

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

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**In the Matter of the Appeal of Gerald W. Winding  
Personnel Order 2014-79**

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Hearing Date: November 21, 2014

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

Commissioners: Kathryn A. Hein  
Steven M. DeVougas  
Ann Wilson

Hearing Examiner: Steven M. DeVougas

Appearances: Adam B. Stephens, Assistant City Attorney  
For the Milwaukee Police Department

Attorney Jennifer Land  
For Appellant Gerald W. Winding

**PROCEDURAL HISTORY**

The Chief of Police, Edward A. Flynn, charged Police Officer Gerald W. Winding (Winding) in Personnel Order 2014-79 dated August 12, 2014, with the following violations of Milwaukee Police Department Rules and Procedures:

1. Core Value 1.00 – Competence, referencing Guiding Principle 1.05, referencing Department Memorandum dated September 26, 2012- Medical Attention: Failure to summon medical attention for an injured person.
2. Core Value 1.00 – Competence, referencing Guiding Principle 1.04: Failure to conduct an investigation and file reports.

Chief Flynn issued Winding two five-day suspensions without pay, one for each violation. Winding, filed an appeal with the Milwaukee Fire and Police Commission from the order of the Chief of Police and a hearing was held.

### **SUMMARY OF HEARING PROCEEDINGS**

The hearing was conducted on November 21, 2014. The hearing was recorded by a stenographic reporter. Testimony was taken from the following witnesses:

For the Chief of Police:        Captain Timothy Heier, Milwaukee Police Department  
   Chief Edward Flynn, Milwaukee Police Department

For the Appellant:             Gerald Winding, Milwaukee Police Department  
   Sean Lauda, Secretary-Treasurer, Milwaukee Police Association

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

### **FINDINGS OF FACT**

1. Winding began working for the Milwaukee Police Department on April 8, 1996. (Ex. 6.) Prior to the personnel order at issue in this proceeding, Winding's most recent discipline occurred in December 2009 for failure to be civil and courteous towards an associate that resulted in a twenty-day (20) suspension. (Id.)
2. On January 8, 2014, Markietha White walked into the District 5 police station where Winding was the desk sergeant. (Exs. 3 and 5.) Ms. White reported that she had been battered by her boyfriend. Ms. White had a visible laceration on her forehead, which was bleeding and would later require six stitches. Ms. White claims that Winding instructed her that "she should have never left her residence and to go back home and wait for the police." (Ex. 3.) Winding disputes this claim and stated that he would have never instructed a citizen who was a victim of a battery to return home.
3. There is videotape of Winding and Ms. White's interaction. (Ex. 2.) The video shows that Ms. White waited for two minutes before Winding was summoned to the lobby. (Id.) In addition, the video shows a two minute exchange between Ms. White, her friend and Winding. (Id.) There is no audio. (Id.) Regardless, Ms. White left District 5 and obtained medical attention from St. Mary's hospital. (Id.)
4. Later, Ms. White called the police and another set of officers subsequently interviewed Ms. White and conducted a felony battery investigation, which led to criminal charges against the suspect. (Ex. 1.)
5. During a PI-21 interview, Winding acknowledged that Ms. White had been battered and was injured. (Ex. 1.) He acknowledged that he did not record any information or file any

- reports. (Id.) Winding stated that he may have “dropped the ball and made a mistake.” (Id.)
6. On January 13, 2014, Ms. White filed a citizen complaint against Winding. (Ex. 3.) Attorney Stephens noted for the record that Ms. White chose not to testify or participate in Winding’s hearing, despite being contacted.
  7. Cpt. Timothy Heier from the Milwaukee Police Department’s Internal Affairs division testified that because there was a video, the complaint was able to be investigated at the district level. Once the district completed its investigation, he reviewed and agreed with the findings.
  8. On July 9, 2014, charges were issued against Winding as a result of the investigation. The first charge involved a violation of a department memorandum which required that an officer having contact with an individual in medical distress must activate the Emergency Medical System and administer first aid until medical personnel arrives. (Ex. 5.) Medical distress includes, but is not limited to “moderate to severe bleeding.” The second charge related to failing to conduct an investigation and prepare reports related to Ms. White’s battery complaint. (Id.)
  9. On August 5, 2014, Chief Flynn conducted a Discipline Review Summary of the incident and determined that based on the degree of harm; Winding’s level of experience; his intentional actions and past employment record, a ten-day suspension was appropriate. (Ex. 4.)
  10. On August 12, 2014, Winding was served with the Complaint and Order recommending the discipline.
  11. Cpt. Heier testified that as to the reasoning behind the recommended discipline. Ms. White came into District 5 to report a crime. Cpt. Heier stated that medical attention should have been called; it was not. Ms. White received poor customer service. In addition, a crime was reported, so a report should have been filed and an investigation commenced. When Ms. White called the police after receiving medical attention, it resulted in a three-hour investigation and felony charges.
  12. Winding has accepted responsibility for his offense. At the time, Winding testified that Ms. White told him that she had called the police and was on her way to the hospital because the police never came. Winding stated that he was unaware of the underlying facts or their seriousness. For example, he testified that he was not informed that a firearm was involved. Winding testified that Ms. White’s friend continued to interrupt and hinder his investigation, for that reason he did not obtain the details of the incident.

13. However, Winding did not do anything to inquire further. He did not have any excuse for failing to call for medical attention or to file a report and admitted that “he should have done more.” He testified that he had written hundreds of reports and called for medical attention numerous times. In this case, he did not do anything to follow up or take any of Ms. White’s information. It was not until six weeks later that Winding learned that he was being investigated regarding Ms. White’s complaint.
14. Chief Flynn testified that this case involved “gross incompetence.” The victim reported a felony and was bleeding. Chief Flynn stated that Winding made no attempt to document the report and that Ms. White could have been murdered as a result of Winding’s inaction. Chief Flynn stated that while he looked to the comparables, none of them involved a case of felony battery, so the stakes were heightened in this case. Chief Flynn testified that he considered terminating Winding. In light of all the facts, he felt the five-day suspensions were warranted.
15. Cpt. Heier stated that Winding was very cooperative during the investigation phase. Winding’s record shows that this was his first offense of this nature. Winding had three prior disciplines, with the last incident taking place in 2009.
16. At the hearing, both sides seemed in agreement as to the essential facts in this appeal. It is undisputed that Winding was informed that Ms. White was a victim of a battery and her visible injury was the result of that battery. Ms. White left to obtain medical attention under her own power. Winding did not file any reports. We do not understand there to be any genuine, material dispute as to any of the foregoing findings of fact.

#### **CONCLUSIONS OF LAW**

17. This appeal is governed by the seven just cause standards set forth in Wis. Stat. §62.50(17)(b). For purposes of this appeal, Winding has conceded that he violated Core Value 1.00, Competence, under Guiding Principles 1.04 and 1.05, as charged in Personnel Order 2014-79. He further admits that the first five just cause standards are satisfied. Even apart from these admissions, and as outlined above, there is substantial evidence in the record in support of the first five just cause standards. Therefore, we determine that the charge is sustained by a preponderance of the evidence, and we turn our attention to “whether the good of the service requires that [Winding] be suspended without pay for a period to be determined by the Board,” in light of the sixth and seventh just cause standards. *See* Wis. Stat. §62.50(17)(b). In answering this question, we take into account our own rules on trial procedures, including the evidence that we are authorized to receive under Section 14 of Rule XVI (i.e., evidence regarding “character, work record, and the impact of the misconduct on the complainant, department, and community”).

18. The sixth just cause standard is “Whether the chief is applying the rule or order fairly and without discrimination against the subordinate.” The Chief based his decision in this case on an extensive investigation of Winding’s conduct, and further testified as to the various legitimate considerations that governed his decision. (See ¶ 15, above.) No evidence was presented indicating that the Chief was motivated by personal animus against Winding or otherwise took into account improper considerations.
19. The department prepared and submitted a list of other officers charged with the same charges, as well as the discipline they received during Chief Flynn’s tenure. (Ex. 7.) There was a single instance of failing to summon medical aid. (Id.) That officer received an official reprimand.
20. In regards to the Failure to conduct an investigation and file reports, a significant amount of time was spent by Winding’s counsel parceling out the other officers who received lesser offenses for seemingly equal or more egregious cases. Winding stressed at hearing that he should receive an official reprimand or a lesser suspension because one officer, who had a much more extensive disciplinary record and who was eventually terminated, received a single five-day suspension for an incident that potentially affected a criminal prosecution. (See Exs. 7 and 12.)
21. We do not find this instance or other instances involving police officers to be comparable. None of the comparables presented involved any offense of that nature. In addition, the Board did not have the facts and other mitigating factors that affected the discipline meted out in the cases of the comparables.
22. We should note that comparables, while helpful, are just a guide. Each case is different. So often, what occurs at a hearing is that a significant amount of time is spent litigating what happened in other cases, involving other officers.
23. The Police Chief and the Board must have the latitude to impose discipline to address various issues and to deter other officers from engaging in similar conduct. In addition to fairness, there are policy considerations that affect the type and level of discipline that the Chief hands out.
24. Chief Flynn provided an example of how his administration’s stance regarding officers and drunk driving has evolved to a stricter standard and that it was a process. Chief Flynn also mentioned a similar evolution in dealing with officers who missed court appearances. In this case, the stakes were higher. These examples are mentioned to drive home the point that comparables can be of a persuasive nature, but are not gospel or binding precedent. The Chief and the Board are not bound by the comparables.

25. We conclude, for the foregoing reasons that the Department has satisfied the sixth just cause standard by a preponderance of the evidence.
26. The seventh just cause standard is “Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate’s record of service with the chief’s department.” In making decisions regarding the seventh just cause standard and what the good of the service requires, we sometimes rely on a principle of limited deference to the Chief’s judgment. We wish to be clear that it is not necessary for us to rely on that principle in this case. In other words, even if we were to assume that the Chief had to carry a burden of proof with respect to these matters and benefitted from no presumptions in his favor, we would still affirm the Chief’s decision.
27. The violation in this case was undeniably a serious one. In the instant case, Chief Flynn noted that Ms. White received no customer service from Winding. Winding could have checked to see if officers were indeed dispatched to Ms. White’s home. Winding also could have interrogated Ms. White separately out of the presence of her friend. These were simple, logical actions that could have made a world of difference.
28. A large part of law enforcement is customer service. It stands to reason that if a crime is reported to a sworn officer, a citizen should expect that the officer will take the appropriate action.
29. In addition, we understand that officers are people too and that sometimes in the course of discharging their duties, they can have lapses in judgment or make mistakes. However, as professionals, they are held to a higher standard and hold themselves to a higher standard. Their actions and/or inaction can have life changing ramifications for the citizens they are sworn to protect. If this case took a turn for the worst, it would have resulted in a tragedy and severely damaged the credibility and effectiveness of the Department.
30. To counter the seriousness of the violation, Winding principally relies on his good character and work record, his passion for the job, acceptance of responsibility, and personal challenges. We do not understand the Department to dispute any of these matters. Rather, the Department’s view is that the nature and seriousness of the violation in this case warrants the discipline handed down. And while we agree that Winding has had very good performance evaluations, one of the areas for improvement involved his reporting. (See Ex. 9, Evaluation Report 2010.)
31. It should be noted that the Board lessened Winding’s charge for failing to provide medical assistance based on the video shown at hearing. Ms. White is shown laughing, she did not appear to be bleeding that much or to be in any other immediate distress. Further, the video shows that a number of officers saw Ms. White and walked right

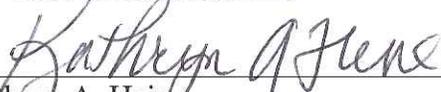
passed her or paid her little attention. As such, it would be inequitable for the entire weight of this charge to fall on Winding, when other officers did not provide medical assistance as well.

**DECISION**

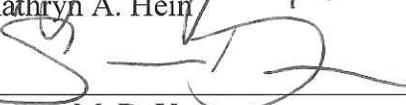
The charges against the Appellant, Gerald W. Winding are sustained, but modified for the charge of failing to provide medical attention from a five-day suspension to a three-day suspension.

Dated at Milwaukee, Wisconsin.

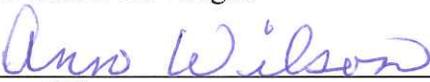
BY THE COMMISSION:

  
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Kathryn A. Hein

December 11, 2014

  
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Steven M. DeVougas

December 11, 2014

  
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Ann Wilson

December 09, 2014