

VOLUSIA COUNTY PERSONNEL BOARD
SUMMARY OF FINDINGS AND DETERMINATION
ADVERSE ACTION APPEAL #10052013

APPELLANT: Michael Todd Snipes

POSITION HELD: Lifeguard Supervisor

DATE OF HIRE: March 24, 1996

DATE OF APPEAL HEARING: November 5, 2013

SUBJECT: Termination

HEARING BODY: Personnel Board

FINAL AUTHORITY: County Manager

ATTENDEES:

Personnel Board Members Patrick Lane, Chair
Brenda Thompson
Ezell Reeves
Joe Winter
Fran Duvall
Dwight Lewis – Recused

Personnel Board Legal Advisor: Jeff Mandel, Esquire

Ex-Officio Members

Executive Secretary: Tom Motes, Human Resources Director

Employer: Volusia County, Division of Beach Safety

Employer’s Representative: Nancye Jones, Assistant County Attorney
Larry Smith, Deputy County Attorney

Employer’s Witnesses: Mark Swanson, Beach Safety Director
Dave Vanis, Beach Safety
George Recktenwald, Public Protection Director

Appellant’s Representative: Jason L. Harr, Esq.

Appellant’s Witnesses: John Texter, Beach Safety
Russell St. John, Beach Safety

Recording Secretary: Ginger Hadley, Personnel Services

I. INTRODUCTION

The Volusia County Personnel Board convened on Tuesday, November 5, 2013 at 9:30 a.m. to hear the appeal filed by Appellant Michael Todd Snipes regarding his termination from the Division of Beach Safety.

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 August 2, 2013, George Recktenwald, Public Protection Director, issued a Notice of Intent to Dismiss to Appellant for violations of the following Volusia County Beach Safety Division, Departmental Standards Directive, Standards of Conduct as well as Merit System Rules and Regulations:

Volusia County Beach Safety Division, Departmental Standards Directive, Standards of Conduct

Unprofessional conduct while on duty

11.01 – It shall be the policy of the Division that employees maintain command of temper, patience and discretion. They shall not engage in any conduct which constitutes neglect of duty or which is likely to adversely affect the discipline, good order or reputation of the Division, even though such conduct may not be specifically set forth in this chapter.

11.01.56 – Employees shall not make derogatory remarks concerning race, sex, religion, age or national origin of any person. (CFA St. 2.08C) (Violation subject to dismissal).

Merit Rules and Regulations

Section 86-453(13), Reasons for disciplinary action: Any conduct, on or off duty, that reflects unfavorably on the county as an employer.

Section 86-453(a), Conduct of employees: code of conduct: Employees of the county government are employed to provide service to the citizenry...and are expected to conduct themselves in a manner to give credit to the county government, public officials, fellow employees and themselves; as well as

Volusia County HR Bulletin 19 – Social Media Policy

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 dismissal from the Division of Beach Safety.

Appellant requested that the Board recommend to the County Manager that his dismissal be rescinded.

III. SUMMARY OF EVIDENCE

On August 9, 2013, Appellant Michael Todd Snipes was dismissed from employment with the Division of Beach Safety. Evidence presented to the Personnel Board was as follows:

In the two years prior to this incident, Beach Safety employees were warned about inappropriate conduct by Director George Recktenwald and again by Director Mark Swanson [in January 2013]. All employees, including Appellant were told that any conduct which reflected poorly on himself, the Beach Department or the County would result in discipline, up to and including, termination. In April 2013, Appellant received a copy and signed that he had read and understood the County's social media policy which warned against inappropriate postings to social media and noted that a violation of same would result in discipline, up to and including, termination.

On July 13, 2013, at 10:00 p.m. George Zimmerman was found not guilty in the very high profile case involving the death of Trayvon Martin.

On July 14, 2013, prior to starting his shift, Appellant posted "Another thug gone! Pull up your pants and act respectful. Bye bye thug rip!" on his Facebook page. This post was visible to approximately 330 other Facebook users including private citizens, as well as current and former Beach Safety employees.

On this same day, Appellant worked an outside detail for the Ocean Deck between the hours of 1:00pm to 9:00pm. Appellant was working in his full capacity as a law enforcement officer for this detail. At approximately 8:30pm, during this shift, Appellant sent a group text message from his cell phone of a picture of Paula Dean holding a pie with a caption that stated "Ya'll Niggas Want Some" to 9 individuals, 3 of those individuals were Beach Safety employees and 1 was a direct subordinate. This text message was responded to by someone in the group with a caricature of Trayvon Martin with the caption "Those skittles were to die for" to which Appellant responded "lol" (laugh out loud).

On July 15, 2013, Appellant worked from 7:00am to 7:00pm with the Beach Safety Department in his regular duty. At approximately 4:30pm someone in the group text message from the prior day sent a picture of a what appeared to be a jury panel depicting all members as Paula Dean with a caption that stated "George Zimmerman Jury". This was followed by Appellant replying "LoL" (laugh out loud). At approximately 4:51 p.m., Appellant sent a picture

text of a dark skinned George Zimmerman and a white teenage male, who appeared to be a white skinned Trayvon Martin.

On July 29, 2013, Appellant was interviewed with counsel present. During this sworn interview, Appellant admitted to sending the first and last pictures in the group text message, to responding "lol" to photos sent by others and to posting the message on Facebook, admitting that he was referring to Trayvon Martin when he posted this message.

Appellant has been employed with Volusia County, in the Beach Safety Division for 24 years, 15 of those years in a position of a sworn law enforcement officer and the last two years as a supervisor. Director Recktenwald testified that he decided to terminate Appellant's employment, despite his years of service because his actions showed a horrible lack of judgment which was made worse during a racially charged time, that he involved subordinates and other Beach Department employees. Mr. Recktenwald stated that as an experienced law enforcement officer and supervisor, it was his responsibility and duty to defuse these types of situations and not be a part of them and, by engaging in behavior that threatened the respect and trust of the community and jeopardized the perception of the department. The cartoons and comments Appellant wrote permanently impaired his ability to effectively perform his duties with the general public and cast doubt upon his ability to lead others or carry out his duties impartially as a law enforcement officer. Finally, Mr. Recktenwald notes that Appellant's actions resulted in a series of media stories and commentary that presented the County of Volusia and the community in a negative light. It was the potential perception of racially biased action that concerned Mr. Recktenwald about Appellant's continued effectiveness, not whether, in fact, he was a racist.

IV. BOARD'S FINDINGS OF FACTS AND CONCLUSIONS

Volusia County Beach Safety Division, Departmental Standards Directive, Standards of Conduct

Unprofessional conduct while on duty

11.01 – It shall be the policy of the Division that employees maintain command of temper, patience and discretion. They shall not engage in any conduct which constitutes neglect of duty or which is likely to adversely affect the discipline, good order or reputation of the Division, even though such conduct may not be specifically set forth in this chapter.

Discussion:

Ms. Thompson stated that Appellant admitted to doing the acts with which he was charged and knowing that it was wrong. Ms. Duvall concurred and noted that Appellant also admitted that in the Facebook posting he was referring to Trayvon Martin. Ms. Duvall further stated that the other thing that bothered her was his admitted neglect of duty in that he sent the text messages while on duty.

Mr. Reeves made a motion to sustain the violation.

Mr. Winter seconded the motion.

Motion carried 5 – 0. Board clarified that their finding was as to both parts of the directive, neglect of duty and conduct likely to adversely affect the discipline, good order or reputation of the Division.

11.01.56 – Employees shall not make derogatory remarks concerning race, sex, religion, age or national origin of any person. (CFA St. 2.08C) (Violation subject to dismissal).

Discussion:

Mr. Reeves noted that, for him, it was not about race, sex, religion, age or national origin but that it was not proper for Appellant as a captain and employee with 24 years experience.

Ms. Thompson made a motion to uphold the violation.

Mr. Winter seconded the motion.

Motion carried 5 – 0.

Merit Rules and Regulations

Section 86-453(13), Reasons for disciplinary action: Any conduct, on or off duty, that reflects unfavorably on the county as an employer.

With no discussion, Mr. Winter made a motion to uphold the violation.

Ms. Thompson seconded the motion.

Motion carried 5 – 0.

Section 86-453(a), Conduct of employees: code of conduct: Employees of the county government are employed to provide service to the citizenry...and are expected to conduct themselves in a manner to give credit to the county government, public officials, fellow employees and themselves.

With no discussion, Mr. Reeves made a motion to uphold the violation.

Ms. Thompson seconded the motion.

In discussion following the motion, Mr. Winters noted that the Personnel Board's job is not easy but this was a terrible lapse in judgment by Appellant which could not be tolerated from a senior law enforcement, who is held to a higher standard. He noted that Appellant did not conduct himself favorably to his own department or the County.

Ms. Duvall commended him for admitting his actions but also noted Appellant's bad judgment.

Motion carried 5 – 0.

Volusia County HR Bulletin 19 – Social Media Policy

Mr. Lane made a motion that Appellant did violate the Social Media Policy.

Mr. Reeves seconded the motion.

Motion carried 5 – 0.

Appropriateness of Penalty

Ms. Thompson stated that she did not agree with termination as the punishment, for a 24 year employee with an almost exemplary record.

Mr. Lane reminded the Board that, pursuant to their rules, they were not to substitute their own judgment for that of the appointing authority, noting that even if he personally did not agree with the penalty, this was an egregious case for which the County had a responsibility and certainly the option to fire Appellant.

Mr. Reeves stated that Appellant used poor judgment and agreed with Ms. Thompson that termination was too harsh.

Ms. Duvall stated that she was torn on termination, noting Appellant's length of service but stating that, in light of this, he knew the policies he was bound by, had been warned by two people [Mr. Recktenwald and Director Swanson] about conduct and had read and signed the social media policy. She noted that she would have liked to have heard from Appellant to note his level of remorse.

Mr. Winter stated that he hated to see a career like this thrown away, and that it was hard to be a part of such punishment.

Mr. Lane noted that it was not one isolated incident – that Appellant's conduct occurred over a period of 2-3 days. In deference to the County, the decision to terminate had been deliberate and well considered by Mr. Recktenwald, who noted the difficulty in doing same.

Again, he noted, it was not proper to substitute their judgment for that of the County. After a reading of Personnel Board Rule VIII,B regarding the Board's obligations in ruling on the propriety of the penalty, Mr. Lane said he did not believe that termination was arbitrary or capricious.

Ms. Thompson made a motion to find that termination was excessive in this case.

Mr. Reeves seconded the motion.

Motion failed 3 – 2.

Mr. Lane made a motion to recommend that the County Manager uphold termination.

Ms. Duvall seconded the motion.

Motion failed 2 – 3.

Following discussion regarding a recommendation to the County Manager that he impose a lesser penalty than termination, Mr. Lane moved to recommend that Appellant's termination not be upheld.

Mr. Reeves seconded the motion

Motion carried 3 - 2.

V. **BOARD'S RECOMMENDATION**

The Board voted ^{3-2 (m)} 5-0 that Appellant's termination not be upheld.

SUBMITTED BY: *[Signature]* DATE: 11/7/13

COUNTY MANAGER: *[Signature]* DATE: 11/7/13

- APPROVAL
- REJECTION
- MODIFICATION

I accept the Board's unanimous findings of fact that the appellant violated the charged offenses. However after careful consideration I find that termination is the appropriate penalty due to the undisputed actions of the appellant and the serious nature of those same actions. *[Signature]*