

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
SERGEANT STEVEN LESNER,) **No. 13 PB 2843**
STAR No. 1402, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
) **(CR No. 1023969)**
RESPONDENT.)

FINDINGS AND DECISION

On September 11, 2013, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Sergeant Steven Lesner, Star No. 1402 (hereinafter sometimes referred to as “Respondent”), recommending that the Respondent be suspended for sixty (60) days 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 10: Inattention to duty.
- Rule 17: Drinking alcoholic beverages while on duty or in uniform, or transporting alcoholic beverages on or in Department property, except in the performance of police duty.

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 May 23, 2014.

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 sergeant of police 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.

Motion to Dismiss

4. The Respondent filed a Motion to Dismiss, contending that the delay in the filing of charges caused prejudice to him in that witnesses and evidence that would have been helpful to the Respondent's defense are no longer available (the Respondent referenced two individuals, victim Catherine Weiland's father and brother—George Weiland and John Weiland—who died between the date of the incidents that gave rise to the charges and date of the filing of charges, and the Respondent attached to the Motion the death certificates of these two individuals).

The Respondent's Motion to Dismiss is **denied** for the reasons set forth below.

a. Timeliness of the Motion to Dismiss. The Respondent filed his Motion to Dismiss on May 19, 2014, four days before the May 23 hearing on the charges. The Police Board's *Rules of Procedure* require that such motions be filed at least five days in advance of the date set for

hearing (Section II-C).

The Respondent stated that he filed his motion four days prior to the hearing because he learned of the death of George Weiland and John Weiland only a few days before filing the motion. However, the Respondent received discovery in this matter on or about October 29, 2013, and the Respondent had ample time to prepare his defense and consider which witnesses to call. At the pre-hearing conferences held on February 5 and March 28, 2014, at which Hearing Officer Johnson required the Respondent's counsel to discuss the identity of the witnesses to be called and the subject matter on which they will testify, the Respondent's counsel made no mention of calling George Weiland or John Weiland as witnesses. The Respondent's learning of the Weilands' unavailability only recently because of his apparent last-minute decision to consider calling them as witnesses is not sufficient justification for excusing his duty to file the Motion at least five days in advance of the date set for hearing. The Motion is therefore denied as untimely.

b. Laches. Even assuming *arguendo* that the Respondent filed the Motion in a timely manner, the Motion fails on its merits.

The Respondent argues that the doctrine of laches should apply here in supporting the dismissal of charges. He argues that the Superintendent's delay in bringing the charges resulted in prejudice to him in that witnesses and evidence that would have been helpful to the Respondent's defense are no longer available.

Laches is an equitable doctrine that is used to prevent a party in litigation from enforcing a right it otherwise has because it has not been diligent in asserting this right and the opposing

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party has been prejudiced by the delay. Private parties and public agencies are not on an equal footing when it comes to the application of the laches doctrine. Many cases, including *Van Milligan v Board of Fire and Police Commissioners of the Village of Glenview*, 158 Ill.2d 85, 630 NE2d 830 (1994), hold that laches can only be invoked against a municipality under “compelling” or “extraordinary” circumstances. In addition, the party that invokes the doctrine of laches has the burden of pleading and proving the delay and the prejudice. *Hannigan v. Hoffmeister*, 240 Ill. App. 3d 1065, 1074 (1st Dist. 1992). Under Illinois law, the Respondent must demonstrate that the Superintendent’s unreasonable delay caused material prejudice to the Respondent; the Respondent must submit evidence in support of his claims of prejudice. *Nature Conservancy v. Wilder*, 656 F.3d. 646 (7th Cir. 2011).

The Respondent has made no specific showing of any prejudice that resulted from a delay in bringing charges before the Police Board. Respondent contends that had Ms. Weiland’s father and brother been available to testify, they might have corroborated Respondent’s account of the evening’s events, and further testify to Ms. Weiland’s mental health problems, thereby bolstering the claim that she may have killed herself, even without Respondent’s gun. This is, however, sheer speculation on Respondent’s part. There is no prior statement or deposition from these witnesses to indicate what they would have said at the hearing about the events that occurred in their building. Speculation about what a witness might say at trial is insufficient to show “material prejudice” for purposes of laches. *Van Milligan* (p. 91). In any event, the facts of what transpired at Ms. Weiland’s apartment and building are not in dispute. We only have Respondent’s account, so there is no disputed factual question on which George and John Weiland’s testimony would be pertinent. Nor does Respondent suggest such a factual question.

In fact, had they lived, these witnesses' testimony might well have been detrimental to Respondent by creating questions about what transpired on the night in question.

As for Ms. Weiland's mental health, Detective Conley testified, without objection by the Superintendent, to John Weiland's statements about her past mental condition (Tr. p. 108). This evidence is thus before the Board. A lay witness, however, could not extrapolate from these statements to offer an opinion on whether his sister would have taken her life, even without Respondent's involvement, as Respondent suggests. Further, Respondent testified that he was not aware of Ms. Weiland's mental health history (Tr. p. 57-58), so the testimony would not have offered an explanation as to his conduct that night. Indeed, the testimony of Ms. Weiland's father and brother may well have undermined the testimony of Respondent, had they disclosed to him some aspect of the mental health situation prior to Ms. Weiland's suicide.

Finally, Respondent complains that he could not call the father and brother of Ms. Weiland to give the equivalent of a victim-impact statement, which purportedly would support the Superintendent's proposed 60-day suspension. Again, the Respondent is merely speculating as to what Ms. Weiland's relatives would have said in such a statement. They may well have condemned Respondent's actions in unequivocal terms. Consequently, any argument that the Weilands' testimony would have been helpful to the Respondent's defense is speculative.

The Respondent has not demonstrated any "compelling" or "extraordinary" circumstances warranting a dismissal of this case, and has not carried the burden of proving that he was prejudiced by a delay in the bringing of charges.

Charges Against the Respondent

5. The Respondent, Sergeant Steven Lesner, Star No. 1402, charged herein, is **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:

Count I: On or about February 17, 2009, at or about 20:10 hours, at a 7-Eleven around Addison Street and Pulaski Road, or another store around or between 3638 North Pulaski Road and 3115 North St. Louis Avenue, in Chicago, while on duty, in uniform, and/or driving a Department vehicle, you purchased an alcoholic beverage (wine) for consumption by Ms. Catherine Weiland and/or other reasons not in the performance of police duties, and then transported it in your Department vehicle to about 3115 North St. Louis Avenue.

The Respondent pled guilty to this charge.

6. The Respondent, Sergeant Steven Lesner, Star No. 1402, charged herein, is **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:

Count II: On or about February 18, 2009, at or about 01:40 hours, in an apartment at or around 3115 North St. Louis Avenue, in Chicago, you failed to secure your auxiliary weapon (a Smith and Wesson Model #3953 9mm semi-automatic handgun), including but not limited to by removing it from your person and placing it on the floor or love seat of said apartment, and/or by leaving your weapon unattended when you left the room, and/or by allowing Ms. Catherine Weiland to take possession of your weapon, which she then used to commit suicide by shooting herself in the head.

The Respondent pled guilty to this charge.

7. The Respondent, Sergeant Steven Lesner, Star No. 1402, charged herein, is **guilty** of

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violating, to wit:

Rule 10: Inattention to duty,

in that:

On or about February 18, 2009, at or about 01:40 hours, in an apartment at or around 3115 North St. Louis Avenue, in Chicago, you failed to secure your auxiliary weapon (a Smith and Wesson Model #3953 9mm semi-automatic handgun), including but not limited to by removing it from your person and placing it on the floor or love seat of said apartment, and/or by leaving your weapon unattended when you left the room, and/or by allowing Ms. Catherine Weiland to take possession of your weapon, which she then used to commit suicide by shooting herself in the head.

The Respondent pled guilty to this charge.

8. The Respondent, Sergeant Steven Lesner, Star No. 1402, charged herein, is **guilty** of violating, to wit:

Rule 17: Drinking alcoholic beverages while on duty or in uniform, or transporting alcoholic beverages on or in Department property, except in the performance of police duty,

in that:

On or about February 17, 2009, at or about 20:10 hours, at a 7-Eleven around Addison Street and Pulaski Road, or another store around or between 3638 North Pulaski Road and 3115 North St. Louis Avenue, in Chicago, while on duty, in uniform, and/or driving a Department vehicle, you purchased an alcoholic beverage (wine) for consumption by Ms. Catherine Weiland and/or other reasons not in the performance of police duties, and then transported it in your Department vehicle to about 3115 North St. Louis Avenue.

The Respondent pled guilty to this charge.

Penalty

9. The Police Board has considered the facts and circumstances of the Respondent's conduct, the evidence presented in defense and mitigation, and the Respondent's complimentary and disciplinary histories (attached hereto as Exhibit A). The Board determines that the Respondent must be discharged from his position due to the serious nature of the conduct of which it has found him guilty.

a. Authority to determine the penalty. In the charges filed with the Police Board, the Superintendent recommended that the Respondent be suspended for a period of sixty (60 days). The Respondent pled guilty to the charges and stated that he accepts this sixty-day suspension. However, pursuant to the Municipal Code of Chicago and state statute, it is the duty of the Police Board to determine the appropriate penalty in this matter.

The powers of the Board are set forth in Section 2-84-030 of the Municipal Code of Chicago and in 65 ILCS 5/10-1-18.1. In cases in which the Superintendent seeks a penalty of more than 30 days suspension, both the ordinance and the statute provide that: "Upon the filing of charges for which removal or discharge or suspension of more than 30 days is recommended, a hearing before the police board, or any member or hearing officer designated by it shall be held." The ordinance and the statute further provide that a majority of the members of the Board "must concur in the entry of any disciplinary recommendation or action." Section 2-84-050 of the Municipal Code adds that the Superintendent's authority to discharge or suspend employees of the Department is "subject to the rules of the department and the instructions of the board." These provisions make clear that in cases involving discharges or suspensions in excess of 30 days, the Superintendent's position on the appropriate penalty is only a recommendation to the

Board and is not binding upon it. Rather, it is for a majority of the Board to “concur” in whatever discipline is imposed, and the Superintendent’s disciplinary authority is expressly made subject to the instructions of the Board. Accordingly, the Board has the power to instruct the Superintendent to impose any penalty it deems appropriate in the cases in which the Superintendent has recommended a suspension in excess of 30 days.

b. Respondent’s conduct. The Respondent engaged in a series of decisions on the night of February 17-18, 2009, that were reprehensible.

Sergeant Lesner’s misconduct began when he made a decision to stop his department vehicle, while on duty and in uniform, in order to buy alcohol for Catherine Weiland while transporting her to her home. This was a knowing and blatant violation of Rule 17, which prohibits an officer from, among other things, “transporting alcoholic beverages on or in Department property.” There is no dispute about this as Sergeant Lesner pled guilty to this charge. He offers no explanation for this misconduct, other than stating that Ms. Weiland wanted to purchase some wine. This violation of Department policy is compounded by the fact that Sergeant Lesner had just assisted in resolving a domestic disturbance involving Ms. Weiland and her former boyfriend, which caused Ms. Weiland to become upset and distraught, according to Sergeant Lesner’s own testimony. While Sergeant Lesner testified that Ms. Weiland did not appear intoxicated at the restaurant (Tr. p. 27), she was clearly in a compromised condition, as is evident not only by her distraught emotional condition, but also by the fact that later, she had to be accompanied by her brother in order to retrieve her car from the restaurant.

While Sergeant Lesner testified he transported Ms. Weiland from the scene because she

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was distraught, it is quite clear that he had more in mind than merely ensuring her safe return to her apartment. He concedes that when he dropped her off, he stayed at the building for 40-45 minutes for what he characterized as “relative socializing with the father, brother, herself” (Tr. p. 30). He also admits that he gave Ms. Weiland his business card, along with his personal cell phone number. He says he gives out cards as a “social, friendly gesture” (Tr. p. 32), but the Board has little doubt as to why he gave his card to Ms. Weiland. If Sergeant Lesner’s intent was to make Ms. Weiland aware of how to secure police services, there was no need to supply his personal cell phone number. Moreover, Ms. Weiland then promptly called Sergeant Lesner’s cell phone in order to invite him over for cocktails, and he agreed to meet her at her apartment that night. The inescapable conclusion is that Sergeant Lesner offered his cell phone number to facilitate a personal, social encounter between himself and Ms. Weiland, and the ploy worked.

Sergeant Lesner then proceeded back to Ms. Weiland’s apartment immediately after checking off duty, buying yet more alcohol for her and himself on the way. While the Superintendent did not offer any General Order or other policy that prohibited Sergeant Lesner from associating with Ms. Weiland while off-duty, the Board finds that Sergeant Lesner exercised extraordinarily poor judgment in returning to Ms. Weiland’s apartment soon after providing police services to her. It is clear that Sergeant Lesner used his involvement in Ms. Weiland’s domestic disturbance, and his position as a sergeant of police, as a way to facilitate a social relationship with her. The relationship was fueled by alcohol that he provided to her. Police officers can abuse their authority in many ways. Here, Sergeant Lesner did so in an effort to pursue a relationship with a woman.

When Sergeant Lesner decided to return to Ms. Weiland’s apartment, he also decided to

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carry his auxiliary weapon with him. While armed, he admits drinking with Ms. Weiland in her apartment. This constitutes a knowing and intentional violation of Department General Order U04-02, Section II(C), which prohibits officers from consuming alcohol off-duty while armed (Superintendent Exhibit No. 14). While Sergeant Lesner was not specifically charged with violating this General Order, the Board may consider such a breach of department policy as an aggravating factor when determining an appropriate penalty for violating Rules 2 and 10 by failing to secure his weapon.

In addition to drinking with Ms. Weiland at her apartment, it is undisputed that the previously distraught Ms. Weiland then brought out a medicine box with pills, and told Sergeant Lesner that she needed to take her pills. Given her prior emotional condition, the drinking that was going on, and the presence of the pills, Sergeant Lesner, as a trained and experienced police officer, should have recognized that this was a woman who may not have been in an emotionally stable state.

Having taken advantage of his position to begin a social relationship with Ms. Weiland and having decided to drink with her while armed, Sergeant Lesner made a bad situation even worse by placing his loaded, unlocked auxiliary weapon on the floor next to the love seat where he was sitting. He then left the room, leaving Ms. Weiland alone with his weapon. While the evidence indicates that Ms. Weiland retrieved the weapon and took her own life, Sergeant Lesner made essentially no effort to secure his weapon. Sergeant Lesner's failure to reasonably secure his weapon led directly to Ms. Weiland's death.

c. Respondent's evidence in mitigation. In mitigation, Sergeant Lesner has offered

important evidence that the Board has carefully considered.

There is no question that Sergeant Lesner has a distinguished record as a police officer. His complimentary record includes nine department commendations, a life-saving award, a police officer of the month award, 205 honorable mentions, and other awards as well. He has made significant arrests, and the Board has considered his testimony about these arrests. His character witnesses indicate he enjoys a good reputation in the community.

It is also clear that Sergeant Lesner cooperated with the Police Department in its investigation of Ms. Weiland's death, beginning with the night it occurred. He has taken responsibility for his actions by pleading guilty and expressing remorse at the hearing.

Sergeant Lesner also has pointed out that while stripped of his police powers, from February of 2009 to March of 2011, he was unable to work secondary employment where use of his police powers was required, and could not secure overtime compensation which he had enjoyed as a sergeant (unless he was subpoenaed to court).¹

The Board also recognizes that the Superintendent of police has recommended a sixty day suspension in this case, which Sergeant Lesner agrees is appropriate.

d. Conclusion. The Board finds that Sergeant Lesner's conduct on the night in question and the lack of judgment he demonstrated are incompatible with continued service as a sergeant of police with the Chicago Police Department. The Board finds that the Respondent's conduct is sufficiently serious to constitute a substantial shortcoming that renders his continuance in his office detrimental to the discipline and efficiency of the service of the Chicago Police

¹ The Superintendent's Motion to Strike Arguments First Raised in the Reply is denied.

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Department, and is something which the law recognizes as good cause for him to no longer occupy his office.

This case does not involve an error in judgment while Sergeant Lesner was making a split second decision under stressful conditions while in the performance of his duties on the street. Rather, it involves a series of calculated and knowing decisions, made over the course of hours while on and off duty, aimed at using his position as a Sergeant to further a personal relationship and that exhibited a complete lack of sound judgment, beginning with his decision to go into a liquor store while on duty and in uniform and buy alcohol for a woman who was distraught after an altercation with her ex-boyfriend to which police were called, and ending with his decision to leave his loaded gun on the floor while he went to the bathroom, which allowed the woman to pick up the gun and use it to shoot herself in the head.

We expect our police officers to protect citizens, particularly those who have endured situations that leave them distraught. Here, however, Sergeant Lesner used Ms. Weiland's circumstances for his own benefit. Far from demonstrating the professionalism that we expect of sergeants, who serve as supervisors and whose responsibilities include maintaining discipline, providing leadership and guidance, influencing subordinates and motivating them to perform their duties well, Sergeant Lesner ignored his training and the Department's rules altogether. Moreover, his decision to ignore those rules led directly to Ms. Weiland's death. With all due respect to the Superintendent, where the pattern of misconduct is as extensive as we find in this case and the consequences of the misconduct are so grave, the Board finds that discharge is the only appropriate penalty.

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 a vote of 8 in favor (Demetrius E. Carney, Ghian Foreman, Melissa M. Ballate, William F. Conlon, Michael Eaddy, Rita A. Fry, Elisa Rodriguez, and Rhoda D. Sweeney) to 0 opposed, the Board **denies** the Respondent's Motion to Dismiss the charges; and

By votes of 8 in favor (Demetrius E. Carney, Ghian Foreman, Melissa M. Ballate, William F. Conlon, Michael Eaddy, Rita A. Fry, Elisa Rodriguez, and Rhoda D. Sweeney) to 0 opposed, the Board finds the Respondent **guilty** of violating Rule 2, Rule 10, and Rule 17.

As a result of the foregoing, the Board, by a vote of 8 in favor (Carney, Foreman, Ballate, Conlon, Eaddy, Fry, Rodriguez, and Sweeney) to 0 opposed, hereby determines that cause exists for discharging the Respondent from his position as a sergeant of police with the Department of Police, and from the services of the City of Chicago.

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Sergeant Steven Lesner, Star No. 1402, as a result of having been found **guilty** of the charges in Police Board Case No. 13 PB 2843, be and hereby is **discharged** from his position as a sergeant of police with the Department of Police, and from the services of the City of Chicago.

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Demetrius E. Carney, Ghian Foreman, Melissa M. Ballate, William F. Conlon, Michael Eaddy, Rita A. Fry, Elisa Rodriguez, and Rhoda D. Sweeney.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 17th DAY OF JULY, 2014.

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Attested by:

/s/ Demetrius E. Carney
President
Police Board

/s/ Max A. Caproni
Executive Director
Police Board

DISSENT

The following members of the Police Board hereby dissent from the Findings and Decision of the majority of the Board.

[None]

RECEIVED A COPY OF

THESE FINDINGS AND DECISION

THIS ____ DAY OF _____, 2014.

GARRY F. McCARTHY
Superintendent of Police

Report Date: 10 Mar 2014
Report Time: 0937 Hrs

Information Services Division
Data Warehouse
Produced by: PC0U889

Chicago Police Department Personnel Division

*Only for active personnel



Complimentary History

Name	Title	Star	Unit	Detail Unit	Emp Number
LESNER, STEVEN E	9171		017	376	[REDACTED]

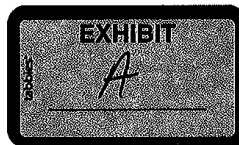
Achievements

Achievements	Total No.
HONORABLE MENTION	205
LIFE SAVING AWARD	1
COMPLIMENTARY LETTER	21
EMBLEM OF RECOGNITION - PHYSICAL FITNESS	5
POLICE OFFICER OF THE MONTH AWARD	1
HONORABLE MENTION RIBBON AWARD	1
2009 CRIME REDUCTION AWARD	1
SPECIAL COMMENDATION	1
ATTENDANCE RECOGNITION AWARD	3
DEPARTMENT COMMENDATION	9
OTHER AWARDS	1
EMBLEM OF RECOGNITION - APPEARANCE	1
DEMOCRATIC NATIONAL CONVENTION AWARD	1
JOINT OPERATIONS AWARD	1
NATO SUMMIT SERVICE AWARD	1
PRESIDENTIAL ELECTION DEPLOYMENT AWARD 2008	1
2004 CRIME REDUCTION RIBBON	1
UNIT MERITORIOUS PERFORMANCE AWARD	2
TOTAL AWARDS	257

2843

FOR USE WITH

CR# 1023969



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10-MAR-2014 09:29:52 AM

CHICAGO POLICE DEPARTMENT
Sustained Complaints History Report

IADR118

<u>Social Sec. #</u>	<u>Name</u>	<u>Star #</u>	<u>Emp. #</u>	<u>Rank</u>	<u>Description</u>	<u>Unit</u>
[REDACTED]	LESNER STEVEN E.	[REDACTED]	[REDACTED]	9171	SERGEANT OF POLICE	376
<u>Sex</u>	<u>Race</u>	<u>Birth Date</u>	<u>Appointed Date</u>	<u>No. Of CR's</u>	<u>No. Of SPAR's</u>	
M	WHITE	[REDACTED]	22-NOV-1993	1	0	
<u>Case #</u>	<u>Incident Date</u>	<u>Suspension Dates</u>	<u>Disciplinary Action Taken</u>	<u>Final Category</u>	<u>Less Serious Transgression</u>	
C 1033959	18-FEB-2010		REPRIMAND	05A-ARRESTEE - DURING ARREST		
<u>Civil Suit #</u>	<u>Police Board #</u>					
<u>Comments</u>						

FOR USE WITH POLICE BOARD CASE # 13 PB 2843