

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JIMMIE DAVIS,)
)
 Petitioner,)
)
 vs.) Case No. 11-0490
)
 PINELLAS COUNTY SHERIFF'S)
 OFFICE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on April 4, 2011, in Largo, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Jimmie Davis, pro se
2086 Pine Ridge Drive
Clearwater, Florida 33763

For Respondent: Sherwood S. Coleman, Esquire
Pinellas County Sheriff's Office
10750 Ulmerton Road
Largo, Florida 33778

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner should be terminated from employment with Respondent.

PRELIMINARY STATEMENT

By memorandum dated January 14, 2011, Respondent, Pinellas County Sheriff's Office (Sheriff's Office), notified Petitioner, Jimmie Davis (Mr. Davis), that his employment with the Sheriff's Office would be terminated based on violations of the Sheriff's Office General Order 3-1.1; Rule and Regulation 5.4, relating to duties and responsibilities; and Rule and Regulation 5.14c, relating to knowingly making a false entry or causing a false entry to be made in any official record of the Sheriff's Office.

Mr. Davis appealed to the Sheriff's Office Civil Service Board pursuant to the Sheriff's Office General Order 10-3. In his appeal, he stated:

I was terminated for violation of General Order 3-1.1, Rule and Regulation 5.4 relating to Duties and Responsibilities and Rule and Regulation 5.14c, Knowingly making a false entry in any official record. While I did admit to these violations, I do not believe they warranted a termination of employment.

The Sheriff's Office Civil Service Board forwarded the appeal to the Division of Administrative Hearings for assignment of an Administrative Law Judge to conduct a final hearing.

At the final hearing, the Sheriff's Office presented Sergeant Thomas E. Klein and Captain Gregory S. Handsel as its witnesses. Respondent's Exhibits 1 through 7 were admitted in

evidence. Mr. Davis testified in his own behalf and did not present any exhibits for admission in evidence.

The one-volume Transcript was filed on April 28, 2011. The parties agreed to file their proposed recommended orders within ten days of the filing of the Transcript. The parties timely filed their proposed recommended orders, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material to this case, Mr. Davis was employed by the Sheriff's Office as a deputy sheriff. He had been employed by the Sheriff's Office for 11 years.

2. On July 26, 2010, Mr. Davis was assigned to work a post in the healthcare facility of the Pinellas County jail, beginning at 7:00 a.m. This facility houses inmates who have medical problems. The inmates are placed in pods, and the pods are monitored by using direct supervision, meaning a deputy is stationed inside the pod with the inmates and is able to directly monitor and interact with the inmates. Additionally, the deputy supervising the inmates is able to summon medical assistance within the building for the inmates.

3. On July 26, 2010, Inmate Kyle Howard (Mr. Howard) was housed in the pod that Mr. Davis was supervising. On that same day, Mr. Howard came to Mr. Davis and told Mr. Davis that he was ill. Sometime during the day, two inmates came to Mr. Davis and

told him that Mr. Howard was sick and throwing up a lot. Standing about 30 feet away from Mr. Howard, Mr. Davis witnessed Mr. Howard "over the toilet in a vomiting mode."

4. Around 9:00 a.m. on July 26, 2010, the nurse, who gave medications to the inmates, gave Mr. Howard a suppository for the nausea.

5. Sometime between 3:08 p.m. and 3:47 p.m., an inmate came to Mr. Davis and told him that Mr. Howard was not responsive. Mr. Davis went to Mr. Howard's cell, discovered that Mr. Howard was not responsive, and called for emergency medical assistance. Mr. Howard was taken to the hospital, where he was pronounced dead.

6. One of the responsibilities of Mr. Davis was to interact with inmates to determine what problems may exist and to summon medical assistance if necessary. On July 26, 2010, Mr. Davis did not attempt to speak to Mr. Howard to determine what was wrong with him and did not call for medical assistance until Mr. Howard was found unresponsive.

7. Mr. Davis was required to check on the inmates in the pod every 30 minutes to monitor the wellness and security of the inmates in the pod. Mr. Davis is required to check each cell and inmate during these checks. After each 30-minute check, Mr. Davis is required to record on a Daily Log Report that he

performed the check. The Daily Log Reports are part of the official records of the Sheriff's Office.

8. Mr. Davis admitted that he did not make a complete check every 30 minutes as he was required to do. He walked part of the way down the hall and observed some but not all the inmates. He entered in the Daily Log Report that he had made the checks as required.

9. During some of Mr. Davis's shift on July 26, 2010, Mr. Davis was playing Hearts on the computer and was checking Yahoo and MSN. Prior to the incident at issue, Mr. Davis had been disciplined two times for inappropriate use of computers while on duty.

10. Mr. Davis has admitted that he committed the violations that are charged, but contends that he should be suspended rather than terminated from his employment.

11. The Sheriff Office's General Order 10-2 sets forth the guidelines to be used in the application of discipline. The range of penalties is based on the severity of the violation, from Level One, which is the least severe, to Level Five, which is the most severe.

12. Failing to monitor Mr. Howard and to call for medical assistance for Mr. Howard are severe violations and are Level Five violations. Failing to accurately record his 30-minute checks, because he was not checking each of the inmates during

his rounds, is also a severe violation and is a Level Five violation.

13. General Order 10-2 provides that two Level Five violations are assigned 60 points. The disciplinary range for 60 points is a seven-day suspension to termination.

CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2010); ch. 2008-285 § 3, at 6, Laws of Fla.

15. The Sheriff's Office has the burden to establish the allegations in the Administrative Complaint by a preponderance of the evidence as set forth in section 10-2.4 T, General Order 10-2.

16. By his own admission, Mr. Davis committed the violations alleged. The issue becomes what penalty should be imposed.

17. Mr. Davis had responsibility of the care and custody of inmates under his supervision. He easily could have called for medical assistance for Mr. Howard, but failed to do so. He did not try to ascertain from Mr. Howard what was the cause of his illness. He did not make complete 30-minute checks as he was supposed to do. Mr. Howard died while on Mr. Davis's watch,

and Mr. Davis made no effort to assist Mr. Howard. Termination of his employment is justified by the facts of this case.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered terminating Mr. Davis's employment with the Sheriff's Office.

DONE AND ENTERED this 16th day of May, 2011, in Tallahassee, Leon County, Florida.



SUSAN B. HARRELL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of May, 2011.

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.