POLICE CIVIL SERVICE COMMISSION
December 23, 2013

The Police Civil Service Commission met on Monday, **December 23, 2013** at 2:45 p.m. in the City Manager's Conference Room (changed from the Council Chambers), 2nd Floor, Clarksburg Municipal Building, 222 West Main Street, Clarksburg.

Members Present: Gary Keith, Chairman
Arch Benninger
Roger Diaz

Also Present: Chief Robert Hilliard
Deputy Chief James Chamberlain
PFC Josh Reed
Greg Morgan, City Attorney
Several (subpoena-issued) Witnesses
Members of the Police Department
Annette Wright, City Clerk/Secretary

The meeting was called to order by Chairman Keith with roll taken by the Secretary upon arrival.

MOTION by Mr. Diaz, **SECONDED** by Mr. Benninger for approval of the minutes of the meeting of August 29, 2013. **MOTION APPROVED UNANIMOUSLY.**

APPEAL HEARING REQUESTED BY BOTH PFC JOSH REED AND THE CITY OF CLARKSBURG REGARDING THE RULING OF THE DISCIPLINARY REVIEW BOARD

Mr. Morgan apprised that there are two matters before the Commission to be heard: (1) the allegation of failure to turn in citation and (2) missing court appearance. Mr. Morgan stated that the concern of the City is that the Disciplinary Review Board purports to change or modify the penalty imposed by the City Manager and opined that the statute does not grant said Board such authority. Chairman Keith stated that he did not see anything in the Code that states that the Board did not have such authority. Mr. Morgan referenced the pertinent West Virginia Code Section commenting that the same sets forth the purpose of the due process procedure to show "just cause" and that the Disciplinary Review Board nor the Police Civil Service Commission had the authority to be the "super city manager." The Review Board is to review the matter to determine if the action was justified, stated Mr. Morgan. Brief discussion was held concerning the penalty imposed by the City Manager above that recommended by the Police Chief with Mr. Diaz expressing concern with the same and suggesting that the Commission hear from the City Manager as to why he felt the need to increase the punishment.

The Commission proceeded with the hearings with Mr. Morgan representing the City and PFC Josh Reed proceeding pro se and the City Clerk administering the oath to all witnesses testifying before the Commission. The first hearing pertained to the missed court appearance with the following witnesses appearing before the Commission: Lieutenant Robert Cook, PFC Joshua Reed, Assistant Prosecutor John Lanham, Deputy Chief James Chamberlain, Chief Robert Hilliard, City Manager Martin Howe and Sergeant Joshua Cox. Various exhibits were presented and labeled accordingly.

Concluding the presentation of all testimony and exhibits, **MOTION** by Mr. Diaz, **SECONDED** by Mr. Benninger to adjourn into Executive Session pursuant to applicable State Code with the following to be present: members of the Police Civil Service Commission. **MOTION APPROVED UNANIMOUSLY.** Following Executive Session, **MOTION** by Mr. Diaz, **SECONDED** by Mr. Benninger to reconvene into Regular Session. **MOTION APPROVED UNANIMOUSLY.**

MOTION by Mr. Benninger, **SECONDED** by Mr. Diaz to vote against the three-day suspension taken from accumulative leave set forth by the City Manager. **MOTION APPROVED UNANIMOUSLY.**

Brief discussion was held concerning the information provided to the Commission with the agenda and the matters set forth thereon. The Commission requested that in the future all information pertaining to matters on said agenda be provided with the City Clerk commenting on the need to receive the same from all pertinent parties, as not all information is provided to her office, and that such request would be so noted.

At this time the Commission heard the appeal regarding the allegation of failure to turn in citation. Again with Mr. Morgan representing the City and PFC Josh Reed proceeding pro se and the City Clerk administering the oath to those testifying, the following witnesses appeared before the Commission: Municipal Court Judge John Marks, Officer Messenger, Chief Hilliard, City Manager Howe and PFC Reed. Once again, exhibits were offered and labeled accordingly.

Concluding the presentation of all testimony and exhibits, **MOTION** by Mr. Diaz, **SECONDED** by Mr. Benninger to adjourn into Executive Session pursuant to applicable State Code with the following to be present: members of the Police Civil Service Commission. **MOTION APPROVED UNANIMOUSLY.** Following Executive Session, **MOTION** by Mr. Diaz, **SECONDED** by Mr. Benninger to reconvene into Regular Session. **MOTION APPROVED UNANIMOUSLY.**

MOTION by Mr. Diaz, **SECONDED** by Mr. Benninger to uphold the position taken by the City Manager of a three-day suspension taken from accumulated leave. **MOTION APPROVED UNANIMOUSLY.**

There being no further business to come before the Commission, **MOTION** by Mr. Diaz, **SECONDED** by Mr. Benninger and **APPROVED UNANIMOUSLY** for adjournment.

Gary Keith, Chairman

Annette Wright

Annette Wright, Secretary

January 23, 2014

Approved

NOTE: **Attached hereto are two (2) separate Orders of the Commission executed by the Chairman setting forth the Commission's rulings on the above-referenced matters.**

BEFORE THE POLICE
CIVIL SERVICE COMMISSION
OF THE CITY OF CLARKSBURG

In Re: PFC Josh Reed
Unexcused Absence From Court

ORDER

On December 23, 2013, The Clarksburg Police Civil Service Commission convened to hear an appeal of a decision of the Police Department's Disciplinary Review Board (Board) pursuant to the provisions of WV Code§ 8-14A-5. The Board convened a pre-disciplinary hearing on October 23, 2013 to consider a proposed punitive action against PFC Josh Reed imposed by City Manager Martin Howe for misconduct. PFC Reed was subpoenaed in May 2013 to appear in the Magistrate Court of Harrison County on September 6, 2013 in a case 12M-2241 (State v. Kevin Ashcraft) Misdemeanor. PFC Reed did not appear for his hearing. The City Manager imposed a punitive action of a "Three (3) day suspension from accumulated leave."

The Board heard testimony of witnesses and received documentary exhibits on behalf of the City Manager and on behalf of PFC Reed. On October 28, 2013, the DRB issued a written decision, including findings of fact and conclusions of law, which upheld the City Manager's punitive action.

PFC Reed appealed the Board's decision to this Commission. This Appeal was originally scheduled for November 20, 2013, but was continued at PFC Reed's request, and was rescheduled for December 23, 2013, at 2:45 p.m. (EDT)

Whereupon, the Commission proceeded to hear testimony, and to receive and consider documentary exhibits from The City Manager had the burden of proof as the "Removing Officer" as defined in WV Code §8-14-20. The Commission also received documentary exhibits from PFC Reed.

At the conclusion of this evidence, the Commission briefly went into executive session to consider all of the evidence, and reconvened to vote on and render it's decision; NOW, THEREFORE:

Upon consideration of the evidence in this matter, the Commission found that there was not just cause for the City Manager's punitive action and, accordingly, ORDERS that the Board's findings and the City Manager's action in imposing a three (3) day suspension from accumulated leave be and is hereby reversed and set aside.

ENTER this 31st day of December, 2013

CLARKSBURG POLICE CIVIL SERVICE COMMISSION

By: Gary L Keith
Its: Chairman

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Sgt. L.W. Sylvester, President
Lt. R.M. Cook
PFC R. White
Disciplinary Review Board
Clarksburg Police Department
October 28, 2013

COPY

ORDER FOLLOWING PRE-DISCIPLINARY HEARING

With regards to the Pre-Disciplinary Hearing for Pfc. J. Reed on October 23, 2013, the Disciplinary Review Board has rendered the following findings and conclusions with respect to the disciplinary action presented:

1. **Failure to appear for a scheduled Court Appearance on September 09, 2013** – The Disciplinary Review Board, based on the evidence and testimony presented, finds the following as facts in this matter:

   - On May 02, 2013 Pfc. Reed receives a subpoena for a court hearing on September 06, 2013 as reflected in the Subpoena Log maintained by Lt. Cook. (Exhibit #1)
   - On September 09, 2013 a letter was written by John S. Lanham, Assistant Prosecuting Attorney for Harrison County. The letter was addressed to Deputy Chief Chamberlain, notifying him that Pfc. Reed was absent from a Magistrate court hearing on Kevin Ashcraft Case No. 12M-2241 on September 06, 2013 at 8:45am. (Exhibit #2)
   - According to testimony, provided by Mr. Lanham Pfc. Reed was subpoena to appear for a Magistrate court hearing on Kevin Ashcraft Case No. 12M-2241 on September 06, 2013 at 8:45am. Mr. Lanham further stated that Pfc. Reed failed to appear as required. Mr. Lanham finally stated that a voice mail was left by Pfc. Reed at approximately 1.01pm on September 06, 2013 asking to be excused from the hearing because of an illness.
   - Deputy Chief Chamberlain testified that once he had received notice that Pfc. Reed had missed a scheduled court hearing he prepared a letter dated September 13, 2013 notifying Interim Chief Hilliard of the alleged infraction. In the letter DC Chamberlain outlined that Pfc. Reed has displayed a pattern of missing court, September 16, 2009, October 2, 2009, December16, 2009 and July 14, 2010 Pfc. Reed had failed to appear for court scheduled on those days. (Exhibit #3).
   - IC Hilliard testified that on September 16, 2013 he prepared a letter for recommendation of disciplinary action in regards to Pfc. Reed alleged infraction of missing a scheduled court date. This letter was deliverer to Martian Howe, Clarksburg City Manager. IC Hilliard then testified that in the letter to Mr. Howe, a total of two (2) days suspension taken from accumulated leave was his recommendation for discipline. (Exhibit #4)
   - On September 17, 2013 a letter addressed to Pfc. Reed from Martian Howe, Clarksburg City Manager was prepared and delivered to Pfc. Reed outlining the infraction of the Police and Procedures of the Clarksburg Police Department rule 3.4, Court Appearances. It was recommended by Mr. Howe that a total of three (3) days suspension taken from accumulated leave. (Exhibit #5)
   - On October 25, 2013 Deputy Chief Chamberlain prepared a letter to address a correction in missed court dates by Pfc. Reed, the DMV hearing involving Barbara Media on September 16, 2009 that resulted in a written reprimand shall be removed from his file and not be considered in the board's findings. (Exhibit #6)

- Pfc. Reed prepared a written statement as to his version of the events leading to him missing court on September 06, 2013. In his statement Pfc. Reed concedes that fact he missed court on September 06, 2013, and his explanation was he was sick and had been sick since the previous day September 05, 2013 and had over slept thereby causing him to miss court. Pfc. Reed once he awoke called Magistrate Tammy Maple's office and spoke with her assistant Lisa, Pfc. Reed then called the Prosecutor's office leaving a voice message with Mr. Lanham explaining his reason for missing court.
- On September 07, 2013 upon his returning to work Pfc. Reed at approximately 0330am visited the emergency room of UHC and was seen by Dr. Mason; who provided a Pfc. Reed with a sick slip. (Exhibit #7)

FINDINGS: The Disciplinary Review Board taking has no reason to doubt that Pfc. Reed failed to appear for a court hearing as required under the Policies and Procedures of the Clarksburg Police Department rule 3.4 based on the testimony and evidence provided.

Section 3.4, pg.1-2 of the CPD Policies and Procedures states:

Court Absences:
If an employee is scheduled to be in court and cannot attend, he must notify the court clerk of the reasons for non-attendances in writing at least seventy-two (72) hours or three (3) days prior to the scheduled court date. In cases of unforeseen emergencies, verification of that emergency must be submitted to the clerk immediately in writing. If the emergency arises before court and the officer is unable to contact the court, the judge will determine if the absence is excused. If the officer is unable to contact the court, the Chief of Police will determine if the absence is excused. Copies of all communication with the court or prosecution regarding appearances the Chief of Police.

CONCLUSION: The Disciplinary Review Board concludes that the City of Clarksburg is entitled to administer discipline in this matter, and hereby upholds that decision.

We, the undersigned members of the Disciplinary Review Board of the Clarksburg Police Department, hereby certify that the findings presented in this Final Order are our conclusions based on the evidence presented during the Pre-Disciplinary Hearing of Pfc. J. Reed on October 23, 2013

Pursuant to West Virginia State Code 8-14A-3(d)(e), this order is considered to be binding on all parties involved unless it is overturned in the appeal process described in section five of the same article.

Sgt. L.W. Sylvester, Board President

Not Present @ hearing
Lt. R.M. Cook

PFC R. White

NOTARY PUBLIC OFFICIAL SEAL
STATE OF WEST VIRGINIA
LISA D. MENENDEZ
RR 7 BOX 6
CLARKSBURG, WV 26301
MY COMMISSION EXPIRES MARCH 16, 2018

BEFORE THE POLICE
CIVIL SERVICE COMMISSION
OF THE CITY OF CLARKSBURG

In Re: PFC Josh Reed
Failure to Turn in Citation

ORDER

On December 23, 2013, The Clarksburg Police Civil Service Commission convened to hear an appeal of a decision of the Police Department's Disciplinary Review Board (Board) pursuant to the provisions of WV Code§ 8-14A-5. The Board convened a pre-disciplinary hearing on October 23, 2013 to consider punitive action against PFC Josh Reed by City Manager Martin Howe for misconduct in that PFC Reed failed to turn in a citation (Summons #1739358) he for public intoxication to Hector Santiago in a timely fashion. The City Manager imposed a punitive action of a "Three (3) day suspension from accumulated leave."

The Board heard testimony of witnesses and received documentary exhibits on behalf of the City Manager and on behalf of PFC Reed. On October 28, 2013, the Board issued a written decision, including findings of fact and conclusions of law, which upheld the City Manager's punitive action, a copy of which is attached.

PFC Reed appealed the Board's decision to this Commission. This Appeal was originally scheduled for November 20, 2013, but was continued at PFC Reed's request, and was rescheduled for December 23, 2013, at 2:45 p.m. (EDT)

Whereupon, the Commission proceeded to hear testimony, and to receive and consider documentary exhibits from The City Manager had the burden of proof as the "Removing Officer" as defined in WV Code §8-14-20. The Commission also received documentary exhibits from PFC Reed.

At the conclusion of this evidence, the Commission briefly went into executive session to consider all of the evidence, and reconvened to vote on and render it's decision; NOW, THEREFORE:

Upon consideration of the evidence in this matter, the Commission found that there was just cause for the City Manager's punitive action and, the City Manager's action in imposing a three (3) day suspension from accumulated leave be and is hereby upheld and sustained.

ENTER this 31st day of December, 2013

CLARKSBURG POLICE CIVIL SERVICE COMMISSION

By: _____
Its: Chairman

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Received from R.T. Cook
on 10-30-13 AT 12:35pm

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Sgt. L.W. Sylvester, President
Lt. R.M. Cook
PFC R.A. White
Disciplinary Review Board
Clarksburg Police Department
October 30, 2013

ORDER FOLLOWING PRE-DISCIPLINARY HEARING

With regards to the Pre-Disciplinary Hearing for PFC Josh Reed on October 23, 2013, the Disciplinary Review Board has rendered the following findings and conclusions with respect to the disciplinary action presented:

1. **Failure to turn in a Citation on August 31, 2013** – The Disciplinary Review Board, based on the evidence and testimony presented, finds the following as facts in this matter:

   - On August 31, 2013 PFC Reed issued a Citation/Summons (#1739358) for Public Intoxication to Hector Louis Santiago.
   - On September 23, 2013 Hector Santiago appeared before Municipal Judge John Martin. At that time, Mr. Santiago entered a plea of "not guilty" and requested a hearing on the matter. Judge Martin filled out an Arraignment Form and made a copy of Mr. Santiago's citation for his own records, which is standard procedure for a contested citation. Judge Martin further testified that he directed Mr. Santiago to the Cashier's office, so that he could post his bond.
   - According to testimony from Interim Chief R.L. Hilliard, Mr. Santiago attempted to post bond with the Cashier's office at least one more time after September 23, 2013 but was unable to do so because the Officer's Copy of Citation #1739358 was unable to be located.
   - On September 23, 2013 Lisa Menendez sent an email to both Sgt. Cox and Messenger informing them of the situation, and asking them to see that PFC Reed turned in Citation #1739358.
   - On September 26, 2013 while working midnight shift, Sgt. Messenger discussed the citation with PFC Reed. Because PFC Reed could not recall the citation the two of them searched the RMS and CAD records in an attempt to help him remember the citation. After seeing a photograph of Mr. Santiago in the system, PFC Reed was able to recall the incident. Sgt. Messenger told PFC Reed to search his vehicle in an attempt to locate Citation #1739358.
   - At some time later in the day of September 26, 2013, I.C. Hilliard was made aware that the citation had still not been located. I.C. Hilliard then contacted Judge Martin and requested that the charge against Mr. Santiago be dismissed, due to the Officer's Copy of Citation #1739358 not being turned in. The Judge dismissed the citation on the same date.
   - On September 27, 2013 Sgt. Messenger sent a letter to I.C. Hilliard requesting "at least a written reprimand" to be placed in PFC Reed's personnel file. The request was made due to the original citation not being turned in on the day that it was written, resulting in the charge against Mr. Santiago being dismissed.

- On September 27, 2013 I.C. Hilliard sent a letter to City Manager Martin Howe detailing the incident and recommending disciplinary action against PFC Reed. I.C. Hilliard based his recommendation on CPD Policies and Procedures, specifically **Policy 2.14 – Rules of Conduct, Section 2.19 – "Completing Official Reports"** and **Policy 3.8 – Discipline and Accountability, "General Reasons for Disciplinary Action", #15 – "Careless Workmanship or Production"**. I.C. Hilliard also recommended that the disciplinary action be in the form of a written reprimand placed in PFC Reed's personnel file.
- On October 8, 2013 PFC Reed received a letter from City Manager Martin Howe regarding this disciplinary action. Mr. Howe concurred with I.C. Hilliard that discipline was necessary, but not with his recommendation of a written reprimand. Instead, Mr. Howe imposed a three (3) day suspension to be taken from PFC Reed's accumulative leave.
- In the letter Mr. Howe based his decision "upon prior infractions of the Police Departments Policies and Procedures".
- By his own testimony, PFC Reed conducted a search of his patrol vehicle on September 26, 2013 but was unable to find the citation. On a separate occasion and at the request of Sgt. Cox, PFC Reed stated that he searched the vehicle a second time but was still unable to locate the citation.
- PFC Reed further testified that "a couple of days" after his conversations with Sgt. Messenger and Sgt. Cox, he was driving on patrol and for some reason had to apply his brakes abruptly. At that time, several items fell forward from above his sun visor in his patrol unit. Among the items PFC Reed found Citation #1739358. He further stated that he immediately contacted Sgt. Cox and turned the citation over to him.
- Under cross-examination PFC Reed agreed that it was his responsibility to turn citations in at the end of his shift. He also acknowledged that on both searches of his vehicle for the citation, he did not look above the sun visor.

FINDINGS: Interim Chief Hilliard's letter to City Manager Martin Howe referenced two specific areas of the Clarksburg Police Department Policies and Procedures.

Policy 2.14 – Rules of Conduct, Section 2.19 – "Completing Official Reports"

Unless otherwise directed, officers and employees will promptly submit all reports completed prior to going off duty. All reports, forms, memoranda, citations, or other papers utilized in this department will be completed in blue ink, computer printed, or typed. Special projects may require deviation from this requirement.

Policy 3.8 – Discipline and Accountability, "General Reasons for Disciplinary Action", #15 – "Careless Workmanship or Production"

General Reasons for Disciplinary Action: *An officer or civilian employee may be disciplined or terminated for a number of reasons including, but not limited to:*

15. Careless workmanship or production.

Based upon the evidence and testimony presented by both parties the Disciplinary Review Board finds that although PFC Reed did not intentionally or maliciously violate policy, it is clear that he did not turn in Citation #1739358 at the end of his shift on the day that it was issued (August 31, 2013).

PFC Reed testified that when the issue was brought to his attention on September 26, 2013 he conducted two separate searches of his police cruiser without locating Citation #1739358, and acknowledged that on both searches of his vehicle for the citation, he did not look above the sun visor. The Disciplinary Review Board finds that PFC Reed's failure to locate Citation #1739358 during two separate searches of the vehicle can easily be defined as "careless workmanship" based on the searches alone.

In City Manager Martin Howe's letter to PFC Josh Reed, he states that:

Based upon prior infractions of the Police Departments Policies and Procedures, I am hereby notifying you that I am imposing upon you the following disciplinary action:

Three (3) Days Suspension Taken From Accumulative Leave

By the wording of his letter it is clear that Mr. Howe has based his decision upon the concept of "Progressive Discipline" as described in **Policy Number 3.8 – Discipline and Accountability** which states:

The department has the sole right to determine the disciplinary process applicable in particular circumstances as well as the discipline to be imposed for violations or non-compliance.

Progressive disciplinary measures are generally followed. However, employee attitudes and performance, and any extenuating and mitigating factors may be considered when determining the discipline to be imposed.

The members of this board recognize that the department has the right to determine the type of discipline administered and is not bound to follow any specific steps of "progressive discipline". However, the members of this board also agree that if the discipline administered is to be based upon allegations of prior infractions, the existence of the prior infractions should be established. At no point during this hearing did the City of Clarksburg present any evidence, documents, or testimony to show that PFC Josh Reed has a history of violating the Policies and Procedures, or that he has received any disciplinary action for any specific previous infractions. Without the proof of specific prior infractions, the members of this board

agree that we cannot justify PFC Reed receiving a level of discipline based solely on the allegation of their existence.

In I.C. Hilliard's initial letter to City Manager Martin Howe, he does not reference the consideration of any prior infractions by PFC Josh Reed in his recommendation that the discipline be in the form of a written reprimand.

The Disciplinary Review Board finds that PFC Josh Reed was in violation of the Policies and Procedures specified by Interim Chief R.L. Hilliard, and agrees with his recommendation that the discipline administered should be in the form of a Written Reprimand to be placed in PFC Reed's personnel file.

CONCLUSION: The Disciplinary Review Board concludes that the City of Clarksburg is entitled to administer discipline in this matter in the form of a Written Reprimand, and hereby upholds that decision.

We, the undersigned members of the Disciplinary Review Board of the Clarksburg Police Department, hereby certify that the findings presented in this Final Order are our conclusions based solely upon the evidence presented during the Pre-Disciplinary Hearing of PFC Josh Reed on October 23, 2013.

Pursuant to West Virginia State Code 8-14A-3(d)(e), this order is considered to be binding on all parties involved unless it is overturned in the appeal process described in section five of the same article.

Sgt. L.W. Sylvester, Board President

Lt. R.M. Cook

PFC R.A. White

10-30-13

NOTARY PUBLIC OFFICIAL SEAL
STATE OF WEST VIRGINIA
LISA D. MENENDEZ
RR 7 BOX 6
CLARKSBURG, WV 26301
MY COMMISSION EXPIRES MARCH 16, 2018