

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)	
SERGEANT JOHN POULOS,)	No. 17 PB 2932
STAR No. 814, DEPARTMENT OF POLICE,)	
CITY OF CHICAGO,)	
)	(CR No. 297657)
RESPONDENT.)	

MEMORANDUM OPINION AND ORDER

On June 29, 2017, the Superintendent of Police filed with the Police Board of the City of Chicago Charges against Sergeant John Poulos, Star No. 814 (hereinafter sometimes referred to as “Respondent”), recommending that the Respondent be discharged from the Chicago Police Department for violating several Rules of Conduct in 2000 and between 2003 and 2006.

On November 7, 2017, the Respondent filed a Motion to Dismiss these charges. The Superintendent filed a Response, and the Respondent filed a Reply. The Police Board has considered these filings, as well as the Superintendent’s Response to the Board's order of December 15, 2017.

The Respondent’s Motion to Dismiss requests dismissal of the charges filed against him with prejudice for the following reasons: (a) the failure to bring timely charges violates the due process rights of the Respondent, the doctrine of laches, Chicago Police Department General Orders G08-01 and G08-01-01, and Sections 6.1 and 8.4 of the Agreement between the Fraternal Order of Police Chicago Lodge No. 7 and the City of Chicago; (b) the charges violate the Respondent’s right to equal protection of the laws; and (c) the charges are pretextual in nature.¹ For the reasons set forth below, the Respondent’s Motion to Dismiss shall be **granted**.

¹Initially, the Respondent also argued that the Superintendent’s recommendation for discharge does not meet the standard for “just cause,” but the Respondent withdrew this claim from his motion to dismiss in his Reply brief, while preserving it, if the case proceeded to a hearing.

Delay in the Bringing of Charges

Sergeant John Poulos is currently under investigation at the Civilian Office of Police Accountability (COPA) for his role in the officer-involved shooting and killing of Kajuan Raye on November 23, 2016. If any charges against Sergeant Poulos emerge from this investigation and are filed with the Police Board, the Board will consider them in a separate case.

The charges filed in this case, however, have nothing to do with the Raye shooting. Rather, on June 29, 2017, the Superintendent filed these charges, alleging that: 1) on September 19, 2000 and October 31, 2000—nearly seventeen years before the charges were filed—Sergeant Poulos failed to disclose his involvement as a defendant in certain misdemeanor cases that had been expunged, when he applied to become a Chicago police officer; and 2) from approximately July 7, 2003 until September 20, 2006—about eleven to fourteen years before the charges were filed—while recovering from an injury on-duty and unpaid by the Department, Sergeant Poulos had maintained a minority (10%) ownership interest in a restaurant that held a liquor license, in violation of Department Rule 18(A), which prohibits police officers from owning, maintaining or operating a tavern or retail liquor establishment. The Superintendent alleges that this conduct in 2000 and between 2003 and 2006 violates Rules 2, 14 and 18(A).

While the Superintendent filed these charges on June 29, 2017, the materials submitted in connection with the briefing on the Respondent's Motion to Dismiss make it clear that the investigation into these charges began with the filing of Complaint Registers in 2004. The Internal Affairs Division of the Police Department completed its investigation of the allegations leading to these charges on February 28, 2007, and the Assistant Deputy Superintendent for the Internal Affairs Division made her disciplinary recommendation to then Superintendent Dana Starks on August 29, 2007—more than ten years ago, (see, Exhs. A and B to the Motion to

Dismiss).

On December 15, 2017, after initially considering the Motion to Dismiss briefing, the Police Board ordered the Superintendent to explain why such a long delay had occurred in the filing of these charges. The Superintendent noted that Sergeant Poulos was injured while on duty in March of 2002 and remained on various leaves of absence until his return to work in June of 2010. The Superintendent indicates that “on information and belief,” it was the Department’s practice to not initiate charges against Police Department members while they were on a leave of absence. However, when it comes to the seven-year delay in filing charges after Sergeant Poulos’s return to duty in 2010, the Superintendent candidly conceded that he “is unable, at this time, to provide a complete explanation regarding the delay in pursuing disciplinary action against Respondent.” (Superintendent's Response to the Board's Order of December 15, 2017, p. 4.) The Superintendent says that when Sergeant Poulos returned to duty in June of 2010, the Department’s Human Resources Division should have notified the Division of Internal Affairs of his return, so that Internal Affairs could have initiated the disciplinary process. “On information and belief,” the Superintendent says the Human Resources Division did not make this notification and can only “hypothesize” that “numerous administration and staffing changes between approximately 2007 and 2011 may have contributed to the lack of notification.” (Id., p. 4.) The Superintendent offers no explanation as to how Sergeant Poulos was promoted to the position of Sergeant in 2015, without the pending disciplinary recommendation being acted upon.²

²The Respondent insists that these charges were brought on June 29, 2017 because IPRA had restored Sergeant Poulos to duty on February 24, 2017 based on the direction in which the investigation of the Raye shooting was going. He notes that in the Superintendent's Response to the Board's December 15, 2017 order, documents were filed showing that in February of 2017, IAD personnel were instructed by the Department's Office of Legal Affairs to conduct additional investigation of the old charges against Sergeant Poulos (Exh. 4). The Superintendent,

General Order 08-01

General Order G08-01 states that it is the policy of the Chicago Police Department that “the Superintendent must ensure that internal investigations are conducted consistent with the provisions outlined in this directive to provide Department members with the *fundamental principles of fairness* and to ensure that members are afforded all their rights.” (Section II.A., emphasis added.) The General Order goes on to state: “Prompt, thorough investigations will be conducted into allegations of misconduct to establish facts which can absolve the innocent and identify the guilty.” (Section II.B.)³

The Board finds that the Superintendent’s lengthy and unexplained delay in filing charges against Sergeant Poulos violates these important provisions of General Order G08-01, and warrants dismissal of these charges with prejudice. This case is factually different than the many other cases where respondents have alleged delay in the investigation of charges, and the Board has not found a violation of General Order G08-01, or its predecessor, General Order 93-03, and refused to dismiss charges. *See, e.g. Orsa v Police Board of the City of Chicago*, 2016 IL App (1st) 121709 (2016), withdrawn as a published opinion, 2016 Ill.App. LEXIS 558 (2016), leave to appeal denied, 2016 Ill. LEXIS 1423 (2016); and *Chisem v McCarthy*, 2014 IL App. (1st) 132389 (2014).

First, in the *Orsa*, *Chisem* and similar cases, there was no lengthy delay between the completion of the investigation and the filing of charges. So, in *Orsa*, charges were filed eight

however, claims that these long-pending charges were discovered only after Sergeant Poulos wrote a memo on November 1, 2016 asking to be assigned to the Internal Affairs Division. Sergeant Poulos vehemently denied authoring the November 1, 2016 memo, which is unsigned (*Id.*, Exh. 1). The Board finds it does not need to resolve this factual dispute, given the long and unexplained delay in the initiation of fully-investigated charges here.

³General Order G08-01 went into effect on June 7, 2017, shortly before these charges were filed, and therefore governs these charges. As the Superintendent concedes, General Order 93-03, which preceded General Order G08-01, provided the same protections to officers. (Superintendent’s Brief in Opposition to the Motion to Dismiss, at p. 10.)

Police Board Case No. 17 PB 2932
Sergeant John Poulos
Memorandum Opinion and Order

months after the investigation was completed, and in *Chisem* charges were filed less than three years after the incident itself occurred. Here, there is a more than a ten-year delay between the completion of the investigation and the filing of charges. The Board recognizes that many investigations can be complex and therefore may take a considerable amount of time to complete and review (and return for re-investigation if deemed necessary). General Order G08-01 makes the same point in recognizing the importance of “thorough” as well as “prompt” investigations, in order to ensure that facts are established that “absolve the innocent and identify the guilty.” The Board therefore has not dismissed charges in cases where investigations have taken several years, but that is not this case. Here the delay took place in the Superintendent’s office, long after the investigation was complete.

Second, the charges here turned largely on documentary evidence, and therefore, in the Board’s judgment, should have been resolved promptly. The issue of whether Sergeant Poulos was not forthcoming when he applied for a position at the Department is dependent, in large part, on his written application and his prior criminal record, as well as the law which pertains to expunged arrests and the consequences of receiving misdemeanor supervision. The issue of whether Sergeant Poulos owned a minority position in a restaurant that had a liquor license can be determined by corporate and licensing records. This case is quite different than excessive-force cases and other cases that involve multiple and conflicting accounts by lay and law enforcement witnesses, companion criminal and civil litigation, and the need for expert evidence. There is thus nothing about the nature of the allegations that explains the lengthy delay in bringing these charges.

Third, the Superintendent has offered no reasonable explanation for the ten-year delay between the end of the investigation and the initiation of charges. Even if the Superintendent

Police Board Case No. 17 PB 2932
Sergeant John Poulos
Memorandum Opinion and Order

held the charges in abeyance while Sergeant Poulos was on a leave of absence, the Superintendent has not offered a reasonable explanation for the seven-year delay in filing charges after Sergeant Poulos returned to duty, during which time he was promoted. Where the investigating agency or the Superintendent has a reasonable explanation for the delay the filing of charges, the Board may well arrive at a different conclusion, but in this case, no good reason was offered.

The *Orsa* court affirmed the Board's decision not to dismiss charges there under the predecessor General Order to General Order G080-01. In doing so, the Court said “the directive does not set an absolute deadline within which investigations must be completed,” 2016 IL App (1st), at par. 42. The *Chisem* Court made the same point, 2014 IL App (1st), at par. 17. The Board agrees. The particular facts of each case must be considered in deciding whether the Department has failed to honor the dictates of these General Orders. Similarly, the *Orsa* Court found that “nothing in the directive suggests, and plaintiff provides no support, for the presumption that automatic dismissal is the sanction” when the General Order is violated, 2016 IL App (1st), at par. 42. The *Chisem* Court arrived at the same conclusion, 2014 IL App (1st), at par. 17. Again, the Board agrees. General Order G08-01 is unlike a statute of limitations, which sets a time limit within charges must be filed, and requires dismissal when this time limit is exceeded. General Order G08-01 is far more flexible and requires a careful balancing between the interests of a prompt investigation and a thorough investigation. It should only be invoked as a basis for dismissal in the most extraordinary and egregious cases, like the present one.⁴

⁴While the Respondent has raised other bases on which to dismiss this case, the Board finds it is unnecessary to resolve those issues, given its decision to dismiss on account of the Superintendent’s violation of General Order G08-01.

Police Board Case No. 17 PB 2932
Sergeant John Poulos
Memorandum Opinion and Order

POLICE BOARD ORDER

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent's Motion to Dismiss is **granted**, and the charges against Sergeant John Poulos, Star No. 814, in Police Board Case No. 17 PB 2932, are **dismissed with prejudice**.

IT IS FURTHER ORDERED that the Respondent, Sergeant John Poulos, Star No. 814, be and hereby is restored to his position as a sergeant of police with the Department of Police, and to the services of the City of Chicago, with all rights and benefits, effective July 6, 2017.

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Lori E. Lightfoot, Ghian Foreman, Eva-Dina Delgado, Michael Eaddy, Steve Flores, John P. O'Malley Jr., John H. Simpson, Rhoda D. Sweeney, and Andrea L. Zopp

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 28th DAY OF FEBRUARY, 2018.

Attested by:

/s/ LORI E. LIGHTFOOT
President

/s/ MAX A. CAPRONI
Executive Director

Police Board Case No. 17 PB 2932
Sergeant John Poulos
Memorandum Opinion and Order

DISSENT

The following members of the Police Board hereby dissent from the Order of the majority of the Board.

[None]

RECEIVED A COPY OF THIS

MEMORANDUM OPINION AND ORDER

THIS ____ DAY OF _____, 2018.

EDDIE T. JOHNSON
Superintendent of Police