

BOARD OF FIRE AND POLICE COMMISSIONERS  
OF THE CITY OF MILWAUKEE

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**In the Matter of the Appeal of Robert J. Koch**

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Hearing Date: September 14, 2011

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

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

Hearing Examiner: John J. Carter

Appearances: Patricia A. Fricker, Assistant City Attorney, for the  
Milwaukee Fire Department

Jessica M. Kramer, for Appellant Robert J. Koch

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**PROCEDURAL HISTORY**

Robert J. Koch was charged by former Milwaukee Fire Department Chief Douglas Holton with four (4) charges on September 9, 2009 alleging violations of Rule Number 24, Section(s) 24.1 (Rules, Orders, Laws, Ordinances, etc.); and 24.2 (General Conduct); Rule Number 26, Section 26.6 (Sick and Injury Leave Requirements); and Rule Number 27, Section 27.2 (“Violations, # 14, Untruthfulness”).

Mr. Koch appealed his termination from the Fire Department and his hearing was held on May 12, 2010. On May 12, 2010, the Commission determined that the Fire Department Chief had sustained his burden on the charges and on the proposed discipline which terminated Mr. Koch.

Mr. Koch appealed the Commission's Decision to the Milwaukee County Circuit Court and Judge William Pohan rendered a Decision on March 10, 2011 upholding the Commission's Decision on the charges, but remanded the case back to the Commission for more specific findings on the second phase pertaining to Wis. Stats. §§ 62.50(17)(b)(6) and 62.50(17)(b)(7). Mr. Koch's appellate counsel, Jessica Kramer, represented Mr. Koch at the remand hearing which was held on September 14, 2011.

### **SUMMARY OF HEARING PROCEEDINGS**

On September 14, 2011 the hearing was held before Commissioners Kathryn A. Hein, Sarah W. Morgan, and Paoi X. Lor, the Hearing Examiner Attorney John J. Carter and a court reporter. The proceedings were transcribed and are a part of the record of this matter.

Testimony was taken on behalf of:

Fire Department:

Former Fire Department Chief Douglas Holton  
Jasmine Salley  
Robert Koch, adversely

Appellant, Robert J. Koch:

Captain Andra Williams,  
Milwaukee Police Department  
  
Sergeant Rita Peerenboom,  
Milwaukee Police Department  
  
Gary Miller  
Heidi Mueller  
Battalion Fire Chief Sean Slowey  
Patricia Saavedra  
Deputy Fire Chief Michael Romas

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

**FINDINGS OF FACT**

The Commission finds that Mr. Koch intentionally left his residence on the evening of September 9, 2009 in furtherance of his own personal goals and without regard to the Department Rules relating to sick leave, thereby making his action willful and without regard to the Department Rules.

The Commission finds that Mr. Koch intentionally lied and/or misled command officers of the Fire Department as to his reasons for leaving home while on sick leave and as to his whereabouts that morning, and that such statements were repeated by him in his efforts to explain his actions and whereabouts.

The Commission finds that his lying extended over a substantial period of time.

The Commission finds that Mr. Koch persisted in his attempt to cover up his improper use of sick time and he knew that such actions only increased the seriousness of the possible charges and the probable penalties.

The Commission's findings as set forth above are by a preponderance of the evidence and unanimously adopted.

The Commission finds that Mr. Koch had many opportunities to correct the record he had made of the misinformation, and he willfully chose not to do so.

The Commission finds that not only the substantive violations charged require the termination of Mr. Koch, but the repeated and knowing untruthfulness persisted long after his emotional response to the sick leave violations should have passed.

The Commission finds that Mr. Koch's testimony is incredible as a matter of law, and that his versions of the explanations of why he took sick leave are not believable, and that no single version can therefore be believed.

The Commission finds that there are no comparables which can provide a basis for a clear comparison by the Commission, since the untruthfulness continued throughout an extended period of time, and was both verbal and in writing, and during that time, Mr. Koch had the opportunity to consult with counsel, his union representative, family members and co-workers.

The Commission finds that Mr. Koch's statements, prior testimony, and demeanor provide substantial evidence for the Commission's determinations.

The Commission finds that the quality of truthfulness is critical for a Fire Department employee who receives incoming phone calls and is responsible to advise others of the facts that the employee learns.

#### **CONCLUSIONS OF LAW**

The Commission finds that Rule Number 24, Section(s) 24.1 (Rules, Orders, Laws, Ordinances, etc.); and 24.2 (General Conduct); Rule Number 26, Section 26.6 (Sick and Injury Leave Requirements); and Rule Number 27, Section 27.2 ("Violations, # 14, Untruthfulness") were each applied fairly and without discrimination to Mr. Koch by the Chief of the Fire Department and such finding is unanimous by a clear preponderance of the evidence.

The Commission finds that the discipline imposed of termination from the Fire Department directly and reasonably relates to the seriousness of the repeated conduct and as compared to Mr. Koch's record of service to the Fire Department.

**DECISION**

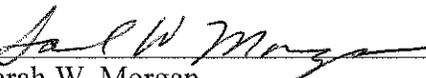
The Commission determines that for the reasons set forth in the Findings of Fact and Conclusions of Law, and based upon the entire record, there is substantial evidence that the Chief's determination that Mr. Koch must be terminated from the Department be sustained, and it is so determined and ordered by a unanimous vote and by a preponderance of the evidence.

By the Commission:

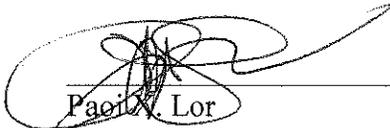
October 26, 2011

  
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Kathryn A. Hein

October 26, 2011

  
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Sarah W. Morgan

October 26, 2011

  
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Paul W. Lor