

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
POLICE OFFICER VIRGINIA O'DONNELL,) **No. 19 PB 2965**
STAR No. 5695, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
RESPONDENT.) **(CR No. 1088141)**

FINDINGS AND DECISION

On September 18, 2019, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Virginia O'Donnell, Star No. 5695 (hereinafter sometimes referred to as "Respondent"), recommending that the Respondent be discharged from the Chicago Police Department for violating several Rules of Conduct, which set forth expressly prohibited acts.

A hearing on these charges against the Respondent took place before Hearing Officer Allison L. Wood on March 12, 2020. Following this evidentiary hearing, the members of the Police Board read and reviewed the record of the proceedings, including the Hearing Officer's Report (neither party filed a response to this report), and viewed the video recording of the entire evidentiary hearing. Hearing Officer Wood 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. A copy of the charges filed, and a notice stating the date, place, and time the initial status hearing would be held, were personally served upon the Respondent not fewer than five (5) days before the date of the initial status hearing for this case.

3. The Respondent was properly notified of the March 12, 2020, evidentiary hearing. She did not appear at this hearing, nor was she represented by legal counsel. Hearing Officer Wood proceeded with this hearing in the Respondent's absence pursuant to section III-F of the Board's Rules of Procedure.

Introduction

4. The Chicago Police Department conducts random drug and alcohol testing of police officers through the Random Drug Test Unit ("Unit"). The Department's policy permits the Unit to use a breath alcohol test administered by a qualified tester using a certified and calibrated breathalyzer. An acceptable breathalyzer test level is .021. On July 5, 2017, Respondent was selected by a computer program to submit to a breathalyzer test for alcohol. At that time, the officer responsible for administering breathalyzer tests was Officer Colette Kopterski. Officer Kopterski received extensive training and obtained a state license in 2015 that certified her to use the EC/IR breathalyzer machine. In the two years since she obtained her license, she had administered close to 100 breathalyzer tests. Officer Kopterski contacted Respondent's supervisor, who then directed Respondent, who was on duty at the time, to go to the Unit to be tested. Officer Kopterski testified that Respondent reported to the Unit and signed in at 1900 hours (7:00pm); and that she administered the breathalyzer to Respondent twice. Respondent failed both times. Her first test result was .116 and her second test result was .120.

In August 2017, Respondent went on medical leave to seek help. She was assigned a case manager from the Department's Medical Section. Respondent was required to provide certain

Police Board Case No. 19 PB 2965
Police Officer Virginia O'Donnell
Findings and Decision

paperwork to her case manager to maintain her paid medical leave status. Respondent failed to provide the paperwork and on January 4, 2018, Respondent's case manager reported Respondent's failure to Sergeant Janet Kemper (now retired) who was at that time head of the Medical Section. Sergeant Kemper testified that on January 9, 2018, she called Respondent's cell phone and she sent emails to Respondent's Department email as well as her email on file. She left messages advising Respondent that if she did not provide the requested documentation she would be decertified and put in a no-pay status. A certified letter to Respondent was returned as undeliverable, and a visit to Respondent's home was unsuccessful. Sergeant Kemper was able to speak with Respondent on January 10, 2018. During this call, Sergeant Kemper ordered Respondent to bring the requested paperwork by January 12, 2018, or she would be decertified and placed in a no-pay status. Respondent advised Sergeant Kemper that she would bring the paperwork on January 12, 2018. Sergeant Kemper testified that any order from a supervisor is a direct order. Respondent did not bring the requested paperwork on January 12, 2018. Sergeant Kemper testified that she did not receive any further communications from Respondent after their January 10, 2018 phone call. She took the necessary steps to decertify Respondent and placed her in no-pay status. She sent a full report to Human Resources.

The Superintendent has the burden to prove by a preponderance of the evidence that Respondent engaged in conduct that discredits the Department, that fails to promote the Department's goals and policies, that she was intoxicated while on duty, and that she failed to comply with a direct order.

The Superintendent presented the testimony of Officer Kopterski and Sergeant Kemper. The Superintendent also presented the following exhibits: Random Drug Testing List for July 6, 2017; Random Drug Testing Unit Sign-In Sheet for July 6, 2017; Officer Kopterski's license to

conduct breathalyzer tests; print-outs that show the system checks conducted by Officer Kopterski prior to administering the test to Respondent passed; a copy of the Police Department's Drug and Alcohol Testing policy; breathalyzer test results for Respondent; Sergeant Kemper's Human Resources Report; and Employee Resource Order 03-01-02. As noted above, Respondent did not participate in this proceeding.

The Board finds that the Superintendent, having presented credible and unrefuted evidence, has met his burden to prove that Respondent is guilty of all charges brought against her. Having found Respondent guilty of all charges, the Board determines that Respondent is to be discharged from the Chicago Police Department.

Charges Against the Respondent

5. The Respondent, Police Officer Virginia O'Donnell, Star No. 5695, charged herein, is **guilty** of violating Rule 2, Rule 3, and Rule 15 in that the Superintendent proved by a preponderance of the evidence the following charges:

On or about July 6, 2017, Officer Virginia O'Donnell reported to the Department's Random Drug Testing Unit at 3510 South Michigan Avenue, Chicago, to submit a random drug and alcohol test, and the result of the initial breath alcohol test was a breath analysis concentration (Br.A.C) of .116, and the result of the confirmatory breath alcohol test was a breath analysis concentration (Br.A.C) of .120. Officer O'Donnell thereby violated:

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;
- b. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals; and
- c. Rule 15, which prohibits intoxication on or off duty.

See the findings set forth in section no. 4 above, which are incorporated herein by reference.

Police Board Case No. 19 PB 2965
Police Officer Virginia O'Donnell
Findings and Decision

The Superintendent established that Officer Kopterski was licensed and experienced in administering breathalyzer tests to officers. The Random Drug Testing List created for July 6, 2017, shows that Respondent was selected on that date to submit to a breathalyzer test, and the sign-in sheet shows that she signed in to be tested on that date at 1900 hours. The system was tested and successfully calibrated by Officer Kopterski before she administered the test to Respondent. An acceptable breathalyzer test result is .021. The test results for Respondent show that she was tested twice and failed both times. The first test result was .116 and the second test result was .120. The Board finds the two failed test results to be reliable evidence that Respondent was intoxicated while on duty. Not only is there no evidence to refute this finding, Illinois case law has affirmed the Board's findings of intoxication where the determinations were supported by Breathalyzer test results. *See, e.g., Jones v. Police Board of the City of Chicago*, 297 Ill. App. 3d 922, 931 (1998); and *Allman v. Police Board of the City of Chicago*, 140 Ill. App. 3d 1038, 1040 (1986) (finding of impairment affirmed based upon stipulated testimony as to the officer's alcohol blood level). Intoxicated officers on duty present a danger to themselves and to others. They bring discredit upon the Department and impede the Department's efforts to accomplish its goals.

6. The Respondent, Police Officer Virginia O'Donnell, Star No. 5695, charged herein, is **guilty** of violating Rule 2, Rule 3, Rule 6, and Rule 24 in that the Superintendent proved by a preponderance of the evidence the following charges:

On or about January 12, 2018, Officer Virginia O'Donnell disobeyed a direct order given by Sergeant Janet Kemper on January 10, 2018, to report to the Department's Medical Services Section on January 12, 2018, with medical documentation, and/or Officer O'Donnell otherwise failed to submit medical documentation certifying her medical absence to the Department. Officer O'Donnell thereby violated:

Police Board Case No. 19 PB 2965
Police Officer Virginia O'Donnell
Findings and Decision

- a. Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;
- b. Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals
- c. Rule 6, which prohibits disobedience of an order or directive, whether written or oral,; and
- d. Rule 24, failure to follow medical roll procedures, in that she failed to follow Employee Resource E03-01-02, "Sworn Medical Roll—Non Injury on Duty Status."

See the findings set forth in section no. 4 above, which are incorporated herein by reference.

The Superintendent presented credible testimony from Sergeant Kemper that Respondent was on medical leave, that Respondent was required to report to the Medical Services Section, and that she was required to provide requested documentation to maintain her paid leave status. Specifically, Employee Resource E03-01-02 – "Sworn Medical Roll – Non Injury on Duty Status", section II(C) provides:

C. Reporting to the Medical Services Section

A member will report to the Medical Services Section or other medical service provider as directed. Department members are responsible for the timely submission of all medical records.

NOTE: *Any member who fails to report as scheduled to the Medical Services Section or submit medical documentation will have their medical certification withheld.*

Compliance with this section required Respondent to report to the Medical Services Section and provide requested documentation to maintain her paid leave status. When it was determined that Respondent had not provided requested documentation, Sergeant Kemper testified that she emailed Respondent, sent her a certified letter, sent another officer to her home,

and received no response from Respondent. When Sergeant Kemper was finally able to speak with Respondent, she gave Respondent a direct order to provide the requested documentation by January 12, 2020. Respondent did not provide any documentation on that date and there were no further communications from Respondent. The Board finds that Respondent failed to comply with her duties pursuant to Employee Resource E03-01-02, and she failed to comply with a direct order by Sergeant Kemper.

Penalty

7. The Police Board has considered the facts and circumstances of the conduct of which it has found Respondent guilty. Respondent did not participate in this case nor did she appear for this hearing to offer evidence in her defense or in mitigation.

The Board has also considered Respondent's complimentary and disciplinary histories. Respondent's complimentary history consists of 30 total awards, including one Life Saving Award, 19 Honorable Mentions, and 3 Attendance Recognition Awards; she has no sustained complaints on her disciplinary history.

Respondent was on duty with her service weapon while intoxicated. Police officers are often required to make split-second decisions affecting human life in difficult and dangerous situations. Respondent's being on duty, armed and authorized to use deadly force, while intoxicated indicates a gross disregard for the safety of members of the public and her fellow police officers.

Respondent also disobeyed a lawful direct order of a superior. Such insubordination is a serious violation of the Department's rules. A police department, as a paramilitary organization, can function effectively only if its officers obey orders. Disobeying a direct order, as the

Police Board Case No. 19 PB 2965
Police Officer Virginia O'Donnell
Findings and Decision

Respondent has done in this case, impairs the effective operation of the Department and its ability to carry out its mission.

The Board finds that, on the facts of this particular case, Respondent's conduct is sufficiently serious to constitute a substantial shortcoming that renders her continuance in her office detrimental to the discipline and efficiency of the service of the Chicago Police Department, and is something which the law recognizes as good cause for her no longer occupying her office.

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POLICE BOARD DECISION

The members of the Police Board of the City of Chicago who have participated in this disciplinary action hereby certify that they have read and reviewed the record of proceedings, viewed the video-recording of the entire evidentiary hearing, received the oral report of the Hearing Officer, and conferred with the Hearing Officer on the credibility of the witnesses and the evidence. The Police Board hereby adopts the findings set forth herein by the following votes.

By votes of 9 in favor (Ghian Foreman, Paula Wolff, Matthew Crowl, Michael Eaddy, Steve Flores, Jorge Montes, John P. O'Malley Jr., Rhoda D. Sweeney, and Andrea L. Zopp) to 0 opposed, the Board finds the Respondent **guilty** of violating Rule 2, Rule 3, Rule 6, Rule 15, and Rule 24, as set forth in section nos. 5 – 6 above.

As a result of the foregoing, the Board, by a vote of 9 in favor (Foreman, Wolff, Crowl, Eaddy, Flores, Montes, O'Malley, Sweeney, and Zopp) to 0 opposed, hereby determines that cause exists for discharging the Respondent from her position as a police officer with the Department of Police and from the services of the City of Chicago.

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Police Officer Virginia O'Donnell, Star No. 5695, as a result of having been found **guilty** of all charges in Police Board Case No. 19 PB 2965, be and hereby is **discharged** from her position as a police officer with the Department of Police and from the services of the City of Chicago.

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Ghian Foreman, Paula Wolff, Matthew Crowl, Michael Eaddy, Steve Flores, Jorge Montes, John P. O'Malley Jr., Rhoda D. Sweeney, and Andrea L. Zopp.

Police Board Case No. 19 PB 2965
Police Officer Virginia O'Donnell
Findings and Decision

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 18th DAY
OF JUNE, 2020.

Attested by:

/s/ GHIAN FOREMAN
President

/s/ MAX A. CAPRONI
Executive Director

DISSENT

The following Board members hereby dissent from the Findings and Decision of the majority of the Board.

[None]

RECEIVED A COPY OF

THESE FINDINGS AND DECISION

THIS ____ DAY OF _____, 2020.

DAVID O. BROWN
Superintendent of Police