BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE CITY OF MILWAUKEE

In the Matter of the Appeal of Dwight Copeland
Personnel Order 2012-95

Hearing Date: September 26, 2012

Hearing Location: 200 East Wells Street, Room 301A, City Hall
Milwaukee, Wisconsin

Commissioners: Kathryn A. Hein
Paoi X. Lor
Michael M. O'Hear

Hearing Examiner: John J. Carter

Appearances: Adam B. Stephens, Assistant City Attorney
For the Milwaukee Police Department

Attorney Brendan P. Matthews
For Appellant Dwight Copeland

PROCEDURAL HISTORY

The Chief of Police, Edward A. Flynn, charged Police Officer Dwight Copeland in Personnel Order 2012-95 dated June 12, 2012, with the following violations of Milwaukee Police Department Rules and Procedures:

1. Core Value 1.00 – Competence, referencing Guiding Principle 1.03: Failure to render services to the community promptly and efficiently.

2. Core Value 3.00 – Integrity, referencing Guiding Principle 3.05: Failure to obey the ordinances in effect in the City of Milwaukee.

The Appellant filed an appeal with Milwaukee Fire and Police Commission from the order of the Chief of Police and a hearing was held.

SUMMARY OF HEARING PROCEEDINGS

The hearing was conducted on September 26, 2012. The hearing was recorded by a stenographic reporter, and the transcript of the proceedings is a part of the record in this matter. Testimony was taken from the following witnesses:

For the Chief of Police:	Patsy Beasley Police Officer Dwight Copeland, Milwaukee Police Department Lead Police Telecommunicator Lydia Vasquez, Milwaukee Police Department Chief Edward Flynn, Milwaukee Police Department Lieutenant Johnny Sgrignuoli, Milwaukee Police Department
For the Appellant:	Detective Dale Bormann, Milwaukee Police Department

Based upon the evidence received at the hearing, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On August 24, 2011, the Appellant began his shift at District 7 at about 7:00 a.m. He was assigned to squad 7151. Upon leaving District 7 headquarters, he took some personal property to a union office. Based on police telecommunication records (Ex. 8), it appears that the Appellant reported arriving at the union office at 8:24 a.m. and leaving at 8:46 a.m.

2. According to the Appellant's testimony at the hearing, he then went to a McDonald's to pick up his breakfast. He further testified that after leaving McDonald's he happened to see his on-again, off-again girlfriend Patsy Beasley driving a schoolbus. There ensued some sort of interaction between the Appellant and Ms. Beasley.

3. In their testimony at the hearing, the Appellant and Ms. Beasley offered sharply different accounts of their encounter. The Appellant's version of the facts was as follows. He stopped his car in order to inquire about Ms. Beasley's health, knowing that she suffers from migraine headaches. Ms. Beasley, sitting in the driver's seat of her parked schoolbus, responded by asking the Appellant for money. The Appellant declined. From the Appellant's perspective, it appeared that Ms. Beasley was on the phone with someone while they were talking. The Appellant suggested that Ms. Beasley ask the person on the other end of the line for money. As he made this suggestion, he pointed to her phone. Ms. Beasley responded by saying something to the effect of "are you trying to hit me now?" She had an "evil smirk" as she said this. At that moment, the Appellant heard a dispatch call for him on his radio. He immediately responded and left the scene. The entire encounter lasted only a couple of minutes.

4. Ms. Beasley's testimony painted a very different picture. In her account, the encounter was much longer, and the Appellant's behavior much more hostile and physically aggressive. The Appellant first parked in front of her schoolbus such that she could not move the vehicle. The Appellant asked her to let him onto the bus, but she refused and kept the door closed. The Appellant then walked around to the open driver's side window. He said that he heard Ms. Beasley talking to a male, and he wanted to get her cell phone so that he could check with whom she had been conversing. He jumped and struck her on the bicep through the open window. He also yelled obscenities at her. And, critically for purposes of this appeal, he noted three or four times that he had a call and had to go; the fact that he was in a hurry apparently contributed to his impatience and anger. Eventually he did leave, but the encounter lasted twenty or thirty minutes.

5. It is not necessary to resolve all of the discrepancies. For purposes of this appeal anyway, the Appellant has stipulated that his actions in the encounter constituted disorderly conduct in violation of the ordinances of the City of Milwaukee. With that charge established, our consideration must focus on the other charge, the gravamen of which is that the Appellant failed to respond "promptly and efficiently" to a series of calls on his radio that were made shortly after 9:00 a.m. on the day of his altercation with Ms. Beasley.

6. There is no serious dispute that these calls were made. As explained in the testimony of Lydia Vasquez, Exhibits 8 and 9 document calls made to the Appellant at 9:00:02, 9:00:23, 9:01:14, 9:03:14, and 9:04:08. The Appellant only responded to the final one. There is nothing inconsistent with this evidence in the Appellant's testimony. The only question is whether he actually *heard* any of the first four calls.

7. At the hearing, the Appellant's able counsel faulted technical problems with the Police Department's radio system. Testimony from Detective Bormann established that the Department's "Open Sky" system has not always functioned in a satisfactory fashion. Indeed, this Commission is well aware of the fact that officers have made a great many complaints regarding the system, including that there are various "dead spots" in the city where reception is particularly unreliable. As a purely technical matter, it is not entirely beyond the realm of possibility that the first four calls to the Appellant between 9:00:02 and 9:04:08 were lost due to a dead spot or other system malfunction.

8. This is where Ms. Beasley's testimony is of crucial importance. By her account, the Appellant expressly acknowledged several times that he had a pending call to which he was supposed to respond. If this testimony is believed, then the Appellant's theory of technical failure must be rejected.

9. For a number of reasons outlined below, we find Ms. Beasley's testimony more credible than the Appellant's on this score, and we accordingly find that the Chief has established by a preponderance of the evidence that the Appellant heard and failed to respond "promptly and efficiently" to one or more of the calls made beginning at 9:00:02.

10. First, the Appellant's story changed between a recorded interview he gave to investigators in September 2011 (Ex. 16) and his hearing testimony. While he initially stated that he reached up for Ms. Beasley's phone, he testified at the hearing that he merely pointed at it. The latter account, of course, presents his role in a more benign light. In our view, this change in the Appellant's story diminishes his credibility.

11. Second, the Appellant made no complaint either to the Department or to his union regarding radio problems on August 24, 2011. The testimony of Ms. Vasquez and Detective Bormann established that officers have not, as a general matter, been reticent about making a record of their problems with Open Sky, and indeed have been encouraged to do so. The fact that the Appellant did not casts doubt on his claim of technical failure now.

12. Third, the Appellant did hear the radio call at 9:04:08, which seems inconsistent with the suggestion that he was in a dead spot during his encounter with Ms. Beasley. Additionally, the Appellant testified that he heard another call very shortly after he left Ms. Beasley regarding a 911 call from her. This, too, makes the radio malfunction theory somewhat less believable.

13. Finally, we do not find credible the Appellant's story of a brief, peaceful interaction in which he merely pointed at Ms. Beasley's phone. This account seems inconsistent with the Appellant's stipulation to disorderly conduct. It is likewise at least in some tension with the fact that the Appellant entered into an agreement with the District Attorney to undergo counseling in lieu of receiving a citation for the incident. (Ex. 10) Then, too, we find it suspicious that the Appellant, by his own account, upon hearing of a reported battery at the location of his exchange with Ms. Beasley immediately surmised that the complaint was about him and made a preemptive call to one of his supervisors. If his testimony is believed, then he had done nothing at all to give Ms. Beasley a basis for making such an accusation. Of course, there was that "evil smirk" and her alleged comment about him trying to hit her. But, again, if his story is believed, his actions—merely pointing at her phone—were so far removed from aggressive physical contact that her alleged reaction does not seem believable. The Appellant suggests that Ms. Beasley was trying to get him in trouble, but absent is any clear indication of a motive for this scheme or why she would see such a short and benign interaction as the Appellant described as her opportunity to get him. Moreover, the Appellant testified that she had never made false accusations about him in the past. It seems to us that the more plausible explanation for the Appellant's preemptive call was that he recognized he had acted improperly and had given Ms. Beasley a valid basis for complaining about him.

14. Although a heated altercation with Ms. Beasley would not in and of itself establish that the Appellant ignored radio calls, the evidence that such an altercation occurred does support the Chief's position in two ways: (1) it reduces the Appellant's overall credibility as a witness, and (2) it establishes a motive for the Appellant to ignore the calls.

15. To be sure, Ms. Beasley's testimony was not without problems of its own. The most important of these is her timeline. She testified that her encounter with the Appellant

lasted twenty to thirty minutes. Twenty minutes before the Appellant responded to the radio call and ended the encounter was 8:44. However, the Appellant did not report leaving the union hall until 8:46. Since his departure was self-reported, and not verified through GPS or other technical means, it is possible that the 8:46 time is not entirely accurate. Still, it seems unlikely that he interrupted his exchange with Ms. Beasley in order to report that he left the union office, and there was no evidence to suggest as much. So, Ms. Beasley seems to have been wrong in her estimate of the time of the encounter. Nonetheless, we believe that his credibility problems are more substantial than hers. We can readily understand why a person involved in a stressful confrontation such as the one Ms. Beasley reported might innocently overestimate the length of the confrontation. And, of course, her motives to testify untruthfully at the hearing were rather less apparent than his.

16. In sum, we credit Ms. Beasley's testimony that the Appellant acknowledged he had a call to which he was obliged to respond, and we accordingly find by a preponderance of the evidence that the Appellant failed to respond "promptly and efficiently" to one or more of the calls made beginning at 9:00:02.

CONCLUSIONS OF LAW

17. This appeal is governed by the seven just cause standards set forth in Wis. Stat. § 62.50(17)(b). The Chief bears the burden of proof as to each of these standards. We understand that the Appellant's stipulation as to the second charge, failure to obey the disorderly conduct ordinance, constitutes an admission that the first five just cause standards are satisfied as to that charge; this admission was at least implicit in the presentation of evidence and arguments at the hearing. Nonetheless, in an abundance of caution, we discuss all seven just cause standards as they relate to both charges.

18. The first just cause standard is "Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct." The conduct alleged in the first charge, failure to respond to radio calls, plainly falls within the scope of Guiding Principle 1.03. Likewise, the conduct alleged in the second charge, failure to obey the disorderly conduct ordinance, plainly falls within the scope of Guiding Principle 3.05. Because the alleged conduct in both counts is plainly proscribed by Department Rules and Procedures, we conclude that the Chief has satisfied the first just cause standard. We note that no evidence or argument to the contrary was presented at the hearing.

19. The second just cause standard is "Whether the rule or order that the subordinate allegedly violated is reasonable." We have no difficulty concluding that the relevant portions of Guiding Principles 1.03 and 3.05 are reasonable. As to 1.03, police officers are not infrequently called upon to respond to dire emergencies, some of which have a life or death character. Prompt service by officers is therefore critical. As to 3.05, it is simply self-evident and beyond dispute that officers charged with the enforcement of the law must scrupulously obey the law themselves; to do otherwise is to undermine the very legitimacy of the Department in the eyes of the public. Again, we note that the Appellant

presented no evidence or argument at the hearing to suggest in any way that either Guiding Principle is unreasonable.

20. The third just cause standard is "Whether the chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order." There can be no serious dispute that the Department undertook a very extensive investigation of this matter. To note just some of the evidence to this effect: (1) Ms. Beasley testified that several members of the Department spoke with her regarding her complaint against the Appellant, (2) Detective Carloni conducted a neighborhood canvass to identify potential witnesses (Ex. 18), and (3) the Appellant testified as to two separate interviews he gave to investigators on September 6, 2011, and April 24, 2012. The Chief testified that he was briefed as to the evidence produced by the investigation. He also reviewed the Appellant's own response to the charges (Ex. 11). Finally, he also took into account a determination by Chief Deputy District Attorney Kent Lovern that a citation could have been issued to the Appellant in connection with his interaction with Ms. Beasley (Ex. 10). We note that no specific criticism was made at the hearing regarding the Chief's efforts to discover whether the Appellant violated a rule or order. We conclude that the Chief has satisfied the third just cause standard.

21. The fourth just cause standard is "Whether the effort described [in the third standard] was fair and objective." For the reasons set forth in ¶20 above, we believe that the Chief has also satisfied this standard. No evidence to the contrary was presented at the hearing.

22. The fifth just cause standard is "Whether the chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate." For the reasons set forth in our findings of fact above, we conclude that the Chief has satisfied this standard as to the first charge. It is also satisfied as to the second in light of the Appellant's stipulation. Even in the absence of the stipulation, we believe that there was substantial evidence in support of the second charge for the reasons set forth in ¶13 above.

23. The sixth just cause standard is "Whether the chief is applying the rule or order fairly and without discrimination against the subordinate." The Chief based his decision on an extensive investigation of the Appellant's conduct in this matter (see ¶20 above), and further testified as to his consideration of the Appellant's less-than-stellar record of service with the Department. Taking into account both the seriousness of the violations and the Appellant's record of service, the discipline imposed (five days' suspension for each count) does not seem indicative on its face of any unfairness or discrimination. This view is reinforced by a review of the discipline imposed in other cases involving violations of the same rules. (Ex. 13) The evidence indicates a range of different sanctions, including some that are more severe than what the Appellant received, such as discharges from the Department and suspensions for more than five days.

24. According to Lieutenant Sgrignuoli, three cases were particularly emphasized to the Chief as comparables, those involving Officers Loechler, Gonzalez, and Lelinski. They received suspensions of thirty, ten, and three days, respectively. In each case, there were

reasons to regard the disciplined officer's conduct as *less* serious than the Appellant's. Specifically, in each of these cases of disorderly conduct, the conduct occurred while the officer was off-duty, while the Appellant's disorderly conduct was on-duty. Additionally, in each case, the officer "owned up" to his misconduct and was apologetic, while the Appellant was not.

25. In light of the quantity and quality of the information relied on by the Chief in this matter, as well as the strength of the support supplied by this information for the discipline imposed, we conclude that the Chief has satisfied the sixth just cause standard.

26. In connection with the sixth standard, the Appellant has not supplied evidence of any animus directed against him by the Chief or anyone else in the Department. Rather, the Appellant has relied on the fact that a number of other officers found in violation of the same rules as was the Appellant have received lesser sanctions. The Appellant's comparables are set forth in Exhibits 14 and 15. We note that a number of these comparables date from before the current Chief's tenure. While we would not go so far as to say that such comparables are never relevant, we tend to regard them as less appropriate benchmarks than more recent cases. In any event, we concur with the Chief that the just cause standards do not require strict uniformity in the sanctions imposed for violations of any given rule. Rather, the statute contemplates a more nuanced assessment of the particular circumstances of each violation and of (as the statute puts it) "the subordinate's record of service." We are persuaded that the Chief undertook just such an assessment in this case and did so in a fair, nondiscriminatory fashion.

27. Of particular concern to the Appellant were the so-called "court administration" cases. In these cases, several officers who worked in a particular unit were found in violation of the prompt and efficient services rule. In each case, multiple violations were found, numbering in the dozens as to some officers. Yet, the sanctions imposed were generally less than those imposed on the Appellant for a single count of failure to render services promptly and efficiently. Although the Appellant sees this as evidence of discriminatory treatment, we are convinced by the Chief's explanation as to why these cases were handled as they were. Specifically, these cases did not involve officers who were responsible for responding to emergencies, and the misconduct at issue had become "normalized" over time in the unit. These considerations bear upon the seriousness of the violations and tend to justify less severe sanctions than what was imposed on the Appellant.

28. The seventh just cause standard is "Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the chief's department." We believe that the violations in this case were serious indeed. This case arises from an on-duty incident in which the Appellant chose to delay responding to a radio call. Moreover, this delay was not in furtherance of any Department business, but was instead in furtherance of the Appellant's personal agenda—an agenda that involved a public altercation with a citizen in violation of the disorderly conduct ordinance. Fortunately, no one was seriously hurt—neither Ms. Beasley nor any other citizen urgently in need of police aid. But this sort of misconduct

is capable of causing great harm and, even in the best of circumstances, brings discredit to the Department. The public rightly expects that on-duty officers will spend their time serving the needs of the public and will reduce, not add to, the level of disorder in the community.

29. The Appellant's record of service does nothing to mitigate the seriousness of the violations. The Appellant's "hard card" (Ex. 2) reveals a long list of demerits dating to 2001. By our count, he has been the subject of thirteen prior personnel orders. (We exclude two that were later modified and dismissed.) The hard card appears devoid of meritorious mentions. (We note, however, that the Appellant has supplied the Commission with four letters of commendation from supervisors (Ex. 5), so his service record does have some positives.) Additionally, the Appellant's evaluation report from September 2011 (Ex. 12) characterizes him as "unreliable." The report further states, "Officer Copeland needs to place a higher priority on job performance and reliability." The overall progress evaluation is "unsatisfactory." We conclude that the most recent violations are hardly an aberration, but instead fit into a much larger pattern of unreliability, lack of diligence in performing assigned duties, and failure to abide by Department rules. This record of service warrants a significantly tougher sanction than would be appropriate for a "first-time offender" guilty of the same misconduct. We have no trouble concluding, then, that the Chief has satisfied the seventh just cause standard.

30. In justifying the Appellant's suspension, the Chief testified that he gave some weight to the Appellant's failure to accept responsibility for his misconduct. In the Chief's view, the Appellant's response to the charges against him was to blame others groundlessly, rather than to "own" his mistakes. This attitude seems exemplified by his letter to the Chief regarding the charges (Ex. 11).

31. At the hearing, the Appellant's counsel seemed to suggest at one point that acceptance of responsibility was not a permissible factor under the statutory just cause standards. It is true that neither of the key statutory factors for penalty-determination ("seriousness of the alleged violation" and "record of service") clearly encompasses acceptance of responsibility. On the other hand, in courts and in other settings, acceptance of responsibility is such a common and natural consideration for determining punishment that it would be quite surprising for the Chief to be precluded from taking it into account. Indeed, it is at least arguable that either "seriousness of the alleged violation" or "record of service" is a sufficiently elastic term to embrace acceptance. Or, if not, perhaps the open-ended phrase "reasonably relates" provides a basis for bringing acceptance considerations into play. It is possible that in some future case these questions will have to be squarely resolved. For present purposes, however, we are persuaded that the Appellant's suspensions are fully justified by reference to the considerations set forth above in ¶¶ 28-29. We do not rest our decision today at all on the Appellant's apparent failure to "own" his misconduct.

32. In sum, we conclude that the Chief has satisfied all seven just cause standards with respect to both charges.

DECISION

The two charges against the Appellant, Dwight Copeland, are sustained, and he is ordered suspended from the Milwaukee Police Department for ten days without pay (that is, five days for each charge).

Dated at Milwaukee, Wisconsin.

BY THE COMMISSION:

Kathryn A. Hein — October 4, 2012

Paoi X. Lor — October 4, 2012

Michael M. O'Hear — October 5, 2012