

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	November 25, 2019
Time of Incident:	3:35 P.M.
Location of Incident:	2520 S. Archer Ave. – CTA Orange Line Platform
Date of COPA Notification:	December 6, 2019
Time of COPA Notification:	12:29 P.M.

Mr. [REDACTED] was returning home from work when the CTA train he was on struck a woman. [REDACTED] and other passengers were instructed to get off the train and leave the platform. [REDACTED] began to take pictures of the emergency personnel’s response to the attempted suicide. [REDACTED] was briefly caught on BWC facing his phone camera towards the location of where the woman was being worked on by emergency personnel on the side of the train on track level. Sgt. Margaret Flisk was captured preventing [REDACTED] from taking a picture of the victim of the attempted suicide. [REDACTED] alleged that Sgt. Flisk violently pushed him without justification.

COPA finds the allegation that Sgt. Flisk pushed [REDACTED], without justification, is not sustained. COPA finds the allegation that Sgt. Flisk failed to activate her BWC during law enforcement activity is sustained.

II. INVOLVED PARTIES

Involved Officer #1:	Sgt. Margaret Flisk / Star #2682 / Employee ID # [REDACTED] / DOA: 17 Mar 1997 / Unit: 009 / DOB: [REDACTED] 1972 / Female / White
Involved Individual #1:	[REDACTED] / DOB: [REDACTED] 1960 / Male / White

III. ALLEGATIONS

Officer	Allegation	Finding
Sergeant Margaret Flisk	It is alleged by [REDACTED] that on or about 25, 2019, at approximately 15:35, at or near 2520 S. Archer (CTA Orange Line Station), Chicago, IL, 60608, that you, Sergeant Margaret Flisk committed misconduct through the following acts or omissions, by:	
	1. Pushed [REDACTED], without justification.	Not Sustained
	2. Failed to activate BWC during law enforcement activity.	Sustained

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 6 – Disobedience of an order or directive, whether written or oral.
2. Rule 8 – Disrespect to or maltreatment of any person, while on or off duty.

Special Orders

1. S03-14 Body Worn Cameras – effective 30 April 2018.

V. INVESTIGATION

a. Interviews

██████████ was interviewed December 18, 2019.¹ While coming home from work via the CTA Orange Line, the train ██████████ was on struck a woman. ██████████ with other passengers were requested to get off of the train which is when ██████████ decided to take photos of the on-scene emergency personnel. ██████████ was motioned by one of three CPD officers standing near the location of impact to come to her. The female officer, now known as Sgt. Flisk, unsuccessfully attempted to take ██████████'s phone from him. Sgt. Flisk then violently shoved ██████████ with two hands approximately two to three times in the chest. ██████████ could not recall if anything was said during the encounter with Sgt. Flisk. Unsure of what to do, ██████████ took the stairs down to the street level of the platform and went about his day. The other two male officers that were with Sgt. Flisk did not engage with ██████████ in any way.

Asked why he was taking pictures, ██████████ said that he enjoys taking pictures of first responders and thought it necessary to capture the scene for his boss because ██████████ himself was involved in an incident on the same platform approximately two months before. ██████████ was able to point out the group of officers he previously referred to in his statement from a picture he had taken while exiting the train platform. ██████████ explains that he knows that he can take pictures of anything while in a public place as long as it does not impede emergency personnel.

Sgt. Flisk was interviewed on August 26, 2020.² Sgt. Flisk confirmed that she was on duty November 25, 2019, as a Sector Sergeant responding to calls and supervising officers. Sgt. Flisk independently recalls responding to the incident at the CTA Orange Line platform for an attempted suicide. Sgt. Flisk's responsibilities were to ensure the scene was safe and secure and assist the Chicago Fire Department as requested. CFD requested that the platform be cleared of pedestrians in order to render aide to the woman. Sgt. Flisk did not independently recall the interaction with ██████████ but upon review of Ofc. Salazar's BWC does remember the interaction.

Sgt. Flisk recalls that ██████████ crossed into the area where CFD personnel were rendering aide to the woman and ignored the consistent verbal orders to exit the train platform. Sgt. Flisk made physical contact with ██████████ to prevent him from taking a photo and redirect him to the area where the other passengers were exiting the platform.

¹ Att. 5

² Att. 8

Sgt. Flisk denies any use of force on [REDACTED] while she used her hands to redirect his person toward the other passengers using the stairs to exit the train platform. Throughout the interaction, Sgt. Flisk continued to give [REDACTED] verbal commands to leave the platform. Sgt. Flisk does not believe a TRR was required because she did not use force against [REDACTED]. Sgt. Flisk's brief physical contact in preventing the photo and redirecting [REDACTED] was the extent of the physical contact and did not recall violently pushing him. Using Ofc. Salazar's BWC and the photo provided by [REDACTED], Sgt. Flisk recognized Ofc. Fitzpatrick but didn't know his name and did not recognize the third officer. Sgt. Flisk was asked if she was assigned a BWC for the day of the incident. Sgt. Flisk confirmed she had a BWC and that she always turns it on when necessary. Sgt. Flisk had no answer as to why COPA was unable to locate BWC footage for her assigned camera on that day.

Sgt. Flisk was interviewed on January 19, 2019.³ Sgt. Flisk was served with the allegation that she failed to activate her BWC during law enforcement activity. Sgt. Flisk was shown a BWC request form⁴ which showed there was no available BWC footage for Sgt. Flisk for the event that took place on the CTA Orange Line Platform. Sgt. Flisk confirmed that her BWC was not activated during the event and affirmed the allegation. Sgt. Flisk could not provide a reason why she did not activate her BWC during the event.

Ofc. Fitzpatrick was interviewed October 14, 2019.⁵ Ofc. Fitzpatrick confirmed that he was on duty the day of the incident and was assigned to patrol the 009th District as a Field Training Officer. Ofc. Fitzpatrick recalls responding to the CTA Orange Line platform for the incident involving the woman who was struck by a train. Ofc. Fitzpatrick's primary responsibility in responding to the train platform was to ensure everyone's safety and clear the platform for emergency medical services. Upon review of Ofc. Salazar's BWC, Ofc. Fitzpatrick does recognize himself but does not independently recall the interaction with [REDACTED]. Ofc. Fitzpatrick, according to the reviewed BWC, believes that Sgt. Flisk prevented [REDACTED] from attempting to record the woman that attempted suicide. Referencing the BWC of Ofc. Salazar, Ofc. Fitzpatrick sees Sgt. Flisk make physical contact with [REDACTED] and guides him towards the stairs. Ofc. Fitzpatrick states that the physical contact that Sgt. Flisk made with [REDACTED] would not require a TRR. Ofc. Fitzpatrick was asked to identify the third officer but was unable to do so.

COPA's attempt to identify the third officer that may have witnessed the interaction between Sgt. Flisk and [REDACTED] were unsuccessful. Attempts to identify the officer were within reason and not exhaustive.

b. Digital Evidence

BWC of Officer Salazar was reviewed.⁶ Officer Salazar arrives on-scene and is ordered to clear the entire platform so that CFD personnel can render aide to the woman. Officer Salazar is standing near the area of impact and where the woman is being treated by CFD personnel on track level when [REDACTED] can be seen coming into BWC view.⁷ Sgt. Flisk can clearly be heard requesting passengers to exit the platform by going down the stairs.⁸ Officer Salazar briefly turns his back to the area at the top of the platform stairs and turns around when Sgt. Flisk can be heard loudly saying "sir" five times.⁹ Officer Salazar's BWC captures [REDACTED] stopped with both arms up holding a cellphone faced towards CFD personnel and the front of the train where the woman is located and being treated.¹⁰ Sgt. Flisk is seen covering [REDACTED]'s hands and

³ Att. 17

⁴ Att. 12

⁵ Att. 9

⁶ Att. 22

⁷ Att. 22 at 5:57

⁸ Att. 22 at 5:55

⁹ Att. 22 at 6:02

¹⁰ Att. 22 at 6:03

redirecting him towards the stairs while ██████ can be heard saying “keep your hands off me”.¹¹ Officer Salazar turns away from ██████ and Sgt. Flisk and the remainder of his BWC footage while on scene does not relate to the interaction.

BWC of Officer Fitzpatrick was reviewed.¹² Officer Fitzpatrick’s shows his arrival on-scene and then a CFD Battalion Chief request that the entire platform be cleared of passengers.¹³ Officer Fitzpatrick begins to instruct passengers to leave while informing Sgt. Flisk of CFD’s request. Officer Fitzpatrick’s BWC shows Sgt. Flisk wearing a BWC on her person¹⁴ while she instructs Officer Fitzpatrick to clear the other end of the CTA platform. Officer Fitzpatrick’s BWC footage ends while at the other end of the platform.

BWC of Officer Velasquez was reviewed.¹⁵ Recorded footage shows Officer Velasquez initially arrive on-scene and assist with clearing the passengers off the CTA platform. During this time, Sgt. Flisk can be heard giving instructions to the exiting passengers at the top of the platform stairwell.¹⁶ The remainder of Officer Velasquez’s BWC recording does not capture the interaction between Sgt. Flisk and ██████.

A photograph taken by ██████ was reviewed.¹⁷ The photograph shows multiple CFD personnel standing on the CTA platform and a group of CPD officers that are partially blocked by train passengers that appear to be walking towards the stairs to exit. Officer Fitzpatrick is visible and identifiable in the photograph but neither Sgt. Flisk or the third unidentified officer are clearly visible.

Video from the CTA Orange Line platform was requested and reviewed.¹⁸ Footage provided by CTA did not capture the interaction between Sgt. Flisk and ██████.

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
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.

¹¹ Att. 22 from 6:05 to 6:08

¹² Att. 20

¹³ Att. 20 at 5:16

¹⁴ Att. 20 at 5:35

¹⁵ Att. 21

¹⁶ Att. 21 from 3:02 to 3:18

¹⁷ Att. 7

¹⁸ Att. 10

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

COPA finds the allegation that Sgt. Flisk pushed ██████████, without justification, is not sustained. Sgt. Flisk is alleged to have pushed ██████████, without justification. Rule 8 establishes that Department members may not engage in disrespect to or maltreatment of any person, while on or off duty. Passengers of the of the stopped CTA train were instructed to exit the train platform using the stairwell. Near the platform's stairwell, CFD personnel were actively rendering aid to the woman that had been struck by the train. ██████████ admittedly took photos using his cellphone of CFD personnel actively working the incident, validated by the photograph provided by ██████████ to COPA. BWC of Ofc. Salazar shows ██████████ stop and raise both arms while grasping his cellphone toward the area where the victim was being treated by CFD on track level. BWC captures Sgt. Flisk order ██████████ to continue moving while she covers his two extended hands to prevent ██████████ from photographing the area of impact and the woman being treated by CFD personnel.

Sgt. Flisk did not activate her BWC during the incident and CTA was unable to provide any security camera footage of the alleged use of force between ██████████ and Sgt. Flisk. COPA is unable to independently verify that Sgt. Flisk did or did not push ██████████. Therefore, COPA finds the allegation that Sgt. Flisk pushed Daniel ██████████, without justification, is **NOT SUSTAINED**.

COPA finds the allegation that Sgt. Flisk failed to activate her BWC during law enforcement activity is sustained. Rule 6 prohibits Department members from the disobedience of an order or directive, whether written or oral. Special Order S03-14 Body Worn Cameras states that the Department member will activate their BWC "at the beginning of an incident and will record the entire incident for all law-enforcement-related activities."¹⁹ COPA was unable to locate BWC for Sgt. Flisk for the event on the CTA Orange Line Platform. Sgt. Flisk affirmed the allegation that she failed to activate her BWC during law enforcement activity and was unable to provide a reasonable explanation why she did not activate her BWC. COPA finds the allegation that Sgt. Flisk failed to activate her BWC during law enforcement activity is **SUSTAINED**.

¹⁹ Att. 18: S03-14 Body Worn Cameras - III. Initiating, Concluding, and Justifying Recordings: A. 2.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Sgt. Margaret Flisk

- i. Complimentary History:** 5 Complimentary Letters, 6 Dept. Commendations, 36 Honorable Mentions, 1 Life Saving Award, 8 Miscellaneous Awards – Total of 56 Awards
- ii. Disciplinary History:** No applicable past history,
- iii. Recommended Penalty by Allegation:**

1. Allegation No. 2: Violation Noted

IX. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Sergeant Margaret Flisk	It is alleged by [REDACTED] that on or about 25, 2019, at approximately 15:35, at or near 2520 S. Archer (CTA Orange Line Station), Chicago, IL, 60608, that you, Sergeant Margaret Flisk committed misconduct through the following acts or omissions, by: <ul style="list-style-type: none"> 1. Pushed [REDACTED], without justification. 2. Failed to activate BWC during law enforcement activity. 	Not Sustained Sustained / Violation Noted

Approved:

[REDACTED SIGNATURE]

Matthew Haynam
 Deputy Chief Administrator – Chief Investigator

3/30/2021

Date

Appendix A

Assigned Investigative Staff

Squad#:	2
Investigator:	Anthony Wall
Supervising Investigator:	Bob Coleman
Deputy Chief Administrator:	Matthew Haynam