

BOARD OF FIRE AND POLICE COMMISSIONERS  
OF THE CITY OF MILWAUKEE

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In the matter of the appeal of

FIREFIGHTER MARCUS J. EASTERN

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND DECISION

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*Hearing Date:* September 30, 2009

*Conducted Before:* Hearing Examiner Commissioners  
*John J. Carter, Esq.* *Kathryn A. Hein*  
*Sarah W. Morgan*  
*Carolina M. Stark*

*Appearances:* *Respondent, Marcus J. Eastern* *Chief Douglas A. Holton*  
*In person and by* *Milwaukee Fire Dept.*  
*Timothy E. Hawks, Esq.* *In person and by*  
*Patricia A. Fricker, Esq.*

*Allegations:* *1. Rule (24.2) General Conduct*  
*2. Rule (27.2) Violations - #14 Untruthfulness*  
*3. Rule (27.2) Violations - #20 Any other act or omission contrary to*  
*good order and discipline, or constituting a violation of any of the*  
*provisions of the rules and regulations, or of any department numbered*  
*notices. Numbered Notice #2006-06 "Commitment to Professional*  
*Conduct and Behavior."*

**SUMMARY OF PROCEEDINGS**

The matter of the appeal of Marcus J. Eastern of his dismissal from the service of the Milwaukee Fire Department on March 30, 2009 having come on for hearing before Milwaukee Fire and Police Commissioners, Kathryn Hein, Sarah Morgan and Carolina Stark on this 30th day of September, 2009 at 9:00 a.m., and the proceeding being under the chair of hearing examiner, John J. Carter, the Fire and Police Commission makes the following Findings of Fact, Conclusions of Law and Decision.

**FINDINGS OF FACT**

1. The Chief of the Fire Department for the City of Milwaukee, Douglas Holton, charged the respondent with three (3) violations of the Rules and Regulations of the Department: to wit:

- a. Rule (24.2) General Conduct;
- b. Rule (27.2) Violations - #14 Untruthfulness;
- c. Rule (27.2) Violations - #20 Any other act or omission contrary to good order and discipline, or constituting a violation of any of the provisions of the rules and regulations, or of any department numbered notices. Numbered Notice #2006-06 "Commitment to Professional Conduct and Behavior."

2. The parties, through their attorneys, who made an opening statement prior to the taking of testimony, stipulated that there exists, as a matter of law, the following facts and that these need not be proven by the Chief:

- |                        |                                                                                                                                                                        |
|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Just Cause Standard #3 | 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. |
| Just Cause Standard #4 | Whether the effort described under subd. 3 was fair and objective.                                                                                                     |
| Just Cause Standard #5 | Whether the chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.           |

3. The Commission finds that each of the stipulated facts also are established by the record in this case based upon the documents admitted and the testimony offered and received, all to a preponderance of the evidence standard.

4. The Commission finds that Just Cause Standard #1 whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct; and Just Cause Standard #2 whether the rule or order that the subordinate allegedly violated is reasonable, have been established by a preponderance of the evidence.

5. The Commission finds that the allegations of the three rule violation charges alleged by the Chief are sustained by a preponderance of the evidence.

6. At the conclusion of the testimony, the parties offered into evidence their Exhibits 1 through 8, which were received. The hearing examiner marked as Commission Exhibit 1, a copy of the Just

Cause Standards form that the Commissioners reviewed. Exhibit 2 is a copy of the transcript of the video and a copy of the video, which was not physically marked, but was reviewed and considered by the Commissioners during the hearing.

7. The Commissioners duly adjourned into closed session pursuant to Wis. Stats. § 19.85(1)(b), to consider the evidence and, upon returning to open session, announced their decision, which was unanimous, that the charges had been sustained by a preponderance of the evidence.

8. Testimony was taken as to the penalty phase (phase two) and the respondent testified and presented various current and former Fire Department Officers. The Chief testified in this phase in addition to his testimony in phase one.

9. The Commissioners adjourned into closed session pursuant to Wis. Stats. §19.85(1)(b), to deliberate and, upon reconvening in open session, announced their decision, which was unanimous, that the Chief applied the rules or orders fairly and without discrimination against the respondent and further, that the Chief's proposed discipline reasonably relates to the seriousness of the violations and to the respondent's record of service with the Fire Department. These findings are to a preponderance of the evidence.

**CONCLUSIONS OF LAW AND DECISION**

Pursuant to Wis. Stats. §62.50(17), the charges and dismissal are sustained.

**MILWAUKEE FIRE AND POLICE COMMISSION**

By:

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Kathryn A. Hein, Commissioner

October \_\_\_\_, 2009

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Sarah W. Morgan, Commissioner

October \_\_\_\_, 2009

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Carolina M. Stark, Commissioner

October \_\_\_\_, 2009