



Florida Commission on Ethics
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FLORIDA
 COMMISSION ON ETHICS
 JAN 26 2022
 RECEIVED

COMPLAINT
22-024
 ORIGINAL

ORIGINAL

1. PERSON BRINGING COMPLAINT:

Name: David A. Hepker (Orange County Fire Rescue Dept.) Telephone Number: 407-836-9058
 Address: 6590 Amory Ct.
 City: Winter Park County: Orange State: Florida Zip Code: 32792

2. PERSON AGAINST WHOM COMPLAINT IS BROUGHT:

Use a separate complaint form for each person you wish to complain against:
 Name: John Capps Telephone Number: 407-242-0944
 Address: 1551 12th Street
 City: Orange City County: Volusia Zip Code: 32763
 Title of office or position held or sought: Firefighter

3. STATEMENT OF FACTS:

Please provide a full explanation of your complaint, describing the facts and the actions of the person named above and why you believe he or she violated the law. Include relevant dates and the names and addresses of persons whom you believe may be witnesses. Please do not submit more than 15 pages, including this form. Please do not submit video or audio tapes, CDs, DVDs, flash drives or other electronic media; such material will not be considered part of the complaint and will be returned.

4. OATH

STATE OF Florida
 COUNTY OF Orange

I, the person bringing this complaint, do swear or affirm that the facts set forth in the foregoing complaint and attachments thereto are true and correct to the best of my knowledge and belief.

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this 13 day of January, 20 22, by David A. Hepker (name of person making statement)

David A. Hepker
 SIGNATURE OF COMPLAINANT
 ZOILA E. MARCIA
 Commission # GG 320932
 Expires April 8, 2023
 Bonded Thru Troy Fain Insurance 800-385-7019

Zoila Marcia
 (Signature of Notary Public)
 Zoila E. Marcia
 (Print, Type, or Stamp Commissioned Name of Notary Public)



FIRE RESCUE DEPARTMENT
DAVID A. HEPKER, Program Administrator
Post Office Box 5879
Winter Park Florida 32793
Telephone 407.836.9058 ♦ Fax: 407.836.9006
David.Hepker@ocfl.net

January 12, 2022

Florida Commission on Ethics
P. O. Box 15709
Tallahassee, FL 32317-5709

To Whom it may Concern:

Based on Florida State Statute 112.3173, (3) **FORFEITURE**.—Any public officer or employee who is convicted of a specified offense committed prior to retirement, or whose office **or employment is terminated by reason of his or her admitted commission, aid, or abetment of a specified offense**, shall forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination.

Please see the enclosed information regarding Mr. John Capps. The Orange County Fire Rescue Department employed Mr. Capps as a certified firefighter from 05/10/2004 to 03/21/2021.

Our department conducted internal investigation #2021-0006 beginning January 14, 2021 and ending February 26, 2021, alleging time card fraud by Mr. Capps.

During a recorded interview, Mr. Capps **admitted** to the following:

- He knew he was late on the specified dates.
- He intentionally failed to use the Kronos device on the specified dates.
- The arrival times he reported to Chief Stratman and Lieutenant Byrne for the specified dates was inaccurate and untruthful.
- His timecard was inaccurate on the specified dates.
- He approved his timecard for the specified dates knowing he provided inaccurate work times to supervisors.
- The inaccuracy was due to his actions and not the actions of anyone else.

Although the investigation focused primarily on three specific dates for which we had video-recorded evidence, Mr. Capps admitted similar instances of inaccurate time reporting had occurred previously. The investigation report sustained Mr. Capps for multiple violations.

An employment Predetermination Hearing was held on March 10, 2021, regarding Mr. Capp's actions and violation of policy. The hearing officer, Assistant Chief Michael Howe terminated Mr. Capp's employment.

The Orange County Comptroller's Office determined the monetary value was \$195.21 for the time Mr. Capps claimed as work time when in fact he did not work. Attempts were made to contact Mr. Capps by telephone to obtain restitution. A certified letter was mailed to Mr. Capps, which was returned unclaimed.

I have enclosed a copy of the investigative report, the predetermination hearing decision and the letter requesting restitution. All exhibits, voice recordings and evidence is in our investigative files and are available upon request.

Should you need any additional information you may contact me at 407-836-9058.

Respectfully,

David A. Hepker

David A. Hepker
Program Administrator
Fire Rescue Professional Standards
407-836-9058



FIRE RESCUE DEPARTMENT
DAVID A. HEPKER, Program Administrator

Post Office Box 5879
Winter Park Florida 32793
Telephone 407.836.9058 ♦ Fax: 407.836.9006
David.Hepker@ocfl.net

DATE: February 26, 2021
TO: Michael Wajda, Division Chief
VIA: Chain of Command *DHH*
FROM: David A. Hepker
SUBJECT: Investigation 2021-0006 (Capps)

Foundation for Investigation:

On January 14, 2021, this office received authorization¹ from Division Chief Michael Wajda to conduct a formal investigation regarding Firefighter John Capps time and attendance issues.

Purpose of the Investigation:

The purpose of this investigation is to determine if there is sufficient evidence that Firefighter Capps committed any violations any Orange County rules, regulations, policies and/or operating procedures.

Appendices

1. Witness List
2. Exhibit List

Background

Firefighter Capps regularly assigned job is on a 56-hour shift workweek in Operations. From July 27, 2020 to January 21, 2021, he was on a 40-hour modified duty workweek assigned to Fire Rescue Headquarters. Firefighter Capps is a non-exempt employee and thus required to utilize the biometric Kronos device to "clock in" and "clock out" when beginning or ending work assignments to include lunch periods.

On November 19, 2020, Firefighter Capps attended a predetermination hearing for time and attendance issues related to November 2, 3, 5 and 6, 2020. The

¹ Exhibit A1

predetermination hearing decision² rendered on December 4, 2020, resulted in a 16-hour suspension without pay.

On December 23, 2020, Battalion Chief Nichol Stratman assigned to the Department's Central Staffing Unit, sent an email³ to Battalion Chief Elizabeth Stone assigned in Operations that she (Stratman) had reconciled Firefighter Capps time card. The email also outlined the changes that were required and identified days and times Firefighter Capps failed to utilize the Kronos device.

Chief Stratman's email identified the following issues:

- December 17, 2021, Firefighter Capps was late, did not use the Kronos device. Lieutenant Pamela Byrne already entered the arrival time of 12:00pm.
- December 18, 2021, Firefighter Capps did not use the Kronos device and reported he arrived at 10:30am.
- December 21, 2021, Firefighter Capps did not use the Kronos device and reported he arrived at 10:30am.
- There was also some lunchtime problems notated.

Chief Stone had knowledge of Firefighter Capps November attendance and discipline issues and discussed her concerns regarding Chief Stratman's December email with Chief Wajda. Chief Wajda authorized a formal investigation.

Investigative Efforts:

I contacted Information & Security Services (ISS) obtaining various video recordings of locations at Fire Rescue Headquarters and requested Firefighter Capps Key Card Access Report for December 17, 18 and 21, 2020.

The video recordings display the current time while being played. I verified through ISS that the recording time was correct and there were no variations due to day light savings time changes. The video viewer also permits the video to stop at any point and provides the ability to record the stopped frame into a picture, which includes the current time.

I obtained Firefighter Capps Kronos timecard records to include the audit trail details for December 2020.

² Exhibit B1-5

³ Exhibit C

Interviews:

On February 2, 2021, I conducted a recorded witness interview with Lieutenant Pamela Byrne.

Lieutenant Byrne stated Firefighter Capps was on modified duty at headquarters and supervised by her, Chief Stratman and Chief Stone. His normal assignment was conducting temperature screenings primarily at the front entrance.

Lieutenant Byrne was aware of time and attendance problems with Firefighter Capps and that Chief Stratman had recently entered arrival times for December 18 and 21, 2020. Soon after that, Chief Stone requested she (Byrne) monitor Firefighter Capps attendance closer and that he should verbally contact her after his arrival at headquarters.

Lieutenant Byrne acknowledged it is not uncommon for an employee to forget to use a Kronos device. A supervisor would then manually enter their time. She explained that in those situations if an employee tells her a time she would assume they are being truthful. I inquired if an employee gave her an inaccurate time would it cause her to enter an inaccurate payroll time and she answered in the affirmative.

I questioned if an employee clocked in on a Kronos device at the exact time they are supposed to begin work (example 08:00am) they may need to put their lunch in the kitchen, may get a cup of coffee and may stop to talk with someone for a few minutes. I asked what would be a reasonable amount of time before that person should begin their work assignment. Lieutenant Byrne replied within 5 minutes.

Lieutenant Byrne confirmed she had entered a start time on an occasion that Firefighter Capps did not use the Kronos device. She could not recall the time or date with certainty. I showed her the Kronos record and audit trail⁴ for December 17, 2020 where Firefighter Capps arrival time was 12:00pm and that employee number 113319 made the entry. Lieutenant Byrne verified it was her employee number, did not have specific recall of the time and confirmed if Kronos is correct she manually entered his time based on the time provided by Firefighter Capps.

I then showed Lieutenant Byrne the Kronos entries for December 18 and 21, 2020. Other than being aware of Chief Stratman manually entering Firefighter Capps time, she had no additional information.

December 17, 2020, Firefighter Capps reported a starting time of 12:00pm and I showed Lieutenant Byrne photographs as follows:

- Firefighter Capps in a red passenger vehicle entering the front gate at 1:02pm⁵.
- Firefighter Capps entering the (west) rear doors at headquarters at 1:06pm⁶.

⁴ Exhibit D1-2

⁵ Exhibit E

⁶ Exhibit F

- Firefighter Capps standing in front of the screening table just inside the rear doors at 1:06pm⁷.
- Firefighter Capps taking a work assignment position at the rear screening table at 1:08pm⁸.

After viewing the photographs and times Lieutenant Byrne was able to identify the person as Firefighter Capps and confirmed she manually entered his December 17, 2020 arrival time of 12:00pm based on him (Capps) providing that information. Lieutenant Byrne had previously testified that if she entered a time given to her by the employee that was not correct, it would cause her to enter inaccurate information on the employee's timecard.

On February 2, 2021, I conducted a recorded witness interview with Battalion Chief Nichol Stratman.

Chief Stratman had knowledge of Firefighter Capps being on modified duty at headquarters. She described his duties as conducting wellness screening at the front, rear entrances of headquarters, and on occasion assisted Lieutenant Byrne with the Pre Incident Program (PIP).

Chief Stratman was aware of the previous November predetermination hearing⁹ regarding Firefighter Capps and I clarified I wanted to discuss December 17, 18 and 21, 2020. I explained these dates were different from dates considered in Firefighter Capps predetermination hearing.

Chief Stratman is in charge of the Departments Central Staffing Unit. She explained the CSU has oversight of all light/modified duty personnel and they reconcile personnel's time cards at the end of a pay period. This is done by having personnel cycle through their office to make sure the individual's time card was up to date, accurate and then they direct the employee to approve their Kronos time card.

Note: An employee is required to approve their time card at the end of a pay period. The employee using a computer, logging in into their Kronos time card, reviewing it for accuracy and clicking on the approval area, accomplishes this. This signifies the employee is attesting their time card is correct. When the employee clicks "approved" the audit trail in Kronos records "timecard approved by employee", verifies the pay period, the date, time, and employee number.

Chief Stratman explained on December 23, 2020 she met with Firefighter Capps to reconcile his timecard. She confirmed manually entering a 10:30am arrival time on Firefighter Capps timecard for December 18 and 21, 2020. These entries were based on Firefighter Capps telling her he forgot to clock in or the punch did not take and he informed her of his time of arrival. Chief Stratman stated she knew Firefighter Capps was present in the building on those dates but did not know his exact time of arrival and had no reason to doubt him. Chief Stratman proffered she sent an email¹⁰ to Chief

⁷ Exhibit G

⁸ Exhibit H

⁹ Exhibit B1-5

¹⁰ Exhibit C

Stone regarding the reconciliation because of the known problems with Firefighter Capps attendance.

I inquired if an employee clocked in on a Kronos device at the exact time they are supposed to begin work (example 08:00am) they may need to put their lunch in the kitchen, may get a cup of coffee and may stop to talk with someone for a few minutes. I asked what would be a reasonable amount of time before that person should begin their work assignment. Chief Stratman replied within 5 to 10 minutes.

I asked if it was uncommon for personnel to forget to use the Kronos device to clock in or for a supervisor to manually enter the person's time and she indicated it was not. I inquired if she would ever enter a person's time if she knew they were not in the building and she stated "no".

Chief Stratman is very familiar with the Kronos timecards including the audit trails. We reviewed Firefighter Capps time card for December¹¹. Chief Stratman testified her employee number was 119346 and confirmed she did all of the changes on Firefighter Capps timecard by that number. Chief Stratman again confirmed Firefighter Capps was present with her and provided the information for the changes.

December 18, 2020, Firefighter Capps reported a starting time of 10:30am and I showed Chief Stratman photographs as follows:

- Firefighter Capps in a red passenger vehicle-entering front gate at 11:05am¹².
- A person entering the (west) rear doors of headquarters at 11:08:44am. The person is at a distance wearing a hat and mask making recognition difficult¹³.
- The same person at a side table just inside the rear doors with hat and mask removed at 11:08:58 (14 seconds later) which Chief Stratman identified as Fire Capps¹⁴.
- Firefighter Capps leaving the rear lobby area at 11:40am¹⁵. (From the arrival time of 11:08 to 11:41, Firefighter Capps does not take a work assignment position. Firefighter Capps appears to go to the breakroom, restroom and sits across from the wellness screening table talking with the person at the screening table.)
- Firefighter Capps entering the front lobby at 11:41am where he then takes over the position at the front wellness screening area¹⁶.

December 21, 2020, Firefighter Capps reported a starting time of 10:30am and I showed Chief Stratman photographs as follows:

¹¹ Exhibit D1-2

¹² Exhibit I

¹³ Exhibit J

¹⁴ Exhibit K

¹⁵ Exhibit L

¹⁶ Exhibit M

- Firefighter Capps entering the (west) rear doors of headquarters at 10:47am¹⁷.
- Firefighter Capps going to put on shirt at 10:52am¹⁸.
- Firefighter Capps takes over work assignment position in front lobby at screening table 11:16am¹⁹.
- Note: From the 10:47am arrival, time, video and pictures show Firefighter Capps in the rear lobby area going to put on a uniform, exits the rear doors at 10:54am, re-enters the rear doors at 11:05am and does not take a work assignment position until 11:16am.

After reviewing the pictures of when Firefighter Capps arrived, and when he took an assigned work position, Chief Stratman agreed it was problematic. She also confirmed that Firefighter Capps had many opportunities to correct any of the times when he was meeting with her. Chief Stratman testified the times provided to her by Firefighter Capps caused her to enter inaccurate time based on what she had seen.

On February 18, 2021, I conducted a recorded interview with Firefighter John Capps.

Firefighter Capps acknowledged receiving and reading the Notice of Investigation including the Firefighter Rights attached²⁰. Firefighter Capps indicated he was not clear why he was there as he had recently attended a predetermination hearing regarding time and attendance during the same time specified in the Notice of Investigation. I explained the predetermination hearing included November 2, 3, 5 and 6, 2020, and we would not discuss any of those dates in today's interview.

Firefighter Capps read and signed the Investigative Warning and had no questions²¹.

Firefighter Capps indicated he started employment in 2004 and currently assigned to Station 55 A-Shift. Due to medical reasons, he had been on modified duty at headquarters from July 27, 2020 to January 21, 2021. He was primarily supervised, by Lieutenant Byrne and assigned to the Wellness Screening Tables and for a short time assisted with the daily 214 forms program.

I interviewed Firefighter Capps for approximately two hours focusing on the starting times reported on his timecard for 12:00pm for December 17, 10:30am for December 18 and 10:30am for December 21, 2020. Lieutenant Byrne and Chief Stratman manually entered his times based on the information provided to them verbally by Firefighter Capps. Full details of his interview are contained in the audio recording²². There are also video recordings²³ verifying the movement of Firefighter Capps detailed in this report.

¹⁷ Exhibit N

¹⁸ Exhibit O

¹⁹ Exhibit P

²⁰ Exhibit Q

²¹ Exhibit R

²² Exhibit S Audio Recording in File

²³ Exhibit T Video Recordings in File

Firefighter Capps routinely used the Kronos device for starting and stopping work. I conveyed to him that on December 17, 18 and 21 the reason he did not use the Kronos device was that he was not actually at work on time and he knew if he clocked in late using the Kronos device the supervisor would realize he was late. Having just received discipline he further knew this would cause him to be in additional trouble. Thus, he intentionally avoided using the Kronos device. When his timecard was reconciled, he informed supervisors he was present at the required start time but forgot to clock in which was untruthful.

After some hesitancy and procrastination, Firefighter Capps admitted to the following:

- He knew he was late on the specified dates.
- He intentionally failed to use the Kronos device on the specified dates.
- The arrival times he reported to Chief Stratman and Lieutenant Byrne for the specified dates was inaccurate and untruthful.
- His timecard was inaccurate on the specified dates.
- He approved his timecard for the specified dates knowing he provided inaccurate work times to supervisors.
- The inaccuracy was due to his actions and not the actions of anyone else.

Firefighter Capps was apologetic and appeared remorseful. Although, he realized it did not excuse what he had done and that some form of corrective action would be taken he discussed some distress he had been encountering with his recent medical issues and a family related issue on going with a parent.

Conclusions:

On December 17, 18 and 21, 2020, Firefighter Capps was scheduled to be at work at 10:30am. He was late for work arriving after 10:30am on each day.

Firefighter Capps intentionally failed to clock in using a Kronos device on December 17, 2020, informing Lieutenant Byrne he arrived for work at 12:00pm, which she entered in Kronos as his supervisor. Evidence clearly shows Firefighter Capps did not arrive until 1:06pm and began work at 1:08pm. Firefighter Capps was untruthful to Lieutenant Byrne regarding his reported work time causing her to enter false information on his (Capps) Kronos time card for which he received compensation.

Firefighter Capps intentionally failed to clock in using a Kronos device on December 18 and 21, 2020, informing Chief Stratman he arrived for work at 10:30am, which she entered in Kronos as his supervisor. Evidence clearly shows Firefighter Capps did not arrive until 11:08am and began work at 11:41am on December 18 and did not arrive until 10:47am and began work at 11:16am on December 18. Firefighter Capps was untruthful to Chief Stratman regarding his reported work time causing her to enter false information on his (Capps) Kronos time card for which he received compensation.

Determinations:

Based on a preponderance of the evidence I have concluded Firefighter Capps violated the following.

1. As to violating Orange County Fire Rescue Department Rules, R.19; Reporting to Duty which states,

Employees shall report for duty at the time and place required by assignment or orders, and shall be properly uniformed, equipped, and prepared to assume duty. Employees shall not sleep or leave assigned work locations without permission from their supervisor, or unless allowed by OCFRD Policy.

To Wit: Failed to arrive at the scheduled work time of 10:30am on December 17, 18 and 21, 2020.

This charge is **SUSTAINED**

2. As to violating Orange County Fire Rescue Department Rules, R.23; Truthfulness which states,

Employees shall give complete and honest answers to any question related to the performance of their official duties.

To Wit: Provided untruthful answers to Chief Stratman and Lieutenant Byrne regarding his work time arrival for December 17, 18 and 21, 2020.

This charge is **SUSTAINED**

3. As to violating Orange County Fire Rescue Department Rules, R.24; Unbecoming Conduct which states,

Employees are expected to maintain a reasonable and decent standard of conduct in their private life as well as their professional life, and not bring discredit to the department by his/her misdemeanors.

Conduct unbecoming of an employee shall include:

That which brings the Department into disrepute or reflects discredit upon the employee as a member of the Department

That which impairs the operation or efficiency of the Department or employee.

To Wit: He impaired the operation and efficiency of both the Department and himself through untruthfulness and causing his

supervisors to enter inaccurate information on his time card for which he received compensation.

This charge is **SUSTAINED**

4. As to violating Orange County Fire Rescue Department Rules, R.26; Falsifying Reports which states,

Employee's shall not knowingly falsify any official report (including oral or radio reports) or enter, or cause to be entered, any inaccurate, false or improper information in official records of the Department.

To Wit: Reporting inaccurate work times caused Chief Stratman and Lieutenant Byrne to enter inaccurate, false or improper information on Firefighter Capps timecard for which he was compensated.

This charge is **SUSTAINED**

5. As to violating Orange County Fire Rescue Department SOP 038 Kronos Procedures which states,

Employees Responsibilities, i. Non-exempt Employees, 1. An employee must clock in at the time clock installed at the appropriate work location.

To Wit: Knowingly failed to use the Kronos device to record his work time arrival for December 17, 18 and 21, 2020.

This charge is **SUSTAINED**

6. As to violating Orange County Firefighters Association Local 2057, Article 41.01; WORK DAY AND WORK WEEK FOR 40 HOUR EMPLOYEES.

All employees are required to be present at and on their assigned jobs for the total hours in the work day and work week unless absence from duty is authorized by the appropriate authority. All absences shall be properly recorded, charged and paid (with applicable leave usage), in addition to all hours worked.

To Wit: Was not present at his assigned job for the total hours in the work day, had no authorization for missed time and time was not properly recorded.

This charge is **SUSTAINED**

This report does not address violation of departmental or division policies that may be found or determined to have occurred upon management's review of the facts and conclusions contained herein.

C: James Fitzgerald, Fire Chief
David Rathbun, Deputy Fire Chief
Elizabeth Stone, Battalion Chief

APENDICES

Persons List

Complainant:	Michael Wajda, Division Chief
Complainant:	Elizabeth Stone, Battalion Chief
Subject:	John Capps, Firefighter
Witness:	Nichol Stratman, Battalion Chief
Witness:	Pamela Byrne, Lieutenant

Exhibits

1	Exhibit A.1	Authorization for Formal Investigation from Chief Wajda
2	Exhibit B.1-5	Predetermination Hearing Decision for Capps 12/4/20
3	Exhibit C.1	Email from Chief Stratman to Chief Stone
4	Exhibit D.1-2	Capps Kronos Time and Audit Report for December 2020.
5	Exhibit E.1	Photograph Capps in vehicle entering Front Gate 12/17/20
6	Exhibit F.1	Photograph Capps entering rear doors 12/17/20
7	Exhibit G.1	Photograph Capps at screening table 12/17/20
8	Exhibit H.1	Photograph Capps assuming work assignment 12/17/20
9	Exhibit B.1-5	Predetermination Hearing Decision for Capps 12/4/20
10	Exhibit C.1	Email from Chief Stratman to Chief Stone
11	Exhibit D.1-2	Capps Kronos Time and Audit Report for December 2020
12	Exhibit I.1	Photograph Capps in vehicle entering Front Gate 12/18/20
13	Exhibit J.1	Photograph Capps entering rear doors 12/18/20
14	Exhibit K.1	Photograph Capps at side table rears lobby 12/18/20
15	Exhibit L.1	Photograph Capps leaving rear lobby area 12/18/20
16	Exhibit M.1	Photograph Capps entering front lobby taking work position 12/18/20
17	Exhibit N.1	Photograph Capps entering rear doors 12/21/20
18	Exhibit O.1	Photograph Capps going to put uniform shirt on 12/21/20
19	Exhibit P.1	Photograph Capps entering front lobby taking work position 12/21/20
20	Exhibit Q.1	Notice of Investigation from Fire Professional Standards
21	Exhibit R.1	Signed Investigation Warning
22	Exhibit S	Audio interview of Firefighter Capps – in file
23	Exhibit T	Videos of Firefighter Capps – in file