

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RICHARD REED,)
)
 Petitioner,)
)
 vs.) Case No. 03-3141
)
 PINELLAS COUNTY SHERIFF'S)
 OFFICE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

On November 5 and 6, 2003, a formal administrative hearing in this case was held in Largo, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: William M. Laubach, Esquire
Pinellas County Police
Benevolent Association
14450 46th Street, North, Suite 115
Clearwater, Florida 33762

For Respondent: Keith C. Tischler, Esquire
Allen, Norton & Blue, P.A.
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STATEMENT OF THE ISSUE

The issue in the case is whether the Petitioner violated the Civil Service Act and the rules and regulations of the

Pinellas County Sheriff's Office by allegedly failing to perform assigned duties and other responsibilities and by insubordination towards a superior officer.

PRELIMINARY STATEMENT

By Notification of Sustained Complaint and Interoffice Memorandum dated August 22, 2003, the Petitioner was informed that an Administrative Review Board had determined that the Petitioner had violated the Civil Service Act and certain rules and regulations of the Pinellas County Sheriff's Office. The memorandum stated that, based on the violations, the Petitioner's employment was being terminated. The Petitioner challenged the termination and requested a formal hearing. The Respondent forwarded the request to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

During the hearing, the Petitioner testified on his own behalf, presented the testimony of three additional witnesses, and had Exhibits numbered 1 through 9 admitted into evidence. The Respondent presented the testimony of seven witnesses and had Exhibits numbered 1 through 3, 6 through 12, 28, 29 (Parts A, C, D, and E), and 30 through 42 admitted into evidence. The Transcript of the hearing was filed on November 13, 2003. The Respondent filed a Proposed Recommended

Order on December 19, 2003, and the Petitioner filed a Proposed Recommended Order on December 22, 2003.

FINDINGS OF FACT

1. From August 1999 to August 21, 2003, Pinellas County Sheriff Everett S. Rice (Respondent) employed Richard Reed (Petitioner) as a detention deputy at the Pinellas County Jail. The Petitioner was a member of the Special Operations Division at the jail.

2. The usual practice at the jail was for deputies to receive their daily work assignments at a morning "read off," where information was read to employees by superior officers.

3. At the May 30, 2003, read off, the Petitioner was assigned to the male "Marchman" unit. The Marchman unit is the section of the jail where persons under the influence of alcohol or other substances are held in protective custody until the influence has subsided. There are separate Marchman unit sections for males and females.

4. Because of the nature of the persons held in the Marchman unit and the potential for self-injury, the Marchman unit is considered a high liability area. Deputies assigned to Marchman duty are expected to report to and inspect the unit immediately following the read off, account for all persons being held in the unit, account for the unit's keys and

equipment, and relieve the person assigned to the unit during the previous shift.

5. When there are persons present in the Marchman unit, the assigned deputy remains in the unit. When the Marchman unit is unoccupied, the deputy is re-assigned to other duty, generally to assist in the processing area of the jail. On May 30, 2003, there were no male detainees in the Marchman unit.

6. Whether or not there are detainees in the unit, the inspection must be conducted and then logged into a book maintained at the unit. The assigned deputy is also responsible for having the Marchman unit cleaned during the deputy's shift.

7. On May 30, 2003, the Petitioner failed to go to the Marchman unit. He did not inspect the unit. He made no notations in the logbook. He failed to have the unit cleaned.

8. The Petitioner testified that he completed the inspection, and because there were no detainees present, he went to the processing area and merely forgot to note his inspection in the logbook. The Petitioner's testimony lacked credibility.

9. In addition to failing to perform his Marchman unit responsibilities, the Petitioner misinformed a superior officer about the status of the unit. At some point during the day on May 30, 2003, Corporal John A. Squillante asked the Petitioner about the status of the Marchman unit, and the Petitioner told Corporal Squillante that it had been "taken care of."

10. Because May 30, 2003, was a busy day at the jail, the processing area was very active and there were persons waiting to be processed and admitted into the detention facility. Sergeant Loren Jones sought the assistance of additional nursing staff to perform routine examinations on the waiting detainees so that a backlog of persons awaiting admission to the facility could be cleared. Nurse Black responded to the sergeant's request.

11. Upon arrival at the processing area, Nurse Black asked for a chair to sit on while she worked. Sergeant Loren Jones, III, entered his own office and found the Petitioner sitting there. It was not unusual for detention officers to use the sergeant's office while on break or at lunchtime. Sergeant Jones requested the Petitioner to get a chair for Nurse Black. The Petitioner replied to Sergeant Jones, "Fuck you, I'm not doing it." Sergeant Jones repeated the request and the Respondent then complied.

12. Later in the day, the Petitioner, after becoming aware that Sergeant Jones had reacted negatively to the remark, attempted to explain to Sergeant Jones that the remark was made in jest. Sergeant Jones was busy and refused to talk to the Petitioner about the incident.

13. The evidence fails to establish that Sergeant Jones had any reason to believe at the time the Petitioner made the

remark that the Petitioner was joking. The statement was not made in a joking manner, and the Petitioner did not have the kind of relationship with Sergeant Jones that would have permitted such a response.

14. Towards the end of the shift on May 30, 2003, the female Marchman unit logbook was determined to be missing. An attempt to locate the missing book was initiated, and both the Petitioner and Deputy Jasmina Buric, the detention deputy who had been assigned to the female Marchman unit duty at the morning read off, were called on their radios to assist in the search.

15. Deputy Buric responded to the radio call. The Petitioner did not respond to the radio call. On her way to assist in the search, Deputy Buric saw the Petitioner and told him that they had been directed to assist in the search. The Petitioner replied to Deputy Buric, "Fuck that, I'm going home."

16. The Petitioner did not return to assist in the search for the female Marchman unit logbook.

17. The Petitioner asserts that he did not respond to the radio call because he did not hear it. He testified that his radio battery was discharged. The evidence establishes that there were additional batteries available to the Petitioner and that it is the Petitioner's responsibility to assure that his

equipment is operational. In any event, the Petitioner was aware of the radio call because Deputy Buric informed him of it.

18. When the female Marchman unit logbook was located, the male Marchman unit logbook was examined at which time the Petitioner's failure to make an entry in the logbook was discovered. Upon further investigation, the Respondent became aware that the Petitioner had not performed an inspection of the Marchman unit earlier in the day.

19. Based on the events of May 30, 2003, a complaint was made against the Petitioner by his supervisor, and an investigation resulted. Following the investigation, the Administrative Review Board determined that the Petitioner had violated the Respondent's rules and regulations and that the Petitioner's employment should be terminated.

CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. § 120.57(1), Fla. Stat. (2003).

21. The Respondent has the burden to establish by a preponderance of the evidence that the proposed discipline against the Petitioner is warranted by the facts of the case and the applicable rules and regulations of the Pinellas County Sheriff's office. Department of Transportation v. J. W. C.

Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). The Respondent has met the burden.

22. The Civil Service Act of the Pinellas County Sheriff's Office was established pursuant to Chapter 89-404, Laws of Florida, as amended by Chapter 90-395, Laws of Florida.

23. Chapter 89-404, Section 6, Laws of Florida, provides disciplinary authority to the Respondent as follows:

(4) Cause for suspension, dismissal or demotion shall include, but shall not be limited to: negligence, inefficiency, or inadequate job performance; inability to perform the assigned duties, incompetence, dishonesty, insubordination, violation of the provisions of law or the rules, regulations, and operating procedures of the Office of the Sheriff, conduct unbecoming to a public servant, misconduct, or proof and/or admission use of illegal drugs.

(5) The listing of causes for suspension, demotion, or dismissal in this section is not intended to be exclusive. The Sheriff, by department rule, may add to this list of causes for suspension, dismissal or demotion.

24. Chapter 89-404, Section 2, Laws of Florida, provides authority to the Respondent to adopt rules necessary to administer the Civil Service Act. The Respondent has adopted General Order 3-1, which sets forth the standard of conduct to be followed by employees of the Pinellas County Sheriff's Office. General Order 3-1 sets forth "levels" of violations

that reflect the severity of different infractions of the regulations.

25. Section 3-1.1 sets forth "Level Five Violations."

Section 3-1.1, Subsection 5.4, provides as follows:

5.4. Duties and Responsibilities - The primary responsibility of all Sheriff's Office personnel is to be aware of their assigned duties and responsibilities. Certified personnel are always subject to duty and are responsible for taking prompt and effective action within the scope of their duties and abilities whenever required.

26. The evidence establishes that the Petitioner's conduct constitutes a violation of Section 3-1.1, Subsection 5.4, in that the Petitioner failed to perform his duties related to the Marchman unit on May 30, 2003.

27. Section 3-1.1, Subsection 5.17 provides as follows:

5.17. Insubordination -
a. Refusal to obey a lawful order.
b. Use of profanity or insulting language towards a superior officer.
c. Failure or deliberate refusal to obey a lawful order relayed from a supervisor by a member of the same or lesser rank.

28. The evidence establishes that the Petitioner's conduct constitutes a violation of Section 3-1.1, Subsection 5.17, in that the Petitioner was insubordinate to Sergeant Jones on May 30, 2003.

29. Section 3-1.3 sets forth "Level Three Violations."

Section 3-1.3, Subsection 3.4, provides as follows:

3.4. Performance of Duty - All personnel shall take appropriate action to preserve the peace and perform their duties as required or directed by law, agency rules, policies and procedures, or other lawful orders of a supervisor.

* * *

d. All members will be efficient and effective in their assigned duties, performing them in a competent, proficient, and capable manner.

30. The evidence establishes that the Petitioner's conduct constitutes a violation of Section 3-1.3, Subsection 3.4.d., when on May 30, 2003, he was made aware of the request that he assist in the search for the female Marchman unit logbook and did not assist in the search.

31. The Respondent has adopted General Order 10-2, which establishes a process for calculation and assessment of disciplinary points against an employee who has violated the regulations of the agency. General Order 10-2 sets forth a matrix which, based on numbers of allegations and points assessed, identifies the type of discipline appropriate in this case. According to the matrix, the Petitioner's conduct results in a total of 75 disciplinary points and warrants discipline ranging from a ten-day suspension to termination of employment.

32. General Order 10-2.6 provides that points from previous discipline may be carried over and added to subsequent disciplinary calculations. The Petitioner had a total of ten

previous disciplinary "carry-over" points resulting in a cumulative total of 85 points; however, the matrix does set forth a penalty for 85 points, and the lower total of 75 points was utilized by the Administrative Review Board in imposing the penalty of termination in this case.

33. The Petitioner asserts that the penalty assessed against him is excessive based upon the discipline imposed against other members of the Sheriff's Office for various infractions. Disciplinary records related to other deputies were admitted into evidence in this case. Review of those records fails to establish that the violations of regulations for which other employees were disciplined occurred within the course of a single workday. In this case and on a single day, the Petitioner failed to perform assigned Marchman unit duties, was directly insubordinate to a superior officer, and refused to return to assist in locating a Marchman unit logbook. The evidence establishes that the penalty assessed in this case is within the permitted range of the disciplinary matrix set forth in the Respondent's rule.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Civil Service Board of Pinellas County Sheriff's Office enter a final order finding Richard Reed guilty

of violating the rules and regulations of the Pinellas County Sheriff's Office as set forth herein and terminating his employment as a deputy with the Pinellas County Sheriff's Office.

DONE AND ENTERED this 2nd day of January, 2004, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of January, 2004.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.