

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS COUNTY SHERIFF'S )  
OFFICE, )  
 )  
 Petitioner, )  
 )  
vs. ) Case Nos. 08-4823  
 ) 08-4824  
CHRISTOPHER HAMILTON, )  
 )  
 Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the final hearing of these cases on January 12, 2009, in Largo, Florida, for the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Sherwood S. Coleman, Esquire  
Pinellas County Sheriff's Office  
Post Office Drawer 2500  
Largo, Florida 33779-2500

For Respondent: Kenneth J. Afienko, Esquire  
Kenneth J. Afienko, P.A.  
560 First Avenue, North  
St. Petersburg, Florida 33701

STATEMENT OF THE ISSUE

The issue presented is whether Pinellas County Sheriff's Office (PCSO or Petitioner) properly terminated Christopher Hamilton (Respondent) from his employment as a deputy sheriff for engaging in conduct prohibited in Chapter 89-404, Laws of

Florida (the Civil Service Act), and Petitioner's General Order Section 3-1.3, Rule and Regulations 3.4(d) and 5.21, and General Order Section 3-1.4, Rule and Regulation 2.17.

#### PRELIMINARY STATEMENT

On September 12, 2008, Petitioner determined that Respondent engaged in prohibited conduct and terminated Respondent's employment as a deputy sheriff. Respondent timely requested an administrative hearing, and Petitioner referred the matter to DOAH to conduct the hearing.

At the hearing, Petitioner presented the testimony of two witnesses and submitted nine exhibits for admission into evidence. Respondent testified and submitted five exhibits.

The identity of the witnesses and exhibits and the rulings regarding each are reported in the one-volume Transcript of the hearing filed with DOAH on January 26, 2009. Petitioner and Respondent timely filed their respective Proposed Recommended Orders on February 4, 2009.

#### FINDINGS OF FACT

1. Petitioner is responsible for providing law enforcement and corrections in Pinellas County, Florida. At all times pertinent to these cases, Petitioner employed Respondent as a deputy sheriff.

2. Respondent does not dispute that his conduct violated Petitioner's rules and regulations. Respondent alleges that the

penalty of termination is excessive, inconsistent with the progressive discipline policy, and, therefore, disparate.

3. General Order 3-1.3, Rule and Regulation 3.4(d), relates to "Performance of Duty." The cited provisions require that "All members will be efficient and effective in their assigned duties, performing them in a competent, proficient and capable manner." For convenience, the cited provisions are referred to as Rule 3.4(d).

4. The evidence shows that from March 2004 through August 8, 2008, Respondent demonstrated a pattern and practice of violating Rule 3.4(d). The individual violations are undisputed, and it is undisputed that the violations arose from Respondent's inability to complete required reports, to do so in a timely manner, and to be punctual in attendance. It is also undisputed that the violations arose from events in Respondent's personal life, which included a divorce and custody battle that precipitated a financial crisis for Respondent and the death of Respondent's father. Finally, Respondent acknowledged during cross-examination that Petitioner attempted to "work with" Respondent during his personal crises.

5. Petitioner first disciplined Respondent for violating Rule 3.4(d) in March 2004. In January 2005, Petitioner issued a formal reprimand for a second violation. Petitioner issued a second formal reprimand for the third violation in

February 2005. In May 2007, Petitioner issued a third formal reprimand for a fourth violation of Rule 3.4(d).

6. On December 6, 2007, Petitioner issued a written reprimand to Respondent for a fifth violation of Rule 3.4(d). On April 10, 2008, Petitioner found Respondent to be a Chronic Offender, as defined hereinafter, and suspended Respondent for seven days for violation of Rule 3.4(d). In June of 2008, Respondent again violated Rule 3.4(d) by failing to complete and submit reports within the required timeframe.

7. Respondent violated Rule 3.4(d) on May 27, 2008, and again on June 24, 2008. Petitioner notified Respondent that he was required to attend a Vehicle Crash Review Board (VCRB) on May 27, 2008. However, Respondent failed to attend the VCRB. Petitioner re-scheduled the VCRB for June 24, 2008, and notified Respondent that he was required to attend that VCRB. Respondent failed to attend the VCRB on June 24, 2008.

8. General Order 3-1.4, Rule and Regulation 2.17, relates to "Timeliness." The cited provisions state that "Members shall not be late to work without valid reason or authorization," The cited provisions are referred to for convenience as Rule 2.17.

9. Respondent violated Rule 2.17 by being late to work on February 28 and March 8, 2008. Petitioner disciplined Respondent for both offenses in a single written reprimand.

Respondent violated Rule 2.17 by being late to work again sometime between June 18 and July 2, 2008.

10. On or about August 8, 2008, Respondent reported to work approximately 30 minutes late in violation of Rule 2.17, and this proceeding began. On September 11, 2008, Petitioner conducted an Administrative Review Board (ARB) meeting at which Respondent testified. The ARB concluded that Respondent had violated Rules 3.4(d) and 2.17 and found Respondent to be a Chronic Offender of both rules.

11. General Order 3-1.1, Rule and Regulation 5.21 (Rule 5.21), defines "Chronic Offender" as a member of the PCSO who violates the same rule or regulation three or more times within an 18-month period. Respondent is a Chronic Offender of Rules 3.4(d) and 2.17. Respondent violated each rule three or more times within an 18-month period. The progressive discipline policy treats Chronic Offender violations as a more severe "Level Five" violation.

12. Petitioner has issued written guidelines that are followed during the disciplinary process and are contained within General Order 10-2. The goal of General Order 10-2 is to standardize the disciplinary process and make the process fair and consistent in application. Consistency is important to ensure fairness for the member being disciplined and for maintaining accountability throughout the agency.

13. General Order 10-2 sets forth a procedure for assigning points for sustained violations based on their severity level. The points range from Level Five to Level One. Level Five violations result in the most serious discipline.

14. The total of points to be assigned in these cases is determined by considering Respondent's prior disciplinary record. Additional points are assigned for disciplinary violations within the recent past. Total disciplinary points are comprised of points for the current offense, plus carryover points for recent discipline against Respondent.

15. The range of discipline that is appropriate in these cases is based upon the total number of disciplinary points accumulated. The highest or most severe discipline applies because Respondent accumulated more than 100 discipline points.

16. Respondent's point total in Case No. 08-4823 is 108.3 points. Authorized discipline ranges from a 15-day suspension to termination of employment. Respondent's point total in Case No. 08-4824 is 116 points. Authorized discipline ranges from a 15-day suspension to termination of employment.

17. Termination of employment is reasonable in this proceeding. Termination of employment does not impose disparate discipline on Respondent.

18. From 2005 through the date of the final hearing, nine members of the PCSO have been disciplined within the same

discipline range as Respondent. Petitioner terminated the employment of seven of those nine members of the PCSO.

19. Four of Respondent's exhibits are excerpts of the case files of other PCSO members charged with violating Rule 5.21 as was Respondent. In each case, the alleged violation of the Level Five Chronic Offender rule was based upon repeated violations of Level Three rules.

20. Respondent's Exhibits 2 and 3 each show a member who violated the Level 3 rule, pertaining to abuse of sick leave a sufficient number of times to be considered a Chronic Offender in violation of Rule 5.21. In both cases, it was the member's first Chronic Offender violation. Authorized discipline ranged from a suspension to termination of employment. In each case, the member received the minimum length of suspension, which is the minimum discipline in General Order 10-2. This is comparable to and consistent with the seven-day suspension Petitioner imposed against Respondent for his first violation of the Chronic Offender rule.

21. The remaining proposed comparator introduced as Respondent's Exhibit 1 relates to an agency member disciplined for being a Chronic Offender based on repeated violations of Rule 3.4(d). This was the member's first violation as a Chronic Offender in Rule 5.21. Like Respondent's seven-day suspension for his first offense as a Chronic Offender, the member in

Respondent's Exhibit 1 received a suspension corresponding to the bottom of the disciplinary range under the disciplinary policy.

22. Prior to Respondent, no other agency member had been found to have violated the Chronic Offender rule a second time. However, Petitioner's Exhibit 5 shows that subsequent to Respondent's discipline, the member referenced by Respondent's Exhibit 2 was disciplined for violating Rule 5.21 a second time. In similar fashion to Respondent, this member was disciplined as a Chronic Offender for the second time with respect to accumulated violations of the same Level Three rule as the first time he was found to be a Chronic Offender. Like Respondent, this member received the minimum suspension for the first violation of Rule 5.21 and was terminated for the second.

#### CONCLUSIONS OF LAW

23. DOAH has jurisdiction of the subject matter and the parties to this proceeding. The parties received adequate notice of the administrative hearing. §§ 120.57(1) and 120.68(8), Fla. Stat. (2008).

24. Petitioner has the burden of proof in this proceeding. Petitioner must show by a preponderance of the evidence that termination of employment is a reasonable penalty for the undisputed violations. Grice v. City of Kissimmee, 697 So. 2d 186 (Fla. 5th DCA 1997); MacNeill v. Pinellas County School



Board, 678 So. 2d 476 (Fla. 2d DCA 1996); Netz v. Jacksonville Sheriff's Office, 668 So. 2d 235 (Fla. 1st DCA 1996).

Petitioner satisfied its burden of proof.

RECOMMENDATION

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

RECOMMENDED that Petitioner issue a final order terminating the employment of Respondent.

DONE AND ENTERED this 23rd day of February, 2009, in Tallahassee, Leon County, Florida.



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DANIEL MANRY  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 23rd day of February, 2009.

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.