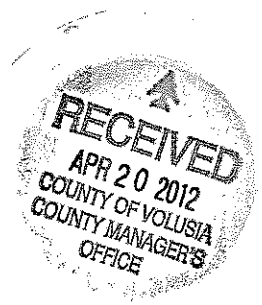


VOLUSIA COUNTY PERSONNEL BOARD
SUMMARY OF FINDINGS AND DETERMINATION
ADVERSE ACTION APPEAL #04121312



APPELLANT: Richard Gardner

POSITION HELD: Captain/ Investigations/Lifeguard Supervisor

DATE OF HIRE: May 12, 1984

DATE OF APPEAL HEARING: April 12-13, 2012

SUBJECT: Termination

HEARING BODY: Personnel Board

FINAL AUTHORITY: County Manager

ATTENDEES:

Personnel Board Members Patrick Lane, Chair
Brenda Thompson
Joe Winter
Ezell Reaves
Dwight Lewis

Ex-Officio Members

Executive Secretary: Tom Motes, Human Resources Director

Employer: Volusia County Beach Safety

Employer's Representative: Nancye Jones, Assistant County Attorney
Mary Jolley, Assistant County Attorney

Employer's Witnesses: Cara Gittner, former Sr. Lifeguard, Beach Safety
Tamra Marris, Captain, Beach Safety
Elizabeth Paige Winters, Sr. Lifeguard, Beach Safety
Andrew Ethridge, Sr. Lifeguard, Beach Safety
Kyle McDaniel, Deputy, VCSO
Kevin Sweat, Director, Beach Safety
Larry Smith, Deputy County Attorney
Joseph Pozzo, Deputy Director of Public Protection
George Recktenwald, Interim Director of Public Protection

Appellant's Representative: Abraham McKinnon, Esquire

Jonathan Kaney, III, Esquire

Appellant's Witnesses:

Michael Fowler, Sgt. Daytona Beach Shores Police
Department
Richard Graves, Sgt., VCSO
Richard Gardner, Appellant
Timothy Cunningham, retired Capt. Beach Safety

Recording Secretary:

Ginger Hadley, Personnel Services

I. INTRODUCTION

The Volusia County Personnel Board convened on April 12 and 13, 2012 at 9:30 a.m. to hear the appeal filed by Appellant Richard Gardner following his termination from the Volusia County Beach Safety on January 13, 2012.

BACKGROUND

1. The hearing before the Personnel Board was conducted in accordance with Merit System Rules and Regulations Sec. 86-485(f).
2. The hearing was held at the request of Appellant.

II. EMPLOYER'S ACTIONS

On October 18, 2011, George Recktenwald, Interim Public Protection Director, issued a Notice of Dismissal to the Appellant for violations of the following:

Volusia County Merit Rules and Regulations

Sec. 86-453. Reasons for disciplinary action:

- (5) Violation of any reasonable or official order, refusal to carry out lawful and reasonable directions given by a supervisor, or other acts of insubordination.
- (8) ...or other conduct which interferes with effective job performance or has and adverse effect on the efficiency of county service;
- (10) ...unsatisfactory performance of duties;
- (12) Knowingly giving false statements to supervisors...;
- (13) Any conduct, on or off duty, that reflects unfavorably on the county as an employer, and

- (21) Any other conduct or action of such seriousness that disciplinary action is considered warranted.

Sec. 86-45. Conduct of employees

- (a) Code of conduct. Employees of the county government are employed to provide service to the citizenry of the county and the public in general and are expected to conduct themselves in a manner that will reflect credit on the county government, public officials, fellow employees and themselves. Employees must avoid any action which might result in or create the impression of using public office for private gain, giving preferential treatment to any person, or losing impartiality in conducting public business; and

Division of Beach Safety Policy and Procedure – Neglect of Duty

11.01.05 Neglect of duty offenses include any act, failure to act or instance wherein an employee ignored, paid not attention to, disregarded, failed to care for, give proper attention to or carry out the duties and responsibilities of their position whether through carelessness, oversight or neglect.

EMPLOYER'S REQUEST

The Employer requested that the Board uphold the action taken by the appointing authority.

APPELLANT'S POSITION AND REQUEST

Appellant opposed the County's position regarding his termination of employment.

Appellant requested that the Board recommend to the County Manager that his termination be rescinded and that he be reinstated.

III. SUMMARY OF EVIDENCE

Due to the length and complexity of the hearing in this case, the County Manager was provided with a copy of an audio recording of the entire hearing for his review in lieu of a written summary of the evidence. A copy of said recording is attached hereto and incorporated by reference as Exhibit A.

IV. BOARD'S FINDINGS OF FACTS AND CONCLUSIONS

The deliberations of the Board, including their findings of fact, conclusions, and advisory decision were transcribed by Shannon Green, RPR, Reliable Reporting Court Reporters, who officially stenographically recorded the entire hearing at the request of Appellant. The transcript of the deliberations is attached hereto and incorporated in this written report as Exhibit B.

As to each violation listed in the notice of termination, the Board found as follows:

Section 86-543(5) Violation of any reasonable or official order, refusal to carry out lawful and reasonable directions given by a supervisor, or other acts of insubordination: Mr. Lewis moved to not uphold the violation, Mr. Reeves seconded the motion. The motion carried 5 to 0.

Section 86-453(8) Other conduct which interferes with the effective job performance or has an adverse effect on the efficiency of county service: Mr. Lewis moved to not uphold the violation, Ms. Thompson seconded the motion. The motion carried 5 to 0.

Section 86-453(10) Unsatisfactory performance of duties: Ms. Thompson moved to not uphold the violation. Mr. Lewis seconded the motion. The motion carried 5 to 0.

Section 86-453(12) Knowingly giving false statements to supervisors: Ms. Thompson moved to uphold the violation. Mr. Reeves seconded the motion. Mr. Lane, Mr. Lewis and Mr. Winter voted to not uphold this violation. The motion failed 2 to 3. Mr. Lewis moved to not uphold the violation. Mr. Winter seconded the motion. The motion carried 4 to 1.

Section 86-453(13) Any conduct, on or off duty, that reflects unfavorably on the county as an employer: Mr. Lewis moved to uphold the violation. Ms. Thompson seconded the motion. The motion carried 3 to 2, with Mr. Winters and Reeves voting against it.

Section 86-453(21) Any other conduct or action of such seriousness that disciplinary action is considered warranted: Mr. Lewis moved to not uphold the violation. Ms. Thompson seconded the motion. The motion carried 5 to 0.

Section 86-45 Employee's Code of conduct: Mr. Reeves moved to not uphold the violation. Mr. Winter seconded the motion. Mr. Lane voted to uphold the violation. The motion carried 4 to 1.

Division of Beach Safety Policy and Procedure - Neglect of Duty: Mr. Reeves moved to not uphold the violation. Mr. Winter seconded the motion. Motion carried 5 to 0.

V. BOARD'S RECOMMENDATION

The Board voted 5-0 to recommend to the County Manager that the termination not be upheld.

RESPECTFULLY SUBMITTED 

DATE: 12/20/12

COUNTY MANAGER 

DATE: 5/3/12

 APPROVAL

 REJECTION

✓ MODIFICATION