

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date /Time of Incident:	October 28, 2018, approximately 1:09 a.m.
Location of Incident:	6334 N. Clark Street, Chicago, Illinois
Date /Time of COPA Notification	October 28, 2018, approximately 2:59 a.m.

An off-duty Chicago Police Department (“CPD”) officer in civilian dress unholstered a firearm in a tavern and placed that firearm on the tavern’s bar while he exchanged words with a fellow patron. A bartender took possession of the firearm and called 911. Responding CPD officers recovered the weapon. COPA’s investigation determined the officer committed misconduct.

II. INVOLVED PARTIES

Involved Member #1:	[REDACTED] Star # [REDACTED], Employee ID# [REDACTED] Date of Appointment: [REDACTED] 1996, Rank: Police Officer; Unit of Assignment: [REDACTED] DOB: [REDACTED] 1965, M/API
Involved Individual #1:	[REDACTED] DOB: [REDACTED] 1982, M/W

III. ALLEGATIONS

Member	Allegation	Finding/ Recommendation
Officer [REDACTED]	1. On October 28, 2018, at approximately 1:10 a.m., at 6334 N. Clark Street, Chicago, Illinois, the accused was intoxicated off-duty, in violation of Rule 15 of the CPD Rules of Conduct.	Sustained / 28 Day Suspension
	2. At the above time and place, the accused committed an aggravated assault in that he unlawfully displayed his weapon, to wit; a Beretta 9mm, blue steel, semi-automatic pistol, serial [REDACTED] during a verbal altercation with [REDACTED] in violation of Rules 1 and 38 of the CPD Rules of Conduct.	Unfounded
	3. At the above time and place, the accused unlawfully displayed his weapon, to wit; a Beretta 9mm, blue steel, semi-automatic pistol, serial [REDACTED] in that he removed it from his holster and placed it on top of the bar, in violation of Rules 1 and 38 of the CPD Rules of Conduct.	Unfounded

Member	Allegation	Finding/ Recommendation
Officer [REDACTED] (continued)	4. At the above time and place, the accused failed to maintain control of his weapon, to wit; a Beretta 9mm, blue steel, semi-automatic pistol, serial [REDACTED] in that he placed it on top of the bar and subsequently allowed the weapon to be taken by the bartender, in violation of Rules 6 and 38 of the CPD Rules of Conduct.	Sustained / 28 Day Suspension
	5. At the above time and place, the accused unnecessarily displayed a weapon in violation of Rule 38 of the CPD Rules of Conduct.	Sustained / 28 Day Suspension
	6. At the above time and place, the accused carried a firearm while consuming alcoholic beverages in violation of Rule 6 of the CPD Rules of Conduct.	Sustained / 28 Day Suspension

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 1, CPD Rules of Conduct (prohibiting the violation of any law or ordinance)
2. Rule 6, CPD Rules of Conduct (prohibiting the disobedience of an order or directive)
3. Rule 15, CPD Rules of Conduct (prohibiting intoxication on or off duty)
4. Rule 38, CPD Rules of Conduct (prohibiting the unnecessary use or display of a weapon)

CPD Directives

1. CPD Uniform and Property Directive U04-02 *Department Approved Weapons and Ammunition* (effective date: June 2, 2017)

State Laws

1. 720 ILCS 5/12-1 (Assault)
2. 720 ILCS 5/12-2 (Aggravated Assault)

V. INVESTIGATION¹

A. Digital Evidence

Norse Bar Video Footage

COPA obtained video footage captured by a security camera that was operating inside Norse Bar, 6334 North Clark Street, Chicago, Illinois at the time of the incident under investigation.² That footage shows a view from above that saloon's bar, facing toward the saloon's Clark Street entrance. There is no audio component to the footage. The footage shows Officer [REDACTED] ("Officer [REDACTED] enter the bar at approximately 1:04 a.m. on October 28, 2018. Three bar patrons are depicted sitting together at the saloon's bar. The footage shows Officer [REDACTED] appear to take a seat at the bar three stools away from the other patrons, closest to the Clark Street entrance, and just out of camera view. After about a minute, the footage appears to show that one of the patrons is speaking in the direction of Officer [REDACTED] and making hand gestures toward him. Officer [REDACTED] then reappears in view, standing approximately five feet away from the three patrons, near the Clark Street entrance. Officer [REDACTED] and the patron then appear to be speaking to each other and making hand gestures to each other. At approximately 1:07 a.m., the footage shows Officer [REDACTED] walk to the Clark Street entrance, momentarily turning his back to the patrons, and stopping at the door. The bartender is then partially visible, standing behind the bar. The footage then shows Officer [REDACTED] walk back to the bar and place an object (subsequently determined to be a firearm) on the bar about five feet away from the patrons and in front of the bartender. The footage then shows Officer [REDACTED] turn his back on the bar and the patrons and walk to the door as the bartender retrieves the firearm. The footage then shows Officer [REDACTED] stop at the door, turn to face the patrons for several seconds, and then return to his barstool, only partially visible. For the next four to five minutes, the footage shows Officer [REDACTED] standing at his barstool, approximately five feet from the patrons, who are seated, as Officer [REDACTED] and the patrons appear to continue their verbal exchange, making occasional hand gestures toward each other. The footage shows CPD officers arrive and enter the saloon at approximately 1:12 a.m.³ They position themselves between Officer [REDACTED] and the patrons, and they walk out with Officer [REDACTED] at approximately 1:13 a.m.

[REDACTED] Cell Phone Video

The Complainant, [REDACTED] (" [REDACTED] provided COPA with cell-phone video footage⁴ which is two minutes and fifty-five seconds long. The footage provided by [REDACTED] shows Officer [REDACTED] exchanging words with [REDACTED] until CPD officers arrived. Among other things, Officer [REDACTED] can be heard stating, "Let's start this, come on. ... You wanted to kick my ass? Come on, let's go."

¹COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis

²Attachment 26.

³COPA viewed body-worn camera footage captured by responding CPD members (Attachment 25). We have determined that the footage is inconsequential.

⁴Attachment 22.

B. Documentary Evidence

Synoptic Report

COPA considered a Synoptic Report prepared by Sgt. [REDACTED] (“Sgt. [REDACTED]”) of CPD’s Bureau of Internal Affairs, which shows, among other things, that a breathalyzer test was administered to Officer [REDACTED] at 5:27 a.m. on October 28, 2018, resulting in a reading of 0.043 g / 201L.⁵

C. Interviews

Officer [REDACTED]

Officer [REDACTED] gave an audio-recorded statement on November 27, 2018.⁶ COPA permitted Officer [REDACTED] to view the above-described video evidence in advance of giving that statement. The following is a non-verbatim (except where otherwise indicated) summary of the material things said by Officer [REDACTED] during that statement.

Officer [REDACTED] was familiar with [REDACTED] prior to the incident under investigation; months before, the two of them had been involved in an argument.⁷ Officer [REDACTED] denied that he went to the Norse Bar to see or confront [REDACTED]. Officer [REDACTED] stated that he had consumed two or three alcoholic drinks (vodka and orange juice) consisting of one shot of alcohol each between 10:00 p.m. and 12:00 a.m. on the evening in question.⁸ He denied consuming any other alcohol or using any other intoxicants during the twelve hours that preceded the incident under investigation.⁹ Officer [REDACTED] acknowledged that the bartender at Norse Bar directed Officer [REDACTED] to leave the bar after Officer [REDACTED] and [REDACTED] had exchanged words.¹⁰ When Officer [REDACTED] was asked why he didn’t leave the bar at that time, he replied, “I didn’t think it was going to go that far. I just wanted to have one quiet drink.”¹¹ Officer [REDACTED] acknowledged that he did not know [REDACTED] (“[REDACTED] the bartender.”¹² He stated that he gave [REDACTED] his gun because he thought he was going to be attacked by [REDACTED] and four of his “buddies,” two of whom were not visible in the video, and because he did not want the gun to be used against him.¹³ Officer [REDACTED] said that he trusted [REDACTED] because he was trying to de-escalate the situation and because “[h]e was a nice guy and I trusted him. So that’s why I gave him my gun.”¹⁴ Officer [REDACTED] acknowledged that he did not say anything to [REDACTED] when he placed the gun on the bar, but that he gave [REDACTED] a “nod of [his] head,” indicating that he wanted [REDACTED] “to take the gun for safekeeping,” and that he expected that [REDACTED] would understand that gesture accordingly.¹⁵

⁵Attachment 9.

⁶Attachment 36 is a transcript of that statement; Attachments 29-31 comprise an audio recording of that statement.

⁷Attachment 36, p. 13, through p. 22, line 12.

⁸*Id.*, p. 25, line 15, through p. 28, line 18.

⁹*Id.*, p. 28, line 19, through p. 34, line 2.

¹⁰*Id.*, p. 38, line 17, through p. 39, line 16.

¹¹*Id.*, p. 40, line 22, through p. 41, line 4.

¹²*Id.*, p. 44, lines 14 – 16.

¹³*Id.*, p. 41, line 19, through p. 44, line 22; p. 46, line 19, through p. 47, line 1; p. 48, lines 6 – 22.

¹⁴*Id.*, p. 46, lines 3 – 14.

¹⁵*Id.*, p. 47, lines 2 – 22.

When Officer ██████ was asked why he didn't leave the bar during the time interval that lapsed between the time he relinquished his gun and the arrival of the CPD, Officer ██████ stated that he was no longer afraid because ██████ had given up, so he was waiting for the police to arrive "to take care of it," and because he wanted to get his gun back.¹⁶ Officer ██████ acknowledged that he didn't ask ██████ to return his gun to him, because, he stated, he assumed that ██████ had secured the gun for safekeeping, as he had seen ██████ remove the gun from the bar to a back room.¹⁷ Officer ██████ admitted that his behavior involved bad judgment,¹⁸ but he denied that alcohol consumption contributed to his exercise of bad judgment.¹⁹ Officer ██████ stated that he believed that he would have acted the same way during the incident, even if he had not been drinking alcohol prior to it.²⁰ Officer ██████ would not admit that he was intoxicated at the time of the incident.²¹ Officer ██████ stated that he believed that at the time he was mentally and physically capable of providing emergency service if an emergency had arisen.²² Officer ██████ stated that, subsequent to the incident, he had undergone an assessment by the CPD's Employee Assistance Program and that he was awaiting the results of that assessment.²³ Officer ██████ admitted to Allegation #5 against him, which is that he unnecessarily displayed a firearm.²⁴ Officer ██████ also admitted to Allegation #6 against him, which is that he consumed alcohol while carrying a firearm.²⁵

██████████ gave an audio-recorded interview on December 21, 2019.²⁶ ██████ is the bartender depicted in the video footage described above. The following is a summary of the material things stated by ██████ during that interview.

██████████ did not know Officer ██████ prior to the incident under investigation. ██████ had a friendly relationship with ██████ at the time, having been to ██████ residence five to six times previously. ██████ then had six years of experience as a bartender. When Officer ██████ walked into the bar, he ordered a vodka and orange juice, and he tendered a twenty-dollar bill to ██████ served Officer ██████ that drink and then heard Officer ██████ say to ██████ "What's your problem?" ██████ responded by stating, "I'll leave." ██████ then returned the twenty-dollar bill to Officer ██████ took his drink away, and told Officer ██████ to leave the bar. Officer ██████ and ██████ continued to exchange verbally. Officer ██████ repeated himself; his words were slurred. ██████ said, "Dude you have a gun and a badge, I'm not going to fight you." In response, Officer ██████ said, "I don't need a gun to fight you." Officer ██████ then put the gun on bar. ██████ took the gun and called 911. ██████ then secured the

¹⁶*Id.*, p. 54, line 19, through p. 56, line 16.

¹⁷*Id.*, p. 56, line 15, through p. 57, line 7.

¹⁸*Id.*, p. 44, line 7.

¹⁹*Id.*, p. 45, line 8, through p. 46, line 10; p. 58, lines 20 – 23.

²⁰*Id.*, p. 58. Lines 14 – 17.

²¹*Id.*, p. 60, line 5 – 6.

²²*Id.*, p. 62, lines 3 -- 7.

²³*Id.*, p. 58, line 1, through p. 59, line 5.

²⁴*Id.*, p. 60, lines 7 -- 13.

²⁵*Id.*, p. 60, lines 14 -- 18.

²⁶Attachment 35. Two other bar patrons, including ██████ gave interviews to COPA on October 28, 2018. (Attachments 12 and 16 are audio recordings of those interviews.) COPA has not relied upon those interviews in our analysis).

gun in the bar's basement. There were other persons in the bar other than those depicted in the bar's surveillance video. However, none of them engaged verbally with Officer [REDACTED] or acted aggressively toward Officer [REDACTED]. In [REDACTED] opinion, Officer [REDACTED] was drunk at the time. [REDACTED] based that opinion on hearing Officer [REDACTED] slur words and repeating himself. [REDACTED] gave Officer [REDACTED] gun to a responding CPD officer.

Sergeant [REDACTED]

Sgt. [REDACTED] gave an audio-recorded statement on January 24, 2019.²⁷ The following is a non-verbatim summary of the material things said by Sgt. [REDACTED] during that statement.

Sgt. [REDACTED] is certified as a breath analysis operator. Sgt. [REDACTED] has conducted approximately one hundred breath analysis tests. Sgt. [REDACTED] administered the breathalyzer test that was given to Officer [REDACTED] in an office at the [REDACTED] District Station. Prior to administering the test, Sgt. [REDACTED] served Officer [REDACTED] with allegations and he provided Officer [REDACTED] with written notice of his administrative rights. Sgt. [REDACTED] also observed Officer [REDACTED] for twenty minutes prior to administering the test, to ensure that Officer [REDACTED] did not place anything in his mouth. No other persons were present during that observation period. Sgt. [REDACTED] did not observe any behavior by Officer [REDACTED] that caused Sgt. [REDACTED] to conclude that Officer [REDACTED] was or was not intoxicated or under the influence of alcohol during that observation period. Officer [REDACTED] then displayed no difficulty in walking, sitting, speaking, or understanding. Sgt. [REDACTED] then detected a slight odor of alcohol on Officer [REDACTED] breath. Officer [REDACTED] did not display bloodshot eyes, slurred speech, or a flushed face. Officer [REDACTED] showed no difficulty in signing the documents that Sgt. [REDACTED] presented to him. Using an extrapolation figure of 0.015 per hour based on the human body's metabolizing of alcohol, and assuming that Officer [REDACTED] had not consumed alcohol after 1:00 a.m. that morning, Sgt. [REDACTED] was able to opine from Officer [REDACTED] 0.043 reading at 5:27 a.m. that morning that Officer [REDACTED] blood alcohol level would have been approximately 0.10 at 1:09 a.m., but that it could have been as low as 0.07 to 0.08 at that time. Sgt. [REDACTED] was not able to opine whether a law enforcement officer having a blood alcohol level of 0.07 to 0.08 would or would not necessarily be impaired in his ability to respond to an emergency.

VI. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or

²⁷Attachment 39.

4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A preponderance of evidence can be described as evidence indicating that it is more likely than not that the conduct occurred and violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. See *e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true." *Id.* at ¶ 28.

VII. ANALYSIS

Allegation 1

Allegation 1 against Officer ██████ is that he was intoxicated at the time of the incident in violation of Rule 15 of the CPD Rules of Conduct. Officer ██████ has denied the allegation. Rule 15 expressly prohibits "intoxication" by CPD members, even when they are off-duty. Though Rule 15 does not define "intoxication," the rule can be well-understood to prohibit impairment that tends to disallow a member's mental or physical requirements for immediate response in the event of an emergency.²⁸ The preponderance of the evidence shows that Officer ██████ was in fact so impaired at the time of the incident. That evidence includes the Synoptic Report showing that a breathalyzer test administered over four hours after the incident resulted in a reading of 0.043. That evidence also includes ██████ observations and opinion, and Officer ██████ admissions concerning the amount of alcohol that he consumed within two hours prior to the incident. Though Sgt. ██████ observed no behavior on Officer ██████ part indicating that Officer ██████ was or was not intoxicated, Sgt. ██████'s observations in that regard have little utility in assessing whether Officer ██████ was or was not intoxicated four hours previously. More consequential is Sgt. ██████'s explanation concerning extrapolation, which indicates that Officer ██████'s breath/blood concentration at the time of the incident was in the range of 0.07 to 0.1. Allegation 1 against Officer ██████ is therefore sustained.

²⁸That interpretation is supported by the CPD's Standards of Conduct, which provide, in relevant part:

[T]he stresses of law enforcement require an employee to be mentally alert and physically responsive. . . . Every member must also be constantly aware that while technically off duty he[/she] is subject to respond to any emergency requiring his[/her] service. *The off duty use of intoxicants must therefore, be moderate in order to allow the mental and physical requirements for immediate response.* An off-duty member under the influence of any intoxicant represents a danger to himself and to others and cannot, therefore, be permitted.

CPD Standards of Conduct, para. 17 (emphasis added).

Allegations 2 and 3

Allegations 2 and 3 against Officer ██████ are that he unlawfully displayed a weapon and committed the offense of aggravated assault, respectively. Video evidence clearly and convincingly disproves those allegations, as it demonstrates that Officer ██████ did not point a firearm at any person or threaten anyone with a firearm. For those reasons, Officer ██████ did not display a firearm *unlawfully*²⁹ or commit the offense of aggravated assault.³⁰ Allegations 2 and 3 against Officer ██████ are therefore unfounded.

Allegation 4

However, allegation # 4 is supported by the preponderance of the evidence. That allegation, that Officer ██████ failed to maintain control of his weapon in violation of Rule 6 of the CPD Rules of Conduct, is proven by video evidence showing that Officer ██████ intentionally relinquished control of a firearm, leaving it unsecured, thereby leading to its access by ██████ immediately thereafter. A CPD directive then in effect prohibited such behavior. That directive provided, in part, “[s]worn members are to secure ALL firearms which they own or possess, in a manner that a reasonable person would believe will prohibit access by unapproved individuals, theft, or loss.”³¹ Officer ██████ disobedience of that directive triggers a violation of Rule 6, which requires adherence to all CPD directives. Allegation #4 against Officer ██████ is therefore sustained.

Allegation 5 and 6

Officer ██████ has admitted to allegation 5, that he unnecessarily displayed a firearm, which is conduct prohibited by Rule 38 of the CPD Rules of Conduct. Allegation 5 is therefore sustained. Officer ██████ has also admitted to allegation 6, that he carried a firearm while consuming alcoholic beverages. That conduct violated Rule 6 of the CPD Rules of Conduct, which prohibits disobedience of CPD directives, because a CPD directive in effect at the time provided, in part, that officers “are instructed to refrain from [carrying firearms] when there is a likelihood that they will be consuming alcoholic beverages or medications which may impair their physical and/or mental abilities.”³² Allegation 6 is therefore also sustained.

²⁹Officer ██████ status as a police officer made it lawful for him to possess a firearm in a bar. Similar conduct by a civilian would have been unlawful. See 720 ILCS 5/24-1(a)(4) (generally prohibiting the general possession of firearms in public except by persons having a concealed-carry permit); 720 ILCS 5/24-2 (exempting police officers from the prohibitions of 720 ILCS 5/24-1(a)(4) and other prohibitions); 430 ILCS 66/65(a)(9) (generally prohibiting persons having a concealed-carry permit from possessing firearms in a bar).

³⁰For relevant purposes, aggravated assault is defined as conduct placing another in reasonable apprehension of receiving a battery, either in a public place of accommodation or by using a deadly weapon. See 720 ILCS 5/12-1 and 720 ILCS 5/12-2.

³¹Chicago Police Department Uniform and Property Directive U04-02, *Department Approved Weapons and Ammunition* (effective Date: June 2, 2017), Section II.M (emphasis original).

³²*Id.*, Section II.P.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer [REDACTED]

i. Complimentary and Disciplinary History

Complimentary History: Democratic Nation Convention – 1; Problem Solving Award – 1; Attendance Recognition Award – 1; Presidential Election Award – 1; 2004 Crime Reduction Ribbon – 1; Honorable Mention – 22; Complimentary Letter – 8; Nato Service Summit Award – 1; and 2009 Crime Reduction Award.

Disciplinary History: Prior sustained findings from an investigation under log 1068523, which resulted from an incident that occurred on April 10, 2014. Briefly, Officer [REDACTED] was involved in an off-duty road rage incident involving a verbal and physical confrontation, including the officer pointing his firearm at the complainant. Sustained findings were reached regarding Officer [REDACTED] pointing his weapon without justification, the use of profanity and derogatory comments, and striking the complaint. A 28-day suspension is recommended.

ii. Recommended Penalty, by Allegation

1. Allegation 1 – Suspension / 28 Days
2. Allegation 4 – Suspension / 28 Days
3. Allegation 5 – Suspension / 28 Days
4. Allegation 6 – Suspension / 28 Days

The handling of a firearm while intoxicated is a serious infraction of CPD rules. While Officer [REDACTED] did admit to some misconduct, which is a mitigating factor, the severity of the incident warrants significant discipline.

IX. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

Member	Allegation	Finding/ Recommendation
Officer [REDACTED]	1. On October 28, 2018, at approximately 1:10 a.m., at 6334 N. Clark Street, Chicago, Illinois, the accused was intoxicated off-duty, in violation of Rule 15 of the CPD Rules of Conduct.	Sustained / 28 Day Suspension

	<p>2. At the above time and place, the accused committed an aggravated assault in that he unlawfully displayed his weapon, to wit; a Beretta 9mm, blue steel, semi-automatic pistol, serial [REDACTED], during a verbal altercation with [REDACTED] in violation of Rules 1 and 38 of the CPD Rules of Conduct.</p> <p>3. At the above time and place, the accused unlawfully displayed his weapon, to wit; a Beretta 9mm, blue steel, semi-automatic pistol, serial [REDACTED], in that he removed it from his holster and placed it on top of the bar, in violation of Rules 1 and 38 of the CPD Rules of Conduct.</p> <p>4. At the above time and place, the accused failed to maintain control of his weapon, to wit; a Beretta 9mm, blue steel, semi-automatic pistol, serial [REDACTED], in that he placed it on top of the bar and subsequently allowed the weapon to be taken by the bartender, in violation of Rules 6 and 38 of the CPD Rules of Conduct.</p> <p>5. At the above time and place, the accused unnecessarily displayed a weapon in violation of Rule 38 of the CPD Rules of Conduct.</p>	<p>Unfounded</p> <p>Unfounded</p> <p>Sustained / 28 Day Suspension</p> <p>Sustained / 28 Day Suspension</p>
<p>A [REDACTED]</p>	<p>6. At the above time and place, the accused carried a firearm while consuming alcoholic beverages in violation of Rule 6 of the CPD Rules of Conduct.</p>	<p>Sustained / 28 Day Suspension</p>

Andrea Kersten
Deputy Chief Administrator – Chief Investigator

Date

4/30/19

Appendix A

Assigned Investigative Staff

Squad#:	████████
Investigator:	██████████
Supervising Investigator:	████████████████
Deputy Chief Administrator:	Andrea Kersten