

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

In the Matter of the Appeal of Ryan Fadrow

Hearing Date: November 4, 2020

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

Commissioners: Steven M. DeVougas, Esq.
Angela McKenzie, Esq.
Fred L. Crouther

Hearing Examiner: Commissioner Angela McKenzie
Decision Prepared by: Rudolph M. Konrad, Esq.

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

For Appellant, Ryan Fadrow
Charles S. Blumenfield, Esq., Blumenfield & Shereff, LLP

PROCEDURAL HISTORY

In Personnel Order 2020-29, dated March 16, 2020, Chief of Police Alfonso Morales (“Chief Morales”) found Police Officer Ryan Fadrow (“Officer Fadrow”) had violated the Milwaukee Police Department Code of Conduct. On the first charge, the Chief found that Officer Fadrow violated Core Value 3.00, Integrity, referencing Guiding Principle 3.05, which requires all members to obey the laws of the State of Wisconsin. The Chief found that on November 8, 2019, at approximately 1:42 A.M., Officer Fadrow was stopped by West Allis Police Department officers for speeding and lane deviation. He exhibited signs of intoxication, but refused the officers’ request to submit to a field sobriety test or a preliminary breath test. He was arrested for Operating While Intoxicated (“OWI”), First Offense. In his PI-21 interview, Officer Fadrow admitted he was too impaired to operate his vehicle and admitted he violated the Code of Conduct. For this violation, Chief Morales suspended Officer Fadrow for twenty (20) working days without pay.

On the second charge, the Chief found Officer Fadrow had violated Core Value 3.00, Integrity, referencing guiding principle 3.01, which requires all members, whether on or

off duty, “to not behave in such a way that a reasonable person would expect that discredit could be brought upon the Department.” The Chief found that Officer Fadrow, while in the custody of the West Allis Police Department, refused to cooperate with the investigating and booking officers, threatened to “swing at” them, disregarded their orders, resisted their attempts to control his arms to the extent that he had to be stabilized against a wall, refused to be escorted to a prisoner cell and threatened to fight the officers and had to be stabilized against a wall. Moreover, he was given numerous additional opportunities to comply with booking procedures and refused. For this violation, the Chief ordered Officer Fadrow discharged from the Department.

Officer Fadrow 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 Lieutenant Matthew Palmer
Inspector Nicole Waldner

For Officer Fadrow: Police Officer Ryan Fadrow
Police Sergeant Juan Lopez
Police Sergeant Bradley Blum
Former Police Officer Craig Wilson
MPD Chaplain George Papachristou
Retired Police Officer Manuel (“Manny”) Molina
Nicholas Overbaugh, LPC, SAC-IT
Ms. Angela Menges

FINDINGS OF FACT

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

1. In response to the first charge, Officer Fadrow, by his attorney, stipulated “that on November 8, 2019, in the 1400 block of South 95th Street in the City of West Allis, WI, Officer Fadrow engaged in conduct, including operating his personal automobile after having consumed approximately five (5) alcoholic drinks, which constituted the offense commonly referred to as Operating While Intoxicated – First Offense.” Officer Fadrow waived his right to a fact-finding hearing on the just cause factors one through five, but reserved the right to a fact-finding hearing on just cause factors six and seven. (Stipulation Waiving Phase 1 as to charge referencing Guiding Principle 3.05, dated November 3, 2020.)

2. On the second charge, the evidence against Officer Fadrow consisted of video footage recorded by the West Allis Police Department on November 8, 2019, which recorded the arrest and booking of Officer Fadrow, Sergeant Matthew Palmer's ("Sergeant Palmer") investigation and report, and, Officer Fadrow's admissions. The portions of the video shown at the hearing clearly establish that Officer Fadrow was repeatedly non-cooperative with the officers, threatened them, and repeatedly resisted their efforts to assert physical control over him. (Ex. 2) Sergeant Palmer reviewed all the video available, interviewed the officers involved in the arrest and booking, and reviewed the West Allis police reports. Sergeant Palmer's report and testimony clearly establishes Officer Fadrow's violation of the Code of Conduct. He also explained the length and breadth of Officer Fadrow's non-cooperation. Officer Fadrow's repeatedly non-cooperative conduct went on for twelve (12) hours and at one point required six (6) officers over thirty (30) minutes to make him comply with their requests. (Ex. 1) For purposes of this decision, however, there is no need to note each instance of non-cooperation, threatening, and resistive conduct proven because Officer Fadrow admitted in his PI-21 and his testimony that his conduct brought discredit on the Department. (Ex. 3)

CONCLUSIONS OF LAW

3. This appeal is governed by the seven (7) just-cause standards set forth in Wis. Stat. sec. 62.50(17) (b) as follows:

(1) "Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct."

(2) "Whether the rule or order the subordinate allegedly violated is reasonable."

(3) "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."

(4) Whether the effort described under subd. 3. was "fair and objective."

(5) Whether the Chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate."

(6) Whether the Chief is applying the rule or order fairly and without discrimination against the subordinate."

(7) Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the Department."

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).

4. On the first charge, based upon the stipulation of the parties, we conclude that just cause standards one (1) through five (5) are satisfied and the Chief's finding of a violation is sustained. We do, however, have to address just cause standards six (6) and seven (7) in reference to the discipline imposed on that charge. In reference to the second charge, we need to address just cause standards one (1) through seven (7).

5. The first just cause standard asks, "whether the subordinate could reasonably be expected to have knowledge of the probable consequences of the alleged conduct." The Code of Conduct provision in issue prohibits conduct, whether on or off duty, that a reasonable person would expect to bring discredit on the Department or would create the appearance of impropriety or corrupt behavior. A reasonable person would conclude that a police officer who is stopped and arrested by police officers in another jurisdiction would be cognizant of the difficulties, delays, and additional stress and personnel required to deal with a person who is non-cooperative, threatening, and physically resisting, even if in a passive manner, and refrain from such conduct. A reasonable police officer would conclude that engaging in such egregious behavior would bring discredit on the Department and create the appearance of improper behavior. Finally, Officer Fadrow admitted his non-cooperative conduct brought discredit on the Department. We conclude the Chief has satisfied the first standard by a preponderance of the evidence.

6. The second just cause standard asks, "whether the rule or order the subordinate allegedly violated is reasonable." The rule alleged to have been violated in this case is necessary to maintain public confidence in the integrity and professionalism of the MPD. We conclude the Chief has satisfied the second standard by a preponderance of the evidence.

7. 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." Sergeant Palmer testified regarding the effort made to investigate this case, which is recorded in his report. (Ex. 1) His report includes a summary of the extensive video recordings of the West Allis Police Department, his interviews of the officers involved, and, Officer Fadrow's PI-21 statement. We conclude the Chief has satisfied the third standard by a preponderance of the evidence.

8. 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 Fadrow. Sergeant Palmer’s investigation, as noted above, was thorough and largely based on video evidence that cannot be disputed. The Chief has satisfied the fourth standard by a preponderance of the evidence.

9. 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 facts that led to the discipline are basically undisputed and Officer Fadrow admitted his conduct violated the Code of Conduct. We note, however, that there is sufficient substantial evidence in the record to sustain the Chief’s finding of the rule violations to meet the preponderance of the evidence standard even without Officer Fadrow’s admission. (See, exhibits 1, 2, 3, and the testimony of Sergeant Palmer and Officer Fadrow.) We conclude the Chief has satisfied the fifth standard by a preponderance of the evidence.

10. 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. The testimony of Inspector Nicole Waldner, the Discipline Review Summary, and the supporting documents establish the considerations that were presented for the Chief’s review. (Ex. 7) We conclude the Chief has satisfied the sixth standard by a preponderance of the evidence.

11. 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 believes misconduct by police officers while in custody of other police departments is so serious a violation that when such incidents occur, he calls the chiefs of the other police departments to apologize for the misconduct of his officers. He felt compelled to do so in this case. The purpose of such call is to attempt to repair the damage done to the Department’s reputation by an officers’ misconduct. In light of this, and other considerations, Chief Morales believes discharge is warranted. In reference to both charges, Officer Fadrow argues that the Commission should take into consideration the fact that his behavior was the result of underlying personal and health problems and that he has addressed and continues to address with the help of counseling professionals and programs designed to assist persons with issues related to the consumption of alcohol. In reference to the second charge, Officer Fadrow argues that the discipline in this case is more severe than in prior cases for similar offenses. In reviewing prior disciplines for similar offenses, however, it must be acknowledged that the facts of each case are different and the discipline in each case is evaluated in the context of the officer’s past performance, prior disciplines, and the extent to which the officer accepted responsibility for his or her conduct. Moreover, there can be differences of degree which cannot be adequately described in a summary fashion.

Nevertheless, we note that some prior disciplines offered into evidence on the second charge were less severe for what appears to be similar conduct. (Ex. 10, 11, 13) Finally, Inspector Nicole Waldner testified that before Chief Morales became chief, the discipline imposed for a first offense OWI was a thirty (30) day suspension. Chief Morales changed this to a twenty (20) day suspension, as imposed here. Chief Brunson, however, reinstated the prior policy of a thirty (30) day suspension for first offense OWI. Taking this into consideration, we conclude that on the first charge, a thirty (30) working day suspension without pay is the appropriate discipline. A thirty (30) working day suspension for a first time OWI is consistent with past (except for Chief Morales) and present MPD discipline policy and is considered by the Commission to be the appropriate discipline for that charge. On the second charge, we take into consideration the level of discipline imposed in similar cases, Officer Fadrow's job performance, his lack of prior reported disciplines, and we credit him for admitting his violations and actively seeking help; accordingly, we conclude that a thirty (30) working day suspension without pay is the appropriate discipline.

DECISION

On the first charge, the Chief's Order of Suspension is sustained but the discipline changed from a twenty (20) day suspension and increased to a thirty (30) day suspension; accordingly, Officer Ryan Fadrow shall be suspended from the Milwaukee Police Department for a period of thirty (30) working days without pay. On the second charge, the Chief's Order of Discharge is changed to a thirty (30) day suspension; accordingly, Officer Ryan Fadrow shall be suspended from the Milwaukee Police Department for a period of thirty (30) working days without pay. In sum, Officer Fadrow shall be suspended for a total of sixty (60) working days without pay.

Commissioner Steven M. DeVougas, Esq.

Date

Commissioner Angela McKenzie, Esq.
Vice-Chair

Date

Fred L. Crouther

Nov 19, 2020

Commissioner, Fred L. Crouther

Date

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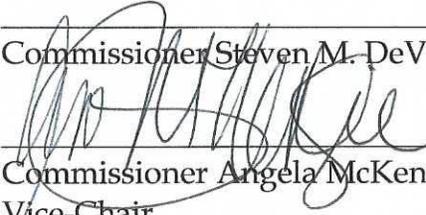
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Commissioner Steven M. DeVougas, Esq.

November 17, 2020
Date



Commissioner Angela McKenzie, Esq.
Vice-Chair

11/20/20
Date

Commissioner, Fred L. Crouther

Date