

OATH IN IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH
COUNTY, FLORIDA
CRIMINAL DIVISION

TAVORIS ALLEN,

Appellant

v.

CASE NO: 19CA10728
Docket No. 19-849

HILLSBOROUGH COUNTY ADMINISRATOR,

Appellee.

Rudin Haidermota, Esq.

County Building, 26th Floor

601 E Kennedy Blvd

Tampa, Florida 33601

haidermotar@HillsboroughCounty.org

Mike Merrill, County Administrator

County Building, 26th Floor

601 E Kennedy Blvd

Tampa, Florida 33601

merrillm@hillsboroughcounty.org

Beverly Waldron, Director of Human Resources

County Building, 17th Floor

601 E Kennedy Blvd

Tampa, Florida 33601

waldronb@hillsboroughcounty.org

Peter Zinober, Esq.

Civil Service Board Counsel

Ogletree Deacons

100 North Tampa Street

Suite 3600

Tampa, Florida 33602

Peter.Zinober@Ogletree.co

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**PETITION FOR WRIT OF CERTIORARI TO CIRCUIT COURT
FROM FINAL ORDER OF THE DISSOLVED CIVIL SERVICE COMMISSION**

TAVORIS ALLEN
2608 BONTERRA BOULEVARD
VALRICO, FLORIDA 33594
Tel: 813-650-4514
Email: hillsboro34@yahoo.com

PRO SE APPELLANT

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Petitioner, TAVORIS ALLEN, hereby appeals the Final Order by Civil Service County Commission granting the Summary Judgment of the Appointing Authority, dismissing Petitioner from his position as Paramedic Fire Fighter- a position that Petitioner has held for the past 16 years.

Petitioner disputes the Final Order procedurally because as of October 1, 2019 the Civil Service Commission has been dissolved without substitution by any other entity, and also substantively because disputed material facts precluded granting summary judgment in favor of the Appointing Authority by the Civil Service Commission

I. BASIS FOR THIS COURT'S JURISDICTION

This Court has jurisdiction to hear appeals from Final Orders entered by Civil Service Commission at the time it existed pursuant to Florida Rule of Appellate Procedures Rule 9.141(d).

II. NATURE OF THE RELIEF REQUESTED

Petitioner seeks an order from this Court finding dissolving the Final Order issued by the now dissolved Civil Service Commission, reinstating Petitioner to his position as Paramedic Firefighter and reimburse Petitioner for all costs and fees incurred in appealing the Final Order.

III. COURSE OF PROCEEDINGS LEADING TO THIS APPEAL

This cause came before the Hillsborough County Civil Service Board (the "Board") on Wednesday, August 28, 2019, on the Motion for Summary Judgment (the "Motion") of the Hillsborough County Administrator (the "Appointing Authority") regarding the appeal filed by Tavoris Allen ("Appellant" or "Allen") of his dismissal. The Appointing Authority's Motion, with supporting evidence, was timely filed on June 13, 2019. Appellant filed his Affidavit in Opposition to Motion for Summary Judgment, with supporting evidence, on July 12, 2019. Both parties were present at the August 28, 2019 hearing. Appellant appeared pro se, and the Appointing Authority was represented by Rudin Haidermota. The Board, comprised of Chairman Ernie Trichler and Board Members Chandra Hosler, Neal Carbaugh, and Andrea Cichon, having reviewed the Motion, the exhibits of record, and having heard the argument of the Appellant and the Appointing Authority's counsel, hereby finds the following facts to be material and undisputed, and renders the following conclusions of law:

IV. THE INCIDENT

1. Tavoris Allen worked as a Lieutenant for Hillsborough County Fire Rescue ("HCFR"). Allen began his employment with HCFR on or around May 5, 2003. In December 2018, Allen was assigned to report to Fire Rescue Station 26. He was scheduled for a shift at Station 26 on December 10, 2018.
2. As a Lieutenant, Allen performed functions as lead crew member and supervised an emergency advanced life support (ALS) paramedic fire rescue crew. Allen assessed patients'

condition to include vital signs, interpreting electrocardiogram rhythms and communicated with the destination facility on the nature and extent of illnesses. Allen was responsible for providing Appropriate emergency medical care, within limits, established by standard operations and Protocols. Allen determined appropriate patient destinations and transport methods, as well as Provided verbal, written and computer reports pertaining to condition and care of patients at Emergency scenes and in transit.

3. Allen has an active medical marijuana use registry card.
4. On or about December 10, 2018, Allen brought an appliance labeled "MagicalButter" to Fire Rescue Station 26. The container held a mixture of coconut oil and CBD Oil, which Allen had purchased.
5. Allen plugged the container in the weight room at the station and continued working During the day.
6. On or about December 10, 2018, Thomas Bryson ("Bryson"), Fire Medic I, walked Into the medical supply room at Station 26 and smelled what he described as a strong odor of Marijuana. Bryson advised Bret Hayes ("Hayes"), Fire Captain, of the smell coming from the Medical supply room. Hayes also smelled what he believed to be an odor of marijuana. Hayes
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Then asked two crew members, Frederick Fisher and Jason Hatfield, to confirm the smell of Marijuana.
7. Both Fisher and Hatfield advised Hayes that they believed that the odor smelled Like marijuana.
8. After Hayes was unable to identify the source of the smell inside the medical supply Room, he entered the weight room and discovered an appliance with a label of "MagicalButter.com" on the lid plugged into the wall next to the treadmill. Bryson entered the Weight room and both Bryson and Hayes believed that the appliance was the source of the Marijuana odor.
9. Bryson unplugged the machine and opened the lid. Bryson and Hayes observed a Liquid substance inside of the appliance.
10. Hayes notified Morris Lopez ("Lopez"), Battalion Chief, about the presence of the Appliance.
11. Lopez notified Angel Herrera ("Herrera"), Shift Commander, of the situation.
12. Herrera notified Jason Dougherty ("Dougherty"), Deputy Operations Chief, of the Situation.
13. Dougherty contacted Donna Luszczynski, ("Luszczynski"), Chief Deputy with

Hillsborough County Sheriff's Office and requested to have deputies respond to Fire Rescue Station 26 to confirm if drugs were on the property.

14. Bradford Sutter ("Sutter"), a detective in the Marijuana Grow House Task Force with the Hillsborough County Sheriff's Office, responded to Fire Rescue Station 26, accompanied By Corporal Michael Hannaford ("Hannaford"), with regard to the presence of the

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"MagicalButter" appliance. Sutter and Hannaford were taken to the weight room where the Appliance was located and began their investigation.

15. Sutter tested the liquid inside the appliance and it tested positive for THC. Based On Sutter's training and experience, the liquid was consistent with homemade Cannabis Oil.

16. after performing tests of the substance inside the appliance, Sutter and Hannaford Found enough evidence to begin interviewing all crew members present at the station. Sutter Informed Dougherty that he would conduct an investigation and interview crew members at the Station.

17. Sutter and Hannaford interviewed the following crew members at the station: Bret Hayes, Daniel Rivera, Frederick Fisher, James Hatfield, Thomas Bryson, and Tavoris Allen.

18. During his interview with Sutter, Allen admitted that the MagicalButter appliance Belonged to him and that he had brought it to the fire station.

19. Following Allen's admission that the Magical Butter appliance belonged to him, Sutter read Allen his Miranda rights and Allen agreed to proceed with the interview without an Attorney present. Post-Miranda, Allen admitted to the possession and use of the MagicalButter Appliance.

20. Sutter placed Allen under arrest, and Allen was transported and booked into the Orient Road Jail without incident.

ARGUMENT

A. APPLICABLE LAW

"Circuit court, in proceedings for judicial review of decision of city civil service commission that discipline imposed by sheriff on police officer had been manifestly unjust, was limited to determining whether commission's decision was supported by substantial evidence; court was not entitled to decide whether sheriff's decision had been supported by substantial evidence." *Castilleja v. City of Jacksonville*, 738 So.2d 335 (Fla 1st DCA 1998).

In *State Department of Pollution Control v. State Career Service Commission*, 320 So.2d 846 (Fla. 1st DCA 1975), the court held that "the role of the Career Service Commission on appeal is to determine whether there existed competent substantial evidence to sustain the action taken by the agency (meaning the hiring authority) and whether the facts established 'just cause'." 320 So.2d at 848. The court noted that the hiring authority has "the sole discretion to determine whether the employee is to be dismissed or suspended . . . the only limitation being that the disciplinary action must be for just cause." 320 So.2d at 848.

"The Board may order the reinstatement of an employee only if the hearing establishes that the suspension, demotion, or dismissal was made for reasons other than just cause. In arriving at its determination of "just cause" as used in this section, the Board shall carefully consider all testimony and evidence presented and shall additionally give careful consideration to the appellant employee's entire personal record which shall be deemed cumulative." *City of Clearwater v. Garretson*, 355 So.2d 1248, 1252 (Fla 2nd DCA 1978).

"Review by certiorari is appropriate when the following three elements have been established: (1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case (3) that cannot be corrected on post judgment appeal." *Farrey's Wholesale Hardware Co., Inc. v. Coltin Electrical Services, LLC*, 263 So.3d 168 (Fla.2nd DCA, 2018).

"Summary judgment is proper only if (1) no genuine issue of material fact exists, viewing every possible inference in favor of the party against whom summary judgment has been entered, and (2) the moving party is entitled to a judgment as a matter of law." *Farrey's Wholesale Hardware Co., Inc. v. Coltin Electrical Services, LLC*, 263 So.3d 168 (Fla. 2nd DCA 2018).

B. DISPUTED ISSUES OF FACT PRECLUDING SUMMARY JUDGMENT

In the instant case, the circuit court's proper scope of review is limited to a determination of (1) whether due process was afforded by the Civil Service Commission (2) whether the essential requirements of the law were observed, and (3) whether the findings of fact and conclusions of law are supported by competent substantial evidence. See *Haines City Community Development v. Heggs*, 658 So.2d 523 (Fla.1995).

In the instant case, the Civil Service Commission Board failed to afford due process to Petitioner and failed to observe essential requirements of law. The Findings of Fact and Conclusions by the Civil Service Commission is also not supported by competent, substantial evidence. There was essentially no evidence allowing the Appointing Authority to take any adverse employment action against Petitioner. Instead of competent substantial facts, the Civil Service Commission succumbed to hearsay upon hearsay facts provided by the Appointing Authority as the basis for its adverse decision. In addition to hearsay, the Civil Service Commission failed to observe essential requirements of law that all disputed facts were to be construed in favor of Petitioner. Instead, the Civil Service Commission resolved all disputed facts in favor of the Appointing Authority. Petitioner was denied the most fundamental procedural due process by the Civil Service Commission failing to afford an evidentiary hearing on the disputed facts. Without an evidentiary hearing, Petitioner was deprived of the ability to be able to confront and cross examine his accusers, test the existence of the evidence against him, and present his own defense.

DISPUTED FACT I :

1. Allen was never in possession of leaf marijuana or this device for hours
2. Allen was not in physical possession of leaf marijuana at the time of his interview or arrest.
3. Allen never seen any actual leaf medical or marijuana plant material.
4. Allen was showed a picture of what appeared to be (one) "dry" marijuana bud.
5. Allen never got a chance to inspect this device.
6. According hcfp policy and my personal knowledge. There are and has never been a policy regarding. The use of medical marijuana or card holders on the job.
7. I was never impaired at work. Never harmed or endanger anyone the day of this incident.
8. I never knowingly meant to break any policy or laws.
9. Nearly all of the prior incident should not have stayed. Charged or placed in My filed. I have tried to reach out several time to several staff members about my Concerns. And the intentional pilling of frivolous negative cases in an attempt to Discriminate against me and my character.
I was not of aware any of these incidents had taken place as I believed I was at The station during this time and still not notified.

DISPUTED FACT II:

1. I was not of aware any of these incidents had taken place as I believed I was at The station during this time and still not notified.
2. Fisher story sounds the same as Bryson story. These stories could have been Conspired to line up with each other as I felt that there was a crew member there that did Not like me. Which could be the reason I wasn't notified.
3. I was never asked to investigate when I was there at the station nor was, I Notified or told about this prior to me coming back from a call. Denied. The referenced Statute is inappropriately applied to Respondent.
4. Bryson admitted he opened the container it was not in my sight or passion at the Time.
5. No one asked me prior to calling law enforcement.
6. I see Lopez at the station he was outside for over an hour never came in the Station. Never spoked with me or asked me of anything
7. Lopez neither did Hayes advise me that my unit or the station was out of Service. I'm an officer and have an obligation to know.
8. Was not made aware of this either which I should've been as an officer at the Station at that time. I believe I was there at the station and not told this for a reason.
9. "Magic butter" machine is not solely used to make edible marijuana. Its Miss leading statement. This device can make all sorts of things and it does not make Edible marijuana.
10. I was not made aware of this either which I should've been as an officer at the station at That time. I believe I was there at the station and not told this for a reason.
11. I was not made aware of this either which I should've been as an officer at the station at That time. I believe I was there at the station and not told this for a reason.
12. I was not made aware of this either which I should've been as an officer at the station at That time. I believe I was there at the station and not told this for a reason.
13. I was not made aware of this either which I should've been as an officer at the station at That time. I believe I was there at the station and not told this for a reason. It was never Noted how much "the" was tested the amount and percentage. It is a known fact that all cbd oils contain a minimum of 0.8% the. So, if in fact it was cbd oil and coconut oil like I Stated this would test positive. I never seen any marijuana buds or plant like material Before or after the container was placed in the gym. Sutter showed me a picture of what Appeared to be one "dry" bud on his cell phone. Which I contested. I was not present for this.

14. I was under duress during this interview, was caught off guard while cooking dinner for My crew. I was the only member of the station who was on aware of what was going on, That the sheriff had been called. I was not aware that we had 3 chiefs at the station. The First this I saw was my 3 chiefs standing in the door which the cops. First statement that Had been made by Dougherty was "listen up the cops are here to conduct an investigation There had been drugs found at the station and it's a felony" still didn't think they were Talking about or targeting me become medical marijuana is not called a drug it's a Medication writing and prescribed by a doctor to treat medical condition brought on by My job with char over the years.

15. I was under duress during this interview, was caught off guard and scared because Dougherty stated this was a felony. I was unaware of that. Hcfr never notified us that this Was a felony and not permitted. I felt if I did not interview, I would get fired on the spot And if I asked for a lawyer, I was get fired for not talking while at work. If I was off, I Would gotten a lawyer first to protect myself hippo and my rights.

16. There was no marijuana plant material that I know of.

Based on the foregoing disputed facts, it was error for the Civil Service Commission to grant the Appointing Authority's motion for summary judgment. Reversal is necessary.

C. LACK OF JUST CAUSE

Medical needs case that need to be heard by a jury. Which I was never giving the chance of cross examine my accusers

As to the general proposition that there are no issues of material fact regarding the Numerous allegations outlined in the legal argument portion of the CAHC MSJ, Appellant Vigorously disagrees, and shows the following line item clarifications as support thereof:

1. As to having violated Rule 11.2(1,2), and also not admitting to having violated These rules at all, Appellant states he has not violated these rules to a degree that Would warrant immediate termination from his position as a Lt. with the Hillsborough County Fire and Rescue.
2. as to having violated Rule 11.2(6), and also not admitting to any specific violation Of this rule, Appellant states he has not violated this rule to such a degree as to Warrant immediate termination from his position as a Lt. with the Hillsborough County Fire and Rescue.

3. As to having violated Rule 11.2(9), Appellant vigorously denies this allegation in full and definitely not to the extent that would warrant immediate dismissal; and Demands proof be provided to support this malicious allegation.
4. As to having violated Rule 11.2(26), Appellant denies this allegation in full and Definitely not to the extent that would warrant immediate dismissal. Appellant Further states he has always worked to maintain the honorable reputation of the Hillsborough County Fire and Rescue.
5. As to having violated Rule 11.2(29), Appellant denies the allegation in full and Further states he has never intentionally or otherwise failed to fully cooperate, Within the scope of expectation, and definitely not to the extent that would warrant Immediate dismissal. Appellant has always worked to aid the Hillsborough County Fire and Rescue during any official actions.
6. As to having violated Rule 11.2(32), Appellant fully and emphatically denies Violating this provision of the policy.
7. As to having violated Rule 7.5 and acknowledging that appellant lacks sufficient Information as what portion of this rule the allegation address, Appellant denies the Allegations.
8. As to having violated Rule 7.6(2), Appellant adamantly denies any negative Behavior that would be attributed to this provision.
9. As to having violated rule 7.6(6), Appellant denies having violated this provision, And further states any violation of said rule would not be to the degree that it would Warrant immediate termination.
10. As to having violated Rule 7.6(9), Appellant, again, adamantly denies said Allegations in full.
11. As to having violated Rule 7.6(26), Appellant reiterates his answer from above and Denies this allegation, and further states that no action would warrant immediate Dismissal from the Hillsborough County Fire and Rescue.
12. As to having violated Rule 7.6(29), Appellant denies these allegations and any Similar allegations that might prompt questions about his ethics.
13. As to having violated Rule 7.6(32), Appellant denies participation in any behavior That would warrant immediate dismissal from the Hillsborough County Fire and Rescue.
14. As to having violated County Policy Rule 7.5, Appellant fully denies having

Violated this rule, and definitely has not violated this rule to an extent to cause Immediate dismissal from the Hillsborough County Fire and Rescue.

15. As to having violated County Policy Rue 7.4 in that he fully denies violating this Policy and definitely has not violated this policy to an extent that would warrant Immediate dismissal from the Hillsborough County Fire and Rescue.

16. As to violating Rule 120.12, Appellant has not violated this provision at all.

17. Appellant denies the allegation in full and has not willfully violated Rule 120.01 to Any extent that would warrant immediate dismissal from the Hillsborough County Fire and Rescue.

18. As to Article 40 of the collective Bargaining Agreement, and while lacking Sufficient information as to the exact allegation, Appellant denies this general Allegation.

D. DISSOLVED CIVIL SERVICE COMMISSION DEPRIVES PETITIONER OF PROPER DUE PROCESS

"An act to establish a comprehensive plan for the creation and operation of a civil service commission in counties of a "Population of Not Less Than One Hundred Sixty-Five Thousand and Not More Than One Hundred Eighty Thousand According to the Last Florida State Census, or Any Subsequent State or Federal Census" is a "special act", and, having been enacted as a general act, is unconstitutional." *Waybright v. Duval County*, 142 Fla. 875 (Fla. 1940). House Bill No. 1373 has dissolved the Civil Service Commission because of the unconstitutional existence of the Civil Service Commission. Petitioner cannot be held hostage to the decision of an entity which Legislature has moved to dissolve on the basis that it is unconstitutional.

Jurisdictional hole has been created by House Bill 1373 dissolving the Civil Service Commission and Petitioner cannot be expected to dig out of this hole in the absence of a proper arbiter between him and the Appointing Authority. There are other problems as well. Counsel who represented Civil Service Commission can no

longer represent the Commission because the Commission no longer exists. Under Florida Bar rules, licensed attorneys cannot represent non-existing fictitious parties.

While existing case law permits a Civil Service Commission to make only a determination of whether just cause existed for the adverse employment decision, existing case law does not permit the adoption of a Commission that has been dissolved on grounds that its existence is unconstitutional.

E. CONCLUSION

For all the foregoing reasons, the Final Order issued by the now dissolved Civil Service Commission should be reversed, and the Appointing Authority should be directed to reinstate Petitioner made whole to his post as lieutenant with HCFR as of 12/11/2018

RESPECTFULLY SUBMITTED BY,

/s/ Tavoris Allen

2608 BONTERRA BOULEVARD
VALRICO, FLORIDA 33594
Tel: 813-650-4514
Email: hillsboro34@yahoo.com

F. SUPPORT OF PETITION FOR HABEAS CORPUS

Under penalties of perjury, I hereby swear and certify that I have prepared and read the foregoing Petition from Final Order of Civil Service Commission, understand its contents and that all of the facts stated herein are true and correct.

By: Tavoris Allen
TAVORIS ALLEN

STATE OF FLORIDA _____)

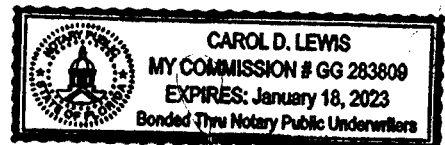
COUNTY OF HILLSBOROUGH _____)

The foregoing instrument was sworn to, under penalty of perjury, before me this day of 18th, 2019, by Tavoris A. Allen who is [] is personally known to me or [] has produced ___ as identification and who did take an oath that the information contained herein is true and correct.

Carol D. Lewis
Notary Public – State of Florida

Printed Name: Carol D. Lewis

My Commission Expires: 01/18/2023



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 18, 2019, a true and correct copy of the foregoing document was filed with the Florida 13th district courts which will send notice of said filing to all Counsel of Record,

s/ Tavoris Allen

TAVORIS ALLEN

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the instant Petition for Writ of Certiorari complies with the font requirements of Fla.R.App.P. 9.100(f).

s/ Tavoris Allen

TAVORIS ALLEN