

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
POLICE OFFICER JAMES D. FRANKLIN,) **No. 14 PB 2876**
STAR No. 15170, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
) **(CR No. 1040688)**
RESPONDENT.)

FINDINGS AND DECISION

On October 15, 2014, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer James D. Franklin, Star No. 15170 (hereinafter sometimes referred to as “Respondent”), recommending that the Respondent be discharged from the Chicago Police Department for violating the following Rules of Conduct:

- Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 3: Any failure to promote the Department’s efforts to implement its policy or accomplish its goals.
- Rule 6: Disobedience of an order or directive, whether written or oral.
- Rule 11: Incompetency or inefficiency in the performance of duty.
- Rule 14: Making a false report, written or oral.

The Police Board caused a hearing on these charges against the Respondent to be had before Jacqueline A. Walker, Hearing Officer of the Police Board, on February 24, 2015.

Following the hearing, the members of the Police Board read and reviewed the record of the proceedings and viewed the video-recording of the testimony of the witnesses. Hearing Officer Walker made an oral report to and conferred with the Police Board before it rendered its findings and decision.

POLICE BOARD FINDINGS

The Police Board of the City of Chicago, as a result of its hearing on the charges, finds and determines that:

1. The Respondent was at all times mentioned herein employed as a police officer by the Department of Police of the City of Chicago.

2. The written charges, and a Notice stating when and where a hearing on the charges was to be held, were served upon the Respondent more than five (5) days prior to the hearing on the charges.

3. Throughout the hearing on the charges the Respondent appeared in person and was represented by legal counsel.

4. The Respondent filed a Motion to Strike and Dismiss requesting that the charges filed against him be stricken and the case dismissed for the following reasons: (a) the failure to bring timely charges violates the due process rights of the Respondent; (b) the charges should be barred by laches; and (c) the investigation by the Police Department's Internal Affairs Division violated two General Orders.

The Illinois Appellate Court has recently affirmed the Board's decision denying a motion to dismiss that makes essentially the same arguments as here. In that case, the Appellate Court found the Board's reasoning and result consistent with the law. *Chisem v. McCarthy*, 2014 IL App (1st) 132389 (December 23, 2014). *Chisem* requires denial of the present motion as well. The Respondent's Motion to Strike and Dismiss is therefore **denied** for the reasons set forth below.

a. Due Process. Citing *Morgan v. Department of Financial and Professional Regulation*, 374 Ill. App. 3d 275 (2007), and *Lyon v. Department of Children and Family Services*, 209 Ill.2d

264 (2004), the Respondent claims that the Constitution precludes such a lengthy delay in the investigation of the Respondent's alleged misconduct. *Morgan* and *Lyon*, however, involved a delay in *adjudication* of allegations of misconduct after the respective plaintiffs had been suspended from their jobs—not delay in the *investigation* leading to the initial suspensions. *Morgan* involved a clinical psychologist accused of sexually abusing a patient, where the state took fifteen months to decide the case after the suspension. *Lyon* involved a teacher accused of abusing students where the director of DCFS failed to honor specific regulatory time limits for decision-making.

The Respondent's case before the Police Board is different from *Morgan* and *Lyon*, as the Respondent in his Motion is complaining about the delay from the time of the incident to the bringing of charges, not the time it took to try him once the charges were filed and he was suspended without pay. This difference is important because the due-process analysis in *Morgan* and *Lyon* is triggered by the state's decision to deprive the psychologist and teacher of their jobs, thus preventing them from working for prolonged periods of time before they were accorded the opportunity to have a hearing and decision to clear their names. Here, the Respondent was working and was being paid his full salary and benefits during the entire period from the time of the incident up to the filing of charges with the Police Board. The Due Process clause precludes a state or local government from "depriving any person of life, liberty or property [i.e. a public job] without due process of law." Here, the Respondent was not suspended without pay from his job until *after* the charges against him were filed. Therefore, the Respondent was *not* deprived of his job prior to the filing of charges, and any delay in bringing the charges is therefore *not* a violation of the Respondent's due process rights.

b. Laches. The Respondent argues that the doctrine of laches should apply here in

supporting the dismissal of charges, for he argues that the delay in bringing the charges against him resulted in prejudice to him.

Laches is an equitable doctrine that is used to prevent a party in litigation from enforcing a right it otherwise has because it has not been diligent in asserting this right and the opposing party has been prejudiced by the delay. Private parties and public agencies are not on an equal footing when it comes to the application of the laches doctrine. Many cases, including *Van Milligan v Board of Fire and Police Commissioners of the Village of Glenview*, 158 Ill.2d 85 (1994), hold that laches can only be invoked against a municipality under “compelling” or “extraordinary” circumstances. In addition, the party that invokes the doctrine of laches has the burden of pleading and proving the delay and the prejudice. *Hannigan v. Hoffmeister*, 240 Ill. App. 3d 1065, 1074 (1992). Under Illinois law, the Respondent must demonstrate that the Superintendent’s unreasonable delay caused material prejudice to the Respondent; the Respondent must submit evidence in support of her claims of prejudice (for example, testimony that witnesses could no longer recall what happened, or affidavits stating that records had been lost or destroyed during the intervening years). *Nature Conservancy v. Wilder*, 656 F.3d 646 (7th Cir. 2011).

Here, the Respondent argues that the delay in bringing the charges resulted in prejudice to him in losing his employment, and in hampering his ability to locate counter evidence years after the incident to defend against the charges. However, the Respondent did not delineate any specific prejudice stemming from the delay during the investigation. Mere general assertions as to how he might theoretically have been prejudiced are insufficient to trigger the doctrine of laches.

Therefore, the Respondent has not carried his burden of proving that he was prejudiced

by a delay in the bringing of charges, nor has he demonstrated any “compelling” or “extraordinary” circumstances warranting a dismissal of this case due to laches.

c. General Orders. The Respondent argues that the investigation by Internal Affairs failed to follow Chicago Police Department General Order 93-03, which requires a prompt and thorough investigation.

General Order 93-03 does not set an absolute deadline within which investigations must be completed, but provides that if they last more than 30 days, the investigator must seek and obtain an extension of time within which to complete the investigation. Once the investigator completes the process of gathering evidence, the matter is reviewed at several levels to ensure that a thorough investigation was conducted, as required by General Order 93-03.

The Respondent also argues that the Department violated General Order 08-01-02, which prohibits officers not assigned to a CR investigation from contacting complainants or witnesses for the purpose of reinvestigating or obtaining additional information regarding the case. However, the Respondent does not explain how the application of this prohibition to the Respondent violates this General Order.

There is no evidence of any substantial violation of the General Orders in this case. Even if, however, the General Orders were violated, there is no provision in the General Orders requiring the extraordinary remedy of dismissal of the case as a sanction for such a violation. The Board declines to extend the reach of the General Orders in this manner.

5. The Respondent, Police Officer James D. Franklin, Star No. 15170, charged herein, is **not guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its

policy and goals or brings discredit upon the Department,
in that the Superintendent did not prove by a preponderance of the evidence the following
charge:

On or about October 11, 2010, Police Officer James D. Franklin attested to a falsified official Chicago Police Department Arrest Report, Records Division # HS559792, thereby engaging in any action or conduct which impedes the Department's efforts to achieve its policy and goals and/or brings discredit upon the Department.

Convincing testimony was given by Officer Franklin that when he entered information into the Automated Arrest system to prepare the Chicago Police Department Arrest Report, Records Division #HS559792 on October 11, 2010, he had no personal knowledge regarding the details of the arrest of the arrestee mentioned in the Arrest Report, and that he had to depend on the knowledge of former Police Officer Erica Rodriguez to enter information to prepare the Arrest Report.

Based on the credible testimony of several witnesses (including the Superintendent's witness who was a commanding officer in the Education and Training Division), there was a common practice within the Police Department of members of a tactical team assisting each other in the completion of reports, and that it was not uncommon for one officer to get information from another officer in order to prepare a report. In addition, there is no dispute that then-Officer Rodriguez authored the falsified narrative section of the arrest report.¹

Accordingly, based on Officer Franklin's testimony that was not refuted by the Superintendent and based on then-Officer Rodriguez's actions, it was Rodriguez's conduct rather than Officer Franklin's that impeded the Department's efforts to achieve its policy and goals and brought discredit upon the Department.

¹ The Police Board ordered Rodriguez discharged from the Chicago Police Department in Case No. 13 PB 2844.

6. The Respondent, Police Officer James D. Franklin, Star No. 15170, charged herein, is **guilty** of violating, to wit:

Rule 3: Any failure to promote the Department's efforts to implement its policy or accomplish its goals,

in that the Superintendent proved by a preponderance of the evidence the following charge:

On or about October 11, 2010, Police Officer James D. Franklin attested to a falsified official Chicago Police Department Arrest Report, Records Division # HS559792, thereby failing to promote the Department's efforts to implement its policy or accomplish its goals.

The Superintendent presented the unchallenged testimony of Captain Michael Pigott that prior to attesting to an Arrest Report, an officer should ensure that the information in the report is correct to the best of his/her knowledge. Furthermore, Captain Pigott testified that the Arrest Report should establish the identity of the person who made the observations set forth in the Arrest Report. There was no testimony presented that Officer Franklin attempted to fulfill this requirement.

Officer Franklin also testified that he had no communication with former Police Officer Rodriguez regarding the details of the arrest, indicating that Officer Franklin failed to ensure that the information in the Arrest Report was correct, prior to his attesting to the Arrest Report.

Therefore, Officer Franklin failed to promote the Department's efforts to implement its policy or accomplish its goals.

7. The Respondent, Police Officer James D. Franklin, Star No. 15170, charged herein, is **not guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,

in that the Superintendent did not prove by a preponderance of the evidence the following

charge:

On or about October 11, 2010, Police Officer James D. Franklin attested to a falsified official Chicago Police Department Arrest Report, Records Division # HS559792, in violation of General Order 02-03, entitled "Processing Persons Under Department Control," Item IV.A.1., by failing to ensure there was a valid basis for the charges placed against the arrestee, thereby disobeying an order or directive, whether written or oral.

The Superintendent entered General Order 02-03 into evidence, which provides for the Department's policy as it relates to the processing of arrested persons. The Department did not present sufficient evidence that Officer Franklin failed to ensure there was a valid basis for the charges placed against the arrestee, particularly in light of evidence which established that: (1) officers assisted each other when preparing reports as a matter of common practice, (2) it was former Police Officer Rodriguez who authored the falsified narrative section of the arrest report, and (3) the automated arrest system gives only the officer who electronically initiated the report the option to attest to it.

Accordingly, the Department failed to prove that Officer Franklin violated General Order 02-03.

8. The Respondent, Police Officer James D. Franklin, Star No. 15170, charged herein, is **not guilty** of violating, to wit:

Rule 11: Incompetency or inefficiency in the performance of duty,
in that the Superintendent did not prove by a preponderance of the evidence the following
charge:

On or about October 11, 2010, Police Officer James D. Franklin attested to a falsified official Chicago Police Department Arrest Report, Records Division # HS559792, thereby performing his duties in an incompetent or inefficient manner.

Competent and credible testimony was presented by Captain Pigott, as well as Officer

Franklin, that Officer Franklin electronically began and completed the Arrest Report according to the Department's general guidelines for completing such a Report. Testimony was obtained that it is the responsibility of the police officer who initiates the report to also electronically attest to the Arrest Report. No testimony or evidence was presented by the Department that Officer Franklin knowingly and intentionally completed this Arrest Report in an incompetent or inefficient manner. Based on the common practice of officers assisting each other when preparing reports, and on the nature of the automated arrest system that gives only the officer who initiated the report the option to attest to it, Officer Franklin did not perform his duties in an incompetent or inefficient manner.

Accordingly, the Department failed to prove this alleged violation of the Department's Rule 11.

9. The Respondent, Police Officer James D. Franklin, Star No. 15170, charged herein, is **not guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,
in that the Superintendent did not prove by a preponderance of the evidence the following charge:

On or about October 11, 2010, Police Officer James D. Franklin attested to a falsified official Chicago Police Department Arrest Report, Records Division # HS559792, thereby making a false report, written or oral.

Officer Franklin credibly testified that he correctly electronically initiated the Arrest Report, as well as filled in several portions of the Arrest Report that were correct.

Additionally, there is no dispute that former Police Officer Erika Rodriguez authored the falsified narrative section of the arrest report. The Department failed to present any competent

and convincing testimony that Officer Franklin's attesting to the Arrest Report met the strict requirements of making a false report as required by Rule 14; i.e., that he knowingly and intentionally made a false report.

10. The Police Board has considered the facts and circumstances of the Respondent's conduct, and the evidence presented in defense and mitigation.

The Board finds that the Respondent's attestation to a falsified Arrest Report violated a Department rule. Nonetheless, the Board finds that the seriousness of this misconduct is mitigated by several factors, and finds that discharging the Respondent from the Chicago Police Department is not warranted.

Officer Franklin bears responsibility for attesting to an arrest report that includes false information. However, it is important to consider the larger context in which Officer Franklin was operating. Based on the credible testimony of several witnesses (including the Superintendent's witness who was a commanding officer in the Education and Training Division), there was a common practice within the Police Department of members of a tactical team assisting each other in the completion of reports, and that it was not uncommon for one officer to get information from another officer in order to prepare a report. In addition, the operation of the automated arrest system for completing and attesting to arrest reports is such that the person who logged on to create the arrest report is the only one given the option of attesting to the report. The common practice of officers dividing the labor when preparing reports, taken together with the nature of the automated arrest system and the undisputed fact that former Police Officer Erika Rodriguez authored the falsified narrative section of the arrest report, mitigate the seriousness of Officer Franklin's misconduct.

Officer Franklin's record as a police officer is also important evidence in mitigation. He has more than twelve years on the job, during which time he has earned numerous awards (including an Officer of the Year Award, three Department Commendations, and 80 Honorable Mentions). He has no disciplinary history. In addition, according to the credible testimony of several witnesses who supervised Officer Franklin (a former CPD commander, two lieutenants, a sergeant), he was a well-respected, hard-working officer with high integrity.

Based on the nature of the misconduct of which the Respondent is guilty and the circumstances in which it took place, and based on the Respondent's record and years of service to the Department, the Board finds that a suspension of thirty (30) days is a justified penalty on the facts of this particular case.

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POLICE BOARD DECISION

The Police Board of the City of Chicago, having read and reviewed the record of proceedings in this case, having viewed the video-recording of the testimony of the witnesses, having received the oral report of the Hearing Officer, and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence, hereby adopts the findings set forth herein by the following votes:

By a vote of 7 in favor (Demetrius E. Carney, Ghian Foreman, Melissa M. Ballate, William F. Conlon, Rita A. Fry, Elisa Rodriguez, and Rhoda D. Sweeney) to 0 opposed, the Board **denies** the Respondent's Motion to Strike and Dismiss;

By a vote of 7 in favor (Carney, Foreman, Ballate, Conlon, Fry, Rodriguez, and Sweeney) to 0 opposed, the Board finds the Respondent **guilty** of violating Rule 3;

By votes of 7 in favor (Carney, Foreman, Ballate, Conlon, Fry, Rodriguez, and Sweeney) to 0 opposed, the Board finds the Respondent **not guilty** of violating Rule 2, Rule 6, Rule 11, and Rule 14.

As a result of the foregoing, the Board, by a vote of 5 in favor (Carney, Ballate, Conlon, Rodriguez, and Sweeney) to 2 opposed (Foreman and Fry), hereby determines that cause exists for suspending the Respondent from his position as a police officer with the Department of Police, and from the services of the City of Chicago, for a period of thirty (30) days, from November 25, 2014, to and including December 24, 2014.

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Police Officer James D. Franklin, Star No. 15170, as a result of having been found **guilty** of a charge in Police Board Case No. 14 PB 2876, be and hereby is **suspended** from his position as a police officer with the Department of Police, and from the services of the City of Chicago, for a period of thirty (30) days, from November 25, 2014, to and including December 24, 2014.

This disciplinary action is adopted and entered by a majority of the members of the

Police Board Case No. 14 PB 2876
Police Officer James D. Franklin

Police Board: Demetrius E. Carney, Melissa M. Ballate, William F. Conlon, Elisa Rodriguez,
and Rhoda D. Sweeney.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 16th DAY
OF APRIL, 2015.

Attested by:

/s/ DEMETRIUS E. CARNEY
President

/s/ MAX A. CAPRONI
Executive Director

DISSENT

We hereby dissent from the Findings and Decision of the majority of the Board, in that we find that a suspension of sixty (60) days is a more fitting penalty on the facts of this particular case.

/s/ GHIAN FOREMAN
Vice President

/s/ RITA A. FRY

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THESE FINDINGS AND DECISION

THIS ____ DAY OF _____, 2015.

GARRY F. McCARTHY
Superintendent of Police