

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

IN THE MATTER OF THE APPEAL OF MARTIN R. GONZALEZ

Personnel Order 2011-60

Hearing Date: September 28, 2011

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

Commissioners: Kathryn A. Hein, Paoi X. Lor, and Sarah W. Morgan

Hearing Examiner: Attorney John J. Carter

Appearances: Patricia A. Fricker, Assistant City Attorney
For the Milwaukee Police Department

Attorney William R. Rettko
For Appellant Martin R. Gonzalez

PROCEDURAL HISTORY

Chief of Police, Edward A. Flynn, charged Martin R. Gonzalez (“Appellant”) on April 6, 2011, in Personnel Order 2011-60, with the following charges of violating the Milwaukee Police Department Rules and Procedures:

1. Rule 4, Section 010.00, referencing Standard Operating Procedures relating to Absence, Section 010.110(4); Core Value 1.00 – Competence, referencing Guiding Principle 1.06: Absent without leave, resulting in a two (2) day suspension without pay.
2. Rule 4, Section 030.00; Core Value 5.00 – Respect, referencing Guiding Principle 5.03: Failure to promptly obey an order emanating from an officer of a higher rank, resulting in discharge.

Appellant filed an appeal of his discipline to the Milwaukee Fire and Police Commission and a hearing was held on September 28, 2011. At the hearing, the parties, through their respective attorneys, stipulated on the record that the hearing was to be a Phase II hearing only, and that the Appellant stipulated that he had violated the rules and procedures set forth in the Personnel Order and that said stipulation constituted an admission for all purposes that §62.50(17)(b)1-5, Wis. Stats., inclusive, were established by a preponderance of the evidence. The hearing proceeded to a Phase II hearing only.

SUMMARY OF HEARING PROCEEDINGS

The hearing commenced on September 28, 2011. The proceedings were recorded by a stenographic reporter and the transcript of the proceedings is on file and is a part of the record herein. Testimony was taken:

For the Chief of Police: Chief Edward A. Flynn,
Milwaukee Police Department

Captain Jerome O'Leary,
Milwaukee Police Department

Sergeant Kerry Flowers,
Milwaukee Police Department

Sergeant August Halama,
Milwaukee Police Department

Sergeant David Arnold,
Milwaukee Police Department

For the Appellant: Captain Regina Howard,
Milwaukee Police Department

Lieutenant Alex Ramirez,
Milwaukee Police Department

Lieutenant Charles Berard,
Milwaukee Police Department

Police Officer Truman Dodd,
Milwaukee Police Department

Police Officer Daniel Cooke,
Milwaukee Police Department

Police Officer Artemio Rodriguez,
Milwaukee Police Department

Retired Sergeant William Pietsch,
Milwaukee Police Department

Appellant Martin R. Gonzalez

Based upon the testimony and exhibits received at the hearing, and the Commission having heard the arguments of counsel, the Commission makes the following:

FINDINGS OF FACT

1. Although Phase I was stipulated to, the underlying facts relative to the conduct of the Appellant as to the alleged violations are relevant factors for the Commission to consider in the Phase II proceedings.
2. Appellant was appointed to the Department on August 14, 1995, and this incident arose while he was assigned to District 4, Day Shift.
3. Appellant submitted Milwaukee Police Department Form PR-27 (Request for Additional Off Day/Trade of Regular Day Off Day) for January 30, 2011, which was denied.
4. Appellant submitted Milwaukee Police Department Form PP-6 (Replacement Execution Form) on January 28, 2011 for another police officer to work for Appellant on January 30, 2011, of which he never received documentation that Form PP-6 was approved or denied.
5. Appellant was scheduled to work on January 30, 2011, and he failed to arrive for his scheduled shift.

6. When Appellant failed to arrive, Sergeant Flowers was informed that the Appellant may have had a replacement.

7. Sergeant Flowers located Appellant's unapproved Form PP-6 in the shift commander's office, in the day shift sergeant's bin.

8. Sergeant Flowers made several efforts to contact Appellant by telephone and in person at his residence by Sergeant Sean Halley of District 6, all without success.

9. On January 30, 2011, at approximately 12:25 p.m., Appellant telephoned Sergeant Flowers who gave Appellant a direct order to immediately report to work and that said order was not obeyed.

10. Prior to January 30, 2011, Appellant did not check with anyone to find out if Form PP-6 was approved or denied.

11. No evidence was received upon the record as to whether or not the police officer who was to work the trade for Appellant was aware that Form PP-6 was approved or denied.

12. Appellant's failure to obey the order to report to work under all of the circumstances, was not reasonable.

13. Testimony of Appellant that he believed that the situation was to be explained to his Lieutenant by Sergeant Flowers, and that Appellant expected there would be no significant ramifications for his failure to report to work, was not credible.

14. The disciplinary history of Appellant at the time that he failed to obey a direct order to report to work should have alerted him to the seriousness of his failure to obey the order issued by an officer of a higher rank.

15. Appellant failed to obey a direct order to report to work, he had previously been spoken to directly by the Chief regarding his prior disciplinary history, and had been warned that any future violations would seriously jeopardize his continued employment.

16. The rules to which Appellant admitted violating were applied fairly and without discrimination against him.

17. The proposed discipline reasonably relates to the seriousness of the alleged violations and to the Appellant's record of service with the Department.

18. The repeated disregard for Department rules, regulations, orders and policy by Appellant provides a substantial basis for the determination by the Chief to discharge the Appellant.

19. The rules violated by Appellant and the underlying facts as to the violations when considered alone, would not provide a basis for Appellant's discharge; however, Appellant's disciplinary history, as testified to by the Chief and as indicated by Exhibits 3 and 7, establish a pattern of conduct demonstrating his unwillingness to conform to the rules, orders and procedures of the Department.

CONCLUSIONS OF LAW

1. The Chief has established, by a preponderance of the evidence, that Appellant's conduct violated the Department rules, orders and procedures.

2. The rules and orders of the Department were applied fairly and without discrimination against Appellant, by a preponderance of the evidence.

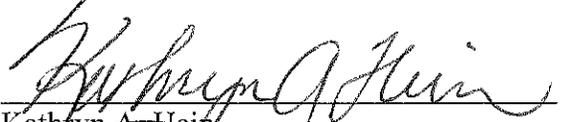
3. The discipline imposed reasonably relates to the seriousness of the offenses as compared to Appellant's service to the Department, by a preponderance of the evidence.

DECISION

The good of the service of the Milwaukee Police Department requires that Appellant be discharged from the Department and such discharge is supported by the Findings of Fact, Conclusions of Law and the testimony received upon the record.

Dated at Milwaukee, Wisconsin.

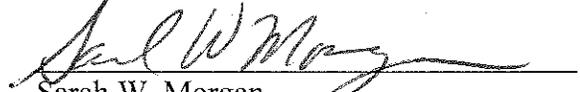
November 21, 2011


Kathryn A. Heip

November 23, 2011


Paul X. Lor

November 16, 2011


Sarah W. Morgan