

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

---

**In the Matter of the Appeal of Megan L. Broadnax**

---

Hearing Date: June 16, 2020

Hearing Location: City Hall, 200 E. Wells Street, Milwaukee, Wisconsin,  
Room 301-A, 8:30 A.M.

Commissioners: Everett Cocroft  
Dr. Fred Crouther  
Steven M. DeVougas, Esq.

Hearing Examiner: Rudolph M. Konrad, Esq.

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

For Megan L Broadnax  
Brendan P. Matthews, Esq.  
Cermele & Matthews, S.C.

**PROCEDURAL HISTORY**

In Personnel Order 2020-15, dated February 20, 2020, Chief of Police Alfonso Morales (“Chief”) found Police Officer Megan L. Broadnax (“Officer Broadnax”) guilty of violating Milwaukee Police Department Core Value 1.00, Competence, referencing Guiding Principle 1.05, familiarity with Department policy, procedures and training, Standard Operating Procedure (SOP) relating to Drug Testing, Section 770(1)(1)(C), which states, “Refusal to submit to a drug test shall result in immediate suspension and discipline up to and including dismissal from the Department.”

The Chief found that on November 5, 2019, Sergeant Nat Tharpe served Officer Broadnax with a random drug test order (PD-39). After receiving the order, she failed to take the drug test as required by the Department’s drug testing SOP. For this violations, the Chief discharged Officer Broadnax.

Officer Broadnax appealed 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:           Police Officer Megan L. Broadnax  
                                          Sergeant Nat K. Tharpe  
                                          Police Officer Evan Biller  
                                          Thomas Hines (Retired Sgt.)  
                                          Inspector Alex Ramirez

For Officer Broadnax:         Police Officer Francisco Cartegena  
                                          Police Officer Nora Burlo  
                                          Sergeant Jasmine Arce  
                                          MPA Vice-President, Andrew F. Wagner  
                                          Police Officer Megan L. Broadnax

### FINDINGS OF FACT

We find the following facts have been established by a preponderance of the evidence.

1.       Police Officer Broadnax (“Officer Broadnax”) was appointed to the Department on July 16, 2018. She completed recruit training, and on January 20, 2019, she was assigned to District 5.
  
2.       In the course of her short career, she was required to take four drug tests. The first was a pre-employment drug test taken before she began police officer recruit training. The second was a drug test given to probationary officers. It was given to her on October 14, 2019. (Ex. 1) The third was 21 days later, on November 5, 2019, when she was served with an order to take a random drug test. She failed to take that test as required by the drug testing SOP, and her failure resulted in her discharge. (Ex. 3) Finally, on November 20, 2019, after she had reported her failure to report for the last drug test, a new drug test order was issued, with which she complied. She passed each of the three drug tests administered.
  
3.       Sergeant Nat Tharpe (“Sergeant Tharpe”) served a drug test order on Officer Broadnax two times. On October 14, 2019, he served her a Form PD-39, Drug Test Order, Probation, and on November 5, 2019, he served her with Form PD-39, Drug Test Order, Random. The forms are the same except that among the list of reasons for the drug test, the word “Probation,” is checked on the earlier form whereas the word “Random,” is checked on the latter form. Form PD-39 orders the officer to “report directly” to the drug testing laboratory, in a department vehicle if on duty, and states that the order goes into effect immediately upon service. (Exs. 1, 3)
  
4.       Exactly what Sergeant Tharpe said to Officer Broadnax when he gave her the random drug test order is in dispute. He maintains he told her that she has to take another drug test, that she has to go right away, and to call the dispatcher and let her know you have to take care of this. She did not ask him any questions. This is the same instruction he had given her earlier on October 14,

2019, which she followed; accordingly, Sergeant Tharpe stated he had no reason to believe she did not understand his instructions this time. Officer Broadnax maintains Sergeant Tharpe handed her a stack of papers and stated "Take care of this." Police Officer Biller ("Officer Biller") was her squad partner on that day and was standing next to her when Sergeant Tharpe handed her the order and spoke to her. Officer Biller testified that he clearly understood that she had been instructed to take a drug test. After entering his squad, he asked her about the drug test and repeated that the sergeant told her to have it done right away. (Ex. 9) It is established, therefore, the Sergeant Tharpe directed her to report for a drug test forthwith.

5. Officer Broadnax maintains she failed to report for the November 5<sup>th</sup> drug test because she did not understand that the order was for a new drug test, in this case, a random drug test. Twenty-one days earlier, on October 14<sup>th</sup>, Sergeant Tharpe handed her keys to a squad and an order to take a drug test and gave her instructions that she cannot recall; nevertheless, she left immediately and took the drug test. She went on vacation on October 21. Upon her return to work on November 5, while sitting in roll-call, Sergeant Tharpe handed her a "stack" of papers and told her to "take care of this." Included among the papers was a memo to her stating that the drug test she had taken on October 14, 2019, was negative. This led her to conclude that the paperwork she had received all concerned the October drug test. When her partner, Officer Biller, asked about the drug test, she told him she had already taken her drug test and the paperwork concerned the results. On November 20<sup>th</sup> she cleaned out her duty bag and took a closer look at the order and realized it was a new order. She reported her failure to Sergeant Tharpe and, after some back and forth, she was ordered to take another drug test, which she passed.

6. Officer Broadnax testified that her failure to report for the November 5<sup>th</sup> drug test was not an attempt to avoid taking the drug test. She was not impaired by any illicit drug on that date and she has not used or taken any illicit drugs since her appointment to the Department. Her failure to report was caused by her confusion and inexperience.

7. Milwaukee Police Department Standard Operating Procedure 770 governs drug testing of members of the Department. Section (1)(1)(C) states: "Refusal to submit to a drug test shall result in immediate suspension and discipline up to and including dismissal from the Department." It further states: "The member shall be permitted no more than three (3) hours to give a sample." Section 15 defines "Refusal," as follows: "Refusal is not providing a test sample. A refusal to test is also the failure to show up for the test within a reasonable time after being directed to do so."

### **CONCLUSIONS OF LAW**

8. 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). On the first count, we conclude that standards one through six are satisfied with respect to the charges against Officer Broadnax. In reference to the seventh standard, however, we conclude that the preponderance evidence supports a 45-day suspension in lieu of discharge.

9. The first just cause standard asks, "whether the subordinate could reasonably be expected to have knowledge of the probable consequences of the alleged conduct." Officer Broadnax does not allege she was unaware of the Department's drug test SOP generally or that she would be disciplined if she refused a drug test. She did not fail to comply out of ignorance of the drug test SOP, but because she was confused. She received the random drug test order 21 days after her probation drug test along with the results of that test. She thought the random drug test order was related to her earlier drug test and failed to realize she had been served with a new drug order. We conclude the Chief has satisfied the first standard by a preponderance of the evidence.

10. The second just cause standard asks, "whether the rule or order the subordinate allegedly violated is reasonable." The SOP includes all of the components needed to maintain an effective drug testing policy. Moreover, no testimony has been offered or argument given that the SOP is unreasonable. We conclude the Chief has satisfied the second standard by a preponderance of the evidence.

11. The third just cause standard asks: "whether the Chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate the rule or order." retired sergeant Thomas Hines testified regarding the effort made to investigate this case, which is recorded in his investigation summary. His report also includes a summary of the Officer Broadnax's PI-21 interview. Officer Broadnax also submitted a memorandum stating her understanding of what had occurred, which is part of the investigative file. (Exs. 5, 9) We conclude the Chief has satisfied the third standard by a preponderance of the evidence

12. The fourth just cause standard asks, whether the investigative effort described above was "fair and objective." Reviewing the entire record in this matter, we find no evidence of any animus directed against Officer Broadnax or unfairness or lack of objectivity in the investigation. The Chief has satisfied the fourth standard by a preponderance of the evidence.

13. 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." The SOP violated in this case is unequivocal. "A refusal to test is also the failure to show up for the test within a reasonable time after being directed to do so." The only issues to be decided here is whether Officer Broadnax was directed on November 5<sup>th</sup> to take a drug test and whether she failed to timely showed up. We answered the first question in finding of fact number 4 where we found that Sergeant Tharpe served the random drug test order on her and directed her to report for a drug test. It is undisputed that Officer Broadnax failed to show up for the test as required by the SOP after being directed to do so. The Chief has satisfied the fifth standard by a preponderance of the evidence.

14. 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 was conducted with no credible evidence of animus against the officer. Officer Broadnax testified she had a good relationship with Sergeant Tharpe and there is no evidence in the record that Sergeant Tharpe or retired sergeant Hines treated her unfairly in any way. The testimony of Inspector Alex Ramirez and the Discipline Review Summary and the supporting

documents establish the considerations that were presented for the Chief's consideration. (Ex. 10) We conclude the Chief has satisfied the sixth standard by a preponderance of the evidence.

15. 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." To meet this standard the Chief reviewed the items listed in the discipline review summary and weighed the factors listed. (Ex. 10) The summary, however, does not note whether the conduct was intentional or unintentional. The nature of her conduct, however, is irrelevant as to whether the rule was violated because the elements of a refusal are notice and failure to appear. But whether her conduct was intentional or unintentional is relevant to the amount or kind of discipline imposed. Considering Officer Broadnax's testimony in the context of the events as they unfolded, we are convinced that her failure to appear for the November 5<sup>th</sup> drug test was not an attempt on her part to avoid taking a drug test out of fear of failing it, but rather was the result of her inexperience and confusion. She appeared for her probationary drug test on October 14<sup>th</sup> in compliance with the SOP. Twenty-one days later, on her first day of work after her vacation, she was handed an order for another drug test and the result of her prior drug test. Rather than ask Sergeant Tharpe whether another drug test was actually being ordered in light of her recent drug test, she assumed the order was related to her earlier drug test and did not report for the test. Fifteen days later she discovered her mistake and informed Sergeant Tharpe that she had failed to appear for the drug test. In light of her self-reporting of her failure to take the test, her short time on the department, her inexperience, the proximity of the two test orders, and the service of the earlier test result with the new order, her reluctance to ask for an explanation and her confusion is understandable. It is, however, not excusable. Based upon these facts and the record as a whole, the Commission concludes that discharge is not warranted and the Chief's order discharging Officer Broadnax is not sustained. The Commission, however, is committed to upholding the integrity and effectiveness of the Department's drug screening program and takes particular note of Inspector Alex Ramirez's testimony in that regard. For those reasons, the Commission can neither excuse Officer Broadnax's violation nor treat it lightly; accordingly, a forty-five (45) day suspension without pay is imposed.

#### DECISION

The Appellant, Megan L. Broadnax, is ordered suspended from the Milwaukee Police Department for a period of 45 working days, and the Chief's order of discharge is not sustained.

*Dr. F. L. Crouther*

Commissioner Dr. Fred Crouther

June 23, 2020

Date

*Steven M. DeVogus*  
Commissioner Steven M. DeVogus, Esq.

June 26, 2020

Date

*Everett Cocroft*  
Commissioner Everett Cocroft

June 26, 2020

Date