

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
POLICE OFFICER EUGENE POSEY,) **No. 14 PB 2874**
STAR No. 18709, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
) **(CR No. 1032584)**
RESPONDENT.)

FINDINGS AND DECISION

On August 26, 2014, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Eugene Posey, Star No. 18709 (hereinafter sometimes referred to as “Respondent”), recommending that the Respondent be suspended from the Chicago Police Department for a period of sixty (60) days 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 14: Making a false report, written or oral.
- Rule 20: Failure to submit immediately a written report that any member, including self, is under investigation by any law enforcement agency other than the Chicago Police Department.
- Rule 38: Unlawful or unnecessary use or display of a weapon.

The Police Board caused a hearing on these charges against the Respondent to be had before Jacqueline A. Walker, Hearing Officer of the Police Board, on March 11 and April 1, 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 Walker made an oral report to and conferred with the Police Board before it rendered its findings and decision. (Police Board President Demetrius E. Carney recused himself from this case pursuant to §2-57-060(c) of the Municipal Code of Chicago.)

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 personally 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 filed a Motion to Strike and Dismiss requesting that the charges filed against him be stricken and the case dismissed for the following reasons: (a) the failure to bring timely charges violates the due process rights of the Respondent; (b) the charges should be barred by laches; and (c) the investigation by the Independent Police Review Authority failed to follow General Order G08-01.

The Illinois Appellate Court has recently affirmed the Board's decision denying a motion to dismiss that makes essentially the same arguments as here. In that case, the Appellate Court found the Board's reasoning and result consistent with the law. *Chisem v. McCarthy*, 2014 IL App (1st) 132389 (December 23, 2014). Based on *Chisem* and for the reasons set forth below, the

Respondent's Motion to Strike and Dismiss is **denied**.

a. Due Process. Citing *Morgan v. Department of Financial and Professional Regulation*, 374 Ill. App. 3d 275 (2007), and *Lyon v. Department of Children and Family Services*, 209 Ill.2d 264 (2004), the Respondent claims that the Constitution precludes such a lengthy delay in the investigation of the Respondent's alleged misconduct. *Morgan* and *Lyon*, however, involved a delay in *adjudication* of allegations of misconduct after the respective plaintiffs had been suspended from their jobs—not delay in the *investigation* leading to the initial suspensions. *Morgan* involved a clinical psychologist accused of sexually abusing a patient, where the state took fifteen months to decide the case after the suspension. *Lyon* involved a teacher accused of abusing students where the director of DCFS failed to honor specific regulatory time limits for decision-making.

The Respondent's case before the Police Board is different from *Morgan* and *Lyon*, as the Respondent in his Motion is complaining about the delay from the time of the incident to the bringing of charges, not the time it took to try him once the charges were filed. This difference is important because the due-process analysis in *Morgan* and *Lyon* is triggered by the state's decision to deprive the psychologist and teacher of their jobs, thus preventing them from working for prolonged periods of time before they were accorded the opportunity to have a hearing and decision to clear their names. Here, the Respondent was working and was being paid his full salary and benefits during the entire period from the time of the incident up to the filing of charges with the Police Board, and also while this case was pending before the Board. The Due Process clause precludes a state or local government from "depriving any person of life, liberty or property [i.e. a public job] without due process of law." Here, the Respondent has not been suspended without pay from his job. Therefore, the Respondent was *not* deprived of his job

prior to the filing of charges, and any delay in bringing the charges is therefore *not* a violation of the Respondent's due process rights.

b. Laches. The Respondent argues that the doctrine of laches should apply here in supporting the dismissal of charges, for he argues that the delay in bringing the charges against him resulted in prejudice to him. He asserts that his "efforts to discover the identity of the unknown individual are extremely narrowed due to the significant passage of time." He also asserts that he and his then-girlfriend, a witness to the incident, broke up shortly after the incident and have not communicated since, and that he has been unable to obtain any contact with her as her whereabouts are unknown to him. Motion to Strike and Dismiss, p. 4.

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 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 (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 (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 (for example, testimony that witnesses could no longer recall what happened, or affidavits stating that records had been lost or destroyed during the intervening years). *Nature Conservancy v. Wilder*, 656 F.3d 646 (7th

Cir. 2011).

It is not clear whom the “unknown individual” is that the Respondent stated he attempted to identify but could not. In addition, other than testifying that he attempted to find his ex-girlfriend by looking through the numbers on his phone and trying Facebook, the Respondent submitted no evidence in support of his claim that his ex-girlfriend is unavailable to testify due to the passage of time.

For the reasons set forth above, the Respondent has not carried the burden of proving that he was prejudiced by a delay in the bringing of charges, nor has he demonstrated any “compelling” or “extraordinary” circumstances warranting a dismissal of this case due to laches.

c. General Order G08-01. The Respondent argues that the investigation by the Police Department failed to follow Chicago Police Department General Order G08-01, which requires a prompt and thorough investigation.

General Order G08-01 does not set an absolute deadline within which investigations must be completed, but provides that if they last more than 30 days, the investigator must seek and obtain an extension of time within which to complete the investigation. Once the investigator completes the process of gathering evidence, the matter is reviewed at several levels to ensure that a thorough investigation was conducted, as required by the General Order.

There is no evidence of a violation of the General Order in this case. Even if, however, the General Order was violated, there is no provision in the General Order requiring the extraordinary remedy of dismissal of the case as a sanction for such a violation. The Board declines to extend the reach of the General Order in this manner.

5. The Respondent, Police Officer Eugene Posey, Star No. 18709, 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:

Count I: On or about April 22, 2010, during a statement with the Independent Police Review Authority, Police Officer Eugene Posey made a false statement regarding an incident that occurred on or about December 16, 2009, at approximately 0910 hours in a parking lot behind the Blockbuster Video Store located at approximately 3045 East New York Street, Aurora, Illinois, when he stated that he displayed his badge to and/or denied pointing his gun at Rachelle Bridget Crile, or words to that effect, when he, in fact, displayed and/or pointed a gun at Rachelle Bridget Crile, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

See the findings set forth in paragraph no. 7 below, which are incorporated here by reference.

6. The Respondent, Police Officer Eugene Posey, Star No. 18709, 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:

Count II: On or about December 16, 2009, Police Officer Eugene Posey failed to submit immediately a written report to the Chicago Police Department to inform the Department that he, Police Officer Eugene Posey, was under investigation by an outside law enforcement agency (the Aurora Police Department) regarding an incident that occurred on or about December 16, 2009, at approximately 0910 hours in a parking lot behind the Blockbuster Video Store located at approximately 3045 East New York Street, Aurora, Illinois, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

Competent evidence was given by Officer Posey, as well as his supervisor, Sergeant Eddie Perez, that following the interview of Officer Posey by the Aurora Police Department regarding the alleged incident in the parking lot at approximately 3045 East New York Avenue, Officer Posey immediately informed Sergeant Perez by telephone of the alleged incident and the interview. Furthermore, when Officer Posey arrived at the district to work later that day, Officer Posey reiterated to Sergeant Perez the details of the alleged incident and the interview with the Aurora Police Department.

Additionally, Steven Henderson, who in 2010 was a police officer with the Aurora Police Department, convincingly testified that at the time of the incident, he inquired of Officer Posey information regarding Officer Posey's supervisor in order to verify Officer Posey's position, which Officer Posey supplied to him. Henderson testified further that he contacted the Chicago Police Department, had them verify that Officer Posey was a member of the Chicago Police Department, and informed that person that Officer Posey was stopped by the Aurora Police.

According to Henderson, Officer Posey was not placed under arrest and was free to leave at the conclusion of the interview. Henderson further testified that at that point Officer Posey was not under investigation by him, the lead officer on the scene.

Based on the above facts and circumstances, the Board finds that Officer Posey did not violate Department rules or orders by not submitting a written report regarding his encounter with the Aurora Police Department.

7. The Respondent, Police Officer Eugene Posey, Star No. 18709, 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:

Count III: On or about December 16, 2009, at approximately 0910 hours in a parking lot behind the Blockbuster Video Store located at approximately 3045 East New York Street, Aurora, Illinois, Police Officer Eugene Posey, while off duty, displayed and/or pointed a handgun at Rachelle Bridget Crile without lawful justification, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

Credible evidence was obtained from Officer Posey that he showed Rachelle Bridget Crile his star on the date of the alleged incident, and did not display or point his gun at her. Furthermore, testimony was obtained from Officer Posey and Aurora Police Officer Henderson that the windows on Officer Posey's car were tinted, causing a diminished visibility of someone looking into the car through the car window.

The amount of time from the date of the incident until the filing of charges with the Police Board, which the Board finds troubling, makes less reliable Ms. Crile's testimony that Officer Posey pointed his gun at her. Additionally, Ms. Crile's testimony that she backed away, went back to her car, which was parked immediately adjacent to Officer Posey's vehicle, and failed to call police to report the incident, and spoke with the police only after the second person she told of the incident phoned the police on her behalf, is not in keeping with the response that would be reasonably expected of someone who was certain that she had a gun pointed at her.

8. The Respondent, Police Officer Eugene Posey, Star No. 18709, 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:

On or about December 16, 2009, Police Officer Eugene Posey failed to submit immediately a To-From-Subject report, in triplicate, to his unit commanding officer informing him that he, Police Officer Eugene Posey, was under investigation by an outside law enforcement agency (the Aurora Police Department) regarding an incident that occurred on or about December 16, 2009, at approximately 0910 hours in a parking lot behind the Blockbuster Video Store located at approximately 3045 East New York Street, Aurora, Illinois, and/or by failing to provide information about the investigation, in violation of General Order 93-03-5B, Item IV-A (“Special Situations”).

See the findings set forth in paragraph no. 6 above, which are incorporated here by reference.

9. The Respondent, Police Officer Eugene Posey, Star No. 18709, charged herein, is **not guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,

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

On or about April 22, 2010, during a statement with the Independent Police Review Authority, Police Officer Eugene Posey made a false statement regarding an incident that occurred on or about December 16, 2009, at approximately 0910 hours in a parking lot behind the Blockbuster Video Store located at approximately 3045 East New York Street, Aurora, Illinois, when he stated that he displayed his badge to and/or denied pointing his gun at Rachelle Bridget Crile, or words to that effect, when he, in fact, displayed and/or pointed a gun at Rachelle Bridget Crile, thereby making a false report, written or oral.

See the findings set forth in paragraph no. 7 above, which are incorporated here by reference.

10. The Respondent, Police Officer Eugene Posey, Star No. 18709, charged herein, is **not guilty** of violating, to wit:

Rule 20: Failure to submit immediately a written report that any member, including self, is under investigation by any law enforcement agency other than the Chicago Police Department,

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

On or about December 16, 2009, Police Officer Eugene Posey failed to submit immediately a written report to the Chicago Police Department to inform the Department that he, Police Officer Eugene Posey, was under investigation by an outside law enforcement agency (the Aurora Police Department) regarding an incident that occurred on or about December 16, 2009, at approximately 0910 hours in a parking lot behind the Blockbuster Video Store located at approximately 3045 East New York Street, Aurora, Illinois.

See the findings set forth in paragraph no. 6 above, which are incorporated here by reference.

11. The Respondent, Police Officer Eugene Posey, Star No. 18709, charged herein, is **not guilty** of violating, to wit:

Rule 38: Unlawful or unnecessary use or display of a weapon,

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

On or about December 16, 2009, at approximately 0910 hours in a parking lot behind the Blockbuster Video Store located at approximately 3045 East New York Street, Aurora, Illinois, Police Officer Eugene Posey, while off duty, displayed and/or pointed a handgun at Rachelle Bridget Crile without lawful justification, thereby engaging in the unlawful or unnecessary use or display of a weapon.

See the findings set forth in paragraph no. 7 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 a vote of 5 in favor (Ghian Foreman, Melissa M. Ballate, William F. Conlon, Elisa Rodriguez, and Rhoda D. Sweeney) to 0 opposed, the Board **denies** the Respondent's Motion to Strike and Dismiss;

By votes of 4 in favor (Foreman, Ballate, Conlon, and Sweeney) to 1 opposed (Rodriguez), the Board finds the Respondent **not guilty** of violating Rule 2 (Counts I and III), Rule 14, and Rule 38; and

By votes of 5 in favor (Foreman, Ballate, Conlon, Rodriguez, and Sweeney) to 0 opposed, the Board finds the Respondent **not guilty** of violating Rule 2 (Count II), Rule 6, and Rule 20.

As a result of the foregoing, the Board, by a vote of 4 in favor (Foreman, Ballate, Conlon, and Sweeney) to 1 opposed (Rodriguez), hereby determines that cause does not exist for the Respondent, Police Officer Eugene Posey, Star No. 18709, to be suspended or otherwise disciplined as a result of the charges filed in this case.

This disciplinary action is adopted and entered by a majority of the members of the Police Board eligible to participate in the case: Ghian Foreman, Melissa M. Ballate, William F. Conlon, and Rhoda D. Sweeney.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 21st DAY OF MAY, 2015.

Police Board Case No. 14 PB 2874
Police Officer Eugene Posey

Attested by:

/s/ GHIAN FOREMAN
Vice President

/s/ MAX A. CAPRONI
Executive Director

DISSENT

I hereby dissent from the Findings and Decision of the majority, in that I find the testimony of Rachel Crile to be credible and convincing, and therefore vote to find the Respondent guilty of displaying his handgun at Ms. Crile without justification and of making a false statement to IPRA regarding the incident.

/s/ ELISA RODRIGUEZ

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THESE FINDINGS AND DECISION

THIS ____ DAY OF _____, 2015.

GARRY F. McCARTHY
Superintendent of Police