

OHIO EMPLOYMENT LAW LETTER

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Barney Fife Revisited: Gunless Deputy Loses Job

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Due process requires that a government employee receive notice of the charges against him before he is discharged, and after he is discharged, he must have the opportunity to respond to the charges and evidence against him in a hearing. A recent case from the Sixth U.S. Circuit Court of Appeals (which covers Ohio) showed that a deputy sheriff who was discharged for charges resulting from domestic violence was given adequate predischarge and postdischarge hearings to satisfy the due process requirements – even though the only valid reason for upholding the firing was misconduct that occurred after the discharge decision.

Facts

On May 26, 1998, Timothy Morrison, a Summit County deputy sheriff, was accused of domestic abuse by his wife, who also obtained a civil protection order against him. The order prohibited him from possessing, using, carrying, or obtaining any deadly weapon. As a result, he was unable to satisfy the essential job requirement of carrying a gun, and the sheriff ultimately discharged him from the force.

A human relations officer for the sheriff's office initiated the discharge process on May 26 by informing Morrison that he would be placed on administrative leave immediately and instructing him to report to a predischarge hearing the following day. In an attempt to save his job, he asked a state court to dismiss the civil protection order.

At the predischarge hearing on May 27, a human relations officer explained that Morrison could be discharged as a result of the civil protection order and notified him of a predischarge conference the next day. At the predischarge conference, which was administered by a neutral lawyer from the county prosecutor's office, the deputy presented a copy of his motion to dismiss the civil protection order and asked to postpone the predischarge conference until a judge decided whether to dismiss the civil protection order.

The county denied Morrison's request. The civil protection order was still in effect and prevented him from carrying a gun despite his request for dismissal. Thus, the county discharged him on May 28.

Morrison challenged his discharge in a postdischarge arbitration under the collective bargaining agreement between the employees' union and the sheriff's office. After his discharge but before the arbitration, a judge dismissed the civil protection order. The county, however, didn't reconsider the discharge, and the arbitration remained scheduled.

Before the arbitration was held, Morrison was charged with additional criminal acts of domestic violence against his wife. He later made an agreement with the prosecutor and pleaded "no contest" to a reduced charge of disorderly conduct. That resulted in a conviction.

At the arbitration, the sheriff's office recognized that the civil protection order was dismissed but argued that Morrison's later conviction required his discharge under the office's "zero-tolerance policy" for domestic abuse. The arbitrator found that the original reason for the discharge was invalid because the civil protection order was dismissed. Nonetheless, the arbitrator ultimately found that the discharge was justified by the deputy's postdischarge misconduct.

Morrison sued in the U.S. District Court for the Northern District of Ohio and argued that his procedural due process rights were violated. The court found that he was given adequate due process and dismissed his claims. He then appealed to the Sixth Circuit.

Appeals Court's Decision

Government employees must be given due process, which means hearings designed to protect their interest in keeping their job, during a discharge. They are entitled to a pre-discharge hearing, which must include oral or written notice of the charges, and a postdischarge hearing, which must present the charges and evidence and give them the opportunity to respond.

Morrison was notified of the charges against him before he was discharged. After his discharge, the sheriff's office made allegations and presented evidence about his postdischarge conduct at the arbitration. He was given the opportunity to respond to the charges and evidence at the arbitration. According to the court, he received adequate due process. *Morrison v. Warren, et al.*, 2004 FED App. 0223P (6th Cir. July 13, 2004).

Bottom Line for Employers

This case had an interesting twist in that the employer won the arbitration based on misconduct that occurred after the discharge. As long as a discharge decision remains contested – or even open to contest – you should investigate and pursue misconduct allegations that either were unknown at the time of the discharge or occurred after it. If the additional misconduct would independently justify the discharge, you should notify the former employee of that in writing. When you are defending claims, you should never lightly pass on the offer of another arrow for your quiver.

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