

VOLUSIA COUNTY PERSONNEL BOARD
SUMMARY OF FINDINGS AND DETERMINATION
ADVERSE ACTION APPEAL # 02/03-01

APPELLANT: TIMOTHY WYCKOFF

POSITION HELD: CORRECTIONS OFFICER

DATE OF HIRE: JANUARY 5, 1983

DATE OF APPEAL HEARING: DECEMBER 2, 2002

SUBJECT: TERMINATION

HEARING BODY: PERSONNEL BOARD

FINAL AUTHORITY: COUNTY MANAGER

ATTENDEES:

Personnel Board Members

Patrick Lane, Chair
Leonard Davis
Brenda Thompson

Ex-Officio Members

Executive Secretary: Michael D. Lary

Employer: Volusia County Public Protection/Corrections Division

Employer's Representative: Matthew G. Minter, Deputy County Attorney

Employer's Witnesses:

1. Kevin Hickey, Corrections Director
2. Denise Bowman, Risk Management
3. James Francis, Investigator, The Merrill Group

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Appellant's Representative: David Glasser, Esquire

Appellant's Witnesses:

1. Lester Labar
2. Dennis Carlson
3. Ashley Wyckoff
4. Daniel Gunger
5. Danielle Peterson
6. Deputy Robert Willis, V.C.S.O.
7. Timothy Wyckoff, Appellant

Recording Secretary: Melodie Hoffman, Personnel Services

I. A. INTRODUCTION

The Volusia County Personnel Board convened on Monday, December 2, 2002 at 9:15 a.m. to hear an appeal filed by Timothy Wyckoff.

B. BACKGROUND

1. The hearing before the Personnel Board was conducted in accordance with Merit System Rules and Regulations Code §86-40(f).
2. The hearing was held at the request of the appellant of November 1, 2002.
3. On October 14, 2002, Kevin Hickey, Director, issued a Notice of Dismissal to Correction Officer Timothy Wyckoff.

Officer Wyckoff obtained a back dated note from his doctor that he would be out of work from August 31, 2002 until September 8, 2002 due to an on the job injury. The note from the doctor's office stated Officer Wyckoff could return to work on September 9, 2002.

Officer Wyckoff did not return to work on September 9th or 10th, however, telephoned on September 12, 2002 and stated that he would be out of work until further notice due to an on-the-job injury. Officer Wyckoff informed his shift commander that his doctor's office would be faxing the required document to Risk Management. The doctor's note was received at Risk Management on or about September 26, 2002.

September 14, 2002- Officer Wyckoff was observed squatting and working on a wood deck and carrying various power tools at Astor Landings Campgrounds, where he is the manager.

September 15, 2002 – Officer Wyckoff was observed using a pole saw to trim a palm tree, putting up a banner, bending, kneeling and using both hands while raking yard debris.

September 13–15, 2002 – Officer Wyckoff was observed at various times throughout the day driving his pick up truck around the campgrounds.

II. A. EMPLOYER'S ACTION AND POSITION

The Employer's position is that Officer Wyckoff was assigned to light duty work at the video visitation center of the corrections division, working an eight-hour shift. Officer Wyckoff requested that his shift be changed to a twelve-hour shift and that was granted. He asked to be removed from the visitation center because it was too hectic of an area. Officer Wyckoff was shown on surveillance video performing strenuous activity, (i.e., pole sawing palm fronds, squatting, kneeling, using and carrying power tools, driving his truck, raking & picking up yard debris). Officer Wyckoff would have been able to work in the visitation center, being able to stand, sit or move around when he felt any discomfort or request the need for additional employee help. There was not any indication of Officer Wyckoff experiencing pain or discomfort during the three days while the investigator was observing him.

B. EMPLOYER'S REQUEST

The Employer requested that the Board uphold the action taken by the department.

C. APPELLANT'S POSITION

The Appellant position was that he had been a good and faithful officer during his employment with the Volusia County Corrections Division. The evidence did not support reasonable suspicion that Officer Wyckoff was not in pain or discomfort because of the medications that he was taking while being observed. He provided statements from his physician that excused him from his light duty assignment.

D. APPELLANT'S REQUEST

The Appellant requested that the Board recommend that the County reinstate his employment.

III. SUMMARY FINDINGS OF FACT

Officer Wyckoff did violate Section 86-453 of the Merit Rules and Regulations: Officer Wyckoff did not report to work on his regular shift schedule on September 9th or 10th, he was neglectful in the performance of the duties to which he was assigned. On September 14th and 15th Officer Wyckoff was engaged in physical work for an outside business while advising the Corrections Division that he was unable to report to work for a light duty position. These days were assigned work days for Officer Wyckoff. Officer Wyckoff informed a corrections lieutenant that his doctor would be faxing the appropriate information to Risk Management regarding his absence. However, the information was not received until September 26, 2002, fifteen days later and was back dated to September 12, 2002. Because the doctor's note was not received on September 12, 2002, Risk Management cut off Officer Wyckoff's worker's compensation benefits.

IV. BOARD'S DETERMINATION

Ms. Thompson is sympathetic with Officer Wyckoff, however, she knows the county will make every effort to accommodate an employee with an on the job injury if they would just ask for help. Because the county's evidence proved that Officer Wyckoff was able to do physical tasks, he had the burden to prove that he was not able to perform his assigned light duties. The county had no alternative but to have surveillance placed on Officer Wyckoff when he did not show up for his regularly scheduled shift while being paid under worker's compensation benefits. The doctor's kept referring him back to work with instructions of moderate work duties allowed. The evidence presented on the surveillance tape speaks for itself, and that Officer Wyckoff could have performed light to moderate duties as an employee of the county.

Mr. Davis believes Volusia County will find light to moderate duty assignments for any employee that requires special consideration due from on the job injuries, disabilities or physical challenges. The responsibility falls to the appellant to prove that there was not willful neglect on his part. However, the County had no other option than to have an investigation completed on Officer Wyckoff because of the worker's compensation claim which he was being paid under and should have reported for duty as scheduled. It is noted that Officer Wyckoff did not receive worker's compensation benefits for the dates of September 14th and 15th. However, had the doctor's note been received before those dates, he would have been paid those benefits.

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Mr. Lane stated that Officer Wyckoff was cleared by his doctor to report to his employer and that light to moderate work could be assigned. However, by not reporting to work and not having the proper paperwork from his doctor, the County had no other option but to place surveillance on Officer Wyckoff. The surveillance tape showed that Officer Wyckoff was capable of performing moderate work assignments for the corrections or other county division.

Brenda Thompson called for a motion to uphold the County's decision to terminate Officer Wyckoff based on the violation of the Merit Rules & Regulations.

Mr. Davis seconded the motion. The motion passed 3 to 0.

PREPARED BY: Michelle Hoffman DATE: 12-6-02
REVIEWED BY: Matthew A. Hunter DATE: 12-6-02
COUNTY MANAGER SSI 21-02 DATE: 12-7-02

☒ APPROVAL
☐ REJECTION
☐ MODIFICATION