

OCCPS Decision # 08-04

CONSTABLE CHRIS MAGUIRE
Appellant

AND

PETERBOROUGH-LAKEFIELD COMMUNITY POLICE SERVICE
Respondent

Presiding OCCPS Members:

Murray W. Chitra, Chair
Garth Goodhew, Member

Appearances:

David Butt, for the Appellant
Glenn P. Christie, for the Respondent

Heard:

June 17, 2008

Date of Decision:

July 28, 2008

NEGLECT OF DUTY - Failure to work in accordance with orders - Hearing Officer imposed five-day penalty for failure to complete and submit an arrest report - Appellant had prior disciplinary record including oral reprimand for breaching same order - Relevant sentencing principles applied in a fair and impartial manner - Penalty not reflecting any manifest error - Appeal against penalty dismissed.

SENTENCING - Progressive discipline - Loss of five days imposed for neglect of duty - Failure to complete arrest report, contrary to service order - Appellant's disciplinary history included conviction for discreditable conduct as well as oral reprimand for breach of same order - Appropriate for Hearing Officer to take into account entire employment record in determining penalty - Hearing Officer not erring in applying principles of progressive discipline - Appeal against penalty dismissed.

Summary of Reasons for Decision

Constable Maguire was found guilty of one count of neglect of duty, contrary to section 2(1)(c)(ii) of the Code of Conduct. Specifically, Cst. Maguire was found to have breached service order LE-005, s. 4.4, which required officers to complete and submit an

arrest report prior to the fingerprint date and court date. The Hearing Officer imposed a penalty of loss of five days. Constable Maguire appealed that penalty.

On August 1, 2006 Cst. Maguire arrested a woman on an outstanding warrant issued when she was a young offender. He was mistakenly advised by a superior officer that the woman should be returned to Adult Court rather than Youth Court. Constable Maguire released the woman and told her to re-attend for fingerprinting on August 15, 2006 and to appear in Adult Court on August 24, 2006. The woman appeared for fingerprinting on August 15, and showed up at Adult Court on August 23, 2006. Upon making inquiries, the Court Officer discovered that she was due in court the following day but she had been returned to the wrong court. Constable Maguire served her with a new appearance notice for Youth Court which had a date of September 18, 2006. Internal inquiries revealed that Cst. Maguire had not completed and submitted the required Crown Brief package. Constable Maguire's explanation was that he had simply forgotten.

Constable Maguire was charged with neglect of duty, and found guilty after a disciplinary hearing. The parties then made submissions on sentencing. The Hearing Officer considered the offence in terms of the purpose of the order - the timely and efficient administration of justice - as well as other factors, including Cst. Maguire's disciplinary record. The Appellant had a prior conviction for discreditable conduct in January 2005 which resulted in a penalty of four days. In addition he had received an oral reprimand in September 2005 for being late and for failing to submit a Crown Brief package. In the Hearing Officer's view, the prior reprimand for the same misconduct was the most important aggravating factor. Considering all the circumstances, including specific deterrence and the potential for harm to the service, the Hearing Officer decided that a five-day penalty was appropriate.

Counsel for the Appellant argued that the penalty was excessive and disproportionate to the offence. He submitted that a penalty of three to sixteen hours was appropriate. Counsel argued that the penalty of five days reflected manifest errors, especially the Hearing Officer's consideration of the entire disciplinary record, as well as his consideration of the potential for harm, as opposed to actual or demonstrated harm. Counsel for the Respondent argued that the Hearing Officer properly applied principles of progressive discipline and specific deterrence. Counsel submitted that the penalty was appropriate and should not be disturbed.

Held, Appeal dismissed.

The Hearing Officer concluded that although the Appellant's misconduct in this instance was not particularly serious, nevertheless it was part of an emerging pattern of behaviour on his part that needed to be dealt with in some "constructive fashion". The fact that no real harm resulted on this occasion did not mean that there was no potential for harm to the service if this pattern of behaviour continued unchecked, i.e. undeterred. These observations were reasonable and fair. The Hearing Officer's approach reflected the essence of a progressive disciplinary system. The subject offence should not be viewed

in isolation from the officer's record, and therefore it was appropriate to consider the entire employment and disciplinary history.

It was also appropriate to consider both specific and general deterrence. The prior reprimand had not proved to be an effective deterrent. The public had an interest in the proper and timely administration of justice. Consistent failure to submit documents on time would undermine that public interest. The Hearing Officer's observations about a pattern of conduct, and the potential for significant damage to the reputation of the service if Cst. Maguire did not reform his conduct, were reasonable and supported on the record. Finally, the penalty was not inconsistent with those imposed for similar misconduct.

The Hearing Officer considered all relevant sentencing principles and applied them in a fair and impartial manner. It was not erroneous to take into account the entire employment record; and the penalty reflected no manifest errors.

Statutes cited

O. Reg. 123/98 s. 2(1)(c)(ii)

Authorities cited

Williams and Ontario Provincial Police (1995), 2 O.P.R. 1047 (OCCPS)
Blackburn and Niagara Regional Police Service (Sept. 17, 2003, OCCPS #03-22)
Reilly and Brockville Police Service (1997), 3 O.P.R. 1163 (OCCPS #97-07)
Schofield and Metropolitan Toronto Police Service (1984), 2 O.P.R. 613 (OPC)
Byrne and Ontario Provincial Police (Oct. 9, 2007, OCCPS #07-15)
Romanic and Niagara Regional Police Service (1998), 3 O.P.R. 1272 (OCCPS #98-11)
Hayward and Sarnia Police (1987), 2 O.P.R. 762 (OPC)