

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY  
APPELLATE DIVISION

STEVEN NAPOLEON,  
Petitioner,

v.

Case No.: 2022-CA-001170-ES

PASCO COUNTY SHERIFF'S OFFICE,  
Respondent.

Petition for Writ of Certiorari

Paul A. Daragjati, Esquire  
Attorney for Petitioner

Matthew D. Stefany, Esquire  
Attorney for Respondent

2022 DEC 19 PM 2:43  
PASCO COUNTY SHERIFF'S OFFICE  
CLERK OF COURT  
PASCO COUNTY, FLORIDA

**ORDER AND OPINION**

Steven Napoleon was not afforded due process and the Pasco County Sheriff's Office departed from the essential requirements of law in the proceedings below. The Written Decision of Career Service Appeal Board is not supported by competent substantial evidence. The Written Decision of Career Service Appeal Board is quashed and this matter remanded for action consistent with this Order and Opinion.

**STANDARD OF REVIEW**

The circuit court, sitting in its appellate capacity, must determine whether: (1) the tribunal afforded the parties due process of law; (2) the order meets the essential requirements of law; and, (3) the order is supported by competent and substantial evidence. *See Haines City v. Heggs*, 658 So.2d 523 (Fla. 1995).

## **BACKGROUND FACTS**

Steven Napoleon ("Napoleon") was employed with the Pasco County Sheriff's Office ("PCSO") for over 14 years when, on the morning of November 29, 2021, he was arrested for battery (domestic violence) in Manatee County. The Probable Cause Affidavit ("PCA") shows that Napoleon and his former paramour ("victim") were in a verbal altercation at a WaWa in Bradenton when law enforcement ("LE") responded. Napoleon stopped at the WaWa so that the victim could find another ride home. LE observed the victim sitting in Napoleon's truck and observed Napoleon picking up scattered personal belongings that had been thrown from his truck. Both Napoleon and the victim stated their argument was verbal only and no physical violence occurred.

The victim informed LE that Napoleon became emotional the night before, after they broke up,<sup>1</sup> and Napoleon pushed the victim's leg with both hands toward the wall. The victim then went to the bedroom and used her body weight to keep the door closed, as Napoleon tried to push his way into the bedroom.<sup>2</sup> The victim did not call 911. The victim stated she was intimidated by Napoleon and didn't want to be around him. No injuries were observed and the victim changed her story regarding which leg had been pushed. Napoleon denied ever touching the victim and stated that he had worked the night shift on the evening of the 28th. At the direction of Sergeant Huff, of the Manatee County Sheriff's Office, Napoleon was arrested for battery and transported to the Manatee County jail.

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<sup>1</sup> The State Attorney's Interdepartmental Memorandum states that Napoleon and victim met at a domestic violence support group in August and became involved in September or October, presumably in 2021.

<sup>2</sup> The victim stated that the bedroom door lock was broken.

The same day, the PCSO arrived at the Manatee County jail and served Napoleon with a letter terminating his employment for violating “Pasco Sheriff’s Office General Order 26.1, Standards of Conduct, Section II(D)(2), Commission of Misdemeanor.” This Section states:

D. Unlawful Conduct Offenses: Disciplinary measures resulting from unlawful conduct may be imposed independently of, or concurrent with, civil and criminal prosecutions. The administration of internal disciplinary measures for unlawful conduct depends upon individual case circumstances and will be determined by the Sheriff.

2. Commission of Misdemeanor: Members will adhere to all federal, state, and local laws and will not commit any act or crime which, if committed in the State of Florida, would constitute a misdemeanor, whether charges are filed or not.”

The following morning, the Manatee County judge made a finding of probable cause and Napoleon was released on his own recognizance. The State subsequently decided to take no action due to insufficient credible evidence to support the charge of battery. Napoleon timely appealed his dismissal to the 5-member Career Service Appeal Board (“Board”)<sup>3</sup> and a hearing was held on March 25, 2022. The Board upheld Napoleon’s termination and Napoleon timely sought review before this Court.

### **PROCEEDINGS BEFORE THE BOARD**

At the Board hearing, Captain Wetherington, Board chairman, agreed with the position of Mr. Stefany, counsel for the Board, that the only issue before the Board was whether or not Napoleon was arrested. As stated by Mr. Stefany:

“...the reason that Mr. Napoleon was terminated from his employment is because he was arrested for domestic battery, and so we would submit that the evidence and testimony

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<sup>3</sup> Board members present were: Captain Justin Wetherington; Lieutenant James Linsalata; Debby Jenkins (citizen member); CPI Supervisor Michelle Douhitt; and, Corporal Eric Jones.

that's relevant in this proceeding is limited to whether or not he was, in fact, arrested for domestic battery. And that's pretty much the end of it."<sup>4</sup>

...

"And so, again, our position is that Mr. Napoleon was terminated because he was arrested. . . it was the arrest that is the reason for the disciplinary action in this case."<sup>5</sup>

...

"The issue is his arrest."<sup>6</sup>

In support of his position, Mr. Stefany produced a previous decision by the Board, titled "Written Decision of Career Service Appeal Board," entered October 27, 2021, and also signed by Captain Wetherington,<sup>7</sup> wherein it sustained the termination of employment of James Stephens, allegedly under similar circumstances.<sup>8</sup> Mr. Stefany objected to any documents coming into evidence that went beyond the actual arrest and First Appearance Order, to include the PCA, PCA supplemental report, and the State Attorney's Interdepartmental Memorandum.

Mr. Daragjati argued that Napoleon was dismissed due to a violation of standard of conduct, a commission of a misdemeanor, and that "just the fact of getting arrested does not constitute a commission of a misdemeanor." Mr. Daragjati objected to the exclusion of testimony and evidence that he intended to put on to show Napoleon did not commit the crime he was arrested for. Mr. Daragjati also objected to the burden of proof shifting to Napoleon and argued that PCSO

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<sup>4</sup> Transcript, Page 5.

<sup>5</sup> Transcript, Page 9.

<sup>6</sup> Transcript, Page 10.

<sup>7</sup> The Board "cut and paste" for its Written Decision of Career Service Appeal Board, as to Napoleon, erroneously using James Stephens' name in the body of the Napoleon's order. With the exception of Napoleon's name in the case style, the two orders are identical.

<sup>8</sup> Mr. Stefany recounted that James Stephens was a PCSO correctional officer and was arrested for battery by another agency while driving to Gainesville, and was immediately terminated.

had the burden to demonstrate cause for Napoleon's termination. Mr. Stefany then agreed that PCSO had the burden to demonstrate cause for the disciplinary action, but maintained that the arrest itself was cause for termination.

Captain Wetherington concluded that the Board's sole decision was to determine whether or not Napoleon was arrested, and that the Board could not consider any evidence or testimony outside of that single question. Captain Wetherington indicated that he felt uncomfortable with the narrow scope of review, stating it was "unfortunate" and "very unfortunate" several times.<sup>9</sup> The Board voted to uphold Napoleon's termination, with Corporal Jones commenting "I don't like how it...played out"<sup>10</sup> and Debby Jenkins commenting, "I really disagree with the whole thing."<sup>11</sup> The Board entered its Written Decision of Career Service Appeal Board, on March 30, 2022, with the sole finding, "As to the charge of Commission of a Misdemeanor, General Order 26.1, Standards of Conduct, Section II. (D)(2), the determination of just cause for disciplinary action is hereby: X Sustained by majority vote."

### **LAW AND ANALYSIS**

Initially, the Court finds that Napoleon's disciplinary action is governed by the Pasco County's Code of Ordinances, specifically Article II, Chapter 54 ("Code"). Those sections, with pertinent provisions italicized, are as follows:

#### **Section 54-37, Disciplinary Action:**

- (a) The sheriff may take the disciplinary action, including the demotion, suspension or dismissal of an employee who has achieved permanent status under this article, for any cause which, in the sheriff's opinion, will promote the efficiency of the office of sheriff. Prior to such action, the employee shall be furnished written notice of the proposed action and offered an opportunity to respond to the reasons for such disciplinary action. *However,*

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<sup>9</sup> Transcript, pages 6, 12, 15 and 19.

<sup>10</sup> Transcript, page 19.

<sup>11</sup> Transcript, page 19-20.

*in extraordinary situations, such as when delay could adversely impact the public safety or welfare or unduly interfere with the efficient operation of the office of sheriff or otherwise result in damage or injury, an employee covered by the article may be immediately suspended or dismissed. In such a situation, the employee shall be provided notice of the reasons for the disciplinary action within five days after the disciplinary action occurs.*

- (b) *For the purpose of this article, cause for disciplinary actions shall include, but not be limited to, the following: untruthfulness; insubordination; negligence; inefficiency; inability to perform assigned duties; incompetence; violation of the provisions of law, including arrest; criminal charges by indictment or information; violation of office rules, regulations, policy or procedures; conduct unbecoming a public employee; misconduct; alcohol or drug abuse; adjudication of guilt by a court, a plea of guilty or nolo contendere or a court verdict of guilty when an adjudication of guilt is withheld and the accused is placed on probation with respect to any felony, misdemeanor or serious traffic infraction; and, suspension, removal or revocation of any employee's certification.*<sup>12</sup>

Section 54-39. Duties and Powers of career service appeal board.

...

- (b) The career service appeal board shall have the power, subject to this article to: (2) *Review matters properly brought before it and determine if just cause for discipline exists. All matters concerning the form or manner of discipline upon a finding of just cause shall be within the sole province and discretion of the sheriff.*
- (c) The board shall meet for the *purpose of conducting an evidentiary hearing* regarding a timely and properly filed appeal of disciplinary action as defined in this article. The board shall, in the conduct of such hearings, have power to administer oaths, issue subpoenas, compel the attendance of witnesses and require the production of books, records, accounts, papers, documents, testimony and other evidence...

Section 54-40. Career service appeal procedure.

...

- (c) ...Any such hearing will be conducted as informally as is compatible with justice, and *both the office of sheriff and the employee will be afforded an opportunity to present documentary evidence and witnesses on their behalf and to examine and cross examine witnesses. Testimony and evidence will be restricted to the charges or reasons given for the disciplinary action taken...*

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<sup>12</sup> It appears Mr. Stefany focused solely on Napoleon's arrest based on the Board's prior action in James Stephens' case. Mr. Stefany could have easily focused on other proscribed behavior, i.e. conduct unbecoming a public employee.

(d) The career service appeal board shall by majority vote to dispose of the appeal *by making findings of fact and determinations of just cause for disciplinary action, if any*, and issuing a written decision within the time period provided by rule. Such decision shall either sustain or not sustain a finding of just cause for disciplinary action taken by the sheriff. If an action by the sheriff is not sustained by the board, the board shall offer such remedial relief as will make the employee whole by the payment of back pay, restoration of employment and pension benefits and reinstatement to the employee's former or substantially equivalent position of employment.

It is clear that the Board failed to follow its own Code in Napoleon's administrative appeal. Napoleon should have been permitted an opportunity to present documentary evidence and witnesses on his behalf and to examine and cross examine witnesses. As explained by the Second District Court of Appeal in *Vollmer v. Key Development Properties*, 966 So.2d 1022, 1027 (Fla. 2d DCA 2007):

The right to be heard at an evidentiary hearing includes more than simply being allowed to be present and to speak. Instead, the right to be heard includes the right to "introduce evidence at a meaningful time and in a meaningful manner." It also includes the opportunity to cross-examine witnesses and to be heard on questions of law. The violation of a litigant's due process right to be heard requires reversal.

Napoleon has a property interest in his continued employment with PCS● and was entitled to due process in his disciplinary hearing. *See Krieger v Fla. Fish and Wildlife Conservation Commission*, 220 So.3d 511, 514 (Fla. 3d DCA 2017)(explaining that a public employee has a property interest in continued employment and is entitled to due process in disciplinary proceeding)(citing *Cleveland Board of Education v. Loudermill*, 105 S.Ct. 1487 (1985)). The Board did not afford Napoleon due process and departed from the essential requirements of law when it failed to conduct an evidentiary hearing and then failed to make findings of fact and determinations of just cause for disciplinary action as set forth in its governing code. *See Thomas v. Office of the Sheriff*, 507 So.2d 145, 146 (Fla. 1st DCA 1987)(finding that absence of findings of fact by the Board and its failure to determine the rules or regulations pertinent to the matter

being reviewed by it renders its order defective and subject to reversal on due process grounds)(*citations omitted*); *See also, Higgs v. Property Appraisal Board of Monroe County*, 411 So.2d 307, 308 (Fla. 3d DCA 1982)(finding that, regardless of which party bears the burden of proof, an agency's failure to make adequate findings of fact in its order constitutes a departure from the essential requirements of law).

PCSO has the burden of proof of showing, by a preponderance of the evidence, just cause for Napoleon's termination. *See Dept. of Agriculture and Consumer Servs. V. Edwards*, 654 So.2d 628, 631 (Fla. 1st DCA 1995)(holding that when an agency terminates employment of career service employee on certain stated grounds, agency must affirmatively prove essence of allegations by preponderance of evidence)(*citations omitted*); *See also, Falk v. Scott*, 19 So.3d 1103, 1105 (Fla. 2d DCA 2009)(finding that the sheriff had the burden of proof in a termination of employment appeal hearing, explaining "[w]here an agency terminates an employee for certain stated grounds, reason, logic and the law would require that the agency affirmatively carry the burden of proving the essence of its allegations")(*citation omitted*).

### **CONCLUSION**

The Board failed to afford Napoleon due process and departed from the essential requirements of law in the proceedings below. As the Board made no findings of fact, the decision to uphold Napoleon's termination is not supported by competent substantial evidence

On remand, the Board must conduct an evidentiary hearing and determine whether there was just cause for Napoleon's termination for the charge of Commission of Misdemeanor, specifically whether Napoleon committed "any act or crime which, if committed in the State of Florida, would constitute a misdemeanor, whether charges are filed or not." While it is one factor



to consider, Napoleon's arrest is not dispositive of whether Napoleon committed any act or crime that would constitute a misdemeanor.

The Board must then make findings of fact and determinations of just cause for the disciplinary action, if any, and issue a written decision as provided in Section 54-40(d). If the action by the Sheriff is not sustained by the Board, it must offer such remedial relief as will make the employee whole.

**WHEREFORE**, it is hereby, **ORDERED AND ADJUDGED** that the Petition for Writ of Certiorari is hereby **GRANTED** and the Written Decision of Career Service Board is **QUASHED**. This matter is remanded for action consistent with this Order and Opinion.

**DONE AND ORDERED** in Chambers at New Port Richey, Pasco County, Florida on this \_\_\_\_ day of \_\_\_\_\_, 2022.

Original Order entered on December 19, 2022, by Circuit Judges Kimberly Byrd, Kimberly Campbell, and Daniel Diskey.

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