

**PROCEEDINGS UNDER THE MINNESOTA
VETERANS PREFERENCE ACT**

ADAM ROLSHOUSE,

Employee/Veteran

CITY OF BROOKLYN PARK,

Employer.

**FINDINGS OF FACT,
CONCLUSIONS AND DECISION
OF HEARING OFFICER**

Pursuant to Minn. Stat. § 197.46

BMS Case No. 10VP1227

Hearing Officer:

Andrea Mitau Kircher

Date and Place of Hearing:

June 30 and July 2, 2010

Date Record Closed:

July 10, 2010

Date of Award:

August 8, 2010

APPEARANCES

For the Employee, Adam Rolshouse:

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For the Employer:

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INTRODUCTION

Brooklyn Park Police Officer Adam Rolshouse, a veteran, was terminated from employment by the City of Brooklyn Park (“City” or “Employer”) because the City’s psychologist, Dr. Michael Campion, found that Officer Rolshouse was unfit for duty as a police officer. Officer Rolshouse is covered by a collective bargaining agreement (“Contract”) between the City and the Brooklyn Park Police Federation (“Union”). As a veteran, Officer Rolshouse

timely requested a hearing pursuant to Minn. Stat. §197.46. The Union also timely grieved Officer Rolshouse' discharge under the Contract. By an agreement executed in April 2010, the City, the Union, and Officer Rolshouse agreed to proceed with one evidentiary hearing conducted pursuant to the Veterans' Preference Act, and the Union and Officer Rolshouse waived any right to a hearing based on the Contract grievance process. The parties agreed to be bound by the decision of one hearing officer and selected the undersigned to conduct the evidentiary hearing pursuant to Minn. Stat. § 197.46.

On June 30 and continuing July 2, 2010, the Hearing Officer convened a hearing at the offices of the Minnesota Bureau of Mediation Services, St. Paul, Minnesota. During the hearing, exhibits were accepted into the record; witnesses were sworn, and testimony was presented subject to cross-examination. The parties agreed to file briefs simultaneously by U.S. mail, and the record closed July 10 when the briefs were received.

STANDARD OF REVIEW

The Veteran's Preference Act provides that a covered veteran may be discharged from public employment only for "incompetency or misconduct". Minn. Stat. § 197.46. In a Veteran's Preference hearing the Hearing Officer is to determine whether the employer has met its burden of establishing by substantial evidence that it acted reasonably when it discharged the veteran. The Minnesota Supreme Court has interpreted this standard as equivalent to the "just cause" standard, which governs the discharge of public employees under the Public Employment Labor Relations Act, Minn. Stat. Ch. 179A. *See, AFSCME Council 96 v. Arrowhead Regional Corrections Board*, 356 N.W. 2d 295, 297-98 (Minn. 1984).

An employer may terminate an employee for "just cause" in two types of situations: a single incident of very serious misconduct or as the final step in the progressive discipline

process.¹ Generally, just cause requires that the employer act reasonably and in compliance with due process in its handling of discharge procedure; that is, the employer's actions must be thorough, timely, consistent, non-discriminatory, and in accordance with its own policies. There must be a full and fair investigation into the misconduct. Similar to the authority of an arbitrator under the PELRA, a Hearing Officer under the Veteran's Preference Act has authority to modify the disciplinary sanction if there are extenuating circumstances. *See, In the Matter of Schrader*, 394 N.W. 2d 796 (Minn. 1986).

ISSUE

Was Officer Rolshouse discharged for just cause? If not, what is the appropriate remedy?

FACTS

A. Background

1. The City of Brooklyn Park hired Police Officer Adam Rolshouse in January or February 2007, when he was 23 years old. He had earned an A.A.S. degree in law enforcement prior to hire and then, during his employment, he earned a B.A. degree in law enforcement.²
2. Officer Rolshouse served in the Army National Guard and was released from active duty in 2004. While on active duty, he served in the military police for 2 years and 6 months including 9 months active duty in Bosnia.³ He was honorably discharged from the Army National Guard, and there is no record that he had behavior problems or a personality disorder when he was in the service.⁴

¹ See, Discipline and Discharge in Arbitration, Norman Brand, ed., ABA Section of Labor and Employment Law, BNA, 1999, at 68. Citations omitted.

² Testimony, Rolshouse

³ Employer's Exhibit ("Er.Ex.") 2, Background summary and Certificate of Discharge from Active Duty.

⁴ *Id.*

3. Prior to hire, the City's investigator, Marni Strauss, reviewed Officer Rolshouse' personal, educational, military, employment, volunteer activities and financial background. She interviewed references, and neighborhood and family members. She wrote a report dated December 5, 2006 concluding there was no information to disqualify Rolshouse from being hired. She recorded that he was highly recommended by the people she interviewed, including other law enforcement officers with whom he was acquainted.⁵
4. Prior to hire, Larry Thompson, a licensed psychologist for the City, conducted a psychological appraisal of Mr. Rolshouse, including various written tests and a personal interview. Mr. Thompson stated in his summary that Mr. Rolshouse "presents no apparent clinical syndromes or disorders at the present time." Mr. Thompson prepared a report for the City dated December 28, 2006, finding Mr. Rolshouse to be a "relatively good match for this position."⁶

B. Conduct as a Police Officer

1. Upon completing his probationary period, Officer Rolshouse' supervisor completed a positive written performance review dated February 13, 2008. Officer Rolshouse was perceived as an employee who "meets expectations". One incident was reported in which Officer Rolshouse "exhibited little patience or tact in dealing with a suspect." The City did not undertake any remedial action or further training based on this data.⁷
2. A year later, on February 19, 2009, a second performance evaluation was completed. Overall, Officer Rolshouse was seen as an employee who "Exceeds expectations". There

⁵ Er. Ex. 2.

⁶ Er. Ex. 3.

⁷ Er. Ex. 4, Performance Review.

- were no complaints of unnecessary force reported during the rating period. The reviewer found him eager, hardworking, timely and responsible.⁸
3. One negative comment appears in the area of “Relations with Citizens and Community”. The reviewer notes, “I have observed Officer Rolshouse get excited with suspects...Officer Rolshouse appears to be aware of this behavior and is determined to improve in this area.”⁹ There is no record that the City made any effort to counsel him or assist him in this effort.
 4. Just before the date of the second performance review, on February 11, 2009, Deputy Chief (then Captain) Craig Enevoldsen, received information that Officer Rolshouse had been involved in an incident where he allegedly used excessive use force against a detainee in the detention center.¹⁰ Deputy Chief Enevoldsen conducted a delayed investigation of this incident and then four other incidents involving Officer Rolshouse that occurred between February and August 2009. The incidents had been filmed on police equipment and a DVD was prepared from that data.¹¹
 5. On September 30, 2009, seven months after the first incident, Deputy Chief Enevoldsen issued a report of his investigations. The investigation and report concluded that Officer Rolshouse had used excessive force with the uncooperative female detainee in the first incident.¹²
 6. The female detainee had been arrested on a DUI, and Officer Rolshouse, unable to gain her cooperation after fruitless conversation and directions, grabbed her by the arm and

⁸ Er. Ex. 4, Performance Evaluation.

⁹ Er. Ex. 4, Performance Review.

¹⁰ Er. Ex. 8, Investigative Findings and Recommendation involving Officer Rolshouse.

¹¹ Er. Ex. 6 and Testimony, Enevoldsen. The DVD was received as evidence at the hearing.

¹² *Id.*

- spun her around. She fell and broke her wrist. Video shows Rolshouse dragging the intoxicated woman on the floor, down the hallway by her arm toward a restroom.¹³
7. After reviewing the incident on the DVD at the hearing for the first time, Officer Rolshouse admitted he had been impatient or frustrated with the detainee, but denied he had been angry with her.¹⁴
 8. Of the other four incidents discussed in Deputy Chief Enevoldsen's investigation and report, one resulted in a finding that Officer Rolshouse had used unreasonable force, and the others involved a variety of discourteous treatment and misconduct toward the public.¹⁵
 9. Officer Rolshouse was not counseled about the February incident until August 2009.¹⁶
 10. A panel of three captains, including then Captain Enevoldsen, looked at the charges, Enevoldsen's investigations and report. They decided that the appropriate penalty for the five incidents was a three-day suspension and a "Work Plan" to correct Officer Rolshouse' behavior, subjecting him to strict oversight for ninety days, and requiring him to undergo further training.¹⁷
 11. Chief Deputy Enevoldsen did not believe that Officer Rolshouse was a danger to the community. If he had believed otherwise, he would have discharged him.¹⁸
 12. The Union and Officer Rolshouse agree that the three-day suspension and the work plan issued October 21, 2009 were reasonable and did not file a grievance.

¹³ Er. Ex. 6, DVD composite.

¹⁴ Testimony, Rolshouse.

¹⁵ Er. Ex. 8.

¹⁶ Rolshouse testified that it was not brought to his attention until August. He first saw the video at the hearing.

¹⁷ Er. Ex. 6, 8 and 9.

¹⁸ Testimony, Deputy Chief Enevoldsen.

13. Officer Rolshouse testified that when he saw the DVD at the hearing he was embarrassed by his behavior and thought it was not like him. At the time of the incidents on the DVD, things were going on in his personal life that caused him a great deal of stress. He was working full time, going to school, and his girlfriend had told him that she was pregnant, and he was the father of the baby. It later developed that he was not the father of the child.¹⁹

C. Discharge

1. The decision of the internal decision-making board to suspend Officer Rolshouse and impose tighter supervision and training as part of a “work plan” was not implemented. Instead, on October 21, 2009, the same day the suspension and work plan were issued to Officer Rolshouse, the Police Department placed him on leave and ordered that he undergo a fitness for duty examination.²⁰
2. The City did not present any written policy or guidelines setting out circumstances under which the police chief should send a peace officer to a psychologist for a fitness for duty exam.
3. The Police Department ordered the fitness for duty examination because Officer Rolshouse’ “course of behavior cause[d] concern”. Chief Davis thought the most prudent thing to do was to refer Officer Rolshouse to the psychologist consultant to determine whether Rolshouse’ personality made him “unfit for duty”.²¹ Based on five incidents in a relatively short period of time, Chief Davis believed he should look further into a pattern

¹⁹ Testimony, Rolshouse.

²⁰ Testimony, Chief Davis.

²¹ *Id.* “Unfit for duty” is explained as part of Dr. Campion’s report. He states that Officer Rolshouse was unfit for duty because he was suffering from an identifiable psychological condition that precludes him from consistently performing the essential functions of his job. Er. Ex. 10, p.7.

of behavior indicating that Officer Rolshouse tended to overreact to challenges to his authority.²²

4. On November 2, 2009, Dr. Michael Campion, a qualified psychologist hired by the City, conducted a psychological examination of Officer Rolshouse. The examination included an interview and a battery of psychological tests. Dr. Campion also viewed the DVD of the five incidents prior to conducting the examination. He prepared a written report for the Chief concluding that Officer Rolshouse was psychologically unfit to continue to work as a police officer.²³ Dr. Campion opined at the hearing that Officer Rolshouse had a personality disorder. He did not propose any remedial plans because he believed that Officer Rolshouse had very limited self-awareness, so that he would not be able to correct his own behavior.²⁴
5. Personality Disorders begin in adolescence or early adulthood.²⁵
6. On November 13, 2009 another qualified psychologist, Dr. Michael Keller, hired by the Union, interviewed Officer Rolshouse and conducted the same battery of tests. He also viewed the DVD prior to testing and interviewing Officer Rolshouse.²⁶ His test results were very similar to those reported by Dr. Campion.²⁷ Dr. Keller concluded that the results did not suggest that Officer Rolshouse was unfit for duty on a psychological basis, and that Dr. Campion's opinion was not supported by sufficient evidence.²⁸ Dr. Keller found no evidence of a personality disorder.²⁹

²² Testimony, Deputy Chief Enevoldsen.

²³ Er. Ex. 10,

²⁴ Testimony, Campion

²⁵ Testimony, Dr. Keller and Dr. Campion

²⁶ Testimony, Keller.

²⁷ Testimony, Keller and Union Ex. 2.

²⁸ *Id.*

²⁹ Union Exhibit 2 and Testimony, Keller.

7. Narcissistic personality traits (as distinguished from personality disorders) are common among police officers.³⁰
8. Dr. Keller, who had once been a police officer himself, concluded that Officer Rolshouse behavior was not so unusual for a young police officer who lacked experience and wisdom to draw on in stressful policing situations. He believed Officer Rolshouse needed to learn coping strategies for the workplace, and would benefit from counseling about how to handle his personal difficulties in a more adaptive way.³¹
9. On December 16, 2009, after reviewing both psychologists' reports, Chief Davis recommended to the City Manager that Officer Adam Rolshouse be discharged because he was psychologically unfit to continue his employment as a police officer and "unable to consistently perform the essential functions" required.³² Chief Davis' recommendation was based on Dr. Campion's findings.
10. At that time, Officer Rolshouse had been on street patrol for approximately 18 months.³³
11. By a letter dated January 11, 2010, James Verbrugge, City Manager, followed the Chief's recommendation.³⁴

MEMORANDUM

The essence of this dispute is not whether Officer Rolshouse committed misconduct. He agrees that he did, and has accepted the three-day suspension and 90-day work plan, which were assessed against him but never imposed. The crux of the matter is whether the City should attempt to correct his behavior through disciplinary actions and further training or whether it can

³⁰ *Id.*

³¹ Testimony, Keller

³² Er. Ex. 15., Testimony, Davis

³³ Testimony, City's psychologist.

³⁴ ER. Ex. 16.

summarily terminate his employment because Dr. Campion deemed him psychologically incapable of performing his duties as a police officer.

Even before examining the conclusions of the City's psychologist to see if they were based on substantial evidence, I find discrepancies between the generally accepted just cause expectations and the City's actions. It is an axiom of labor law that an employer may only terminate an employee for "just cause" in two types of situations: a single incident of very serious misconduct or as the final step in the progressive discipline process. The facts recited above do not meet these standards.

None of the incidents investigated was deemed to be "very serious misconduct" requiring immediate discharge. Months elapsed after the first and arguably most serious incident³⁵ before an investigation was completed and a sanction proposed.³⁶ The three captains who eventually reviewed the investigation and report determined that the five incidents together did not rise to the level of "very serious misconduct" requiring discharge. They proposed a 3-day suspension and retraining instead.

The other possible standard that an employer must meet if its action is to withstand just cause scrutiny is that an employee may be discharged for just cause only after the employer has tried and failed to change errant conduct through progressive discipline. The City did not employ progressive discipline.

A fitness for duty exam ("FFDE") is not intended as a substitute for disciplinary action. For example, Employer's Exhibit 13, the Fitness for Duty Evaluation Guidelines of the

³⁵ Incident of February 2009, where Officer Rolshouse became angry with an inebriated, uncooperative woman he was booking, grabbed her arm, and spun her around. She fell, breaking her wrist, and Officer Rolshouse, who was not aware of this injury until later, dragged her down the hallway on her back.

³⁶ Deputy Chief Enevoldsen on cross-examination admitted that he did not consider Officer Rolshouse a danger to the community, or he would have recommended discharge.

International Association of Chiefs of Police, adopted by the IACP Police Psychological Services Section, sets out a norm for law enforcement agencies that use FFD examinations.³⁷

The Guidelines state in pertinent part:

An FFDE is not a substitute for supervision or a mode of discipline. When possible, agencies should be encouraged to develop comprehensive FFDE policies that define such matters as conditions leading to referral. Such a process encourages including adequate documentation of problematic behaviors, attempts to remediate (or reasons why remediation is inappropriate), and a clear, job-related question regarding the officer's psychological suitability. Usually a written referral from the agency to the evaluator is desirable. This document could identify the reason for the referral, and might detail the agency's attempts, if any, to remediate the problem (e.g., training, tailored supervision, discipline, mentoring, reassignment and/or referral to EAP services), or why such interventions were deemed inappropriate (e.g., the precipitating behavior was so egregious or the need so immediate).³⁸

These guidelines highlight the expectation that the employer is to attempt to remediate the employee's misconduct by "training, tailored supervision, discipline, mentoring, reassignment and/or referral to EAP services." There was no evidence that any of these efforts were tried and failed; nor did the City explain in writing to its psychologist why it did not employ remedial measures. Patterns of inappropriate conduct, such as the pattern of conduct identified by Chief Davis, may be extinguished by any or all of the methods suggested in the Guidelines, but the City did not attempt any of them. I find no evidence that the misconduct was intrinsically so immediate or egregious, in the words of the Guidelines, that attempts at remediation were impossible. Based on the findings of fact set out above, directing Officer Rolshouse to attend a fitness for duty examination instead of attempting first to remediate his conduct violates the due process element of just cause

Chief Davis testified that he recommended discharge because Dr. Campion found that Officer Rolshouse was not fit for duty. Dr. Campion stated at the hearing that Officer Rolshouse

³⁷ Dr. Campion testified that he had worked on updating these Guidelines for the Association.

³⁸ Er. Ex. 13.

suffered from Narcissistic Personality Disorder and is unable to consistently perform his duties as a patrol officer. An important question is whether there is sufficient data to confirm this diagnosis and the subsequent discharge based upon it. Weighing against this diagnosis are two significant factors. First, a personality disorder is a condition that appears during adolescence and early adulthood. Neither Officer Rolshouse work history, military service nor educational background demonstrates previous difficulties that might be expected from a person with this disorder. Second, of the three psychologists who examined Officer Rolshouse within three years prior to the discharge, only one detected that Officer Rolshouse suffered from Narcissistic Personality Disorder. Neither the psychologist who conducted the pre-hiring FFDE nor Dr. Keller replicated Dr. Campion's conclusions.

Within the same month, both Dr. Campion and Dr. Keller used the same personality assessment tools. They agreed that the Minnesota Multiphasic Personality Inventory ("MMPI") is the "gold standard" for fitness for duty evaluations, and both administered this test to Officer Rolshouse. The results of both examinations were very similar and "unremarkable". According to Dr. Campion, the MMPI "produced a valid profile without remarkable abnormal behavior."³⁹

Yet, Dr. Campion concluded that Officer Rolshouse suffered from a serious personality disorder. These findings were based not on the MMPI, but on three main factors: 1) Dr. Campion's extensive experience testing peace officers; 2) the DVD which showcased incidents where Officer Rolshouse appeared angry and unable to deal calmly with members of the public who questioned his authority; and 3) Dr. Campion's interpretation of the results of the Millon Clinical Multiaxial Inventory – III, another assessment tool administered by both psychologists. As to the reliability of the Millon Inventory in diagnosing a narcissistic personality disorder, Dr. Campion conceded on cross-examination that the Millon tends to overestimate the breadth of

³⁹ ER. Ex. 10, p.5.

psychopathology. He admitted that there is more than one way a clinician may interpret findings on the Millon, and he chose, he said, to use “the dark side” that described some pathology, based on what he knew about Officer Rolshouse’ actions.⁴⁰ He agreed that the Millon should not be used for a diagnosis standing alone, but suggested that his conclusion is confirmed by the “excessive” extroverted tendency he noted on the MMPI.⁴¹ Dr. Keller, on the other hand, found the results of the Millon Inventory generally unremarkable as well as the MMPI. Overall, he stated in his report, “the assessment suggests that the Examinee is seen as highly sociable and gregarious, as well as tending to adhere to the expectation of authority...At the same time, there is an indication that the Examinee has difficulty, perhaps some fears of expressing negative emotions and likelihood to deny deeper personal concerns.”⁴²

In his report, Dr. Keller concluded that there was no significant evidence of negative personality traits and features associated with Narcissistic Personality Disorder. He did not detect any other clinical diagnoses or any types of personality disorders. Rather, he found that Officer Rolshouse was psychologically fit to return to duty as a police officer. He recommended that Officer Rolshouse enter into a period of counseling to address his “tendency to deny personal difficulties” and to assist him in learning more skills to cope with managing personal stress.⁴³ Officer Rolshouse testified that he has begun to do so.

Dr. Keller also testified that diagnosis of a personality disorder is commonly based on the Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM-IV). This manual defines narcissistic personality disorder as being marked by a pervasive pattern of grandiosity, need for admiration, and lack of empathy, as indicated by *five or more* of the following traits:

⁴⁰ Testimony, Campion.

⁴¹ Dr. Keller stated that the extroversion score was not out of the normal range.

⁴² Union Exhibit 2, Independent Psychological Evaluation, Dr. Michael Keller.

⁴³ *Id.*

- Grandiose sense of self-importance;
- Preoccupation with fantasies of unlimited success, power, brilliance, beauty, or ideal love;
- Belief that s/he is “special” and unique and can only be understood by, or should associate with, other special or high-status people or institutions;
- Requires excessive admiration;
- Has a sense of entitlement, *i.e.*, unreasonable expectations of especially favorable treatment or automatic compliance with his or her expectations;
- Is interpersonally exploitive; *i.e.*, takes advantage of others to achieve his or her own ends;
- Lacks empathy; is unwilling to recognize or identify with the feelings and needs of others;
- Is often envious of others or believes that others are envious of him or her;
- Shows arrogant, haughty behaviors or attitudes.⁴⁴

Dr. Campion did not identify five or more of these traits in either his report or in his testimony.⁴⁵

Further, Dr. Campion and Dr. Keller noted that narcissistic traits (as distinguished from disorders) are very common among police officers. Based on the above factors, I conclude that Dr. Campion’s diagnosis of narcissistic personality disorder is not supported by substantial evidence. Even when relatively objective test results are obtained, interpreting these results is more of an art than a science, as demonstrated by the conclusions drawn by two competent, experienced psychologists.

The Employer has the burden of proving that a discharge is for just cause. That burden is especially important where a person’s chosen profession is at stake. I share the City’s concern that police officers must provide public safety for all its citizens in a professional manner; that its officers must handle conflict using only the amount of physical force necessary and they must be capable of defusing emotionally charged situations. The City cannot continue to employ police officers who are unwilling or unable to meet reasonable standards. Nonetheless, I am not

⁴⁴ Testimony, Dr. Keller.

⁴⁵ *See*, Er. Ex. 10, pp. 5-6.

persuaded that the City met its burden of proof that Officer Rolshouse was unable or unwilling to meet those standards due to psychological pathology.

CONCLUSIONS

1. The undersigned hearing officer has authority to consider and decide this matter pursuant to Minn. Stat. Sec. 197.46 and the agreement of the parties dated April 2010. (*See, Introduction.*)
2. The parties have met the procedural and notice requirements of Minn. Stat. Sec. 197.46 and the Contract.
3. The City's discharge does not meet just cause requirements because it violates due process in three ways: a) It did not act promptly to investigate and attempt to deal with Officer Rolshouse' use of excessive force in the first incident; b) The City does not appear to have written guidelines governing the circumstances when the police department may order a psychological examination of an employee during employment; and c) It did not attempt to remediate Officer Rolshouse' behavior through progressive discipline, retraining, mentoring, strict supervision, reassignment or referral to an employee assistance program before ordering him to attend a psychological fitness for duty examination.
4. Officer Rolshouse was not discharged for misconduct or incompetence, but solely because of the opinion of the City's psychologist.
5. The opinion of the City's psychologist that Officer Rolshouse' personality renders him unfit for duty as a police officer is not sufficiently supported by his test results or by an articulation of the five or more indicators required by the DSM-IV to diagnose

narcissistic personality disorder. Since his opinion lacks support, it cannot form a “reasonable basis” for termination.

6. Officer Rolshouse should be reinstated to his position as a police officer with the City.

The City should reinstate its interrupted disciplinary plan and make an effort to remediate his behavior.

Dated: August 8, 2010

Andrea Mitau Kircher
Hearing Officer