

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS COUNTY SHERIFF'S)
OFFICE,)
)
Petitioner,)
)
vs.) Case No. 12-1186
)
DOLORES TAYLOR,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held by video teleconference between St. Petersburg and Tallahassee, Florida, on July 18, 2012, before the Division of Administrative Hearings by its designated Administrative Law Judge Linzie F. Bogan.

APPEARANCES

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

For Respondent: Dolores Taylor

STATEMENT OF THE ISSUE

Whether cause exists to suspend Respondent for 60 days without pay.

PRELIMINARY STATEMENT

On or about March 13, 2012, Petitioner, Pinellas County Sheriff's Office (Petitioner or PCSO), issued written notification to Respondent, Dolores Taylor (Respondent), informing her that the PCSO intended to suspend her for 60 days without pay for allegedly falsifying official records and for failing to conduct required 30-minute checks of inmates under her supervision. On or about March 14, 2012, Respondent filed her "Notice of Appeal" and "Request for Civil Service Board Review." In accordance with the Pinellas County Sheriff's Civil Service Board Rules of Procedure, the Civil Service Board, on or about March 29, 2012, forwarded this matter to the Division of Administrative Hearings for review and entry of a Recommended Order.

The final hearing was noticed for video teleconference on June 8, 2012. Following the granting of a joint motion for continuance, the instant matter was noticed for video teleconference on July 18, 2012.

At the hearing on July 18, 2012, Lieutenant Darrell Spiva testified on behalf of Petitioner. Respondent testified on her own behalf. Petitioner's Composite Exhibit 1 was admitted into evidence. Respondent did not offer any exhibits into evidence.

A Transcript of the proceedings was filed on August 20, 2012. Only Petitioner submitted a Proposed Recommended Order.

The Proposed Recommended Order was considered in the preparation of this Recommended Order.

FINDINGS OF FACT

The parties stipulated to the facts set forth in paragraphs 1 through 47 below^{1/}:

1. Bob Gualtieri is the duly-appointed sheriff of Pinellas County, Florida.

2. Sheriff Gualtieri is in command of the operations of the PCSO and is responsible for providing law enforcement and corrections services within Pinellas County, Florida.

3. Sheriff Gualtieri is authorized to impose discipline in accordance with the Civil Service Act, upon PCSO members/employees who are found to have violated rules or regulations of the PCSO.

4. At all times pertinent to this case, Respondent was employed by the PCSO as a Deputy Sheriff. As a Deputy Sheriff, Respondent was charged with the responsibility of complying with all applicable state laws and PCSO rules, regulations, and standard operating procedures.

5. Respondent is familiar with the General Orders and standard operating procedures with respect to the PCSO generally, and in detention and corrections specifically.

6. Respondent has been employed by the PCSO for approximately 24 years.

7. Respondent has been employed as a deputy with the Detention and Corrections Bureau approximately nine years.

8. [Lt.] Darrell Spiva is assigned to the Administrative Investigations Division of the PCSO.

9. [Lt.] Spiva investigated concerns raised by Respondent's supervisors arising from a Christmas party that Respondent had for inmates who were under her supervision at the jail.

10. In the Correction and Detention Bureau of the PCSO, Respondent's primary function is to ensure the care, custody and control of inmates.

11. Respondent's specific responsibility is to supervise the inmates in the area of the jail where Respondent is assigned during a particular shift.

12. As part of Respondent's job duties in her assignment as a deputy, Respondent is required to conduct well-being checks every 30 minutes, at a minimum, on each inmate in Respondent's assigned area.

13. Respondent is required to document the completion of the well-being checks.

14. Completion of the well-being checks is required to be documented in the official records of the PCSO using the jail's inmate management system.

15. The inmate management software is commonly referred to as "JIMS."

16. Respondent is familiar with a memorandum issued on April 11, 2011 (Memorandum), by Sheriff's Gualtieri's predecessor, Sheriff Coats, directed to all detention and corrections personnel regarding proper care, custody, and control of inmates.

17. The subject line of the Memorandum reads, "automatic 30 day suspension without pay."

18. The Memorandum was understood by Respondent to emphasize that in order to carry out the PCSO's legal and ethical responsibilities, it is imperative that deputies check on inmates.

19. Deputies are to check on inmates in accordance with accreditation standards and requirements of the General Orders of the Sheriff.

20. The Memorandum explained that there had been a pattern of violations by deputies not completing the required checks.

21. The Memorandum indicated that deputies had not been completing the required well-being checks and then falsifying records to reflect they had completed the checks.

22. According to the Memorandum, a new minimum penalty of 30-days unpaid suspension would be imposed for future violations.

23. According to the Memorandum, the new minimum penalty was to be effective on April 11, 2011.

24. On December 2, 2011, Respondent was assigned to supervise an area within the jail's central division designated "Pod 4C4."

25. Pod 4C4 contained 16 cells on two levels around a common area on the lower level.

26. During Respondent's shift, Pod 4C4 contained somewhere between 48 to 60 female inmates.

27. The pod is designed to be managed by the direct supervision of a single deputy.

28. The deputy is stationed at a work area within the pod.

29. The work area is located in the front of the pod on the lower level.

30. A person standing on the lower level of the pod cannot see into all the cells on the upper and lower level without moving up to the upper level and walking throughout the pod.

31. There are certain recessed areas--vestibules, bathrooms, etc.--that are not entirely visible unless a deputy walks around the pod. It would not be a complete well-being check if Respondent did not go to the upper level of the pod.

32. It takes somewhere under five minutes for a deputy, if not interrupted, to make the walk that constitutes a well-being check.

33. On Respondent's overnight shift, which would have been from 6:00 p.m. on December 22, 2011, to 6:00 a.m. on December 23,

2011, Respondent made computer entries to indicate that she had performed well-being checks at certain times.

34. JIMS records indicate that Respondent made well-being checks on the days in question at 1837 hours, 2054 hours, 2123, 2151, 2225, 2246, 0024, 0049, 0118, 0147 and 0218 hours.

35. Pursuant to the Sheriff's General Orders the Administrative Review Board (ARB) met, reviewed the disciplinary file, questioned the Respondent, gave the Respondent an opportunity to make a statement and subsequently determined that based on the preponderance of the evidence, Respondent had violated the Sheriff's rules.

36. General Order 10-2 covers disciplines and ranks certain offenses.

37. General Order 10-2 ranks offenses from Level 1 to Level 5.

38. Level 1 offenses are the least severe, and Level 5 offenses are the most severe.

39. The General Orders set forth a procedure for assigning points for each sustained violation.

40. According to the number of points, there is a corresponding table that indicates the range of punishment.

41. The ranking of certain offenses, the procedure for assigning points for each sustained violation and the range of punishment are all set by the General Orders.

42. The point total for the two sustained violations found by the ARB in Respondent's case is 60.

43. The discipline range for a violation resulting in 60 disciplinary points is from a minimum of a seven-day suspension up to, and including, termination.

44. Sheriff Gualtieri imposed a suspension of 30 days, or 240 hours, without pay against Respondent.

45. The imposed suspension of 30 days, or 240 hours, without pay is the penalty provided for as a minimum in the Memorandum.

46. Respondent did not make any correcting entries to document that well-being checks she intended to complete were never made.

47. If Respondent made entries in the Sheriff's official records that well-being checks were performed and the well-being checks were not made, these recorded entries are false.

48. Although the JIMS system indicated that Respondent made well-being checks at the times set forth in paragraph 34 above, video surveillance confirmed that Respondent did not actually make several of the well-being checks as indicated. Respondent admits that she logged each of the 11 entries into JIMS and that she failed to conduct well-being checks for the times entered at 2123, 2225, 0049, 0118, 0218 and 0244 hours.

49. According to Respondent, the established practice in Pod 4C4 is to note in JIMS that a particular well-being check was done prior to actually conducting the check. Following this practice, Respondent should have conducted the well-being checks within a reasonable time after entering the times into JIMS; but she did not. Because Respondent failed to conduct the well-being checks as required, this failure resulted in the JIMS entries being false.

50. Respondent asserts that she was distracted during the times in question because she was thinking about Christmas and her mom's 95th birthday. Respondent assertion of being distracted is not credible. If Respondent was able to repress her distracting thoughts long enough to make six entries in JIMS attesting to well-being checks that she intended to do, then she should have also been able to curb those same distracting thoughts long enough to actually conduct the required well-being checks. Respondent admits that there was no emergency or disturbance among the inmates that physically impeded here ability to complete the required checks, and in the absence of such circumstances, Respondent should have completed each of the checks. Respondent intentionally failed to conduct the well-being checks at issue, and she knowingly caused false entries to be made in the JIMS tracking system.

CONCLUSIONS OF LAW

51. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. § 120.65(7), Fla. Stat. (2011).

52. "The burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal." Balino v. Dep't of HRS, 348 So. 2d 349, 350 (Fla. 1st DCA 1977). Petitioner is asserting that Respondent violated PCSO General Order 3-3.1, Rules and Regulations 5.4 and 5.14(c) and, therefore, Petitioner, as the party asserting the affirmative, carries the burden of proving by a preponderance of the evidence that Respondent committed the alleged violations.

53. A preponderance of the evidence is defined as "the greater weight of the evidence" or evidence that "more likely than not" tends to prove a certain proposition. Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000).

54. Chapter 89-404, Laws of Florida, as amended by Chapter 90-395, section 5, Laws of Florida, authorizes the PCSO to take certain disciplinary action against classified employees. Chapter 89-404 also authorizes the PCSO to adopt rules and regulations as are necessary to carry out the sheriff's functions. Pursuant to this authority, the PCSO has adopted policies, rules, and regulations which establish a standard of

conduct which must be followed by employees of the sheriff's office.

55. General Order 3-3.1, of which Rule and Regulation 5.4 is a part, generally provides that employees, when carrying out their duties and responsibilities, are to adhere to the rules and regulations governing their employment.

56. General Order 3-3.1 also includes Rule and Regulation 5.14(c), which addresses conduct unbecoming members of the PCSO. This rule prohibits employees from knowingly making a false entry or causing a false entry to be made in any official record of the agency.

57. Petitioner has met its burden of proving that Respondent intentionally failed to conduct all of her assigned well-being checks on the day in question and that she knowingly caused false entries to be made in the JIMS database.

58. On April 11, 2011, Respondent and all other detention and corrections personnel of the PCSO were advised that "effective immediately anyone found to have violated policy by intentionally not performing required inmate checks and falsifying a document to reflect [that] the checks were actually completed will receive an **automatic 30 days suspension without pay**, and may be terminated. (Emphasis in original).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, Pinellas County Sheriff's Office, enter a final order finding that Respondent, Dolores Taylor, violated General Order 3-1.1, Rules and Regulations 5.4 and 5.14(c), and suspending Respondent for a period of 30 days (240 hours) without pay.

DONE AND ENTERED this 10th day of September, 2012, in Tallahassee, Leon County, Florida.



LINZIE F. BOGAN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of September, 2012.

ENDNOTE

^{1/} The stipulated facts offered by the parties are set-forth in numbered paragraphs 1 through 52 of the Joint Pre-Hearing Stipulation (Stipulation). Paragraphs 5, 6, 7, 38, and 48 of the Stipulation are duplicative of other paragraphs contained therein and have, therefore, been omitted from this Recommended Order. The remaining stipulated facts appear verbatim in this Recommended Order.

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.