

**CIVIL SERVICE BOARD APPEAL HEARING  
EMPLOYEE: PHILIP THONEN  
FEBRUARY 11, 2010  
TIME: 2:00 P.M.**

The meeting was called to order by Chairman Griffin at 2:01 P.M..

**PRESENT:** Attorney Rob Jackson (City of Callaway); Attorneys Bill Warner and Tim Warner (CSB Attorneys); Vice-Chairman DiSanto, Members Mrs. Carla Farley, Mr. John "Andy" Anderson, Mr. Tommy Walls.

**ALSO PRESENT:** Rebecca Hughen (Court Reporter), Genette R. Bernal, CSB Secretary.

**APPEAL HEARING: EMPLOYEE PHILIP THONEN**

Chairman Griffin stated this is Mr. Philip Thonen's appeal of his demotion from the position of Lieutenant to Firefighter. Attorney Bill Warner stated all members of the Board are here which is a quorum and all members stated their names. Employee Philip Thonen introduced himself; Attorney Rob Jackson introduced Fire Chief Jack McKinney. Mr. Jackson then asked that witnesses be sequestered; Mr. Warner stated this is the usual procedure. Chairman Griffin requested that all witnesses step outside.

Chairman Griffin announced that statements that are not relevant to what we are here for today will not be addressed; we need to stick to the relevant facts in this case and only those. Attorney Jackson asked that all members of the Board reveal any ex parte communications. Mr. Warner explained to the Board what this meant and asked that Board members disclose any communications they have had with anyone regarding this case for the record. Chairman Griffin stated "the only time I spoke to Mr. Thonen was when he brought the certified letter to my house and I told him I couldn't discuss anything with him." Mr. Walls stated he also spoke to Mr. Thonen once on the phone and he told me what was going on, and that was it. All other members stated they had had no communications with Mr. Thonen.

Mr. Thonen's Opening Statements: Explained why some of his witnesses could not be present; they all could be here if there was a continuance. Mr. Jackson objected because their statements are not relevant to the action here; it is irrelevant information that could be prejudicial. Mr. Warner agreed they were not relevant to this particular case and asked that Mr. Brandow's letter be marked Exhibit 1 and Mr. Wilkinson's as Exhibit 2. Exhibit #3 (Mr. Thonen's evaluations) were admitted.

Attorney Rob Jackson stated that Firefighter Jake Keeney, who was a witness, was not able to be present because his grandmother passed away; then presented his opening statements. There were eight exhibits entered into evidence by Mr. Jackson for the City of Callaway.

Testimony was received from the following witnesses with each witness being sworn in as they were called to testify with Direct Examination, Cross Examination, Redirect Examination and Recross Examination by Mr. Jackson and Mr. Thonen; as well as questions for clarification from

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members of the Civil Service Board.

NOTE: A transcript of the proceedings was provided to the City of Callaway by Court Reporter Rebecca Hughen, Stewart & Shoman Reporting; and is on file in the City of Callaway City Clerk's Office.

**FOR THE CITY OF CALLAWAY:**

1. David Preston Joyner, Jr., Lieutenant with the Callaway Fire Department
2. Derek Cope, Firefighter with the Callaway Fire Department
3. Samantha Johnson, Engineer with the Callaway Fire Department

**FOR PHILIP THONEN:**

1. Daniel Schroeder, Engineer with the Callaway Fire Department
2. Alice Bennett, Director of Finance, City of Callaway

Chairman Griffin then asked Mr. Thonen if he would like to give any testimony. Mr. Thonen replied, "yes."

Mr. Thonen was sworn and presented additional testimony on his behalf.

Attorney Rob Jackson then stated he would like to Cross Examine Mr. Thonen; presented the City's exhibits, and did his cross examination.

Members of the Civil Service Board had several questions for Mr. Thonen regarding the evidence that had been presented.

Mr. Jackson then called Fire Chief Jack McKinney who was sworn with Direct Examination by Mr. Jackson and Cross Examination by Mr. Thonen.

Mr. Tim Warner then reviewed all Exhibits that were admitted by both parties.

Mr. Philip Thonen provided his closing statements stating he would point out three things:

1. When Jake damaged the truck, I wasn't there.
2. I have never told anybody in my life to get on a roof.
3. One air pack on one truck. I was told that truck was back in service.

Mr. Thonen stated: "I don't punish people who are doing a good job. It is hard for me to supervise with all the work I do at City Hall. It is all about credibility."

Mr. Jackson then provided his closing statements which included:

You have been told by Mr. Thonen: "I was told this happened, I wasn't there; I wasn't there at the time it happened; this is not my fault, it's not my fault." I don't think that's the kind of behavior that is expected of a fire lieutenant in the City of Callaway..his own words. You have heard that this was a difficult decision for the Chief; that "He's a good firefighter." The Chief promoted him because he thought he could be a good supervisor. You have heard

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from the firefighters that work for him that they have lost confidence in his ability to be a good supervisor. This doesn't mean he's a bad man, it doesn't mean he's not a nice guy; it just means that he shouldn't be supervising firefighters that are going in and putting their lives on the line every day.

Mr. Warner advised the Board it was time for them to begin their deliberations. Chairman Griffin asked if this could be done in private. Mr. Warner stated, "No, it is a public meeting" and read the applicable facts from the Civil Service Board Charter.

...4:50 p.m. Vice-Chairman DiSanto asked for a brief break...

...4:55 p.m. Reconvened...

The Civil Service Board began discussing/deliberating their opinions of the testimony and evidence they had received. Mr. Warner advised them they could not make "recommendations" on discipline. The following motions were made separately on the three violations charges:

# 1. Mr. Anderson made a motion that Mr. Thonen not be held accountable for the incident of not reporting the drug testing..or not having the individual go immediately for a drug testing. Second by Mr. Walls. Chairman Griffin, Vice-Chairman DiSanto and Mr. Anderson gave different "caveats" they would like for the City to amend in the standard operating procedure.

ROLL CALL VOTE: Mr. Anderson - yea

Mr. Walls - yea

Ms. Farley - yea

Vice Chairman DiSanto - yea

Chairman Griffin - yea

**Motion carried, 5-0.**

Mr. Jackson asked for a clarification of the motion. Mr. Tim Warner asked Mr Bill Warner to use the terminology specifically from the Charter so we're clear on the record. Mr. Bill Warner stated that as he understood the motion, the Board has determined that there was not competent, substantial evidence to support that the adverse employment action taken by the City Manager was made with cause and was, therefore, unwarranted, as to the first allegation regarding the drug screen.

#2. Chairman Griffin asked what would the second allegation be; do we have two or three? Mr. Bill Warner stated there are three; the second is according to the employee discipline record Mr. Thonen ordered a firefighter to find and place a ladder to access a roof that was on fire with the intention of placing the firefighter on the roof, potentially a dangerous situation, and a violation of numerous policies, and standard operation procedures and guidelines, including but not limited to the personnel policy of the city, the officer's responsibilities, SOP 23; the rules of engagement for structural firefighting, SOP 32; and the fire ground safety, SOP 33. Discussion followed by members of the CSB on this issue. Vice-Chairman DiSanto moved (with clarification provided by Mr. Warner) that there is not enough competent, substantial evidence to support that Mr. Thonen ordered the firefighter to find and place a ladder to access a roof that was on fire with the intention of placing a firefighter on the roof, a potential dangerous situation,

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in violation of numerous policies and standard operating procedures and guidelines of the City of Callaway. Second by Ms. Farley.

ROLL CALL VOTE: Vice-Chairman DiSanto - Yes

Ms. Farley - Yes

Mr. Walls - Yes

Mr. Anderson - Yes

Chairman Griffin - Yes

**Motion carried, 5-0.**

#3. Mr. Warner stated the third allegation to determine is whether there was competent, substantial evidence that he failed to ensure that all firefighting equipment was in-service upon shift change, in violation of the personnel policy manual of the city, the job description for the fire lieutenant, and the officer's responsibility, SOP 23. Discussion was held by members of the Board. Vice-Chairman DiSanto made a motion regarding violation 3 that Lieutenant Thonen failed to ensure that all firefighting equipment was in-service upon shift change, which was part of his duty and responsibility, and part of his job description. Second by Mr. Anderson. Mr. Bill Warner clarified that there was competent, substantial evidence to support this allegation. Vice-Chairman DiSanto and Chairman Griffin responded "Yes."

ROLL CALL VOTE: Vice-Chairman DiSanto- Yes

Mr. Anderson - Yes

Ms. Farley - Yes

Mr. Walls - Yes

Chairman Griffin - Yes

**Motion carried, 5-0.**

Mr. Bill Warner stated there are three separate bases; the Board has determined there was not competent, substantial evidence to support both number 1 and 2, however you have found there was competent substantial evidence to support number 3. It is his opinion the Board should make a recommendation to the City Manager as to what you feel is the appropriate, or what action the City Manager should take with regard to the situation based upon your findings. Ultimately it is the City Manager's decision to accept or reject your recommendation. Members of the Board discussed various recommendations to make to the City Manager.

Items #1 and #2: Mr. Anderson moved that the Committee recommend that the City Manager take no action against Mr. Thonen for Items 1 and 2. Second by Vice-Chairman DiSanto.

ROLL CALL VOTE: Mr. Anderson - Yes

Vice-Chairman DiSanto - Yes

Ms. Farley - Yes

Mr. Walls - No

Chairman Griffin - Yes

**Motion carried, 4-1.**

Item # 3. Mr. Anderson moved that the action was not warranted on #1 and #2 and that the City Manager please reconsider action on #3. Second by Vice-Chairman DiSanto.

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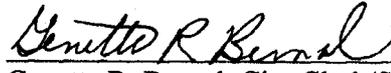
ROLL CALL VOTE: Mr. Anderson - Yes  
Vice-Chairman DiSanto - Yes  
Ms. Farley - Yes  
Mr. Walls - No  
Chairman Griffin - Yes  
**Motion carried, 4-1.**

Mr. Rob Jackson stated there is "no disrespect to the Board but I do need to go on the record that during the break I heard the Chairman trying to talk to another Board member."

Mr. Tim Warner reviewed the process on providing the written order as required in the Charter.

Chairman Griffin announced to the Secretary of the Board (Genette Bernal): "Genette, you have my resignation for this Board, to be effective immediately, and I close this meeting." Mr. Warner advised Mr. Griffin that the written recommendation to the City Manager would typically be signed by the Chair of the Board and if he is resigning immediately, does he give the recommendation to the Vice-Chair for his signature? Mr. Griffin said okay.

The meeting was adjourned at 6:15 p.m.

  
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Genette R. Bernal, City Clerk/Secretary to  
Civil Service Board