

SECOND DIVISION

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

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

R E S O L U T I O N

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 Villafior 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;