

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

**In the Matter of the Appeal of Dennis Trzcinski
Personnel Order 2015-136**

Hearing Dates: February 8-9, 2016

Hearing Locations: City Hall

Commissioners: Ann Wilson
Steven M. DeVougas
Fred Crouther

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

William R. Rettko, Rettko Law Offices, S.C.
For Appellant Dennis Trzcinski

PROCEDURAL HISTORY

The Chief of Police, Edward A. Flynn, charged Lieutenant Dennis Trzcinski in Personnel Order 2015-136, dated November 6, 2015, with the following violations of Milwaukee Police Department Rules & Procedures:

1. Core Value 1.00-Competence, referencing Guiding Principle 1.06: Failure to report for duty at the time designated by a supervisor.
2. Core Value 3.00-Integrity, referencing Guiding Principle 3.11: Failure to be complete, honest and accurate with respect to all relevant facts and information when completing an official report.
3. Core Value 4.00-Leadership, referencing Guiding Principle 4.04: Failure to be a role model for professional police service.

Trzcinski, the Appellant in this matter, filed an appeal with the Milwaukee Fire & Police Commission from the order of the Chief of Police and a hearing was held.

SUMMARY OF HEARING PROCEEDINGS

The hearing was conducted on February 8-9, 2016. The hearing was recorded by a stenographic reporter. Testimony was taken from the following witnesses:

For the Chief of Police: Sergeant Thomas Hines, Milwaukee Police Department
Captain Victor Beecher, Milwaukee Police Department
Office Assistant Sarah Foster, Milwaukee Police Department
Assistant Chief Carianne Yerkes, Milwaukee Police Department

For the Appellant: Lieutenant Dennis Trzcinski, Milwaukee Police Department
Sergeant Sterling Harding, Milwaukee Police Department
Captain Andra Williams, Milwaukee Police Department
Lieutenant Joseph Seitz, Milwaukee Police Department
Sergeant Sharell Edwards, Milwaukee Police Department
Dr. David Goodman, American Behavioral Clinics
Kerry Flowers
Angela Trzcinski

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

FINDINGS OF FACT

1. Dennis Trzcinski has been a member of the Department for nineteen years. On October 23, 2005, he was promoted to Sergeant, and he was promoted to Police Lieutenant on February 24, 2013. As a Lieutenant he has been assigned to the night shift, and at the time of the infractions, he was assigned to District 4, on the late "Power Shift." (Exhibit 26.)
2. Based on the stipulated facts, on March 6, 2015, Trzcinski was scheduled to work an 8 hour shift from 12:00 a.m. to 8:00 a.m. (Exhibit 1.) Department records show that Trzcinski entered the District 4 garage at 11:38 p.m. and drove out of the garage at 6:50 a.m. Trzcinski was overpaid 1.2 hours. (Id.)
3. On March 11, 2015, Trzcinski was scheduled to work an 8 hour shift from 7:00 p.m. to 3:00 a.m. (Id.) Department records show that Trzcinski entered the District 4 garage at 9:28 p.m. and drove out of the garage at 3:00 a.m. Trzcinski was overpaid 2.7 hours. (Id.)
4. On March 15, 2015, Trzcinski was scheduled to work an 8 hour shift from 10:00 p.m. to 6:00 a.m. (Id.) Department records show he arrived at District 4 at 10:30 p.m. and left at 6:08 a.m. (Id.) Trzcinski was overpaid 0.5 hours.
5. On April 4, 2015, Trzcinski was scheduled to work an 8 hour shift from 11:00 p.m. to 7:00 a.m. (Id.) Department records show he arrived at District 4 at 11:24 p.m. and left at 6:33 a.m. (Id.) Trzcinski was overpaid 0.5 hours.

6. On April 14, 2015, Trzcinski was scheduled to work an 8 hour shift from 10:00 p.m. to 6:00 a.m. (Id.) Department records show he arrived at District 4 at 10:24 p.m. and left at 6:55 a.m. (Id.) Trzcinski then drove back and left again at 7:02 a.m. He completed an overtime card for one hour. As a result, Trzcinski was overpaid 0.6 hours. (Id.)
7. On April 20, 2015, Trzcinski was scheduled to work an 8 hour shift from 7:00 p.m. to 3:00 a.m. (Id.) Department records show he arrived at the District 4 garage at 10:11 p.m. and left at 3:08 a.m. Trzcinski was overpaid 3.4 hours. (Id.)
8. On April 23, 2015, Trzcinski was scheduled to work an 8 hour shift from 7:00 p.m. to 3:00 a.m. (Id.) Department records show he arrived at the District 4 garage at 10:01 p.m. and left at 3:48 a.m. Trzcinski was overpaid 2.4 hours. (Id.)
9. On April 29, 2015, Trzcinski was scheduled to work an 8 hour shift from 11:00 p.m. to 7:00 a.m. Department records show that he arrived at the District 4 garage in his personal vehicle at 11:07 p.m. and left the garage at 5:59 a.m. Trzcinski was overpaid 0.3 hour. (Id.)
10. In total, Trzcinski was late for duty on several occasions between March 6, 2015, and April 29, 2015, and also failed to complete an eight hour tour of duty on eight occasions. He was overpaid 8.2 hours, and he failed to utilize compensatory time to cover the difference of hours. The record shows that Trzcinski had approximately 40 hours of compensatory or “comp” time and could have covered the time shortage but failed to do so. (Exhibit 28.)
11. It should be noted that a number of Trzcinski’s timecards were not signed before they were paid. Trzcinski, however, subsequently signed the time cards in question at the request of his captain.
12. Office Assistant Sally Foster testified that Trzcinski never completed his own time cards and that she typically completed them and entered them into the computer system on his behalf. OA Foster further testified that Trzcinski ordered her not to change or adjust his working hours on the online payroll system unless he instructed her to do so.
13. Around March, April and early May 2015, four sergeants that were under Trzcinski’s command in District 4 began to recognize that Trzcinski was not working his “8 for 8” or taking compensatory time when he was leaving early. (See Exhibits 7, 14.) The sergeants brought this concern to the day shift lieutenant and ultimately provided specific dates and times when Trzcinski was neither completing his scheduled shift nor using comp time to account for the shortage. The reporting sergeants advised that they suspected additional occurrences; however the dates could not be recalled or verified. (Exhibits 13-15.)
14. On May 12, 2015, Internal Affairs began an investigation regarding the misconduct alleged on the part of Trzcinski relating to his intentional falsification of his timesheets. (Exhibits 7-8.)

15. On July 7, 2015, Trzcinski requested a transfer from the late shift to the early shift based upon insomnia and migraines that allegedly worsened from “being on the night shift” and submitted a doctor’s note regarding same. (See Exhibit 16, 18, 19) Captain Beecher forwarded the request to the MPD’s medical section. (Exhibit 20.) In response, Trzcinski was advised that promotional appointees are assigned to a mandatory shift other than Days as a part of the promotional process and the supervisory needs of the department. He was advised to consider a “body-for-body” transfer (e.g., find someone who would be willing to switch with him), and to evaluate using FMLA or a Medical Leave of Absence to address his medical and personal needs. (Exhibit 21.) Trzcinski testified that he sought the transfer, but was unable to find another lieutenant to switch with him; nor did he seek leave. Thereafter, there was no further medical documentation or request submitted by Trzcinski regarding his alleged medical condition or shift modification.
16. Disciplinary charges were filed against Trzcinski on October 27, 2015 as a result of the Internal Affairs Division’s investigation. (Exhibits 2-4.)
17. In Trzcinski’s Response to Charges filed with the Chief, he stated that he took full responsibility for not reporting his time and failure to use compensatory time. He mentioned his medical issues of “depression, insomnia, and anxiety” and wrote that he had worked very hard controlling his issues. (Exhibit 12.)
18. Trzcinski was discharged from the Department on November 6, 2015. (Exhibits 5, 6.)
19. After he was discharged, on November 11, 2015, Trzcinski was diagnosed as having Bipolar II disorder with hypomania.

CONCLUSIONS OF LAW

20. This appeal is governed by the seven just cause standards set forth in Wis. Stat. § 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). The Department bears the burden of proof for each of these standards.
21. In a disciplinary appeal, our hearing is divided into two phases. In Phase I, we determine whether a Department rule has been violated. If we determine that there has been a rule violation, then we conduct a Phase II hearing to determine the appropriate level of discipline.
22. In this case, Trzcinski appealed three charges: (1) Competence; (2) Integrity and (3) Leadership. We conclude that standards one through five are satisfied by a preponderance of the evidence as to charges 1 and 3. We further find that the preponderance of the evidence supports that the “good of the service” requires that Trzcinski be demoted to the rank of Sergeant and be suspended without pay for a period not to exceed 5 days. We will take each charge in turn.

PHASE I

Competence

23. The charge of competence alleges that Trzcinski arrived late for duty on seven occasions between March 6, 2015 and April 29, 2015, in violation of Core Value 1.00-Referencing Guiding Principle 1.06. (Exhibit 2.)
24. The first just cause standard asks “whether the subordinate could reasonably be expected to have knowledge of the probable consequences of the alleged conduct.” Trzcinski has been an officer with the Department for almost 20 years and has been in a supervisory position since 2005. (Exhibit 26.) Trzcinski admitted that he was familiar with the expectations that members are expected to work their full scheduled shift or take compensatory time. As such, we conclude that the Department has satisfied this first standard by a preponderance of the evidence.
25. The second just cause standard asks “whether the rule or order the subordinate allegedly violated is reasonable.” Guiding Principle 1.06 states “All department members shall report for duty at the time designated by their supervisors.” We have no trouble concluding that the attendance policy is reasonable. Nor is there any need to explain at length the self-evident reasons why it is reasonable for the Department to hold department members, but especially supervisors, accountable in reporting for duty in a timely manner. We conclude that the Department has satisfied the second standard by a preponderance of the evidence.
26. The third just cause standard asks “[w]hether the Chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order.” Sergeant Hines testified at length regarding the efforts made to investigate this case. In addition, there is stipulated evidence that Trzcinski did not work his complete shift during that alleged time period. (Exhibit 1.) We conclude that the Department has satisfied the third standard by a preponderance of the evidence.
27. The fourth just cause standard asks “whether the effort was fair and objective.” According to the record, on May 12, 2015, the Internal Affairs Division began an investigation on Trzcinski. Sergeant Hines testified, and his report states, that he reviewed emails, department memorandum, video tape, reports, and PI-21 interviews of Trzcinski. He also spoke to Captain Beecher, as well as Trzcinski’s peers and subordinates. From the record, what we see is a reasonably thorough investigation and no evidence pointing to any animus directed against Trzcinski. (Exhibit 7.) We conclude that the Department has satisfied the fourth standard by a preponderance of the evidence.
28. 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.” In this case, it is undisputed that Trzcinski did not work his scheduled shifts, use any compensatory time and was ultimately overpaid. We

conclude that the Department has satisfied the fifth standard by a preponderance of the evidence.

Integrity

29. The second charge of integrity alleges that on eight occasions from March 6, 2015 to April 29, 2015, Trzcinski left work without completing an 8 hour shift and failed to use compensatory time to cover the difference of hours, in violation of Core Value 3.00-Referencing Guiding Principle 3.11. (Exhibit 3.)
30. While it is reasonable that Trzcinski knew or should have known of the probable consequences of his actions of inaccurately completing his time cards, the record reflects that he did not appreciate the gravity of not properly following the administrative protocol in documenting time. There is no evidence that he attempted to defraud the Department, engage in dishonesty, or breach the public's trust especially when he clearly had more than enough compensatory time to cover the discrepancies. As such, we cannot sustain the Integrity charge. We think his actions are more attuned with the Competency and Leadership deficiencies.

Leadership

31. The third charge of leadership alleges that eight occasions between March 6, 2015 and April 29, 2015, Trzcinski left work without completing an eight hour tour of duty and failed to utilize compensatory time to cover the difference of hours. It is also alleged that on April 14, 2015, he submitted an overtime card for one hour of work that he did not complete, and ordered a subordinate under his command not to adjust his working hours or record him using compensatory time, unless specifically instructed by him to do so. (Exhibit 4.)
32. Under the first just cause standard, the Department has proven that Trzcinski had knowledge of the probable consequences of his alleged conduct. To reference the Guiding Principal of the Core Value of Leadership, "Supervisors shall be role models for delivering truly professional, impartial and effective police service. Supervisors shall ensure that the individuals for whom they are responsible carry out their professional duties correctly. Supervisors must put the department's mission first, in both word and action, and do nothing to interfere with its accomplishment." (Exhibit 4). Trzcinski testified he was aware of the requirement that a supervisor works his complete shift and if he or she fails to do so, he or she should report it as compensatory time.
33. Trzcinski acknowledged that he received and read SOP 550 – Time Sheet Preparation, which states that members are responsible to fill out their own time cards, sign, and verify before the end of each shift, on a daily basis. (See Exhibits. 9, 10, 11.) OA Foster testified that she notified a sergeant that Trzcinski was not filling out his time cards in a timely manner on a daily basis. During one of Trzcinski's absences, she asked a sergeant what to do with Trzcinski's incomplete time card; the

sergeant advised her to put in compensatory time. Upon Trzcinski's return, he instructed OA Foster not to change his time.

34. During this hearing, Trzcinski explained that he had a "general recollection" of telling the clerks not to change his timecards, but the record reflects by way of OA Foster's testimony that Trzcinski instructed her not to change any time unless he told her to do it.
35. As to the second just cause standard, it is reasonable that supervisors, under Core Value 4.00 – Leadership, are held to a higher standard in delivering professional, impartial and effective police service. We conclude that the Department has satisfied the second standard by a preponderance of the evidence.
36. The third just cause standard asks "[w]hether the Chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order." Sergeant Hines testified at length regarding the efforts made to investigate this case. In addition, there is stipulated evidence that Trzcinski did not work his complete shift during that alleged time period. (Exhibit 1.) We conclude that the Department has satisfied the third standard by a preponderance of the evidence.
37. The fourth just cause standard asks "whether the effort was fair and objective." Again, from the record, what we see is a reasonably thorough investigation and no evidence pointing to any animus directed against Trzcinski. (Exhibit 7.) We conclude that the Department has satisfied the fourth standard by a preponderance of the evidence.
38. 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." Again, it is undisputed that Trzcinski did not work his scheduled shifts, use any compensatory time and was ultimately overpaid. We conclude that the Department has satisfied the fifth standard by a preponderance of the evidence.

PHASE II

Competence

39. The sixth just cause standard asks "whether the Chief is applying the rule or order fairly and without discrimination against the subordinate." As discussed above, we find a thorough investigation and no animus against Trzcinski. The testimony of Sergeant Hines, Captain Beecher, and Asst. Chief Yerkes and the notes on Exhibit 32 establish the considerations, both aggravating and mitigating, that were presented for the Chief's consideration, and there seems nothing unfair or improper about any of them.
40. In evaluating the sixth just cause standard, we may look to "comparables," that is, the discipline imposed in earlier cases are similar to the case under review. The "comparables" put forward at hearing were not instructive to these facts. It is

undisputed and acknowledged that Trzcinski failed to work his full shift as a supervisor on eight occasions. Taking into account all of the foregoing considerations, we conclude that the sixth just cause standard is satisfied by a preponderance of the evidence.

41. 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.”
42. When we balance the serious violation versus good record of service, we do so with an eye to the ultimate question: “whether,” in the words of Wis. Stat. § 62.50(17)(a), “the good of the service” requires the proposed discipline. We also may look at the member’s character, work record, and the impact of the misconduct on the complainant, department and community.
43. Trzcinski had an overall good record of service and persons testifying stated that he was a dedicated member of the Department. Upon this record, we agree with Chief Flynn that a five day suspension is appropriate for the violation of Competence in this matter. (Exhibit 33.)

Leadership

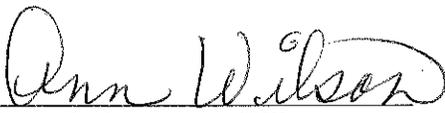
44. In regards to the sixth just cause standard for leadership, we do not find that there was any animus, and there was a thorough investigation of Trzcinski’s actions. The testimony of Sergeant Hines, Captain Beecher, and Asst. Chief Yerkes and the notes on Exhibit 32 establish the considerations, both aggravating and mitigating, that were presented for the Chief’s consideration, and there seems nothing unfair or improper about any of them.
45. In terms of comparables, those presented at the hearing were not instructive under these facts. When we balance the serious violation versus good record of service, we do so with an eye to the ultimate question: “whether,” in the words of Wis. Stat. § 62.50(17)(a), “the good of the service” requires the proposed discipline. We also may look at the member’s character, work record, and the impact of the misconduct on the complainant, department and community.
46. In recommending discharge, the Chief by way of his designee, testified that Trzcinski’s motivation was self-serving by intentionally falsifying timecards, not working full shifts to the extent that subordinates noticed, and intentionally restricting a subordinate Office Assistant from accurately completing time sheets. This resulted in a grave loss of confidence by subordinate personnel and Command Staff.
47. The Commission agrees that Trzcinski’s motivation was self-serving, showed a lack of competence, and showed a severe lack of leadership. We disagree with the Chief on the degree of harm. Taking into account the sixth and seventh just cause standards, including the specific considerations identified in our rules, we conclude that the good of the service does not require that Trzcinski be discharged from the Department. We believe that the good of the service, however, does require a severe,

if somewhat lesser, sanction. It is very important for Trzcinski to understand that accountability in management and supervision is essential as a public servant and guardian of our community. It is also very important for Trzcinski to be cognizant of the ways that his actions may harm the Department's morale, reputation, and ultimately undermine the community trust that is necessary for the Department to be able to provide effective service. Given the importance of these values, we conclude that the good of the service requires that Trzcinski be demoted to his prior rank.

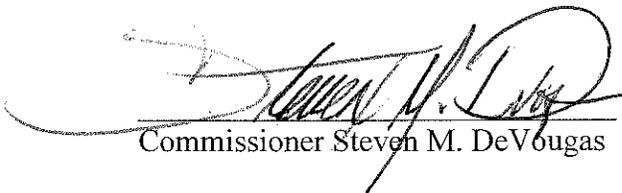
48. While witnesses for the Appellant spent a lot of time on the alleged medical condition of Trzcinski – both by speculation of his mental state before and medical testimony derived after his discharge - there was not one witness that stated that Trzcinski seemed unfit while working. Indeed, his alleged medical condition has no bearing on our decision in this matter. Testimony from Trzcinski's treating physician who diagnosed him after the discharge with bipolar disorder was not mitigating to Trzcinski's admitted misconduct. Trzcinski's initial notification of his trouble with insomnia and migraines did not trigger the MPD to take his July 7, 2015 memorandum or later Response to Charges as a defense to his failure to work full shifts and submit accurate time cards. There is no way the MPD knew or should have known that a diagnosis of bipolar disorder was present or needed to be accommodated, if possible, when it made the employment decision to discharge him. (Likewise, Trzcinski did not know of the diagnosis until after he was discharged.)

DECISION

The Appellant, Dennis Trzcinski is ordered demoted from the rank of Lieutenant to Sergeant. In addition, he is ordered to serve a suspension of no more than five days without pay.


Commissioner Ann Wilson

5/5/16
Date


Commissioner Steven M. DeVougas

5/5/16
Date


Commissioner Fred Crouther

5-5-16
Date