8-14-2009

GRADY ODOM

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BEFORE THE CIVIL SERVICE COMMISSION
of THE METROPOLITAN GOVERNMENT of
NASHVILLE AND DAVIDSON COUNTY

IN THE MATTER OF:   )
    )
    )
GRADY ODOM    )   DOCKET NO. 43.02-102920J
    )

INITIAL ORDER

The hearing was held in this matter on August 14, 2009, before Mattielyn B. Williams, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Civil Service Commission of the Metropolitan Government of Nashville and Davidson County. Metropolitan Attorney Cynthia E. Gross represented the Metropolitan Government of Nashville and Davidson County, during the hearing. Metropolitan Attorney Jon Michael represented Metropolitan Government, post-hearing. Appellant Grady Odom was represented by Attorney Mark Chapman, of the Nashville bar.

This matter became ready for consideration on November 17, 2009, after submission of the Appellant’s Proposed Order.
The subject of this appeal is the Appellant’s three (3) day suspension from the Davidson County Sheriff’s Office, with the option to address the suspension through use of accrued leave. After consideration of the record and arguments of the parties, it is DETERMINED that Appellant’s conduct merits the discipline of a TWO (2) DAY SUSPENSION¹.

This decision is based on the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. Appellant Grady Odom is a Lieutenant with the Davidson County Sheriff’s Office (DCSO). At the time in question, Appellant worked the third shift, i.e. the evening shift, in the DCSO’s Offender Re-Entry Center. The Appellant has never before received discipline in his career with the DCSO.

2. Earlier, as reflected in some of the Exhibits, sergeants were the ranking officers on a given shift, but, at the time in question, lieutenants were the ranking officers, i.e. the shift supervisors.

3. Exhibit 1, DCSO’s Post Order 2, Index Number 6.2, 105-B, requires shift supervisors to be present at least 45 minutes prior to the start of the assigned shift and

¹ The Undersigned does not intend to remove the DCSO-added option that the Appellant utilize accrued leave to address the suspension.
requires shift supervisors to conduct a shift meeting, 30 minutes prior to the time of the assigned shift.

4. Ms. Lawanda Page was the Appellant’s immediate supervisor. Ms. Marsha Travis, CJM, was Ms. Page’s supervisor.

NIGHT OFF

5. Appellant wanted the night of April 2, 2009 off, in celebration of a Longevity Award he was receiving at the DCSO Awards Dinner. The Awards Dinner typically ended at approximately 8 pm. Appellant’s shift was scheduled to start at 11:30 pm.

6. Lieutenants are expected to arrange shift coverage with one another, when an individual lieutenant wants to be absent. Frequently, coverage is arranged successfully.

7. By e-mail of March 20, 2009, at 1:09 AM, Lieutenant Tony Ross informed Ms. Page and the Appellant that he was requesting leave for March 31st, April 1st through 4th, April 10th, and April 11th. By e-mail of March 20, 2009, at 3:28 AM, the Appellant requested leave for April 2nd, due to the DCSO Awards Dinner, and April 3rd and 4th, due to military training.
8. On March 24th, the Appellant received an e-mail from Ms. Page, asking whether or not he and Lt. Ross had arranged coverage for April 2nd. The Appellant admits that he did not respond to that e-mail.

9. As a result of the Appellant’s non-response, it was assumed that coverage had been obtained.

10. It was undisputed that the Appellant was not able to arrange coverage with his “Partner Lieutenant,” Lt. Ross. In fact, some testimony suggests that the Appellant did not speak or otherwise communicate with Lt. Ross about possible coverage.

11. Lieutenant Ross was not called as a witness concerning coverage arrangements for April 2nd.

12. Ultimately, when the second shift Lieutenant phoned the Appellant to inquire regarding his whereabouts on April 2nd, Appellant Odom offered to come in. The second shift Lieutenant agreed to cover, and in fact did cover, the Appellant’s third shift.

13. The way the April 2nd third shift “problem” came to the attention of Ms. Paige is that the Appellant self-reported the “mix-up.”

DOCUMENTATION
14. By e-mail of March 23, 2009, Ms. Travis informed the lieutenants that they needed to improve their submission of written documentation, including chemical logs, fire drills, and security equipment logs. Ms Travis required that security equipment logs be submitted daily, and, asked that any missing logs be submitted.

15. The Appellant failed to submit the missing logs. Appellant testified that he forgot to comply with the March 23rd e-mail.

16. By e-mail of March 30th and April 3rd, Ms. Travis called the attention of the Appellant and Lieutenant Tony Ross to missing security equipment logs for March 28th, March 30th, April 1st, April 3rd, April 4th, and April 5th.

17. In response to Ms Travis’ email of April 12, 2009, seeking missing logs for April, the Appellant only submitted one of the logs immediately. On April 13th, Appellant submitted logs for April 8th, 10th, 11th, and 12th, but did not explain why the other logs and documentation was missing.

18. Appellant Odom testified that he was absent on Military Leave when Ms. Travis directed some of the e-mail to him regarding the security equipment logs. Yet, based on his submissions of logs on April 12th and 13th, apparently the Appellant was present and on duty on those dates.

FIRE DRILLS
19. According to Exhibit 6, Chapter 7, Index Number 6-7.114, it is DCSO Policy that fire drills be conducted monthly, that the shift supervisor document that the drills have occurred, and submit such documentation monthly. Ms. Travis reminded the Appellant of this policy by e-mail of April 3, 2009.

20. Appellant Odom never submitted documentation that the fire drills were conducted in February and March 2009. The Appellant admits such.

21. Appellant Odom contended that he had an agreement with Lieutenant Ross to conduct and document the fire drills on third shift. However, Lieutenant Ross was not called as a witness to testify to such an arrangement.

**INTERNAL HEARING PROCESS**

22. Appellant Odom contends that he was verbally notified of the charges against him and of the date of the disciplinary hearing/Panel meeting. The Appellant contends that the written statement of the charge against him was first provided him at the April 15\textsuperscript{th} Panel meeting.

23. Metropolitan Government contends that the Appellant was notified of the charges and hearing date by letter of April 13, 2009, Exhibit 7. However, Metropolitan Government did not present a certified mail receipt or an acknowledgement of hand-delivery, regarding its April 13\textsuperscript{th} letter.
24. The DCSO Panel consisted of Ms. Travis and Ms. Lawanda Page. Ms. Travis testified that it is not uncommon in the DCSO for the supervisors presenting the charges to serve as members of the Hearing Panel.

25. Assuming arguendo that the Appellant was first presented the written charges on April 15th, when the Panel was convened, the Appellant asked the Panel for time to prepare. The Panel and the Appellant agreed to a re-set date of April 16, 2009.

26. It is also DETERMINED that the Panel’s willingness to re-schedule could be a sign, acknowledging possible slippage in delivery or receipt of written notice. On the other hand, willingness to re-schedule could simply be a sign of graciousness.

27. No evidence was presented that the Appellant asked for a longer period of time between receipt of the written statement and the Panel hearing. No evidence was presented that the Appellant asked for a longer period of time to prepare and that the Panel denied him such requested time.

28. The Panel determined that the Appellant had violated the DCSO’s Employee Conduct Policy 1-1.312 and Civil Service Rule 6.7, concerning unsatisfactory performance of duties, neglect, disobedience to a lawful and reasonable order, plus being absent without leave. The Panel determined that the Appellant was not guilty of insubordination.

29. Although a five (5) day suspension had been recommended by the Panel, initially, Human Resources Director Jim Kramer informed the Appellant that after
consultation with Metro Legal, based on an earlier misunderstanding regarding minimum discipline for absence from duty, the Panel revised its recommendation to conclude that a three (3) day suspension, with the option to use accrued leave time, was the appropriate discipline for the Appellant’s conduct.

30. The Panel believed that the lesser discipline of a written reprimand was not appropriate because being absent without leave/absent without shift coverage constitutes an issue of public safety, which carries a minimum suspension of one day.

**CONCLUSIONS OF LAW**

1. Chapter 6, Section 6.7 of the Rules of the Civil Service Commission of the Metropolitan Government of Nashville and Davidson County shows that discipline can be imposed for:

   (11) Violation of any written rules, policies or procedures of the department in which the employee is employed.

2. According to Exhibit 6, DCSO Policy Chapter 7, Index Number 6-7.114, fire drills are to be conducted monthly with the shift supervisor documenting that the drills have occurred, and submitting such documentation monthly.

3. According to Exhibit 1, DCSO’s Post Order 2, Index Number 6.2, 105-B, shift supervisors are required to be present at least 45 minutes prior to the start of an
4. DCSO Employee Conduct Policy 1-1.312, Exhibit 7, permits employees to be disciplined for (1) Unsatisfactory performance of duties and (24) Being absent without approval for leave.

5. Exhibit 7 bears an effective date of July 17, 2009, i.e. a date after the incident(s) at issue. Presumably, the previous policy that was effective March 14, 2008 is substantially similar, in terms of the relevant portions. If not, Appellant is, or both parties are, invited to submit a timely Petition for Reconsideration of the Initial Order concerning this particular charge.

6. Appellant admits that he failed to conduct the fire drills and failed to document that they had been conducted. Appellant contends that Lieutenant Ross was supposed to conduct and document the fire drills, but Appellant failed to call Lieutenant Ross as a witness to corroborate such assertion. An adverse inference is taken. Thus, it is CONCLUDED, by a preponderance of the evidence, that Appellant Odom violated DCSO Policy Chapter 7, Index Number 6-7.114, regarding fire drills and DCSO Employee Conduct Policy 1-1.312, Exhibit 7(1), regarding unsatisfactory performance of duties.

7. It is NOTED that fire drills are directly related to the safety of the numerous offenders and staff members at the Offender Re-entry Center. Based on the
Appellant’s demeanor, it is **CONCLUDED** that the Appellant did not show any sign of appreciating the risk at which he placed the human beings in the Center.

8. With regard to the paperwork, it seems odd that the Appellant would believe himself relieved of paperwork, once he became aware of the request, upon his return from military leave. It is unclear why the Appellant did not send an e-mail back to Ms. Travis or Ms. Page, in response to the e-mail directed to him, if he was on military leave and believed that such status somehow absolved him of certain responsibilities.

9. It also seems odd that the Appellant did not request a meeting with Ms. Page, or, with Ms. Page and Ms. Travis, upon his return from military leave, if he truly believed that the paperwork responsibilities were “magically” transferred to Lieutenant Ross or another staff member, while he was on military leave.

10. If the responsibility was shared, it seems odd that Lieutenant Ross was not called as a witness to explain the shared responsibilities. Clearly, Ms. Page and Ms Travis did not believe the responsibilities to be shared.

11. Even as the date of the hearing, apparently, certain security logs/paperwork had not been timely submitted or ever submitted. It is **CONCLUDED**, by a preponderance of the evidence, that such conduct violates DCSO Employee Conduct Policy 1-1.312, Exhibit 7(1), regarding unsatisfactory performance of duties.

12. Appellant was already aware that Lieutenant Ross wanted to be off duty on April 2\(^{nd}\) when he (Appellant) requested the same night off. Whether intentionally or
unintentionally, the Appellant did not respond to the reminder/inquiry from Ms. Travis, asking whether or not the April 2\textsuperscript{nd} coverage problem had been solved.

13. Although not explored thoroughly at the hearing, it seems that the Appellant and Lieutenant Ross were experiencing “communication problems” during the March – April 2009 period. Even when communication problems exist, it is improper conduct for an employee to not appear for a shift when s/he has no reason to believe that the shift has been covered.

14. If Ms. Travis or Ms. Page would have been responsible for covering the Appellant’s shift, there would have been no reason for Ms. Travis to have inquired of the Appellant as to whether or not the problem had been solved. Thus, the Appellant’s theory that he thought his supervisors were handling the coverage for his shift is CONCLUDED to be WITHOUT MERIT.

15. The Appellant failed to secure advance shift coverage for the third shift of April 2\textsuperscript{nd}, even though he had a reminder/inquiry from Ms. Travis. It is unclear why the Appellant acted in such a risky fashion and did not ask the second shift Lieutenant, or another colleague, to cover his shift in advance, consistent with standard practice. Thus, it is CONCLUDED that the Appellant, by a preponderance of the evidence, violated DCSO’s Post Order 2, Index Number 6.2, 105-B and DCSO Employee Conduct Policy 1-1.312 (24), regarding absence from duty.
16. Violation of DCSO policies and rules constitutes violation of Chapter 6, Section 6.7 of the Rules of the Metropolitan Civil Service Commission.

17. The issues of whether or not it was appropriate that Ms. Page and Ms. Travis serve as the Appellant’s Hearing Panel and the issue of whether or not the Appellant was given adequate time to prepare, assuming arguendo that written notice was not received until April 15th are **PRESERVED** for the purposes of appeal.

18. Although one day to prepare seems a bit short, it is also **NOTED** that the Appellant failed to cite a statute, case law, Rule, or other authority to indicate a specific minimum, regarding the number of days for which an employee must have written notice of the charges against him or her, whether the actual period of time was April 13th to April 16th or April 15th to April 16th. Further, no evidence was presented that the Appellant requested a longer period of time to prepare and was denied such.

19. It is **NOTED** that the Appellant failed to cite a statute, case law, Rule, or other authority to indicate that the DCSO practice of having the supervisors involved serve as the internal Hearing Panel is a violation of due process, per se.

20. On the one hand, the supervisors involved are the persons most likely to be familiar with the practices of an agency and responsibilities of a given position. Given that an employee has the right to a de novo hearing before an Administrative Judge, appeal to Chancery, etc., the employee’s due process rights are also protected via those mechanisms.
21. It is also noted that the supervisors/hearing Panel, here, started with a recommendation of a five (5) day suspension, then reduced the discipline to a three (3) day suspension, suggesting that at least these particular hearing panel members were not completely locked-in to a specific discipline, prior to the hearing/Panel meeting.

22. Once it has been established that violations occurred, one must consider what level of discipline, if any, is appropriate.

23. Progressive discipline requires that discipline be instituted at the lowest level appropriate to gain future compliance. Until the instant series of incidents, the Appellant had a disciplinary record that was free of infractions.

24. In the instant matter, the Appellant was proactive in informing his supervisors of the April 2\textsuperscript{nd} occurrence. But for the Appellant’s honesty, this infraction may never have been discovered. Whether the Appellant self-reported out of honesty and integrity, or, self-reported due to fear of being turned in, is known only to the Appellant himself.

25. Although DCSO Post Order 2, Index Number 6.2, 105-B and DCSO Employee Conduct Policy 1-1.312 (24) were violated, it is CONCLUDED that those violations were mitigated through the second shift lieutenant’s decision to cover the Appellant’s shift and by the Appellant’s conduct in self-reporting. The public was not, as a practical matter, at risk, as it would have been, had the second shift lieutenant not elected to provide coverage.
26. Surely, the DCSO wants to honor the Appellant’s conduct in self-reporting the incident.

27. Thus, based on the above, recognizing the Appellant’s self-reporting, yet in light of the risky absence of fire drills, repeated failure to timely submit required paperwork, and odd decision to not secure shift coverage in advance, it is CONCLUDED that the appropriate discipline for Appellant’s conduct is a TWO DAY SUSPENSION.

This Initial Order entered and effective this 5th day of January, 2010.

________________________________________
Mattielyn B. Williams
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State this 5th day of January, 2010.

________________________________________
Thomas G. Stovall, Director
Administrative Procedures Division

2 The Undersigned does not intend to remove the DCSO-added option that the Appellant utilize accrued leave to address the suspension.