



Florida Department of
Law Enforcement

Gerald M. Bailey
Commissioner

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NOTICE OF DISMISSAL

DATE: October 7, 2008

TO:  Sandra Veiga, Government Analyst II, MROC

FROM:  Gerald M. Bailey, Commissioner

SUBJECT: Notice of Final Agency Action of Dismissal

I have considered Assistant Commissioner Ken Tucker's findings related to your September 29, 2008 Predetermination Conference. Based upon the findings in the Internal Investigation Report in Case Number EI-79-1370, as are specified below and included in the file, and in the September 9, 2008 Notice of Proposed Dismissal, which is herein incorporated by reference, it remains my decision to dismiss you from employment with the Department effective as of 5:00 p.m. on the day that you receive this memorandum.

The specific charges and the facts forming the basis for your dismissal are:

CHARGE #1: Rule 60L-36.005(3)(e), Florida Administrative Code (F.A.C.), entitled "Violation of Law or Agency Rules," to wit: violation of FDLE Policy 33.3[5], Values and Ethics, that reads "Each FDLE member, whether on or off duty, should avoid any conduct (whether in the context of business, financial or social relationships) that might undermine the public trust in the member or FDLE, be considered unethical, or create or cause the appearance of impropriety. Particular caution is required when dealing with any person, entity or any agency subject to the regulation of, or doing business with, FDLE;" and/or Rule 11I-1.011(2), F.A.C., entitled "Violation of Law or Rules," to wit: violation of FDLE Policy 33.3[5], Values and Ethics, that reads "Each FDLE member, whether on or off duty, should avoid any conduct (whether in the context of business, financial or social relationships) that might undermine the public trust in the member or FDLE, be considered unethical, or create or cause the appearance of impropriety. Particular caution is required when dealing with any person, entity or any agency subject to the regulation of, or doing business with, FDLE."

A review of the facts, circumstances, documentation, and sworn testimony in the investigation reveal that on different occasions in 2008 you made statements to personnel of the Miami Beach Police Department and the Miami-Dade Police Department about how you had preempted the testing of evidentiary DUI instruments (Intoxilyzer 8000 instruments), by intentionally turning off the power to such DUI instruments when it is apparent that the instrument was going to fail required tests and how by turning off the instrument that there would be no documentation of the attempted test.

It was determined that the statements attributed to you in regards to this investigation were well founded in testimony and evidence. The statements themselves reasonably created or caused the appearance of impropriety and could serve to undermine the public trust in you as the Department Inspector for such instruments and in the Florida Department of Law Enforcement.

CHARGE #2: Rule 60L-36.005(3)(f), Florida Administrative Code (F.A.C.), entitled "Conduct Unbecoming a Public Employee"; and/or Rule 11I-1.011(1), F.A.C., entitled "Unbecoming Conduct."

Your statements about the preemption of the testing of the Intoxilyzer 8000 instruments to members of the Miami Beach Police Department and the Miami-Dade Police Department prompted the Florida Department of Law Enforcement to draft and send a letter to the law enforcement agencies in Miami-Dade, Broward and Monroe Counties that use the Intoxilyzer 8000 instruments. The letter notified the agencies of a potential issue regarding the manner in which an FDLE Department Inspection had been conducted. The letter also authorized the agencies, if they desired, to duplicate or provide this FDLE letter to prosecutors for their evaluation. In addition, as a result of your actions and statements, the Miami-Dade PD Intoxilyzer instrument (#80-000883) had to be removed from "on-line status" and sent to an authorized repair facility for reevaluation with FDLE bearing the costs for the reevaluation.

Through your actions and statements you have brought discredit to the Florida Department of Law Enforcement and the State of Florida while also impairing the operation and efficiency of FDLE in its Breath Alcohol Testing Program.

CHARGE #3: Rule 60L-36.005(3)(e), Florida Administrative Code (F.A.C.), entitled "Violation of Law or Agency Rules," to wit: violation of Rule 11I-1.011[21], F.A.C., "Failure to Give Truthful or Requested Information During the Course of an Internal Investigation"; and/or Rule 11I-1.011[21], F.A.C., "Failure to Give Truthful or Requested Information During the Course of an Internal Investigation."

A review of the facts, circumstances, documentation, and sworn testimony in the investigation reveals that three independent witnesses from two different Miami-Dade County law enforcement agencies furnished credible evidence that you had told them how to avoid a failing Intoxilyzer 8000 test and/or how you had previously evaded a failing test on a tested instrument by turning it off prior to completion of the test. The statements that you gave during your internal investigation were determined to be inconsistent, evasive and/or not complete or realistic.

As a permanent Career Service employee, you are entitled to appeal your dismissal to the Public Employees Relations Commission (PERC), 4050 Esplanade Way, Tallahassee, Florida 32399-0950; telephone (850) 488-8641. To be timely, your appeal must be received by PERC no later than fourteen (14) calendar days after your receipt of the Notice of Final Agency Action. In the event you are covered by a collective bargaining agreement, as an alternative you may

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utilize your certified bargaining agreement unit grievance procedures under Section 447.401, Florida Statutes.

The information required by PERC for an appeal of your dismissal is: name, job title or classification, action you wish to appeal (dismissal), name of the employing agency (FDLE), whether you (1) contest that the agency had just cause to take this action; or (2) contest the severity of the discipline; your mailing address and telephone number (where you may be reached 8:00 a.m. to 5:00 p.m., Monday through Friday).

The PERC appeals coordinator will be glad to assist you in filing your appeal or answer any questions you may have regarding this appeal at (850) 488-8641.

Upon receipt of your appeal, the coordinator will send you a complete copy of the appeal regulations. A copy of your appeal will be sent to the agency as required. If the appeal is found to be proper, you will be advised, and the necessary arrangements for the appeal to be heard will be made. The Commission will then establish a date and place for the hearing and you and the agency will be notified accordingly.

cc: Executive Investigations
Human Resources
Finance and Accounting