A paper is considered filed when it is delivered to the clerk for that purpose.”)).

The original Complaint in this matter was filed with the Merit Board’s administrative staff on October 21, 2019. Regardless of whether or not Merit Board Members were properly appointed during a given term, the Merit Board, as a quasi-judicial body and statutorily created legal entity, maintained at all times a clerical staff not unlike the Clerk of the Circuit Court. (“Administrative Staff”). These Administrative Staff members receive and date stamp complaints, open a case file, assign a case number, and perform all of the functions typically handled by the circuit clerk’s office. Just as a timely filed complaint would be accepted by the circuit clerk even if there were no properly appointed judges sitting on that particular day, so too was the instant Complaint with the Administrative Staff of the Merit Board. Accordingly, the Complaint filed commencing the

instant action, was properly filed, and will be accepted as the controlling document for calculating time in this case.

Background:

That on or about March 10, 2003, the RESPONDENT was appointed a correctional officer. And that on or about October 10, 2017, the RESPONDENT was assigned to Division 10 of the Cook County Department of Corrections (“CCDOC”), located at 2950 S. California, Chicago, Illinois. That on or about November 18, 2018, the Cook County Sheriff’s Police Department (“CCSPD”) investigated a shooting at Manny’s Blue Luxury Lounge located at 2911 S. Claire Blvd., Robbins, Illinois.

The charges from the investigation are as follows:

1. Violation of the conduct policy for secondary employment
2. Failure to notify gang affiliation of Cousin
3. Operating a business without proper license

STATEMENT OF FACTS

That on or about November 18, 2018, the Cook County Sheriff’s Police Department (“CCSPD”) investigated a shooting at Manny’s Blue Luxury Lounge located at 2911 S. Claire Blvd., Robbins, Illinois. There was no evidence presented that through the investigation, CCSPD detectives, they learned that one of the owners of either Manny’s Blue Luxury Lounge or Luxury US was [REDACTED], a convicted felon who cannot hold a valid liquor license pursuant to Illinois Statute (235 ILCS 5/6-2). And even though the investigation determined that [REDACTED] [REDACTED] has multiple arrests including, but not limited to, obstruction, aggravated assault of a

peace officer, cannabis manufacturing and delivery, domestic battery, armed robbery, and that he is a documented convicted felon, it has no bearing on the ownership of Luxury US. The assertion of the Sheriff is that November 2018, the Sheriff's investigation revealed that the RESPONDENT was married to [REDACTED], a person the RESPONDENT knew or should have known was a convicted felon and had a particular reputation in the community for present or past involvement in felonious or criminal behavior. However, there was no evidence presented that substantiated the assertion. In fact, based on the finding of fact, their marriage was ten years after his conviction. Finally, Director [REDACTED] testified that her investigation revealed no evidence that Respondent violated any policy with respect to her association with her then-husband [REDACTED] Smith. (Tr. 90:7-17)

The Sheriff's assertion, based on their investigation revealed that Manny's Blue Luxury Lounge was owned by Luxury US, Inc., a/k/a Luxury Life Studio, and the President is the RESPONDENT, and the home address of the RESPONDENT is also the home address of Luxury US, Inc., [REDACTED], Riverdale, Illinois. In fact, there was no evidence presented that demonstrates this to be true. Additionally, the Sheriff asserts that their investigation revealed that Manny's Blue Luxury Lounge was operating without a valid liquor license, However, there was no evidence presented that this was true.

The Sheriff's investigation further revealed that the RESPONDENT was the owner of Luxury Life Studio Barber Shop located at 2557 W. 63rd Street, Chicago, Illinois, from 2011 to 2015. That on or about November 11, 2011, at RESPONDENT's barbershop, an incident involving the RESPONDENT's husband, [REDACTED], and the RESPONDENT's brother, [REDACTED],

wherein [REDACTED] was arrested and charged with possession of a controlled substance (crack cocaine), and her husband, [REDACTED], was arrested and charged with obstruction. Thereafter the arrest, the RESPONDENT's brother, [REDACTED], was housed at the CCDOC. It was determined that the RESPONDENT's brother, [REDACTED], has had numerous arrests including, but not limited to, burglary, obstruction, weapon and drug offenses, and assault. Because of this the Sheriff asserts that the RESPONDENT failed to document or notify supervisors that her brother, [REDACTED], was housed at the CCDOC after the November 11, 2011 arrest. That the RESPONDENT failed to notify the Cook County Sheriff's Office about the November 11, 2011 arrest of the RESPONDENT's husband, [REDACTED], and the RESPONDENT's brother, [REDACTED], which occurred at her barbershop. The Sheriff's investigation also determined that [REDACTED] also worked at the barbershop that the RESPONDENT owned and operated from 2011 to 2015. That on or about February 5, 2019, the RESPONDENT admitted that [REDACTED] was her brother and would spend time with him including holidays. That on or about February 5, 2019, the RESPONDENT admitted that she knew her brother [REDACTED] was housed in the CCDOC and admitted that she never reported that he was incarcerated. That on or about February 5, 2019, the RESPONDENT admitted she never completed or documented the gang affiliation of [REDACTED] as a known criminal organization/gang member.

During the trial, it was learned that the Barbershop incident was not a part of the OPR's investigation. We also learned that [REDACTED] was the cousin of the respondent and not her brother. There was also no evidence presented that concluded that the respondent knew or should have known about the criminal activity of her cousin. Under Cross-examination of the OPR Director [REDACTED], no conclusive evidence or testimony was made available that the

respondent knew that her cousin was incarcerated at Cook County Jail. There were no phone records, no visitation records, no witnesses that would demonstrate the respondent had knowledge of her cousin's activities. And according to Director [REDACTED], in running the barbershop, other than owning it; how frequently [REDACTED] worked at the barbershop; how much time, if any, Respondent spent at the barbershop. (Tr. 69:16-71:5), the Director admitted she had no evidence that Respondent was present at the barbershop on the night of [REDACTED]'s arrest, and that when Respondent came to the police station to retrieve the keys to the barbershop, [REDACTED] was being held at a completely different location. (Tr. 69:22-70:12)

That during the Sheriff's investigation, the original complaint asserts that the RESPONDENT engaged in unauthorized secondary employment for several years, and that the RESPONDENT does not have any current or past secondary employment requests on file with the Cook County Sheriff's Office, even though she runs numerous businesses outside of the Sheriff's Office.

In addition, the Sheriff asserts that the RESPONDENT violated the Sheriff's Conduct Policy and the Secondary Employment Policy through the ownership of Luxury US. Based on the interview conducted on February 5, 2019, the RESPONDENT admitted that she was the owner of the corporation Luxury US, Inc since June of 2017. That on or about February 5, 2019, the RESPONDENT admitted that she was operating Manny's Blue Luxury Lounge with an expired state liquor license. And that the RESPONDENT engaged in conduct unbecoming of a Member of the Cook County Sheriff's Office ("CCSO") reflecting unfavorably upon the CCSO as well as herself, RESPONDENT operated businesses without reporting secondary employment, associated with known felons, and operated and owned an establishment where liquor was sold without proper license.

During the trial, it was discovered that Luxury US was owned by the respondent but did not own Manny's Blue Lounge but there was a lease agreement for the properties where Manny's Blue Lounge was located, and that Luxury US was operating under the liquor license of Manny's Blue Lounge.

Under cross-examination, OPR Director [REDACTED] testified that she did not conclude Respondent violated the Secondary Employment Policy with respect to her ownership of the Luxury Life Studio barbershop. (Tr. 72:14-20). In contrast, [REDACTED] concluded Respondent violated the Secondary Employment Policy for Luxury US because Respondent failed to "submit a request for secondary employment in reference to her being the owner of Luxury US, Inc." (Tr. 37:11-18, 72:5-13; Sheriff's Ex. 14 at 8). Director [REDACTED] acknowledged that Respondent was the owner of Luxury US, which leased Manny's. (Tr. 62:3-13). Director [REDACTED] also acknowledged that owning real estate does not count as "secondary employment" under the Secondary Employment Policy. (Tr. 80:12-21).

Nevertheless, Director [REDACTED] claimed that in her opinion, "owning a corporation is the same as being employed by that corporation." (Tr. 75:4-7). The Director subsequently clarified that she believes owning a business is considered "self-employment." (96:3-14).

However, Director [REDACTED] could not identify any written policy stating that owning a corporation or business is considered self-employment. (Tr. 96:15-21). The Director did testify that she considers "self-employment" to mean, in general, "when you perform services for pay." (Tr. 96:22-97:1). However, the Director admitted she has no evidence Respondent ever received a salary, wages, commissions, or other fees for services from Luxury US, Inc. (Tr. 78:12-79:4). Additionally, she admitted she has no evidence Respondent ever served drinks or food, engaged

in any custodial or cleanup work, or otherwise worked at Manny's. (Tr. 81:5-14). Further, she admitted that she did not review any tax or other governmental records indicating Respondent was an employee of Manny's or Luxury US, Inc. (Tr. 1:15-82:5).

At the Hearing Officer's recommendation, the Counsel for the Sheriff and Respondents Counsel was asked to present their understanding concerning ownership of a business being in violation of the Sheriff's secondary employment regulations.

In closing arguments, the Respondent argues that the secondary employment policy contains a definition of what secondary employment means, and it specifically refers to the performance of services for a wage, fee, commission or other compensation for an employer or in self-employment. They argue that those are specific, legal relationships that have been recognized in the common law since before this country was a nation. And specifically in Illinois, and in the federal code, those relationships have been codified in various places and by every reasonable definition that is recognized by Illinois law, the concept of employment to the performance of services in exchange for compensation, and whether it's self-employment or working for another employer, that relationship is the same. An individual is self-employed when they perform services for another entity or individual and receive compensation. That is a legally distinct relationship from ownership. And importantly, the exhibits -- Respondent's Exhibits 3 through 8 make that abundantly clear. For instance, the IRS, the Internal Revenue Service, in describing information about the self-employment tax imposed by the federal government states that "Self-employment income is income that arises from the performance of personal services, but which cannot be classified as wages because an employer-employee relationship does not exist between the payer and the payee." Likewise, the Internal Revenue Service maintains the website with a

section for Self-Employed Individuals Tax Center, and it contains an explanation of who is self-employed. And the IRS states, "Generally, you are self-employed if any of the following apply to you. You carry on a trade or business as a sole proprietor or an independent contractor. You are a member of a partnership that carries on a trade or business. You are otherwise in business for yourself (including a part-time business or a gig worker)." Those references to sole proprietorship and independent contractors recognize that there are distinct legal forms recognized by the laws of this state and the federal government defining when individuals are employees, and ownership of a corporation simply does not fall within that definition. Likewise, in Respondent Exhibit 8, which is Publication 15-A from the IRS, which is Employer's Supplemental Tax Guide, there is a reference that specifically states that while officers of a corporation may be employees of the corporation, officers of the corporation who do not perform meaningful services but simply own the corporation are not considered employees, according to the IRS. Therefore, the Respondent argues that for the Sheriff to take the position that ownership of a corporation is considered self-employment, under its policy, that policy definition would be a unique definition and inconsistent with how every other tribunal and government entity interprets those same terms and hold officers responsible.

Concerning the liquor license, OPR Director [REDACTED] testified that she also concluded Respondent violated the Conduct Policy by "not having the proper licensing to run a liquor establishment." (Tr. 38:8-18). However, Director [REDACTED] admitted she did not know – and took no steps to find out, whether the lease agreement between Luxury US and Manny's required Respondent to hold the state liquor license for Manny's. (Tr. 87:2-23). In contrast, Respondent testified, without refutation, that under the terms of the lease-to-purchase agreement, the owner

of Manny's would continue to hold the required liquor licenses for the business until ownership was transferred to Luxury US, at which point Luxury US would become responsible for the licenses. (Tr. 129:10-19). Respondent further testified that at no point during Luxury US's operation of Manny's did Respondent become aware that Manny's owner had failed to maintain a valid State of Illinois liquor license. (Tr. 131:15-18). It is undisputed that Respondent has never been charged with any civil or criminal violation related to Manny's failure to maintain a valid Illinois liquor license. (Tr. 147:17-19).

Order: Wherefore, based on the foregoing lack of evidence for the asserted charges, and based on the creditability of the respondent's legal arguments to the charges, it is hereby ordered that the charges of the respondent, Nikeea Buchanan-Smith are dismissed effective October 21, 2019.

JOHN J. DALICANDRO, Chairman
BYRON BRAZIER, Vice-Chairman
VINCENT T. WINTERS, Secretary
KIMBERLY PATE GODDEN, Board Member
ELENI P. SIANIS, Board Member
TERRENCE J. WALSH, Board Member
MARLA M. KAIDEN, Board Member
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Nakeea Buchanan Smith
Correctional Officer
Docket No. 2208

This Decision is adopted and entered by a majority of the Members of the Merit Board:

John J. Dalicandro, Byron Brazier, Vincent T. Winters, Kimberly Pate Godden, Eleni P. Sianis, Terrence J. Walsh, Marla M. Kaiden and Wade Ingram Sr.

Not Present: None

DISSENT

The following Members of the Merit Board dissent from the Findings and Decision of the majority of the Board.

[NONE]

DATED AT COUNTY OF COOK, STATE OF ILLINOIS, THIS 15th DAY OF SEPTEMBER, 2022.