

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)	
)	
vs.)	
)	Docket No. 1832
Deputy Sheriff)	
Kendra Noble-Cobb)	
Employee # [REDACTED])	
Star # 11309)	

DECISION

This matter coming to be heard pursuant to notice before Brian J. Riordan, former Board Member, on February 24, 2016, and before Gray I. Mateo-Harris, Board Member, on June 22, 2016, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Kendra Noble-Cobb, hereinafter Respondent, was appointed a Deputy Sheriff on September 28, 1998. Respondent's position as a Deputy Sheriff involved duties and responsibilities to the public; each member of the Cook County Sheriff's Merit Board, hereinafter Board, has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; the Board has jurisdiction of the subject matter of the parties in accordance with 55 ILCS 5/3-7001, *et seq*; and the Respondent was served with a copy of the Complaint and notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint.

As a threshold matter, a proceeding before the Merit Board is initiated at the time the Sheriff files a written charge with the Merit Board. 55 ILCS 5/3-7012. A document is considered filed, in this case with the Merit Board, "when it is deposited with and passes into the exclusive control and custody of the [Merit Board administrative staff], who understandingly receives the same in order that it may become a part of the permanent records of his office." *See Dooley v. James A. Dooley Associates Employees Retirement Plan*, 100 Ill.App.3d 389, 395 (1981)(quoting *Gietl v. Commissioners of Drainage District No. One*, 384 Ill. 499, 501-502 (1943) and citing *Hamilton v. Beardslee*, 51 Ill. 478 (1869)); accord *People ex rel. Pignatelli v. Ward*, 404 Ill. 240, 245 (1949); *in re Annex Certain Terr. To the Village of Lemont*, 2017 IL App (1st) 170941, ¶ 18; *Illinois State Toll Highway Authority v. Marathon Oil Co.*, Ill. App. 3d 836 (1990) ("A 'filing' implies delivery of a document to the appropriate party with the intent of having such document kept on file by that party in the appropriate place." (quoting *Sherman v. Board of Fire & Police Commissioners*, 111 Ill. App. 3d 1001, 1007 (1982))); *Hawkyard v. Suttle*, 188 Ill. App. 168, 171 (1914 ("A paper is considered filed when it is delivered to the clerk

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for that purpose.”).

The original Complaint in this matter was filed with the Merit Board’s administrative staff on August 28, 2015. Regardless of whether or not Merit Board Members were properly appointed during a given term, the Merit Board, as a quasi-judicial body and statutorily created legal entity, maintained at all times a clerical staff not unlike the Clerk of the Circuit Court (“Administrative Staff”). These Administrative Staff members receive and date stamp complaints, open a case file, assign a case number, and perform all of the functions typically handled by the circuit clerk’s office. Just as a timely filed complaint would be accepted by the circuit clerk even if there were no properly appointed judges sitting on that particular day, so too was the instant Complaint with the Administrative Staff of the Merit Board. Accordingly, the Complaint filed on August 28, 2015 commenced the instant action, was properly filed, and will be accepted as the controlling document for calculating time in this case.

Findings of Fact

The Sheriff filed a complaint on August 27, 2015. The Sheriff is requesting Respondent’s discharge from employment.

Respondent was appointed a Deputy Sheriff on September 28, 1998 (Tr. 174), and assigned to the George N. Leighton Criminal Court Building on April 28, 2006 (Tr. 173).

[REDACTED] is a long-tenured employee of the Sheriff’s Office and held the position of Deputy Director of Bureau of Human Resources. (Tr. 22). [REDACTED] testified that the Bureau maintains time and attendance by “hard cards” as well as via emails or interoffice mail received indicating what an employee’s daily status is. (Tr. 24-25). According to Respondent’s time cards, as interpreted by [REDACTED], Respondent’s attendance records reflect 49 occurrences ranging from hours of tardiness to days of absenteeism between August 2012 and June 2015. (Tr. 28-38, 244).

[REDACTED] was a long-tenured employee of the Cook County Sheriff’s Office, and held the title of Director of Government Relations. (Tr. 69-71). In his prior role, [REDACTED] would meet with deputy sheriffs about unauthorized absences. The first meeting was essentially informative. [REDACTED]’s normal process was to meet with the deputy regarding the basis for the meeting, solicit feedback as to underlying issues, and discuss options to correct issues. (Tr. 72). At each subsequent step, the parties would follow a system of progressive discipline starting with 1-day, 3-day and 5-day discipline. (Tr. 72). The 6th occurrence would result in a complaint register with the Cook County Sheriff’s Office of Professional Review (“OPR”). (Tr. 72).

[REDACTED] has served as an investigator for OPR since March of 2003. (Tr. 101-04). On November 7, 2014, [REDACTED] submitted his Summary Report on Respondent’s investigation. (Tr. 104). His report enumerates all of the steps taken in connection with the same. (Tr. 105-06, 111-25). Further, Respondent applied for FMLA but did not realize the same would cover her need to care for her husband. (Tr. 147-49, 181-84).

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According to the Sheriff's witnesses, when an employee is calling in to take a day off, it is the employee's responsibility to ask for the type of time they want to take. (Tr. 64). It is the employee's responsibility to monitor their own time. (Tr. 65). Notably, if an employee does not qualify for FMLA leave or has exhausted it, depending on how long the employee is going to be off, they can go on disability for ordinary medical issues or a compassionate leave. (Tr. 39-40, 61).

Throughout her testimony, Respondent challenged the 49 occurrences by: (i) setting forth a pattern of incorrectly coded absences; (ii) pointing to multiple instances when her absence was coded No Sick Time when she had available sick time, compensatory time, personal time, vacation time or FMLA time; and (iii) establishing irregularities such as missing signatures and wrong addresses in FMLA and discipline related documents. (Tr. 175-77, 188, 244-45, 261-71, 307-08). Respondent also denies having being informed that she could take FMLA for caring for her ill spouse, or that she needed to take disability for ordinary medical issues or a compassionate leave to avoid termination. (Tr. 192, 197, 204-08, 221-22). She also denies knowledge of her union filing grievances on her behalf and did not participate in any such grievance process. (Tr. 222, 262-64). Respondent was never suspended and had never been disciplined despite such discipline being reflected in the grievance documents. (Tr. 229). Respondent alleges the Sheriff did not follow applicable procedures with respect to her discipline and termination. (Tr. 191-99, 229).

Conclusion

Based on the evidence presented, and after assessing the credibility of witnesses and the weight given by the evidence in the record, the Board finds that the Sheriff has met its burden of proof in establishing that Respondent violated the following policies, rules and regulations:

- (1) Sheriff's Order 11.4.1.1, Unauthorized Absence (governing treatment of unauthorized absences and setting forth occurrences).
- (2) General Order 3.8, Ethics and Standards of Conduct (compliance with all applicable rules as well as leave laws)
- (3) Sheriff's Order 11.2.20.0, Rules of Conduct (same as No. 2 and lists absence without leave as grounds for disciplinary action)

There is no question that Respondent violated the aforementioned rules with respect to at least some of her unauthorized absences. Respondent's 49 occurrences amount to an average of 16 occurrences per year for nearly a 3 year period. Common sense dictates that a cancer survivor and sole caregiver to her ailing husband, an average of 16 occurrences per year would not be a shocking figure for Respondent. Nevertheless, Respondent must be held accountable for her attendance deficiencies and failure to seek appropriate resources regarding her FMLA and other leaves.

However, the Sheriff must also be held responsible for contributing to Respondent's delinquency by not adhering to its own rules with respect to document retention,

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investigation, attendance deficiencies, progressive discipline and FMLA and alternative leave usage (e.g., compassionate care). Indeed, the Sheriff bears the burden of proof in this matter. Its own errors, coupled with the evidence submitted to date, have weakened its claims and reduced the veracity of some of its allegations.

Order

Wherefore, based on the foregoing, it is hereby ordered that the Sheriff's request to remove Respondent Kendra Noble-Cobb from the Cook County Sheriff's Department is DENIED. Respondent is hereby suspended from duty for a period of 180 days effective August 28, 2015.

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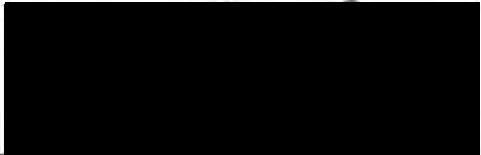
James P. Nally, Chairman



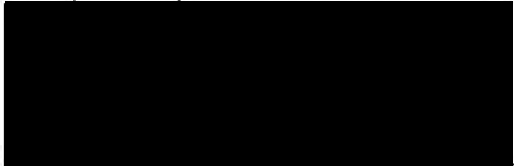
Byron Brazier, Vice-Chairman



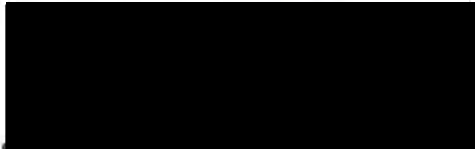
John Dalcandro, Secretary



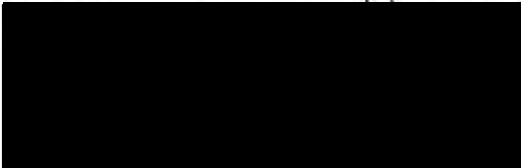
Kim R. Widup, Board Member



Vincent T. Winters, Board Member



Juan L. Baltierres, Board Member



Patrick Brady, Board Member



Gray Mateo - Harris, Board Member

Date December 14, 2018