

**BOARD OF FIRE AND POLICE COMMISSIONERS  
OF THE CITY OF MILWAUKEE**

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**In the matter of the appeal of**

**POLICE OFFICER RYAN D. KARR  
from  
MPD Personnel Order No. 2008-202**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND DECISION**

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*Hearing Date: February 4, 2009*

*Conducted Before: Commissioners Kathryn Hein, Carolina Stark and Paoi Lor  
with Steven Fronk acting as FPC Hearing Examiner*

*Appearances: Ryan Karr in person and by Attorney Scott Jess and  
Attorney Matthew Granitz, of Cermele & Associates, S.C.  
Chief of Police Edward Flynn by Lieutenant Kurt Leibold and  
Assistant City Attorney Heidi Galvan*

*Allegation(s): Count 1. Violation of MPD Rule 4, Section 2/030.00  
(failure to obey a lawful order)  
Count 2. Violation of MPD Rule 5, Section 2/500.55  
(absent from duty without leave)*

**SUMMARY OF PROCEEDINGS**

Milwaukee Chief of Police Edward Flynn discharged Police Officer Ryan Karr on November 26, 2008, pursuant to MPD Personnel Order No. 2008-202. Officer Karr filed an appeal of that order with the Board of Fire and Police Commissioners on December 1, 2008. A final hearing was held before a three-member panel of the Board of Fire and Police Commissioners on February 4, 2009.

At the hearing regarding this matter on February 4, 2009, testimony was received from Police Officer Ryan Karr, Police Sergeant Eric Pfeiffer, Police Sergeant Alberto Riestra, Administrative Lieutenant Mercedes Cowan and Chief of Police Edward Flynn. A transcript of the proceedings will be obtained and made a part of the record. A summary of testimony from each witness will not be provided here.

## FINDINGS OF FACT

1. Police Officer Ryan D. Karr, at all times pertinent hereto, was a member of the Milwaukee Police Department and bound by the rules and procedures thereof.
2. On June 12, 2008, Officer Karr called in sick with the flu, and he exhausted his available paid sick leave.
3. On June 13, 2008, Officer Karr was placed on unpaid sick leave as a result of having exhausted his paid sick leave.
4. On June 20, 2008, Officer Karr called in to return to duty and immediately began his previously scheduled paid vacation which lasted through June 29, 2008.
5. On June 30, 2008, Officer Karr called in sick with a migraine headache and was again placed on unpaid sick leave.
6. On July 15, 20 and 22, 2008, Sergeant Alberto Riestra called Officer Karr's residence and left messages to return his calls. Officer Karr did not return these calls.
7. On July 23, 2008, Administrative Lieutenant Mercedes Cowan called Officer Karr's residence and left a message to return her call. Officer Karr did not return this call.
8. On July 23, 2008, Sergeant Riestra and Sergeant Patrick O'Donnell visited Officer Karr's residence and collected his duty items as required for an officer who is on an unpaid leave. During this visit, Officer Karr told Sergeant Riestra that he would return to work on July 27, 2008. Then, Sergeant Riestra ordered Officer Karr to notify his shift commander of his return to work date. Sergeant Riestra was an officer of higher rank than Officer Karr.
9. On July 25, 2008, Lieutenant Cowan spoke to Officer Karr by telephone. Lieutenant Cowan ordered Officer Karr to report for work on July 26, 2008, and she advised him that failure to do so would subject him to absent without leave (AWOL) charges. Lieutenant Cowan also ordered Officer Karr to provide medical substantiation for his absences from June 12 through July 25, 2008, directly to her within one week. Lieutenant Cowan was an officer of higher rank than Officer Karr.

10. Officer Karr followed the Department's procedures for providing notice of his absence from June 12 through July 25, 2008.
11. Officer Karr did not report for work on July 26, 2008, as ordered by Lieutenant Cowan.
12. Officer Karr did not report for work on July 27, 2008, as he promised Sergeant Riestra, and he did not notify his shift commander of his return to work date as ordered by Sergeant Riestra.
13. Officer Karr did not provide any medical substantiation of his absence within one week as ordered by Lieutenant Cowan.<sup>1</sup>
14. On August 5, 2008, Lieutenant Cowan called Officer Karr's residence and left a message requesting a return call. Officer Karr did not return her call.
15. On August 25, 2008, Officer Karr had his first appointment with James Gerber, a licensed clinical social worker (LCSW). Mr. Gerber advised Officer Karr to return to work and continued on-going counseling sessions with him.
16. On August 25, 2008, Acting Captain of Police Kurt Leibold, instructed the Professional Performance Division to investigate allegations against Officer Karr related to his absence from work. Sergeant Eric Pfeiffer conducted the investigation.
17. During his entire period of absence from June 12 through August 26, 2008, Officer Karr was aware of MPD Rule 4, Section 2/030.00 and Rule 5, Section 2/500.55.
18. On August 27, 2008, Officer Karr returned to work and provided a note from James Gerber indicating that he could perform limited duty. As a result, Officer Karr was placed on limited duty.
19. On September 4, 2008, Officer Karr provided the Department with a letter from James Gerber stating the he began suffering from stress-related symptoms in June of 2008.

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<sup>1</sup> The Commission finds that Officer Karr failed to provide *any* medical substantiation within one week of July 25, 2008, as ordered by Lieutenant Cowan. Therefore, it is not necessary for the Commission to address the sufficiency of any medical documentation that Officer Karr provided to the Department after the deadline ordered by Lieutenant Cowan.

20. On October 14, 2008, Sergeant Pfeiffer submitted a written report of his investigation to Acting Captain Kurt Leibold. The investigation included reviewing reports by Sergeant Riestra and Lieutenant Cowan, reviewing payroll records, reviewing two notes from James Gerber and interviewing Officer Karr. Sergeant Pfeiffer's report provided information regarding Officer Karr's absence from June 12 through August 26, 2008, and his failure to obey orders from Sergeant Riestra and Lieutenant Cowan.
21. Officer Karr worked as scheduled from August 27, 2008, until November 26, 2008.
22. On November 26, 2008, Chief of Police Edward Flynn issued MPD Personnel Order No. 2008-202. This order suspended Officer Karr for thirty days for failing to obey a lawful order from an officer of higher rank in violation of MPD Rule 4, Section 2/030.00. This order also discharged Officer Karr for being absent without leave in violation of MPD Rule 5, Section 2/500.55. Prior to this, Officer Karr had not been disciplined for any rule violations.
23. On October 30, 2008, the Chief of Police issued a thirty-day suspension against a different member of the Department for violating MPD Rule 4, Section 2/030.00 by failing to report to work as ordered by a supervisor. The Chief of Police also discharged that member of the Department for violating MPD Rule 5, Section 2/500.55 for being absent without leave for ten days after failing to report to work as ordered by a supervisor.
24. On February 17, 2006, the then-Chief of Police discharged a different member of the Department for violating MPD Rule 5, Section 2/500.55 for being absent without leave for 266.35 hours.

#### **APPLICABLE LEGAL STANDARDS**

The burden of proof is on the Chief of Police to show by a preponderance of the evidence that Officer Karr violated Milwaukee Police Department rules as alleged in the complaint and that a preponderance of the evidence supports a finding of just cause as defined in Wis. Stats. §62.50(17)(b).

## CONCLUSIONS OF LAW

**As to Count 1, alleging that Officer Ryan Karr failed to obey a lawful order from an officer of higher rank in violation of MPD Rule 4, Section 2/030.00:**

1. Officer Ryan Karr failed to obey the lawful order given to him by higher-ranking Sergeant Alberto Riestra on July 23, 2008. Specifically, he failed to notify his shift commander that he intended to return to work on July 27, 2008.
2. Officer Karr also failed to obey the lawful orders given to him by higher-ranking Administrative Lieutenant Mercedes Cowan on July 25, 2008. Specifically, he failed to report to work on July 26, 2008, and he failed to provide any medical substantiation of his absences within one week of July 25, 2008.
3. Officer Karr was aware of MPD Rule 4, Section 2/030.00 requiring members of the Milwaukee Police Department to obey all lawful orders given to them by any officer of higher rank. Therefore, he could reasonably be expected to know that violating this rule would probably result in disciplinary action.
4. MPD Rule 4, Section 2/030.00 is reasonable because it ensures orderly command within the Department necessary for effectively serving the community.
5. Prior to issuing this charge against Officer Karr, the Chief of Police, or those acting on his behalf, made a reasonable, fair and objective effort to determine whether or not Officer Karr did in fact violate MPD Rule 4, Section 2/030.00. Specifically, Sergeant Eric Pfeiffer's investigation was reasonable, fair and objective because it took in consideration the accounts of Officer Karr, Sergeant Riestra and Lieutenant Cowan, payroll records, and two notes from James Gerber.

6. As a result of Sergeant Pfeiffer's investigation, the Chief of Police, or those acting on his behalf, discovered substantial evidence that Officer Karr violated MPD Rule 4, Section 2/030.00 as alleged in the complaint. Specifically, the investigation discovered credible evidence that Officer Karr failed to obey orders from Sergeant Riestra and Lieutenant Cowan.
7. The Chief of Police applied MPD Rule 4, Section 2/030.00 fairly and without discrimination against Officer Karr. Specifically, on October 30, 2008, the Chief applied this rule to another Department member for failing to report to work as ordered by a higher-ranking officer, also resulting in a thirty-day suspension. There is no evidence to indicate that the Chief's application of this rule to Officer Karr lacked fairness or involved discrimination.
8. A thirty-day suspension reasonably relates to the seriousness of Officer Karr's violation because it is a substantial discipline for a substantial rule violation. A thirty-day suspension also reasonably relates to Officer Karr's record of service with the Department because, even though this is his first discipline for a rule violation, this is a very serious rule violation. Failure to obey orders from higher-ranking officers undermines the orderly command of the Department and, ultimately, its ability to effectively serve the community.

**As to Count 2, alleging that Police Officer Ryan Karr was absent without leave in violation of MPD Rule 5, Section 2/500.55 for forty-six days:**

1. Officer Karr followed the Department's procedures for providing notice of his absence from June 12 through July 25, 2008. However, Officer Karr failed to obey Lieutenant Cowan's order to return to work on July 26, 2008, and as of that date, he was absent without leave until he returned to work on August 27, 2008. Therefore, Officer Karr was absent without leave in violation of MPD Rule 5, Section 2/500.55 from July 26 through August 26, 2008.

2. Officer Karr was aware of MPD Rule 5, Section 2/500.55 stating, in part, that an unexplained absence without leave for three days shall be considered grounds for discharge. Therefore, he could reasonably be expected to know that his failure to report to work on July 26, 2008, as ordered by a higher-ranking officer, would be considered an unexplained absence without leave and would probably result in disciplinary action, including discharge.
3. MPD Rule 5, Section 2/500.55 is reasonable because it ensures that the Department will have the workforce necessary to effectively serve the community every shift of every day. Any Department member's unexplained absence without leave diminishes service to the public and increases the burden on other Department members.
4. Prior to issuing this charge against Officer Karr, the Chief of Police, or those acting on his behalf, made a reasonable, fair and objective effort to determine whether or not Officer Karr did in fact violate MPD Rule 5, Section 2/500.55. Specifically, Sergeant Eric Pfeiffer's investigation was reasonable, fair and objective because it took in consideration the accounts of Officer Karr, Sergeant Riestra and Lieutenant Cowan, payroll records, and two notes from James Gerber.
5. As a result of Sergeant Pfeiffer's investigation, the Chief of Police, or those acting on his behalf, discovered substantial evidence that Officer Karr violated MPD Rule 5, Section 2/500.55 as alleged in the complaint. Specifically, the investigation discovered credible evidence that Officer Karr failed to report for work on July 26, 2008, as ordered by Lieutenant Cowan, and that he was absent without leave until he returned to work on August 27, 2008.
6. The Chief of Police applied MPD Rule 5, Section 2/500.55 fairly and without discrimination against Officer Karr. Specifically, on February 17, 2006, the then-Chief of Police discharged a different member of the Department for violating MPD Rule 5, Section 2/500.55 for being absent without leave for 266.35 hours. Additionally, on October 30, 2008, the Chief of Police discharged a different member of the Department for

violation MPD Rule 5, Section 2/500.55 for being absent without leave for ten days after failing to report to work as ordered by a supervisor. There is no evidence to indicate that the Chief's application of this rule to Officer Karr lacked fairness or involved discrimination.

7. Officer Karr's discharge reasonably relates to the seriousness of this rule violation because it is severe discipline for a severe rule violation. Officer Karr's one-month absence without leave, despite being ordered to report for work, showed a blatant disregard for the Department, its rules and the community it serves. Officer Karr's discharge also reasonably relates to his record of service with the Department because this now his second discipline for a rule violation and it is a very serious rule violation. Given that Officer Karr was absent without leave for one month after a direct order from a higher-ranking officer to report for work, any discipline less than discharge would depreciate the seriousness of his conduct.

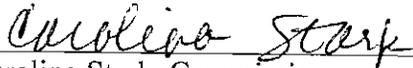
### DECISION

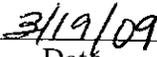
**As to Count 1:** We therefore find that Police Officer Ryan Karr violated MPD Rule 4, Section 2/030.00, and we hereby order that Officer Karr be suspended without pay for thirty working days.

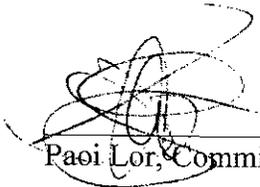
**As to Count 2:** We further find that Police Officer Ryan Karr violated MPD Rule 5, Section 2/500.55, and we hereby order that Officer Karr be discharged from the Milwaukee Police Department.

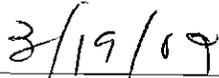
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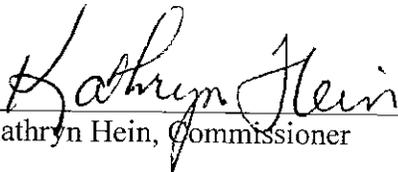
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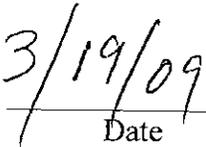
  
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Carolina Stark, Commissioner

  
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Kathryn Hein, Commissioner

  
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