

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

**In the matter of the appeal of Tamecka C. Carr-Winding
Personnel Orders: 2010-179; 2010-180; 2010-182; 2010-183; 2010-184**

Hearing Date: June 8, 2011

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

Commissioners: Kathryn A. Hein, Michael M. O’Hear and Carolina M. Stark

Hearing Examiner: John J. Carter

Appearances: Patricia A. Fricker, Assistant City Attorney, for
the Milwaukee Police Department
Tamecka C. Carr-Winding, *pro se*

PROCEDURAL HISTORY

Police Chief Edward A. Flynn charged Tamecka C. Carr-Winding (“Appellant”) with the following nine (9) charges of violating the Milwaukee Police Department Rules and Regulations:

1. Off Duty Employment in violation of Rule 4, Section 20.00.
2. Failure To Notify Shift Commander of Sick Leave Status, April 12, 13, 14, 16, 18, and 19, 2010 in violation of Rule 4, Section 010.00.
3. Leaving Residence While on Sick Leave, April 19, 2010 in violation of Rule 4, Section 010.00.
4. Failure To Conform to and Abide by the Laws of Wisconsin, June 15, 2010 in violation of Rule 4, Section 015.00.
5. Absent Without Leave, June 25, 2010 in violation of Rule 4, Section 010.00.
6. Untruthfulness, June 25, 2010 in violation of Rule 4, Section 105.00.

7. Failure To Update Contact Information, July 17, 2010 in violation of Rule 4, Section 045.00.
8. Leaving Residence While On Sick Leave, July 17, 2010 in violation of Rule 4, Section 010.00.
9. Absent Without Leave (2 counts) (April 11, 2010 through April 25, 2010) and (July 11, 2010 through August 26, 2010) both in violation of Rule 4, Section 010.00.

For charge 5, the Chief suspended her for 3 days. For charges 2 and 7, the Chief suspended her for 5 days each. For charge 3, the Chief suspended her for 10 days. For charge 8, the Chief suspended her for 30 days. For charges 1, 4, 6 and 9 (both counts), the Chief discharged her for each charge. Appellant filed an appeal from the orders of the Chief to the Milwaukee Fire and Police Commission and a hearing was conducted.

SUMMARY OF HEARING PROCEEDINGS

On June 8, 2011 a hearing was held. The hearing being conducted before three Commissioners, the Hearing Examiner and a court reporter. The proceedings were transcribed and are a part of the record of this matter. Testimony was taken:

For the Chief of Police:

Alberto Riestra
Charlene Kennedy
Charles Grimm
Heather Wurth
Malcolm Blakley
Timothy Leitzke
Robert King
Mercedes Cowan
Edward A Flynn

For the Appellant:

Tamecka C. Carr-Winding
Ashley Porter
Darnisha Barbee
Luberdia Carr

Based upon the testimony received at the hearing the Commission makes the following:

FINDINGS OF FACT

1. Appellant was appointed to the Milwaukee Police Department on June 18, 2007 and was assigned to District 7 with the rank of Police Officer.
2. At the time of her application for employment she indicated she was the owner/operator of a licensed day care center.
3. During her training at the police academy she was made familiar with the Rules and Regulations of the Department and of her obligation to be familiar with the rules of the Department.
4. During her field training, Appellant was informed by her Field Training Officer that any additional employment was prohibited without the prior permission from the Department.
5. Appellant testified she did not consider herself as being employed by the day care because she was an owner/operator and she had employees working there.
6. Appellant would visit the day care center at least once or twice per month in order to make sure it was being run properly. The day care occupied part of her home and that of her children; the family occupied the second floor and part of the first floor and the basement of the building. The day care was located on part of the first floor.
7. Appellant testified she believed that because the Department knew she owned a day care when she was hired that the Department did not object to her doing so and therefore she did not need to seek additional permission.
8. The general operation of the day care as an owner/operator took some time and attention although she did not work in the traditional sense as a day care worker.
9. The Commission finds that Appellant was engaged in a business as a day care owner/operator without the consent or knowledge of the Department during her employment as a Police Officer in violation of the Rule.

10. Appellant failed to call in and notify her shift commander on April 12, 13, 14, 16, 18 and 19, 2010 that she was taking sick time and she claimed she didn't know why she failed and/or she forgot to do so.
11. Appellant left her home while on sick leave on April 19, 2010, without permission, which was prohibited. She went to a bar and she knew she needed permission before doing so.
12. On June 15, 2010 Appellant operated a motor vehicle with suspended license plates in violation of the motor vehicle laws when she knew the plates were suspended. Appellant knew of other police officers who operated vehicles with suspended or expired plates and didn't think the Rule was very important. She testified she had no other way to get to work.
13. On June 25, 2010 Appellant requested from the shift commander to have the night off. Her request was denied due to staffing shortages and she was told to come to work after a two hour delay. She reported to work 21 minutes late and reported the reason for her request was that the power was off in her home, which turned out to be only partially true in that the power was off to only a portion of the home/day care. Appellant produced a written communication from the power company showing there was a disconnection of service on the date in question.
14. Appellant knew of the Rule to keep the Department aware of current contact information and she failed to do so on July 19, 2010, and never updated the Department information after that date.
15. On July 17, 2010 Appellant left her home without permission while on sick leave and was not at home when checked by Sergeant Robert King.
16. Appellant failed to comply with absence procedures between April 11, 2010 through April 25, 2010 and further she failed to comply with Department directions regarding her status; she was given time to notify the Department as to her status and she failed to do so, but did return on April 25, 2010.

17. Appellant was absent without leave between August 21, 2010 through August 25, 2010 because she failed to provide the Department with the necessary medical reports for that time period.
18. Appellant admitted that all of the allegations about missing work, failing to notify the department and being absent are generally accurate and only contests the untruthfulness charge.
19. The parties stipulated that there is no dispute as to charges 2, 3 5, 7 and 8, and to those the Commission makes a finding that the Chief has sustained his burden by a preponderance of the evidence and such finding is unanimous.

CONCLUSIONS OF LAW

20. Based on the Findings of the Commission and the stipulations of the parties, the charges set forth in charge 2, (Failure to Notify the Shift Commander of Sick Leave Status (Rule 4, Section 010.00) was violated by Appellant.
21. Based on the Findings of the Commission and the stipulations of the parties, the charges set forth in charge 3 (Leaving Residence While On Sick Leave, Rule 4, Section 010.00) was violated by Appellant.
22. Based on the Findings of the Commission and the stipulations of the parties, the charges set forth in charge 5 (Absent Without Leave, Rule 4, Section 010.00) was violated by Appellant.
23. Based on the Findings of the Commission and the stipulations of the parties, the charges set forth in charge 7 (Failure to Update Contact Information, Rule 4, Section 045.00) was violated by Appellant.
24. Based on the Findings of the Commission and the stipulations of the parties, the charges set forth in charge 8 (Leaving Residence While on Sick Leave, Rule 4, Section 010.00) was violated by Appellant.
25. Appellant reasonably knew her conduct could result in the probable consequences and the Rules stipulated to were reasonable. The Chief made reasonable effort to discover

whether Appellant violated the Rules, and the Chief's effort to discover whether the Rules were violated was fair and objective, and the Chief discovered substantial evidence that Appellant violated the Rules stipulated to.

26. Based upon the Findings and the Stipulations, the Commission concludes that the Chief applied the Rules fairly and without discrimination against Appellant. The suspensions by the Chief for violations of charges 2, 3, 5, 7 and 8 reasonably relate to the seriousness of the violations and Appellant's record of service to the Department, particularly because of the need for staffing requirements for the Department and the need to produce a force of officers in such numbers to handle the work of the Department.
27. Based upon the Findings and the Stipulations, the Commission concludes that the charge of Engaging in Outside Employment, Rule 4 Section 20.00 is reasonable because the Department needs to know of potential conflicts of interest and other matters which might impact policing.
28. Appellant could reasonably conclude that a violation of the outside employment Rule would result in consequences.
29. The Commission concludes that the Chief made a reasonable effort to discover the outside employment violation.
30. The Commission concludes that the Chief discovered substantial evidence of outside employment of Appellant and that the Rule was applied fairly and without discrimination against Appellant.
31. The Commission concludes in their decision on the outside employment charge, with two in favor and one opposed, that the discipline imposed by the Chief reasonably related to the seriousness of the violation and Appellant's record of service with the Department, such termination being not upheld by one member upon his belief that the employment engaged in by Appellant was not a knowing and willful violation. The dissent would only terminate upon a showing of willfulness, with the majority concluding that the history of Appellant's conduct showed a disdain for the Rules, Regulations and Laws.

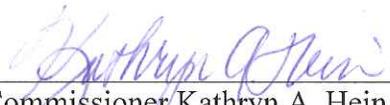
32. The Commission concludes that the Chief has failed to sustain his burden of a violation of charge 6, Untruthfulness, Rule 4, Section 105.00. The rule prohibits “sign[ing] any false official statement or report, commit[ting] perjury, or giv[ing] false testimony before any court, board, or commission, or in any judicial or administrative hearing.” The allegedly false statement that Appellant was accused of making was not made in any of the settings covered by the cited rule.
33. The Commission concludes that charge 4, Failure to Comply with State Laws, was sustained by the Chief. The Commission concludes that Appellant could reasonably conclude there would be consequences for her conduct and that the Rule is reasonable. Further, the Commission concludes that the Chief made a fair and objective inquiry and investigation and that such effort was fair and objective. There was substantial evidence of a violation of the Rule.
34. The Commission concludes that the violation (charge 4) was flagrant and open and engaged in by Appellant without regard for the probable consequences and Appellant concluded that she did not have to comply with that law regarding suspended license plates and registration. The Commission concludes that the Rule was applied fairly and without discrimination. The discipline is appropriate in light of the seriousness of this violation, including its open and willful nature and its continuation over an extended period of time, and in light of Appellant’s record of many other violations.
35. The Commission does not sustain the charges that Appellant was absent without leave on April 11 and 12, 2010, and the Commission concludes that the charges are sustained that Appellant was absent without leave beginning April 13, 2010 through April 24, 2010 and Appellant returned to work on April 25, 2010.
36. The Commission concludes that the charges that Appellant was absent without leave from July 11, 2010 through August 25, 2010 are not sustained. The Commission concludes that Appellant was absent without leave from August 21, 2010 through August 25, 2010 and that the discharge for both counts (paragraphs 35 and 36) is sustained as fair and without discrimination, and that the discharge reasonably relates to the seriousness of the violations and to Appellant’s service with the Department.

37. The Commission makes its findings and conclusions by a preponderance of the evidence and unanimously, except as to the dissent set forth in paragraph 31 above.

DECISION

For the reasons set forth in these Findings of Fact, Conclusions of Law and the transcript of the hearing which is incorporated by reference, the charges as set forth above are sustained, except as is specifically enumerated in paragraph 32, along with the discipline as set forth above, including that Appellant is discharged from the Department for the good of the Department. Appellant's repeated violations of the Rules regarding sick leave, notifications and the open, flagrant and willful ignoring of the traffic laws compel these results.

By the Commission:



Commissioner Kathryn A. Hein

9/15/11

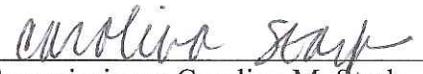
Date



Commissioner Michael M. O'Hear

9/15/11

Date



Commissioner Carolina M. Stark

09/15/11

Date



Commissioner Michael M. O'Hear,

I dissent as to the discipline imposed for charge 1 (outside employment).