

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
POLICE OFFICER ROBERT DRELL,) **No. 14 PB 2877**
STAR No. 3374, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
) **(CR No. 1062099)**
RESPONDENT.)

FINDINGS AND DECISION

On October 30, 2014, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Robert Drell, Star No. 3374 (hereinafter sometimes referred to as “Respondent”), recommending that the Respondent be discharged from the Chicago Police Department for violating the following Rules of Conduct:

- Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 6: Disobedience of an order or directive, whether written or oral.
- Rule 23: Failure to obey Department orders concerning other employment, occupation, or profession.
- Rule 24: Failure to follow medical roll procedures.

The Police Board caused a hearing on these charges against the Respondent to be had before Thomas E. Johnson, Hearing Officer of the Police Board, on January 29, 2015.

Following the hearing, the members of the Police Board read and reviewed the record of the proceedings and viewed the video-recording of the testimony of the witnesses. Hearing Officer Johnson made an oral report to and conferred with the Police Board before it rendered its findings and decision.

POLICE BOARD FINDINGS

The Police Board of the City of Chicago, as a result of its hearing on the charges, finds and determines that:

1. The Respondent was at all times mentioned herein employed as a police officer by the Department of Police of the City of Chicago.

2. The written charges, and a Notice stating when and where a hearing on the charges was to be held, were served upon the Respondent more than five (5) days prior to the hearing on the charges.

3. Throughout the hearing on the charges the Respondent appeared in person and was represented by legal counsel.

4. The Respondent, Police Officer Robert Drell, Star No. 3374, charged herein, is **not guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

From about March to May 2013, including but not limited to on or about March 28, May 9, May 10, May 14, May 15, May 16, May 17, May 21, May 22, May 23, May 24, and/or May 29, 2013, or for some period of time therein, you engaged in secondary employment while on the medical roll of the Chicago Police Department, in that you performed work for Abbott Paint Company, a company which you owned and/or operated, and/or from which you received compensation.

Said work included, without limitation, purchasing and/or delivering supplies to job sites, administrative tasks, managing and/or paying employees, meeting with clients, and/or soliciting business, including but not limited to at or around 4747 West Peterson Avenue, Chicago; 107 Berry Parkway, Park Ridge; 900 West Foster Avenue, Chicago; 100 East Walton Avenue, Chicago; 179 East Oak Street, Chicago; 8720 Callie, Morton Grove; 8014 North Waukegan Road, Niles; 486 Capital Lane/Washington Park, Gurnee; 5826 North Kolmar Avenue, Chicago; 230 East Ontario Street, Chicago; 21 West Goethe Street,

Chicago; 7007 North Milwaukee Avenue, Niles; and/or 4929 North Wolcott Avenue, Chicago. You thereby impeded the Department's efforts to achieve its policy and goals, and/or brought discredit upon the Department.

There is no dispute here that Officer Drell was president of a small painting contracting business for many years, and operated this business (in addition to his police duties) before going on the medical roll on February 4, 2013. Officer Drell went on the medical roll from February 4, 2013, to March 31, 2013, on account of a cardiac condition, and returned to the medical roll from May 4, 2013, until September of 2013, when he returned to limited duty (on account of an injury on duty). In sixteen years on the force, he had not previously been on the medical roll, except possibly for a couple of days due to food poisoning. During his two 2013 stints on the medical roll, Officer Drell was in ambulatory status, meaning he was free to leave his home and drive or walk wherever he wished, without prior permission or approval from the Department's Medical Services Section. There is no dispute that Officer Drell continued to operate his painting business both while on the medical roll and thereafter. The business consists of two painters, an administrative assistant, and Officer Drell.

There is also no dispute that Department restrictions (Employee Resource E01-11, Section IV) prohibit secondary employment while an officer is on the medical roll. "Secondary employment" is defined in Employee Resource E01-11, Section II, as "any extra-Department activity for which any Department member is being compensated in salary, wages, commission, or other things of value for services performed for an employer or in a self-employed status," with a number of exceptions, which include activity related to a Department member's ownership of real estate. Commander Robert Klimas of the Bureau of Internal Affairs testified that the Department has a zero-tolerance policy when it comes to secondary employment while on the medical roll, and seeks discharge of every person who engages in secondary employment

while on the medical roll. According to Commander Klimas, the rationale for this rule is that a member on the medical roll is being paid full salary and benefits. Thus, the member's sole focus should be on healing and returning to work as soon as possible, without risking an aggravation of his or her injury or ailment, on account of secondary employment.

The Department's policy on secondary employment (Employee Resource E01-11, Section III.A.) states in relevant part: "The Chicago Police Department has the right to restrict secondary employment for good cause. The duties and obligations of the Chicago Police Department take priority over any other employment. Department members who engage in secondary employment are reminded that their primary responsibility is to the Chicago Police Department."

There is insufficient evidence in this case that Officer Drell violated the above policy on secondary employment (Employee Resource E01-11, Section III.A.). There is no evidence that his operation of the painting business took priority over his duties and obligations to the Department, or interfered with his primary responsibility to the Department. On the facts of this particular case, the Department has not demonstrated the good cause the policy requires for restricting Officer Drell's operation of the painting business.

There is no proof here that Officer Drell was actually engaged in any kind of physical work. The surveillance reports, photos and video recording the Superintendent offered into evidence (Superintendent Ex Nos. 2-10) show Officer Drell driving to paint stores, job sites, and his office. They do not show him engaged in carrying equipment or paint, going up on ladders, or engaged in painting. The Superintendent conceded in his closing argument that the most they show is Officer Drell carrying one small box, and one cannot tell what is in it or how much it weighs. Therefore, in this case, the Superintendent did not demonstrate that Officer Drell was

engaged in any kind of activity that would have aggravated his injuries or illness, or prolonged his time on the medical roll. Indeed, the evidence is undisputed that, at least with respect to his first time on the medical roll in 2013, he returned to full duty earlier than expected.

Nor does the Board find that Officer Drell was attempting to manipulate the medical roll procedures in order to maximize his time off the job. He did not seek to hide his work with the painting contracting business. He testified that his sergeant and case nurse both knew about his work. He did not substitute the painting work for the police work he no longer had to do, as the painting business was operational before, during, and after his time on the medical roll. And, Officer Drell is clearly not a malingerer, having been on the medical roll only two or three times in sixteen years.

If the Department is going to have a zero-tolerance policy that leads it to recommend the discharge of anyone engaged in secondary employment while on the medical roll (regardless of the individual circumstances), it is incumbent upon the Department to more clearly communicate to its employees that any kind of employment, including the operation of a pre-existing business, without any physical labor, is forbidden. While clearly prohibiting physical work for a paycheck, the present policy and restrictions are not sufficiently clear with respect to the conduct in which Officer Drell engaged, and thus he cannot be found guilty of violating the rule.

5. The Respondent, Police Officer Robert Drell, Star No. 3374, charged herein, is **not guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,
in that the Superintendent did not prove by a preponderance of the evidence the following charge:

From about March to May 2013, including but not limited to on or about March 28, May 9, May 10, May 14, May 15, May 16, May 17, May 21, May 22, May 23, May 24, and/or May 29, 2013, or for some period of time therein, you engaged in secondary employment while on the medical roll of the Chicago Police Department, in that you performed work for Abbott Paint Company, a company which you owned and/or operated, and/or from which you received compensation.

Said work included, without limitation, purchasing and/or delivering supplies to job sites, administrative tasks, managing and/or paying employees, meeting with clients, and/or soliciting business, including but not limited to at or around 4747 West Peterson Avenue, Chicago; 107 Berry Parkway, Park Ridge; 900 West Foster Avenue, Chicago; 100 East Walton Avenue, Chicago; 179 East Oak Street, Chicago; 8720 Callie, Morton Grove; 8014 North Waukegan Road, Niles; 486 Capital Lane/Washington Park, Gurnee; 5826 North Kolmar Avenue, Chicago; 230 East Ontario Street, Chicago; 21 West Goethe Street, Chicago; 7007 North Milwaukee Avenue, Niles; and/or 4929 North Wolcott Avenue, Chicago. You thereby disobeyed orders or directives regarding secondary employment on the medical roll, including Employee Resource E01-11, Section IV(J).

See the findings set forth in paragraph no. 4 above, which are incorporated here by reference.

6. The Respondent, Police Officer Robert Drell, Star No. 3374, charged herein, is **not guilty** of violating, to wit:

Rule 23: Failure to obey Department orders concerning other employment, occupation, or profession,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

From about March to May 2013, including but not limited to on or about March 28, May 9, May 10, May 14, May 15, May 16, May 17, May 21, May 22, May 23, May 24, and/or May 29, 2013, or for some period of time therein, you engaged in secondary employment while on the medical roll of the Chicago Police Department, in that you performed work for Abbott Paint Company, a company which you owned and/or operated, and/or from which you received compensation.

Said work included, without limitation, purchasing and/or delivering supplies to job sites, administrative tasks, managing and/or paying employees, meeting with clients, and/or soliciting business, including but not limited to at or around 4747 West Peterson Avenue,

Chicago; 107 Berry Parkway, Park Ridge; 900 West Foster Avenue, Chicago; 100 East Walton Avenue, Chicago; 179 East Oak Street, Chicago; 8720 Callie, Morton Grove; 8014 North Waukegan Road, Niles; 486 Capital Lane/Washington Park, Gurnee; 5826 North Kolmar Avenue, Chicago; 230 East Ontario Street, Chicago; 21 West Goethe Street, Chicago; 7007 North Milwaukee Avenue, Niles; and/or 4929 North Wolcott Avenue, Chicago. You thereby violated orders or directives regarding secondary employment on the medical roll, including Employee Resource E01-11, Section IV(J).

See the findings set forth in paragraph no. 4 above, which are incorporated here by reference.

7. The Respondent, Police Officer Robert Drell, Star No. 3374, charged herein, is **not guilty** of violating, to wit:

Rule 24: Failure to follow medical roll procedures,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

From about March to May 2013, including but not limited to on or about March 28, May 9, May 10, May 14, May 15, May 16, May 17, May 21, May 22, May 23, May 24, and/or May 29, 2013, or for some period of time therein, you engaged in secondary employment while on the medical roll of the Chicago Police Department, in that you performed work for Abbott Paint Company, a company which you owned and/or operated, and/or from which you received compensation.

Said work included, without limitation, purchasing and/or delivering supplies to job sites, administrative tasks, managing and/or paying employees, meeting with clients, and/or soliciting business, including but not limited to at or around 4747 West Peterson Avenue, Chicago; 107 Berry Parkway, Park Ridge; 900 West Foster Avenue, Chicago; 100 East Walton Avenue, Chicago; 179 East Oak Street, Chicago; 8720 Callie, Morton Grove; 8014 North Waukegan Road, Niles; 486 Capital Lane/Washington Park, Gurnee; 5826 North Kolmar Avenue, Chicago; 230 East Ontario Street, Chicago; 21 West Goethe Street, Chicago; 7007 North Milwaukee Avenue, Niles; and/or 4929 North Wolcott Avenue, Chicago. You thereby failed to follow medical roll procedures, including Employee Resource E01-11, Section IV(J).

See the findings set forth in paragraph no. 4 above, which are incorporated here by reference.

POLICE BOARD DECISION

The Police Board of the City of Chicago, having read and reviewed the record of proceedings in this case, having viewed the video-recording of the testimony of the witnesses, having received the oral report of the Hearing Officer, and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence, hereby adopts the findings set forth herein by the following votes:

By votes of 5 in favor (Ghian Foreman, Melissa M. Ballate, Michael Eaddy, Elisa Rodriguez, and Rhoda D. Sweeney) to 3 opposed (Demetrius E. Carney, William F. Conlon, and Rita A. Fry) the Board finds the Respondent **not guilty** of violating Rule 2, Rule 6, Rule 23, and Rule 24.

As a result of the foregoing, the Board, by a vote of 5 in favor (Foreman, Ballate, Eaddy, Rodriguez, and Sweeney) to 3 opposed (Carney, Conlon, and Fry), hereby determines that cause exists for restoring the Respondent to his position as a police officer with the Department of Police, and to the services of the City of Chicago, with all rights and benefits, effective November 14, 2014.

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Police Officer Robert Drell, Star No. 3374, as a result of having been found **not guilty** of the charges in Police Board Case No. 14 PB 2877, be and hereby is **restored** to his position as a police officer with the Department of Police, and to the services of the City of Chicago, with all rights and benefits, effective November 14, 2014.

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Ghian Foreman, Melissa M. Ballate, Michael Eaddy, Elisa Rodriguez, and Rhoda D. Sweeney.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 19th DAY OF MARCH, 2015.

Police Board Case No. 14 PB 2877
Police Officer Robert Drell

Attested by:

/s/ MELISSA M. BALLATE

/s/ MICHAEL EADDY

/s/ MAX A. CAPRONI
Executive Director

DISSENT

We believe the majority goes too far in concluding that an officer on medical leave actively running his own for-profit business is not engaged in secondary employment. The Secondary Employment Rule is clear; prohibited secondary employment for an officer on the medical rolls includes:

Any extra-Department activity for which any Department member is being compensated in salary, wages, commission *or other thing of value* for services performed as an employer or *in a self-employed status*. (Emphasis added)

The evidence clearly shows Officer Drell operating his painting business while on the medical roll. He was driving from job site to job site, meeting with his workers and the people for whom his company was doing painting jobs, he met with potential customers and picked up and delivered materials to the various job sites. While the majority correctly points out there is limited evidence of Office Drell doing heavy lifting, that is not the test and, for one with a heart condition, driving about the city, supervising workers and meeting with prospective clients is hardly conducive to reducing the chance of aggravation to his heart condition; nor does it logically contribute to the rehabilitation of an officer on the medical roll.

Next, there is no real doubt that Officer Drell received a benefit from running his painting business. The fact that the business is an S Corporation provides no safe-harbor to Officer Drell in applying the facts to the Secondary Employment Rule in this analysis. An S Corporation, simply stated provides, among other things, tax and asset protection to the individual shareholders (here, Officer Drell) as compared to a sole proprietorship. Office Drell is an owner, shareholder, operator and boss of this business. The fact that Officer Drell is a business owner should not change the secondary employment analysis. Whether the business ended up in the red

or made money is irrelevant. The income generated from Officer Drell's secondary employment benefitted him and his company. Even if all it did was reduce the deficit the business might have incurred, that "is a thing of value" to Officer Drell.

And, the fact that Officer Drell is a business owner creates no exception to the Secondary Employment Rule. Officer Drell deserves no special treatment as a business owner over another officer on the medical rolls who decides, for example, to engage in secondary employment as an Uber driver.¹

/s/ DEMETRIUS E. CARNEY
President

/s/ WILLIAM F. CONLON

/s/ RITA A. FRY

RECEIVED A COPY OF

THESE FINDINGS AND DECISION

THIS _____ DAY OF _____, 2015.

GARRY F. McCARTHY
Superintendent of Police

¹ And, keep in mind, the secondary employment rule is hardly punitive. It does not prevent one on the medical rolls from making a living. All the while Officer Drell is out driving about the city running his for-profit business, he is receiving full salary and benefits from the Chicago Police Department.

Officer Drell had an alternative to operating his business and engaging in impermissible secondary employment; he could have simply taken unpaid leave from the Chicago Police Department to concentrate on his painting business. He would have not received his CPD salary and benefits, but he would have been playing by the rules, rules that apply to all Chicago Police Officers.