

BEFORE THE WEBSTER COUNTY CIVIL SERVICE COMMISSION

CURTIS W. RUBY,)	
)	
Appellant,)	
)	
vs.)	WEBSTER COUNTY SHERIFF'S
)	PRE-HEARING BRIEF
)	
WEBSTER COUNTY SHERIFF,)	
)	
Appellee.)	
)	

Sergeant Curtis Ruby (“Ruby”) has appealed the decision of Webster County Sheriff Brian Mickelson (“Sheriff”) to terminate his employment effective December 13, 2007. The Sheriff believes that the following issues are before the Webster County Civil Service Commission (“Commission”). To the extent additional issues arise during the course of the hearing, the Sheriff requests the opportunity to submit a post-hearing brief to address any such issues.

I. BACKGROUND

A. Factual Background

Curtis W. Ruby was hired by former Webster County Sheriff Charles Griggs on May 12, 1997. Sheriff Griggs resigned in September 2003. An election was held to replace Sheriff Griggs in late 2003. Brian Mickelson was selected over Kevin Kruse (currently a Webster County Lieutenant) in a Republican primary/caucus. Mickelson then ran against Democratic candidate James Stubbs (currently a Webster County Lieutenant) and was elected to complete Griggs’ term as Sheriff. Mickelson was re-elected in 2004. James O’Brien became the Chief Deputy in January 2005.

The Webster County Sheriff's Office consists of approximately 18 full-time officers, ranging in rank from deputies to the Sheriff himself, as well as support staff. Patrol deputies work one of three shifts, mornings, afternoons, and nights, and are rotated between the shifts every few years.

Sheriff Griggs enacted the "Webster County Sheriff's Department Policy & Procedure Manual," also labeled "Manual of Regulations," to establish uniform procedures for the Department's discharge of duties. The Manual spans approximately 300 pages, providing numerous "General Orders" which set forth specific guidance on how the deputies should conduct themselves in the line of duty. For example, when more than one officer reports to the scene of an incident, the highest ranking officer present is considered the "deputy in charge" to make decisions and exercise control of the situation. See Manual, 94-20100.04 & 94-40200.48. Other General Orders are referenced in section II (D) below and will be discussed during the hearing.

B. Procedural Background

Ruby was notified by the Sheriff of his removal on December 13, 2007. Ruby was given a written "Notice of Discharge from Employment," accompanied by a "Notice of Violations," copies of which were provided to the Commission pursuant to Iowa Code Section 341A.12. Ruby appealed the decision on December 14, 2007. A hearing was initially scheduled for January 3, 2008. Both parties requested a continuance of the hearing. A pre-hearing conference call was held on January 10, 2008. During the conference call, the hearing was set to commence March 19, 2008. Pursuant to Iowa Code Section 341A.6, the Commission established "Rules and Hearing Procedures of the Webster County Civil Service Commission," adopted March 5, 2008.

Pursuant to Iowa Code Section 341A.12, the Commission shall “fully hear and determine the matter, and either affirm, modify, or revoke such order.” Iowa Code § 341A.12.

The Sheriff hereby requests the Commission to affirm his Notice of Discharge From Employment directed to Sergeant Curtis W. Ruby, effective December 13, 2007.

II. RUBY’S TERMINATION WAS “FOR CAUSE” PURSUANT TO IOWA CODE SECTION 341.

The sole issue before the Commission is whether Sheriff Mickelson had “cause” to terminate Ruby’s employment. Iowa Code section 341A.12 provides:

No person in the classified civil service who has been permanently appointed or inducted into civil service under this chapter shall be removed, suspended, or demoted except for cause, and only upon written accusation of the sheriff, which shall be served upon the accused and a duplicate filed with the commission.

Section 341.12 does not define “cause”; however, Iowa Code section 341A.11 provides, in pertinent part:

After the probationary period, the deputy sheriff may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other privileges for any of the following reasons:

1. Incompetency, inefficiency, or inattention to or dereliction of duty.
2. Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee, or any other act of omission or commission tending to injure the public.
-
7. Any other act or failure to act or to follow reasonable regulations prescribed by the sheriff which in the judgment of the commission is sufficient to show the offender to be unsuitable or unfit for employment.

The Sheriff's December 13, 2007 "Notice of Discharge From Employment" identifies the following three reasons for Ruby's termination:

1. Incompetency, inefficiency, or inattention to or dereliction of duty. See Iowa Code § 341A.11(1).
2. Insubordination, discourteous treatment of fellow employees, or any other acts tending to injure the public, and/or willful failure to properly conduct yourself. See Iowa Code § 341A.11(2).
3. Other acts or failure to act or to follow reasonable regulations prescribed by the Sheriff that show you to be unsuitable or unfit for employment. The regulations you failed to follow include, but are not necessarily limited to, regulations pertaining to insubordination, loyalty to the County, Department, and departmental efficiency, respect to superiors, addressing superiors, cooperation between the ranks, failure to report damaged or inoperative equipment, neglect of duty, cooperation with other agencies, incompetence, maintaining communications, and personal advertising. See Iowa Code § 341A.11(7).

In addition to the "Notice of Discharge from Employment," Sheriff Mickelson gave Ruby a "Notice of Violations" on December 13, 2007, which provided details of various incidents demonstrative of the reasons for his termination dating from approximately two years prior to the termination date through the month before the termination date. The Notice of Violations identifies numerous General Orders that were violated by Ruby. Any one of these incidents, alone, constitutes sufficient reason for removal pursuant to Iowa Code section 341A.11 & .12. When considered comprehensively, these numerous violations constitute sufficient cause for discharge.

A. Standard of Review

Webster County Civil Service Commission Rule 11 provides that the Sheriff shall have the burden to show reason for removal by substantial evidence. Evidence is "substantial or sufficient when a reasonable mind could accept it as adequate to reach the same finding." See Currans v. Linn County Civil Service Com'n, 540 N.W.2d 469, 472

(Iowa Ct. Ap. 1995) (finding substantial evidence to support just cause determination where jail supervisor's supervisory efforts were not consistent with the reasonable requirements of her job). The public has the right:

to expect sheriff's officers to conduct themselves with good character, sobriety, judgment and discretion . . . Activities of deputy sheriffs should be subject to proper discipline so that their activities are not disrupted or impaired in the performance of their duties. In like fashion, sheriff's offices are "akin to paramilitary organizations and discipline must be strictly enforced."

Burmeister v. Muscatine County Civil Service Com'n, 538 N.W.2d 877, 879 (Iowa App. 1995), *citing* Sieg v. Civil Service Com'n of West Des Moines, 342 N.W.2d 824, 829 (Iowa 1983).

Whether there exists "just cause requires a focus on the ability and fitness of an employee to discharge the duties of his or her position, bearing in mind the legislative purpose to protect the public against incompetence and maintain high standards of performance." Id. (citing Hawkinson v. Civil Service Com'n, 431 N.W.2d 350, 352 (Iowa 1988)).

B. Ruby's Conduct Constitutes Inattention to or Dereliction of Duty.

Iowa Code section 341A.11(1) provides that one reason a Sheriff can terminate a deputy is because of his incompetence, inattention to, or dereliction of duty. The examples of Ruby's conduct set forth in the Sheriff's Notice of Violations establish that Ruby failed to perform numerous job duties. Ruby cannot claim he did not know what was expected of him. Ruby had worked in law enforcement for many years and clearly knew the requirements of his position as a deputy sheriff. The reasons Ruby failed to adequately perform his job duties are unknown to the Sheriff. The evidence will show ample examples establishing Ruby was derelict in his duties.

Perhaps the most troubling examples are the three domestic abuse calls in four months in which Ruby failed to secure the safety of the victims who had suffered bodily injuries.¹ In two of the cases, Ruby chose not to arrest the perpetrator, despite Iowa law requiring the arrest of a person where there is probable cause that a domestic abuse has been committed which resulted in the victim suffering a bodily injury. See Iowa Code § 236.12(b).

Accordingly, the Sheriff had cause to terminate Ruby's employment pursuant to Iowa Code section 341A.11 (1). See Hawkinson, 431 N.W.2d at 353 (finding substantial evidence to support deputy's removal based on dereliction of duty where he failed to comply with the requirement that he reside in the county and failed to report for work on one day).

C. Ruby Engaged in Insubordination, Discourteous Treatment of Fellow Employees, and Acts That Tended to Injure the Public.

Iowa Code section 341A.11(2) provides additional reasons a Sheriff can terminate a deputy, including, insubordination, discourteous treatment of fellow employees or the public, or any other acts tending to injure the public. The evidence will demonstrate that Ruby's behavior toward Sheriff Mickelson and Deputy Sheriff O'Brien was insubordinate on numerous occasions throughout their joint tenure with the County. The evidence also will show that some of Ruby's fellow officers complained to the Sheriff about Ruby's discourteous treatment of them, while others created their own coping mechanisms to deal with Ruby. The mishandled domestic abuse calls certainly tended to injure the public.

¹ As explained in the undersigned's letter to counsel for Appellant dated February 29, 2008, the dates of two of the of the domestic incidents were incorrectly referenced in the "Notice of Violations." The incident identified in paragraph 14 occurred on July 25, 2007 (rather than July 7, 2007) and the incident identified in paragraph 15 occurred on August 6, 2007 (rather than August 8, 2007).

The Commission may wonder why the Sheriff tolerated Ruby's insubordinate behavior for so long. The Sheriff now asks himself the same question. It really does not matter; the law has no requirement that a deputy's employment be terminated upon the first, second, third, or even tenth violation of Iowa Code section 341A.11. Rather, it merely provides that *when* the Sheriff makes a decision to terminate, it must be based on one of the reasons set forth in Iowa Code section 341A.11. As the evidence will demonstrate, the Sheriff had ample reasons for removing Ruby from his employment. Accordingly, the Sheriff had cause to terminate Ruby's employment pursuant to Iowa Code section 341A.11 (2). See also City of Clinton v. Loeffelholz, 448 N.W.2d 308, 312 (Iowa 1989) (affirming termination of employment rather than lesser disciplinary action, finding that, over the course of two years, Loeffelholz repeatedly exhibited behavior that indicated a lack of sound judgment and concluding his actions were detrimental to preserving public trust and confidence in the Clinton Police Department).

D. Ruby's Conduct Violated Numerous Regulations Prescribed by the Sheriff.

Iowa Code section 341A.11(7) provides an additional reason that a deputy may be terminated: "any failure to act or to follow reasonable regulations prescribed by the Sheriff which in the judgment of the commission is sufficient to show the offender to be unsuitable or unfit for employment." As set forth in the Sheriff's December 13, 2007 "Notice of Violations," the Sheriff determined that Ruby's conduct on various dates violated thirteen of the General Orders contained in the Manual of Regulations. These numerous violations showed Ruby to be unsuitable for the job. The General Orders are reasonable regulations prescribed by the Sheriff; they have not been challenged since Sheriff Griggs implemented them ten years ago. The Sheriff concluded, and the evidence

will show, that the following General Orders were violated by Ruby, some on multiple occasions.

General Order	Subject
94-20100.05	Insubordination
94-20100.06	Neglect of Duty
94-20100.07	Incompetence
94-40200.1	Loyalty
94-40200.04	Coordination
94-40200.05	Cooperation Between the Ranks
94-40200.06	Cooperation with Other Agencies
94-40200.11	Maintaining of Communications
94-40200.20	Damaged or Inoperative Equipment
94-40200.34	Personal Advertising
94-40200.38	Respect to Superiors
94-40200.39	Addressing Superiors
Order Dated 3/4/1999 (Bates No. WC 224)	Public Statements, Criticisms, or Official Reports

While some of the offenses seem quite minor as compared to others, they all constitute violations of reasonable regulations prescribed by the Sheriff. See Hawkinson, 431 N.W.2d at 353 (finding substantial evidence to support removal of deputy for failing to follow reasonable regulations prescribed by sheriff which show deputy unfit for duty where deputy failed to comply with requirement that he reside in the county).

In Hawkinson, the Commission upheld the deputy’s removal, but the district court modified the Commission’s ruling and, instead, suspended him without pay for 14 days, conditioning reinstatement upon providing proof of residency within 30 days. Id. at 352. The Supreme Court reversed the district court’s ruling, finding substantial evidence supported the Commission’s finding of just cause for termination. If Hawkinson’s “persistent failure to maintain a Louisa County residence” constituted just cause for termination, then Ruby’s persistent disregard of numerous Webster County General Orders must constitute just cause. Not only did Ruby violate the Sheriff’s regulations,

Ruby's conduct with respect to the domestic abuse calls violated Iowa Code section 236.12(b).

When the Sheriff and/or Deputy Sheriff attempted to talk with Ruby about his job performance, Ruby became irate. The evidence will show that Ruby hurled insults and threats toward both the Sheriff and Deputy Sheriff. After experiencing months of Ruby's utter disregard for his instructions, the Sheriff concluded that Ruby was unfit for continued employment with the Sheriff's Office. The Sheriff urges the Commission to conclude that Ruby is unsuitable to continue in his employment as an officer with the Webster County Sheriff's Office.

III. IOWA CODE SECTION 80F.1 DOES NOT APPLY TO RUBY'S TERMINATION.

Ruby has alleged that Iowa Code section 80F.1, effective July 1, 2007, is applicable to his termination. The Sheriff strenuously disagrees. Iowa Code section 80F.1 appears to address multiple issues regarding peace officers. It appears the portion of the law that Appellant seeks to apply to this situation are those provisions regarding "formal administrative investigations."

Subsections 1 through 13 and 19 of Iowa Code section 80F.1 appear to address situations involving "formal administrative investigations" stemming from "Complaints." Iowa Code section 80F.1 does not require a "formal administrative investigation" as a prerequisite to the Sheriff taking any and all disciplinary action (including discharge) against a deputy. Rather, the law defines a "formal investigative investigation" as:

an investigative process ordered by a commanding officer of an agency or commander's designee during which the *questioning* of an officer is intended to gather evidence to determine the merit of a *complaint* which may be the basis for seeking removal, discharge, or suspension, or other disciplinary action against an officer.

Iowa Code § 80F.1 (1)(b) (emphasis added). This definition requires, first, that there be a “complaint” and, second, that there is questioning of an officer intended to gather evidence to determine the merit of such a complaint. The evidence will show that there was neither a “complaint” nor “questioning” of Ruby that resulted in the Sheriff’s decision to remove him from his deputy position.

A “Complaint” “means a formal written allegation signed by the complainant or a written statement by an officer receiving an oral complaint stating the complainant’s allegation.” See Iowa Code § 80F.1 (1)(a). Ruby’s termination was not based upon any “complaint” arising after July 1, 2007. Rather, it was the totality of Ruby’s conduct as a police officer throughout his tenure with the Sheriff’s office (only 5½ months of which occurred during the period since Iowa Code § 80F.1 was enacted) that led Sheriff Mickelson to determine there was cause to terminate his employment pursuant to Iowa Code section 341A.11(1), (2) & (7).

Subsections 5-11 provide for various procedures to be followed when an officer is interviewed as part of a “formal administrative investigation,” but do not specify when such an investigation *must* be commenced. As no formal administrative investigation took place (or was required to take place), the Sheriff was not obligated to follow the procedures of subsections 5-11. Accordingly, the Sheriff has not violated Iowa Code section 80F.1.

IV. RUBY HAD NO PROPERTY INTEREST IN HIS POSITION AS A DEPUTY SHERIFF.

Counsel for Appellant has suggested that Ruby’s removal was unconstitutional. Iowa law is clear that a deputy sheriff does not have a constitutionally protected property

interest in his employment entitling him to a pretermination hearing. See Burmeister v. Muscatine County Civil Service Com'n, 538 N.W.2d 877 (Iowa App. 1995). The right to public employment is not a fundamental right. Bennett v. City of Redfield, 446 N.W.2d 467, 473 (Iowa 1993); see also Currans v. Linn County Civil Service Com'n, 540 N.W.2d 469, 472 (Iowa Ct. App. 1995) (rejecting equal protection claim with respect to difference in procedure under Iowa Code § 341A, applicable to county employees, and § 400, applicable to cities with populations over 8,000).

V. CONCLUSION

The evidence will demonstrate numerous reasons for terminating Ruby's employment that constitute sufficient cause under Iowa Code sections 341A.11 & 12. Accordingly, the Sheriff requests the Commission to affirm its Notice of Discharge from Employment issued to Sergeant Curtis W. Ruby.

/s/ Bridget R. Penick
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the document attached to this Certificate was delivered to the person listed below via electronic mail at roxlaw@aol.com, on the 17th day of March, 2008.

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