

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

In the Matter of the Appeal Matthew C. Knaack

Hearing Date: December 4, 2019

Hearing Location: Room 301-A, City Hall, 200 E. Wells Street

Commissioners: Everett Cocroft
Steven M. DeVougas, Esq.
Angela McKenzie, Esq.

Hearing Examiner: Rudolph M. Konrad, Esq.

Appearances: For the Milwaukee Police Department,
Assistant City Attorney Robin A. Pederson

For Matthew C. Knaack
Attorney Brendan Matthews, Cermele & Matthews, S.C.

PROCEDURAL HISTORY

Chief of Police, Alfonso Morales (hereinafter “Chief”), charged Police Officer Matthew C. Knaack (hereinafter “Officer Knaack”) with violating Core Value 1.00, Competence, referencing Guiding Principle 1.05, referencing Standard Operating Procedures relating to social network sites, sec. 685.15(A)(8), by imparting confidential Department information on a social network site to an unauthorized person. He also charged him with violating Core Value 1.00, Competence, referencing Guiding Principle 1.05, referencing Standard Operating Procedures relating to social network sites, sec. 685.15(A)(11), by posting a photo of an official Department record on social media without permission of the Chief. The Chief found the charge to have been proven and ordered him suspended from the Department for five (5) days on the first charge and (5) days on the second charge.

SUMMARY OF HEARING PROCEEDINGS

Officer Knaack appealed the order of suspension to the Milwaukee Fire and Police Commission. A hearing was held and recorded by a stenographic reporter. Testimony was taken from the following witnesses:

For the Police Chief: Police Officer Matthew C. Knaack
Police Sergeant Michael Dix
Police Lieutenant David Feldmeier

For the Appellant:

None

STANDARD OF PROOF

This appeal is governed by the seven “just cause” standards set forth in Wis. Stat. Sec. 62.50(17)(b). The Commission must find by a preponderance of the evidence that there is just cause to sustain the charges. Preponderance of the evidence means “more likely than not,” rather than just possible. See, e.g., *U.S. v. Johnson*, 342 F.3d 731, 734 (7th Cir. 2003). Disciplinary appeals before this Board are divided into two parts. In Phase I, we determine whether a violation of a Department rule has been proven by a preponderance of the evidence. In making this determination, we are guided by the first five “just cause” standards set forth in Wis. Stat. §62.50(17)(b). In Phase II, we determine whether the “good of the service” requires discharge or some lesser discipline. In making this determination, we are guided by the sixth and seventh statutory “just cause” standards.

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

FINDING OF FACTS

1. The events leading to this discipline began on May 30, 2018. Police Officer Robert Fitchett (hereinafter “Officer Fitchett”) sent an email to Police Officer Jered Fliss, who was assigned to the Risk Management Division as the TIME Agency Coordinator, and to Sergeant Ruth Fishnick. Officer Fitchett’s email stated “I just thought you should know that Mateo Knaack posted a runoff on Facebook.” Attached to the email was a screenshot, which is an image of the data displayed on the screen of a computer or mobile device. The image appeared to be a photo of Wisconsin Department of Transportation (hereinafter “DOT”) driver registration information runoff. The information displayed would appear when a license plate inquiry is made on the TIME system. The TIME system contains confidential information which is to be viewed by members of law enforcement for official purposes only. For a police officer to release the information for a non-law-enforcement purpose is in violation of the TIME system policy. The email also contained what appeared to be a link to a Facebook account. (Ex. 1, 4)

2. The photo attached to Officer Fitchett’s email is labeled “Mateo Knaack.jpg.” JPG, or JPEG, is a computer file extension. It indicates the method of photographic image compression that was used. The link to the photo copied to or reproduced in the email refers to a Facebook account, but contain no information that identifies the sender of the image. When Sergeant Dix clicked on the link, it did not work. (Ex. 2, 3)

3. On September 20, 2018, the allegation of misconduct was referred to Sergeant Michael Dix for investigation. On October 20, 2018, he conducted a non-PI-21 interview of Officer Fitchett. He told Sergeant Dix he sent the May 30th email because he was concerned about a security breach. He confirmed he had a personal Facebook account and that the image in question appeared as a posting on his personal Facebook account. He recognized it as a confidential record and took a screenshot of it. He noted that the attachment was labeled “Mateo Knaack.jpg.” He knew that the

moniker, “Mateo Knaack,” is that of Officer Matthew Knaack. Officer Fitchett is not a Facebook friend of Officer Knaack. Moreover, he has neither personal nor professional contact with Officer Knaack, but only knows of him as an officer who is employed by the Milwaukee Police Department. (Ex. 3)

4. On March 13, 2019, almost ten months after Officer Fitchett sent the email, Sergeant Dix conducted a P- 21 interview of Officer Knaack. In the course of the interview, Officer Knaack admitted he was familiar with the TIME system. He had completed TIME training and had accessed it in the course of his police work. He was aware the information on the system is confidential. When he was shown the image in question, he recognized it as a DOT runoff and remarked he had seen the name before but could not recall to what it was related. He confirmed he had had a personal Facebook account under the moniker “Mateo Knaack,” which he later changed to “Matthew Knaack.” Sergeant Dix told Officer Knaack that the image in question “was observed posted to his personal Facebook account.” Officer Knaack responded that he did not recall posting the image to his Facebook account; moreover, he did not recall ever posting the result of a DOT query to his Facebook account. He admitted he had taken a picture of the runoff, probably with his cell phone. He agreed to search his phone for the image and did locate it on his phone. Finally, he stated he may have shown the photo to his squad partner. He did not recall if he had shared it via text but did not believe he would have shared it via social media such as Snapchat, Instagram, or another similar form. The photo image taken from Officer Knaack’s phone is identical to the image attached to Officer Fitchett email. (Ex. 3)

5. On May 13, 2019, Officer Knaack responded to the investigation. He acknowledged that he had taken the photo in question, but never intended it to be seen by the public or by any non-sworn personnel. He was concerned and confused because the link in the email was no longer available and the investigating officers had not been able to view the photo through the link. He had no recollection of posting the photo on Facebook. He speculated he might have posted it and then removed it after realizing it was a mistake, but had no recollection either way. (Ex. 2) Officer Knaack testified that although he has no memory of posting it or not posting it on Facebook, he would not have posted it on his Facebook account. Officer Knaack also had looked for the photo in his Facebook account but could not find it.

CONCLUSIONS OF LAW

6. The fifth just cause standard asks, “whether the Chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.” The gravamen of each count of the complaint against Officer Knaack is that he posted the photo he took of a DOT runoff on a social media site.

7. Proving this accusation is difficult because of the nature of social media generally and Facebook in particular. A Facebook news feed includes posts from account holder’s Facebook friends. That does not mean that the only posts that might appear on an account holder’s Facebook feed are from Facebook friends. As explained by Facebook, “[y]our News Feed includes posts about your friends’ activity on Facebook, including when your friends comment on posts from people you’re not friends with.” (<https://www.facebook.com/help/132021603539177?helpref=related>) In other

words, when an account holder's friends comment on posts from other people who are not the account holder's friends, those comments, nevertheless, would appear on the account holder's news feed. If a photo were included in the comment, it would also be seen. Moreover, a digital photo can also be transmitted by a screenshot, text, or email.

8. Officer Fitchett reported that he saw the post of the photo on his own Facebook account. Neither Fitchett nor anyone else testified that they saw the photo on Officer Knaack's Facebook account. Officer Fitchett took a screenshot of the photo and copied the accompanying Facebook link. He sent them both via email to Officer Fliss and Sergeant Fishnick. He told them that "Mateo Knaack" posted a runoff on Facebook. The attached link did not open to the photo or to Knaack's Facebook page or any other site, and, therefore, could not tie the post to any source. The photo was named "Mateo Knaack.jpg," but that only indicates that he had taken the photo, which he admits. Officer Fitchett stated to Sergeant Dix that he observed the photo on his personal account, but that he was not a Facebook friend of Officer Knaack. Because Officers Fitchett and Knaack are not Facebook friends, Knaack could not have posted the photo directly so that it could be seen by Fitchett. For Officer Fitchett to see the photo on Facebook, it either would have to had been posted by a friend, or have been attached to a comment to a posting by one of his Facebook friends.

9. Officer Knaack's statement that he did not recall posting the photo on a social media site might be viewed as evasive. The question, however, was put to him eight months after the May 30, 2018, email was sent, and after he was told that the photo was observed posted on his Facebook site, but the site was never viewed by the investigators because the link to the site did not work. Moreover, Officer Knaack was cooperative and forthright by admitting he took the photo and by searching for it on his phone and producing it. Under these circumstances, and in light of his cooperative attitude, we cannot conclude that Officer Knaack was untruthful based on his failure-to-recall statement alone.

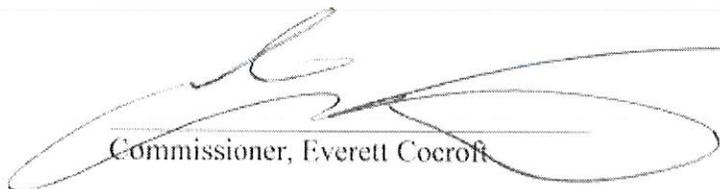
10. Officer Knaack should not have created the circumstances whereby his photo of a DOT runoff wound up in the hands of other persons via text, or email, or by allowing a screenshot. However, he was not charged for that conduct. In deciding this case we are constrained by the charges brought. The gravamen of both charges is that Officer Knaack posted the photo of the DOT runoff on social media. The Chief concluded he did so based on the circumstantial evidence presented. Because of the uncertainty about how Officer Knaack's photo appeared on Fitchett's Facebook site when neither were Facebook friends, we conclude that the circumstantial evidence presented does not amount to a preponderance of the evidence. Accordingly, we conclude the Chief has not satisfied the fifth just cause standard.

DECISION

We find the order of suspension of the Appellant, Matthew C. Knaack, is not sustained; accordingly, the order of suspension is vacated.

In reference to Exhibit 1, which contains confidential information, we direct that the redacted version of the exhibit, which is Exhibit 1A, be substituted in the record for Exhibit 1, and also be substituted where a copy of Exhibit 1 is in the record as part of another exhibit. The general content of the redacted parts are adequately explained in the record.

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Commissioner, Everett Cocroft

December 17th, 2019

Date

Commissioner, Steven M. DeVougas, Esq.

Date

Commissioner Angela McKenzie, Esq.

Date

Commissioner, Everett Cocroft

Date



December 17, 2019

Commissioner, Steven M. DeVougas, Esq.

Date



12/18/19

Commissioner Angela McKenzie, Esq.

Date