

**BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE CITY OF MILWAUKEE**

**In the matter of the appeal of Thomas D. Ruege
Personnel Order 2010-104**

Hearing Date: April 13, 2011

Hearing Location: 200 East Wells Street, Room 301A, City Hall
Milwaukee, Wisconsin 53202

Commissioners: Kathryn A. Hein, Sarah W. Morgan and Carolina M. Stark

Hearing Examiner: John J. Carter

Appearances: Patricia A. Fricker, Assistant City Attorney
Nicholas E. Fairweather, Attorney for Appellant

PROCEDURAL HISTORY

Chief Edward A. Flynn charged Thomas D. Ruege, hereinafter "Ruege," with the following nine counts of violating Milwaukee Police Department Rules and Regulations:

1. Failing to notify dispatch of location on December 10, 2009, in violation of Rule 4, Section 010.00
2. Failing to notify dispatch of location on December 17, 2009, in violation of Rule 4, Section 010.00
3. Failing to notify dispatch of location on December 21, 2009, in violation of Rule 4, Section 010.00
4. Idling and loafing on December 9, 2009, in violation of Rule 4, Section 380.00
5. Idling and loafing on December 10, 2009, in violation of Rule 4, Section 380.00
6. Idling and loafing on December 17, 2009, in violation of Rule 4, Section 380.00
7. Idling and loafing on December 21, 2009, in violation of Rule 4, Section 380.00
8. Failing to follow an order on December 17, 2009, in violation of Rule 4, Section 030.00
9. Failing to follow an order on December 21, 2009, in violation of Rule 4, Section 030.00

For charges 1, 2, and 3, the Chief issued Ruege an official reprimand. For charges 4, 5, 6, 7, 8 and 9, the Chief demoted Ruege from the rank of sergeant to the rank of police officer. Ruege filed an appeal of the Chief's order with the City of Milwaukee Fire and Police Commission, and a hearing was conducted.

SUMMARY OF HEARING PROCEEDINGS

At the hearing on April 13, 2011, which was transcribed by a court reporter and which is available as part of this record, testimony was received from:

For the Chief of Police: Chief Edward A. Flynn
 Lieutenant Heather N. Wurth
 Sergeant Liam G. Looney

For the Appellant: Thomas D. Ruege

Based upon the evidence received at the hearing on April 13, 2011, the Commission makes the following

FINDINGS OF FACT

Ruege has been employed by the Milwaukee Police Department since August 17, 1992. He became a police officer on December 3, 1995, and he was promoted to the rank of police sergeant on August 1, 2004. During the entire month of December of 2009, Ruege held the rank of police sergeant.

Pursuant to the contractual provisions governing Ruege's employment as a sergeant, he was allowed a twenty-minute break during a shift for a meal. Ruege was aware of the allowed break period. Ruege was also aware of the department rules and procedures requiring him to familiarize himself with all department rules and procedures and abide by them, to notify dispatch of his location, to obey lawful orders from an officer of higher rank and to refrain from idling or loafing while on duty.

On December 1, 2009, a department member informed Lieutenant Heather Wurth that Ruege was spending excessive amounts of time at home while on duty.

On December 2, 2009, Ruege's commanding officer, Lieutenant Wurth, advised him that she received information that he was spending excessive amounts of time at home while on duty, more than the allowed twenty-minute meal break, and that this was not acceptable.

On December 9, 2009, Ruege was at his home at 6:47 p.m. At 7:14 p.m. he reported to dispatch that he was going to eat lunch, and at 7:43 p.m. he reported to dispatch that he was back in service. Ruege remained at home until 7:47 p.m. Ruege was on duty the entire time he was at home.

On December 10, 2009, Ruege was dispatched to an incident involving the theft of a vehicle. At 6:45 p.m. he was at home. At 6:54 p.m. he reported to dispatch that another squad should remain at the scene of the incident. Ruege remained at home through at least 7:34 p.m. At 7:49 p.m. he reported to dispatch that the theft assignment was completed. Ruege was on duty the entire time he was at home.

On December 14, 2009, District 7 Captain William Jessup issued a written order requiring all sergeants to obtain approval from their shift commander before going home during their shift. The order was effective immediately. Ruege was not scheduled to work December 11 through 16, 2009, and he returned to work on December 17, 2009. On December 17, 2009, Ruege was at his home at 8:18 p.m., and he remained at home until 9:15 p.m. Ruege was on duty the entire time he was at home.

At the beginning of Ruege's shift on December 18, 2009, his shift commander, Lieutenant Wurth, talked to him about the order issued by Captain Jessup on December 14, 2009. She emphasized that he must call her every time that he wants to go home during his shift.

On December 18, 2009, Ruege was at his home at 7:19 p.m. while on duty. Lieutenant Wurth was Ruege's shift commander that day, and he did not obtain approval from her to go home during his shift before doing so.

On December 21, 2009, Ruege told Lieutenant Wurth, his shift commander, that his wife would have dinner ready for him at home between 6:00 and 6:30 p.m. Lieutenant Wurth ordered Ruege to call her immediately before going home so that she could make a decision at that point based upon pending calls for service. At 5:53 p.m. Ruege was at a strong armed robbery incident. At 7:05 p.m. Ruege sent Lieutenant Wurth a text message stating that he was at home for dinner, and he remained at home through at least 7:43 p.m. Ruege did not obtain approval from Lieutenant Wurth to go home during his shift before doing so. At 7:21 p.m. Ruege reported to dispatch that he left the robbery scene. Ruege was on duty the entire time he was at home, and other assignments were pending while he was at home.

Lieutenant Wurth reported Ruege's conduct to Captain Jessup and Deputy Inspector Denita Ball in written memos dated December 17 and 21, 2009. Lieutenant Wurth's reports included information from the department's automated vehicle locator system and the computer aided dispatch system. Deputy Inspector Ball ordered the Professional Performance Division to investigate Ruege for allegations of spending excessive amounts of time at home while on duty, going home while on duty without obtaining prior approval from his shift commander and failing to notify dispatch of changes in his location.

Sergeant Liam Looney, assigned to the Professional Performance Division, conducted a formal investigation of the allegations against Ruege. The investigation included a review of Lieutenant Wurth's reports and an interview of Ruege.

Chief Edward Flynn considered the information gathered during the investigation and found that Ruege had committed nine counts of violating Milwaukee Police Department Rules and Regulations. In determining the appropriate discipline to impose against Ruege, Chief Flynn reviewed the records of the investigation. Chief Flynn considered the responsibilities of a sergeant as a front-line supervisor, such as modeling

behavior expected of subordinate officers and enforcing department rules, regulations and policies. Chief Flynn considered the higher standard to which supervisors are held. Chief Flynn considered that Ruege's conduct was brought to Lieutenant Wurth's attention by other officers who noticed that Ruege was not following the rules. Chief Flynn considered that Ruege's conduct was not a single isolated incident, but an ongoing pattern of conduct that continued even after Lieutenant Wurth told him that he was spending excessive amounts of time at home while on duty and even after Lieutenant Wurth emphasized that he must call her for approval to go home while on duty before doing so. Chief Flynn considered the extreme importance of the chain of command and a sergeant's need to follow direct orders from his immediate supervisors. Chief Flynn also considered Ruege's record of service with the department, which included one award in 2000 and two rule violations in 2004. Chief Flynn knew that Ruege's explanation for his conduct involved medical issues, but he determined that given the totality of the circumstances Ruege's explanation did not mitigate or justify his conduct.

CONCLUSIONS OF LAW

Department Rule 4, Section 010.00 requires Department members to familiarize themselves with all Department rules and procedures within 30 days of issuance and abide by those rule and procedures or be subject to disciplinary action. The department procedures include notifying dispatch about a change in one's location.

Given the Commission's findings of fact, Ruege violated Rule 4, Section 010.00 on December 10 and 21, 2009, because he failed to notify dispatch of his change of location when he went home while on duty those days. The evidence does not support a finding that Ruege violated Rule 4, section 010.00 on December 17, 2009, because no evidence was presented about his communication and/or lack of communication with dispatch around and/or during the time he went home that day.

Department Rule 4, Section 380.00 prohibits Department members from sleeping, idling or loafing while on duty.

Given the Commission's findings of fact, Ruege violated Rule 4, Section 380.00 on December 9, 10, 17 and 21, 2009, because he spent approximately thirty-eight to sixty minutes at home while on duty those days despite knowing that he was limited to a twenty-minute meal break and despite being warned by Lieutenant Wurth that he was spending excessive amount of time at home while on duty.

Department Rule 4, Section 030.00 requires Department members to promptly obey any lawful order from any officer of higher rank.

Given the Commission's findings of fact, Ruege violated Rule 4, Section 030.00 on December 21, 2009, because at that point he knew about the order issued by Captain Jessup requiring all sergeants to obtain approval from their shift commander before going home during their shift, his shift commander that day ordered him to call her immediately before going home so that she could make a decision based upon pending calls for

service and he went home during his shift without obtaining approval from his shift commander before doing so. The evidence does not support a finding that Ruege violated Rule 4, section 030.00 on December 17, 2009, because the evidence does not prove by a preponderance of the evidence that he knew about Captain Jessup's order while working that day.

Given the Commission's findings of fact, the Commission also concludes the following:

1. Ruege could reasonably be expected to have had knowledge of the probable consequences of his conduct on December 9, 10, 17 and 21, 2009, within the meaning of Wisconsin Stat. §62.50(17)(b)(1).
2. Department Rule 4, Sections 010.00, 030.00 and 380.00, the Department's procedure requiring members to notify dispatch of changes in their location, and the order by Captain Jessup requiring all sergeants to obtain approval from their shift commander before going home during their shift are all reasonable, within the meaning of Wisconsin Stat. §62.50(17)(b)(2).
3. Chief Flynn, before filing the charges against the subordinate, made a reasonable effort to discover whether Ruege did in fact violate a rule or order, within the meaning of Wisconsin Stat. §62.50(17)(b)(3).
4. Chief Flynn's effort to discover whether Ruege did in fact violate a rule or order was fair and objective, within the meaning of Wisconsin Stat. §62.50(17)(b)(4).
5. Chief Flynn discovered substantial evidence that Ruege violated the rule or order as described in the charges filed against Ruege, Wisconsin Stat. §62.50(17)(b)(5).
6. Chief Flynn applied the rule or order fairly and without discrimination against Ruege, within the meaning of Wisconsin Stat. §62.50(17)(b)(6).
7. The proposed discipline for charges 1, 3, 4, 5, 6, 7 and 9 reasonably relate to the seriousness of Ruege's violations and Ruege's record of service with the chief's department, within the meaning of Wisconsin Stat. §62.50(17)(b)(7). The serious and repeated nature of Ruege's conduct, coupled with the notice he received from his shift commander regarding such conduct, requires that Ruege be removed from the rank of sergeant, notwithstanding Ruege's explanation for his conduct.

DECISION

The Commission sustains Chief Flynn's order regarding the rule violations and discipline of Thomas D. Ruege for counts 1, 3, 4, 5, 6, 7, and 9. The Commission does

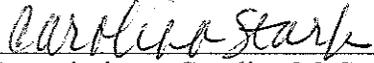
not sustain Chief Flynn's order regarding the rule violations and discipline of Thomas D. Ruege for counts 2 and 8. The Commission's decision is unanimous as to all counts.

By the Commission:



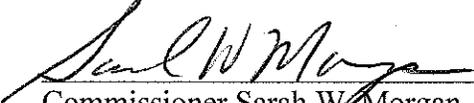
Commissioner Kathryn A. Hein

6/23/11
Date



Commissioner Carolina M. Stark

06/23/11
Date



Commissioner Sarah W. Morgan

6/23/11
Date