COURT OF APPEALS BY: COC TERESITA R. MARIGOMEN, COMPLAINANT, VS. ENRIQUE E. MANABAT, JR., SECURITY GUARD I, COURT OF APPEALS, MANILA, RESPONDENT.

A.M. No. CA-11-24-P (formerly A.M. OCA I.P.I. No. 10-163-CA-P). November 16, 2011

Ponente: BRION, J.

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BRION, J.:

We resolve the present administrative complaint filed against Enrique E. Manabat, Jr. (respondent), Security Guard 1 (SG1) of the Court of Appeals (CA), Manila, for gross neglect of duty and conduct prejudicial to the best interest of the service by the accidental firing of his service pistol inside the CA guardhouse on June 8, 2009.

In an Investigation Report[1] dated June 15, 2009, Mr. Reynaldo V. Dianco, Chief of the CA Security Services Unit, informed Hon. Justice Normandie B. Pizarro, Chairperson of the CA Security and Safety Committee, that at around 8:00 a.m. of June 8, 2009, the respondent, who was inside the guardhouse, accidentally fired his service pistol, a 9mm FEG Hungary, while in the process of unloading it for turnover to SG1 Miguel Tamba, the guard on duty for the next shift. In the same report, Mr. Dianco recommended that the respondent be dismissed from the service for gross neglect of duty. The matter was forwarded to the CA Clerk of Court, Atty. Teresita R. Marigomen, for investigation.[2]

On June 22, 2009, the CA Clerk of Court filed a formal charge[3] against the respondent for gross neglect of duty and conduct prejudicial to the best interest of the service. The respondent was directed to file a written answer, under oath, within five (5) days from receipt thereof.

In his verified answer,[4] the respondent explained that the firing of his service pistol on June 8, 2009 was purely accidental, it was not done with evident bad faith, and it did not cause undue injury to any party; hence, his dismissal from the service for gross neglect of duty is unwarranted. He narrated that, to his surprise, the pistol went off after he removed the magazine and while emptying the chamber load; that immediately after the incident, he reported the same to the CA Clerk of Court; and that in turning over the pistol to SG1 Tamba, he observed the usual and safety procedure of pointing the gun's muzzle towards the ground, particularly to the inner wall of the guardhouse, and at a safe distance from his co-officer – a fact attested to by SG1 Tamba in an affidavit attached to his answer.[5] As cause of the accidental discharge, the respondent intimated that his pistol may have been defective because during their recent firing course at Camp Crame, service pistols of the model 9mm FEG Hungary used in the shooting exercises malfunctioned; that the malfunctioning of the 9mm FEG Hungary pistols was made known to Justice Pizarro; and that their police instructor at Camp Crame recommended that they no longer use the 9mm FEG Hungary pistols as they may encounter problems with them in the future. The respondent reiterated these arguments in the position paper[6] he subsequently filed with the CA.

After the investigation, the CA Clerk of Court did not find the respondent guilty of gross neglect of duty and conduct prejudicial to the best interest of the service. However, the CA Clerk of Court found the respondent liable for simple neglect of duty, and recommended the penalty of one (1) month and one (1) day suspension without

pay, with a stern warning that a repetition of the same offense would be dealt with more severely. The CA Clerk of Court forwarded the Investigation Report and Recommendation[7] to CA Presiding Justice Andres B. Reyes, Jr., who adopted the recommended penalty and forwarded the records of the instant case to this Court.[8]

In an Indorsement[9] dated March 24, 2010, the Office of the Court Administrator (OCA) required the respondent to file his comment on the formal charge against him for gross neglect of duty and conduct prejudicial to the best interest of the service.

In his comment,[10] the respondent stressed that the incident was purely accidental; that he had complied with the standard procedure in unloading his pistol, but despite this, the pistol still went off without his fault. For this reason, he argued that the recommended penalty of dismissal from the service is highly improper and he prayed that the charges against him be dismissed for insufficiency of evidence. Also, he related that he had been employed with the CA for eleven (11) years and that his latest performance rating for the period of January to June 2009 was very satisfactory.

After a review of the records, the OCA agreed with the CA's finding that the respondent is guilty of simple neglect of duty. For one, the OCA did not find the elements of gross negligence present in the case. The OCA, however, could not absolve the respondent from liability because the latter, by accidentally firing his service pistol, still failed to exercise the diligence required in the proper discharge of his functions; that the respondent should have been extra careful in handling his firearm while turning it over to SG1 Tamba. The OCA belied the respondent's claim that his service pistol was defective for there was evidence which showed that the exact same service pistol issued to him was in good condition and has never been reported for any malfunction – this fact was attested to by former SG1 Marcialito Villaflor and SG1 Romeo Pimentel, to whom the same service pistol had earlier been issued.[11]

Also, the OCA did not find the respondent liable for the offense of conduct prejudicial to the best interest of the service because the records do not show that the respondent's negligent act compromised the integrity and efficacy of the government service.[12]

In its Recommendation[13] to this Court, the OCA enumerated the previous infractions committed by the respondent: that in March 1999, the respondent was reprimanded for discourtesy with stern warning; that in November 2001, he was sternly reprimanded for unprofessional behavior and acts prejudicial to the service; and that in June 2005, he was suspended for a month for habitual absenteeism. The OCA, however, noted that the respondent's performance rating for the periods of January to June 2008 and July to December 2008 were both very satisfactory and that simple neglect of duty is not one of the offenses for which the respondent was previously found guilty. Due to these considerations, the OCA agreed with the CA and submitted that the respondent be suspended for one (1) month and one (1) day, without pay, and be sternly warned that a repetition of the same or similar offense shall be dealt with more severely.

THE COURT'S RULING

We agree with the OCA's recommendation
and find respondent Enrique E. Manabat, Jr.
administratively liable for simple neglect of duty.

The unexpected discharge of a firearm may occur for a variety of reasons. It can be the result of mechanical failure such as wear, faulty assembly, damage or faulty design of the firearm, but most often, undesired discharges result from "operator error" or due to the carelessness or ineptness of the person handling the firearm. It is for the latter reason that our court security personnel are taught the basic rules of firearm or gun safety in order to prevent

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incidents of undesired discharges.

To exculpate himself from liability, the respondent contended that the discharge might have been caused by a mechanical failure; that his service pistol may have been defective because 9mm FEG Hungary pistols used during their recent firing course at Camp Crame malfunctioned. This incident at Camp Crame, however, is barely proof that the respondent's pistol is defective. One cannot simply generalize, based from such incident, that all 9mm FEG Hungary pistols used by the CA security personnel are defective. To bolster his theory, the respondent should have presented evidence to show that his service pistol was, at that time, not mechanically sound, particularly in light of the evidence that the pistol is in good working condition.

In ruling out mechanical causes, it can only be concluded that the undesired discharge of the respondent's service pistol was the result of his own negligence; in the usual course of things, a firearm that is being unloaded should not discharge if gun safety procedures had been strictly followed. What cannot be denied is that the gun fired and the firing could not have happened unless there was a bullet in the gun's chamber. Assuming that the respondent did indeed remove the magazine and did indeed cock the gun to eject whatever bullet that might have been in the chamber, obviously, he simply cocked the gun and did not visually examine if the chamber was clear. This is a basic and elementary precaution that every gun handler, more so a security guard who is provided a gun for his duties, should know.

The next question to be resolved is whether the respondent's negligence, in causing the undesired discharge of his service pistol, is gross in nature. We rule in the negative.

Simple neglect of duty is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference.[14] On the other hand, gross neglect of duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty.[15]

We cannot consider the respondent's negligence as gross in nature because there is nothing in the records to show that the respondent willfully and intentionally fired his service pistol. Also, at the time of the incident, the respondent did observe most of the safety measures required in unloading his firearm. As attested to by SG1 Tamba who was the lone eyewitness to the incident, the respondent did point the pistol's muzzle towards a safe direction, i.e., to the ground, at the time it was being unloaded and when it unexpectedly went off – a fact evidenced by the bullet mark on the floor of the guardhouse.[16]

We also agree with the OCA that the respondent is not liable for conduct prejudicial to the best interest of the service. Although the Revised Uniform Rules on Administrative Cases in the Civil Service[17] does not provide for a definition or enumerate acts that constitute such an offense, we held that conduct prejudicial to the best interest of the service refers to acts or omissions that violate the norm of public accountability and diminish — or tend to diminish — the people's faith in the Judiciary.[18] Here, we do not find the respondent's negligent act to have an adverse reflection on the Judiciary's integrity.

Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service,[19] simple neglect of duty is classified as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months for the first offense. Considering the respondent's performance ratings and that this is his first offense for simple neglect of duty, we impose upon him the penalty of suspension in the minimum period.

ACCORDINGLY, premises considered, respondent Enrique E. Manabat, Jr., Security Guard I of the Court of Appeals, Manila, is SUSPENDED for one (1) month and one (1) day, without pay, for simple neglect of duty. He is further DIRECTED to undergo, during his suspension, a firearm handling security course with the appropriate

unit of the Philippine National Police, at his own expense, and shall be deemed to have completely served his suspension only upon submission of proof of the completion of this course. He is WARNED that a repetition of the same or similar offense shall be dealt with more severely.

Let a copy of this Resolution be given to the Presiding Justice, Court of Appeals, Manila, with the suggestion that the firearms and ammunition issued to the CA security force be technically examined for their mechanical safety and working order.

SO ORDERED.

Carpio, Perez, Sereno, and Reyes, JJ., concur.

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[1] Rollo, pp. 9-10.

[2] Memorandum dated June 17, 2009; id. at 8.

[3] Id. at 12.

[4] Id. at 15-19.

[5] Id. at 20-21.

[6] Id. at 30-36.

[7] Id. at 3-7.

[8] Letter dated March 12, 2010; id. at 1.

[9] Id. at 37.

[10] Id. at 38-41.

[11] Id. at 9.

[12] Id. at 64.

[13] Dated July 21, 2011; id. at 59-65.

[14] Reyes v. Pablico, A.M. No. P-06-2109, November 27, 2006, 508 SCRA 146, 156.

[15] Brucal v. Hon. Desierto, 501 Phil. 453, 465-466 (2005).

[16] Rollo, p. 6.

[17] Promulgated by the Civil Service Commission through Resolution No. 99-1936 dated August 31, 1999 and implemented by CSC Memorandum Circular No. 19, series of 1999.

[18] Ito v. De Vera, A.M. No. P-01-1478, December 13, 2006, 511 SCRA 1, 11-12.

[19] Id. at 11.

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