

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS COUNTY SHERIFF'S
OFFICE,

Petitioner,

vs.

Case No. 13-3024

RICHARD STOTTS,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held on October 1, 2013, in St. Petersburg, Florida, before Administrative Law Judge Lynne A. Quimby-Pennock of the Division of Administrative Hearings (Division).

APPEARANCES

For Petitioner: Paul Grant Rozelle, Esquire
Pinellas County Sheriff's Office
10750 Ulmerton Road
Largo, Florida 33778

For Respondent: Craig L. Berman, Esquire
Berman Law Firm, P.A.
Suite 706
111 2nd Avenue Northeast
St. Petersburg, Florida 33701

STATEMENT OF THE ISSUE

Whether the Pinellas County Sheriff's Office (PCSO or Petitioner) properly terminated Respondent, Richard Stotts, from his employment as a deputy sheriff for engaging in conduct that

violated Petitioner's General Order 3-1.1, Rule and Regulation 5.15, regarding the Custody of Arrestees/Prisoners.

PRELIMINARY STATEMENT

On July 29, 2013, Petitioner terminated Respondent's employment as a deputy sheriff. On August 1, Respondent timely requested "relief/appeal as set in [sic] forth in General Order 10-3." Petitioner forwarded the matter to the Division to conduct the hearing. The final hearing was noticed for Tuesday, October 1, 2013.^{1/} On September 25, Respondent filed a Motion to Continue, which was denied.

On Friday, September 27, Respondent filed an Amended Exhibit and Witness List, which prompted Petitioner to file a Motion to Strike and Exclude Respondent's Amended Witness List and Amended Proposed Exhibit List, and Emergency Motion for a Protective Order Regarding Sheriff Gualtieri (motion). Thereafter Respondent filed a Renewed Motion for a Continuance and Opposition to Petitioner's Motion to Strike and Exclude and for a Protective Order Regarding Sheriff Gualtieri. Following a telephonic hearing, the renewed motion for continuance was denied, the motion regarding the protective order was granted, and the ruling on the Amended Exhibit List was reserved for the hearing.

At the hearing on October 1, 2013, Joint Exhibits 1 through 13 were admitted into evidence. Petitioner presented the

testimony of Respondent, Captain David Danzig and Sergeant Deanna Carey.^{2/} Respondent testified on his own behalf. Captain Danzig was called in rebuttal. Respondent offered Exhibits 1 through 3,^{3/} which were admitted.^{4/}

The Transcript of the proceedings was filed on October 15, 2013. Petitioner timely filed its Proposed Recommended Order (PRO) on October 25. Respondent's PRO was filed on October 28.^{5/} On October 29, Petitioner filed a Motion to Strike Respondent's Proposed Recommended Order (Strike Motion), citing Respondent's failure to comply with Florida Administrative Code Rule 28-106.104(1) and (3). The Strike Motion is denied. Each PRO has been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

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

2. Sheriff Gualtieri is in command of the operations of PCSO.

3. Sheriff Gualtieri's responsibilities include providing law enforcement services within Pinellas County, Florida.

4. Sheriff Gualtieri is authorized to impose discipline, in accordance with the Civil Service Act, on PCSO members and employees who are found to have violated PCSO rules or regulations.

5. At all times pertinent to this case, Respondent was employed by PCSO as a deputy sheriff.

6. At the time of his termination, Respondent had been employed by PCSO for approximately 12 years.

7. As a deputy sheriff, Respondent was charged with the responsibility of complying with all PCSO rules, regulations, general orders, and standard operating procedures.

8. PCSO General Order 13-3 requires that PCSO members shall use only that degree of force necessary to perform official duties. The member shall not strike or use physical force against a person except when necessary in self-defense, in defense of another, to overcome physical resistance to arrest, to take an individual into protective custody, or to prevent escape of an arrested person.

9. At the time of the events in issue in this case, Captain David Danzig (then a Lieutenant) was assigned to the PCSO Administrative Investigations Division.

10. Sergeant Deanna Carey is assigned to the PCSO Administrative Investigations Division.

11. Sergeant Christina Cuttitta is assigned to the PCSO Administrative Investigations Division.

12. Sergeants Carey and Cuttitta investigated the complaint of misconduct that was filed against Respondent on or about June 11, 2013.

13. The complaint of misconduct alleged that on May 8, 2013, Respondent violated General Order 3-1.1, Rule and Regulation 5.15, pertaining to the custody of arrestees/prisoners.

14. At the Administrative Review Board (ARB) hearing, Respondent admitted that his use of force on the inmate was not justified because it did not meet the criteria for use of force.

15. PCSO General Order 10-2 covers discipline and ranks certain offenses. This General Order ranks offenses from Level 1 to Level 5. A Level 5 offense is the most severe. A Level 1 offense is the least severe. Further, this General Order sets forth a procedure for assigning points for each sustained violation. According to the number of points, there is a corresponding table that indicates the range of punishment. The point total for the violation admitted before the ARB in Respondent's case was 50.

16. Respondent had five carryover points from prior discipline.

17. Under PCSO General Order 10-2, 55 points reverts to 50 points.

18. Under PCSO General Order 10-2, the range of discipline for a 50-point violation is a minimum five-day suspension to termination.

19. Sheriff Gualtieri terminated Respondent from his employment with PCSO effective 1200 hours on July 29, 2013.

20. Exhibit 13 is a series of six video clips taken from various angles in the intake and booking section of the Pinellas County Jail. The six video clips document Respondent's actions. Respondent was not involved in bringing the inmate into the intake/booking area. The inmate, who was yelling obscenities and racial slurs, was standing on the mat to have his picture taken when Respondent left his station, approached the inmate, and proceeded to strike the inmate and take him to the floor. Respondent admitted that he used force on the inmate. Respondent admitted that the use of force on this inmate was not justified.

21. In the past three years, two (former) deputy sheriff were terminated for Level 5 offenses. While the exact offenses involved other Level 5 offenses, the consistency in discipline is constant: termination. There was no justification for Respondent's action.

CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. § 120.65(7), Fla. Stat. (2013).

23. Petitioner is asserting that Respondent violated PCSO General Order 3-1.1, Rules and Regulations 5.15. Petitioner, as the party asserting the affirmative, has the burden of proving by

a preponderance of the evidence that Respondent committed the alleged violation. "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 348, 350 (Fla. 1st DCA 1977).

24. 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, 289 n.1 (Fla. 2000).

25. Chapter 89-404, Laws of Florida, as amended by Chapter 90-395, Laws of Florida, authorizes the sheriff 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.

26. General Order 3-1 provides that its purpose "is to establish a standard of conduct, which must be followed by members of the agency" (the PCSO). This General Order also provides the PCSO disciplinary system. The disciplinary system has five levels with Level 5 applying to the most serious infractions.

27. General Order 3-1.1 includes Rule and Regulation 5.15, which addresses the "Custody of Arrestees/Prisoners." This rule provides:

Arrestees/prisoners shall be kept secured and treated humanely and shall not be subjected to physical abuse. The use of physical force shall be restricted to circumstances specified by law when necessary to accomplish a police task.

28. Petitioner has met its burden of proving that Respondent subjected an inmate to physical abuse that was not warranted, and termination of employment is a reasonable discipline.

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, Richard Stotts, violated General Order 3-1.1, Rules and Regulations 5.15, and terminating his employment.

DONE AND ENTERED this 12th day of November, 2013, in
Tallahassee, Leon County, Florida.



LYNNE A. QUIMBY-PENNOCK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of November, 2013.

ENDNOTES

^{1/} In a pleading filed on September 25, Respondent's counsel avers that he filed a Notice of Appearance on August 23, yet he failed to receive a copy of the August 26 Notice of Hearing. Respondent's counsel's Notice of Appearance was filed with the Division on September 24. On August 26, 2013, Respondent was sent the Notice of Hearing to his address of record.

^{2/} Respondent also listed these witnesses for his case-in-chief. To provide an orderly hearing flow and allow Respondent the opportunity to elicit the direct testimony of each witness, the undersigned allowed Respondent's cross-examination to go beyond Petitioner's direct.

^{3/} These three exhibits were still photographs taken from the video that was admitted as Joint Exhibit 13.

^{4/} Respondent did not offer the three additional exhibits that were the subject of the September 27th motion.

^{5/} Respondent's certificate of service reflects that counsel certified "that on October 25, 2013, I emailed/electronically filed the foregoing with the eALJ system which will send a notice of electronic filing to Paul G. Rozelle, Esquire, 10750 Ulmerton

Rd., Largo, FL 33778 [sic]". The eALJ filing contains a highlighted notice that no notice is sent to the opposing party. Hence, a Notice of Ex-parte Communication was issued on October 29, 2013.

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.