



Fire and Police Commission

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May 23 2018

Via E-mail and U.S. Mail

ACA Robin Pederson
City Attorney's Office
841 N. Broadway, Room 716
Milwaukee, WI 53202

Mr. Brian S. Petersen
5606 West Rogers Street
West Allis, WI 53219

Re: Former Police Officer Brian S. Petersen
MPD Personnel Order No. 2018-19

Dear Attorney Pederson and Mr. Petersen:

Enclosed please find a copy of the Board's written Decision in the disciplinary appeal matter of Milwaukee Police Officer Brian S. Petersen. Please be advised that a request for Circuit Court review pursuant to §62.50(20) Wis. Stats., must be filed within ten (10) days of the date of this letter.

Please do not hesitate to contact the Fire and Police Commission office with any questions, comments or concerns.

Very truly yours,

Steven Fronk
Emergency Management &
Homeland Security Director

SF/nmt

Cc: Chief Alfonso Morales (w/enclosure)
Internal Affairs Division (w/enclosure)
Hearing Examiner Rudolph Konrad (w/enclosure)



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

In the Matter of the Appeal of Brian S. Petersen

Hearing Dates: May 14, 2018

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

Commissioners: Nelson Soler
Steven M DeVougas, Esq.
Fred Crouther

Hearing Examiner: Rudolph M. Konrad, Esq.

Appearances: For the Milwaukee Police Department,
Robin A. Pederson, Esq.
Office of the City Attorney

For the Appellant, Brian S. Petersen, *pro se*

PROCEDURAL HISTORY

In Personnel Orders 2018-19, dated February 20, 2018, Chief of Police, Alfonso Morales, found that Police Officer Brian S. Petersen (hereinafter "Officer Petersen" or "Petersen"), failed to obey the laws of the State of Wisconsin, in violation of Milwaukee Police Department Core Value 3.00, *Integrity*, Guiding Principle 3.05. Officer Petersen, failed to obey Wis. Stat. sec. 346.63(1)(A), Operating While Intoxicated (3rd Offense), and 346.67(1), Hit-and-Run (Attended). Officer Petersen also violated the terms of his bail by failing to maintain absolute sobriety in violation of Wis. Stat. 946.49, Bail Jumping. (Ex. 1.1 and 1.2) For these rule violations, the Chief ordered that Officer Petersen be discharged from the department. Petersen appeals the Chief's order to the Milwaukee Fire and Police Commission.

SUMMARY OF HEARING PROCEEDINGS

A hearing was held and recorded by a stenographic reporter. Testimony was taken from the following witnesses:

For the Police Chief: Captain Paul Felician

For the Appellant: Brian S. Petersen, *Pro se*

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.

PHASE I

1. At the Phase I hearing, Officer Petersen did not contest the charges in the Complaint nor whether the Police Chief, in his investigation and imposition of discipline, satisfied the five “just cause” standards stated in Wis. Stat. sec. 62.50 (17) (b). Accordingly, a stipulation, marked Exhibit 1, was entered into by the parties that established the following:

a. Petersen was an employee of the City of Milwaukee and a sworn member of the Milwaukee Police Department holding the rank of Police Officer.

b. Petersen knowing waived his right to a fact-finding hearing for what is commonly referred to as Phase I of the appeal of the discipline but to proceed with Phase II of the appeal.

c. Petersen waived a hearing on the first five “just cause” factors under Wis. Stat. sec. 62.50(17), and stipulated the commissioners may deem them established.

d. Petersen admitted violating the two core values and guiding principles as charged in the Complaint filed in this matter and dated February 20, 2018, and Personnel Order 2018-19.

2. The specification in the first count in the Complaint summarizes his offense as follows:

“On November 20, 2017, Police Officer Brian S. PETERSEN, while off-duty and after consuming alcoholic beverages, operated a motor vehicle in the City of West Allis, where he crashed into three other cars, one of which was occupied, and then fled the crash scenes. West Allis Police Officers responded and determined that Officer Pedersen was the driver of the hit-and-run vehicle. Additional investigation revealed that Officer PETERSEN was intoxicated by alcohol, as evidenced by a preliminary breath test

result of 0.23g/210L. Officer PETERSEN was arrested for Operating While Intoxicated (3rd Offense) and Hit-and-Run (Attended).”

“During a PI-21 interview, Officer PETERSEN admitted to consuming alcohol and medication prior to operating his vehicle on November 20, 2017. Officer PETERSEN also stated that the consumption of alcohol and medication impaired his ability to operate a motor vehicle. Officer PETERSEN stated he did not recall crashing into three other vehicles, one of which was occupied.”

“Police Officer Brian S. PETERSEN failed to obey state law while off-duty, specifically Wisconsin State Statute 346(1)(A) Operating While Intoxicated (3rd Offense) and 346.67(1) Hit-and-Run (Attended).”

3. The specification in the second count in the Complaint summarizes his offense as follows:

“On November 24, 2017, Officer PETERSEN was released on bail with court ordered absolute sobriety. On December 1, 2017, West Allis police officers responded to Officer PETERSEN’S residence for a dispatched Welfare Check assignment of Officer PETERSEN. During this investigation, Officer PETERSEN stated to West Allis Police Officer that he consumed alcohol, violating the terms of his bail. A preliminary test of Officer PETERSEN’S breath revealed an alcohol content of 0.30g/210L.”

“During a PI-21 interview, Officer PETERSEN confirmed he was ordered by the court to maintain absolute sobriety, and admitted to violating the terms of his bail by consuming alcohol, resulting in his arrest for bail jumping on December 1, 2017.”

“Police Officer PETERSEN failed to obey state laws while off-duty, specifically Wisconsin State Statute 946.49 Bail Jumping.”

4. Peterson agreed that to establish the underlying factual basis establishing the two rule violations for purposes of appeal, the following documents are true and correct and are admitted into the record for the truth of the matters asserted.

a. The specifications contained in the Complaint filed in this matter. (Ex. 1.1, quoted above).

b. The probable cause statement contained in the Criminal Complaint filed in *State of Wisconsin v. Brian S. Petersen*, Milwaukee County Case No. 2017CT2025. (Ex. 1.3).

c. The investigation summary memorandum by Sergeant Benjamin Fellers dated December 8, 2017. (Ex.1.4).

d. Four West Allis Police Department Incident Reports concerning Incident Nos. 17-046199 and 17-047734. (Ex. 1.5(1) through 1.5(4)).

5. Based upon Officer Peterson's failure to contest the charges in the Complaint, his stipulation to the facts and to the admission of the documents attached to the stipulation, we find that the fact stated in the Complaint have been established as true and that first five "just cause" standards set forth in Wis. Stat. §62.50 (17) (b) have been met. Accordingly, the charges against Officer Petersen are sustained.

PHASE II

6. During the Phase II hearing, Officer Petersen submitted a letter from Rogers Memorial Hospital stating that he had undergone inpatient treatment. (App. Ex. 1) He also submitted a letter from a St. Francis Hospital behavioral therapist. In the letter she reports (1) that during March and April of this year he attended 18 group sessions; (2) That he reported to her that he attends Alcoholics Anonymous at least three times a week; and, (3) That he has been offered Aftercare treatment. (App. Ex. 2) Officer Petersen testified that he has been sober for a couple of months and that he believes that his job performance warranted a suspension rather than a discharge.

7. The sixth just cause standard asks, "whether the Chief is applying the rule or order fairly and without discrimination against the subordinate." Captain Felician testified that the discipline imposed is consistent with department policy. For a first offense OWI, officers are suspended for either 15 or 30 days, depending upon the degree of intoxication. A level of intoxication greater than 0.1 usually resulted in a 30-day suspension. This was Peterson's second OWI while a department member; he was suspended for 30 days on January 17, 2016, for OWI. The discipline imposed on him is consistent with comparable cases. (Ex. 5) We find a thorough investigation was conducted with no credible evidence of animus, unfairness, or discrimination against Petersen. (Ex.1.4 and 1.5) We conclude the Chief has satisfied the sixth standard by a preponderance of the evidence.

8. The seventh and final just cause standard asks, "whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the department." Chief Morales met with his staff to discuss the case. He reviewed the Code of Conduct and considered Officer Petersen's past performance and disciplines, experience, training, intent, and the degree of harm that resulted. (Ex. 2) Captain Paul Felician testified that he supervised Officer Petersen for two and one-half years while Petersen was assigned to telephone services in the Technical Communications Division. Petersen's tenure was marked by low productivity and so many absences that he exhausted his sick time, his compensatory time off, and took time off without pay. His evaluations were mediocre at best. We find that Petersen's two OWI incidents coupled with his violation of the total sobriety bail condition, are of a significantly serious nature that even a more credible record of service would not be

sufficient to warrant a discipline short of discharge. We conclude the Chief has satisfied the seventh standard by a preponderance of the evidence.

DECISION

The charges are sustained and Appellant, Brian S. Petersen, is ordered discharged from the Milwaukee Police Department for the good of the service.

Commissioner Steven M DeVougas, Esq.

Date

Dr. F. L. Crouther

Commissioner Fred Crouther

May 21, 2018
Date

Commissioner Nelson Soler

Date

sufficient to warrant a discipline short of discharge. We conclude the Chief has satisfied the seventh standard by a preponderance of the evidence.

DECISION

The charges are sustained and Appellant, Brian S. Petersen, is ordered discharged from the Milwaukee Police Department for the good of the service.

Commissioner Steven M DeVougas, Esq.

Date

Commissioner Fred Crouther

Date



Commissioner Nelson Soler

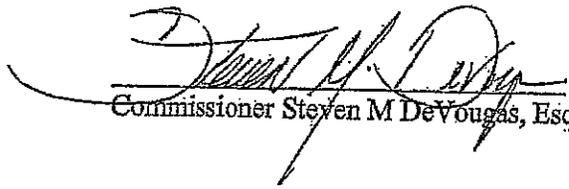
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5/22/18

sufficient to warrant a discipline short of discharge. We conclude the Chief has satisfied the seventh standard by a preponderance of the evidence.

DECISION

The charges are sustained and Appellant, Brian S. Petersen, is ordered discharged from the Milwaukee Police Department for the good of the service.



Commissioner Steven M DeVougas, Esq.



Date

Commissioner Fred Crouther

Date

Commissioner Nelson Soler

Date