

SUMMARY REPORT OF INVESTIGATION

| | |
|---------------------------------|--|
| Date/Time/Location of Incident: | May 15, 2021/ 9:56 A.M./ 25 W. Grand Avenue |
| Date/Time of COPA Notification: | May 15, 2021/ 11:00 A.M. |
| Involved Officer #1: | Julio Hernandez, Star No. 18377, Employee No. [REDACTED], Date of Appointment: May 17, 1993, Rank: Police Officer, Unit of Assignment: 701/704, DOB: [REDACTED], 1966, Male, Hispanic |
| Case Type: | Unintentional Weapon Discharge |

I. ALLEGATIONS

| Officer | Allegation | Finding |
|-------------------------|---|-------------------------------|
| Officer Julio Hernandez | 1. It is alleged by the Civilian Office of Police Accountability that on or about May 15, 2021, at approximately 9:56 A.M., at or near 25 W. Grand Avenue, Officer Julio Hernandez, Star No. 18377, committed misconduct by being inattentive to duty in that his weapon discharged unintentionally, in violation of Rule 10. | Sustained / 20-day suspension |

II. SUMMARY OF EVIDENCE

On May 15, 2021, the Chicago Police Department (CPD) notified COPA of an unintentional firearm discharge that occurred in a parking garage at or near 25 W. Grand Avenue. COPA alleged Officer Hernandez was inattentive to duty in that his weapon discharged unintentionally, in violation of Rule 10 of CPD’s Rules and Regulations. In reaching its factual findings, COPA reviewed Officer Hernandez’ body worn camera video, the original case incident report, CPD supplementary reports, the Office of Emergency Management & Communications event query reports, a Bureau of Internal Affairs synoptic report, and Officer Hernandez’s statement to COPA. COPA finds Officer Hernandez’s account to be credible, as it is consistent with BWC video and other evidence. The following is a summary of the material facts as determined by COPA.

On the morning of May 15, 2021, multiple officers responded to reports of shots fired in a parking garage at 25 W. Grand Avenue, where the first arriving officers observed two injured and bleeding male subjects.¹ As additional units responded, the first arriving officers reported that shots were fired inside the garage and other subjects may still be present.² Officer Hernandez arrived at the scene at approximately 9:52 A.M., observing multiple officers and wounded subjects.

¹ Attachment 1 – Original Case Incident Report, Page 7.

² Attachments 7 & 8 – Office of Emergency Management & Communications Event Query Reports.

At 9:55 A.M., Officer Hernandez followed two SWAT officers into the indoor parking garage, walking up the incline driveway to the next level of the garage. Officer Hernandez walked with his weapon drawn in a two-handed grip, utilizing his right hand as his primary hand. Throughout this period, music was playing from somewhere on Officer Hernandez's person, near his camera.³ As Officer Hernandez searched the parking garage with other officers, he realized the music was continuing to play. He passed his weapon from his right hand to his left, then used his right hand to retrieve his cell phone from within his tactical vest. As he did so, he unintentionally discharged his weapon one time,⁴ striking the parking garage's cement floor.

Officer Hernandez immediately yelled to other officers that he had an accidental discharge, and other officers and the dispatcher announced the accidental discharge over the radio. Additional officers secured the area with crime scene tape as Officer Hernandez guarded his spent casing and the bullet strike.⁵ At approximately 2:00 P.M., Officer Hernandez submitted to drug and alcohol screening, with negative results.⁶

III. 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.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct reviewed complied with Department policy.⁷ If the evidence gathered in an investigation establishes that it is more likely that the conduct complied with Department policy than that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met.

³ In his statement to COPA, Officer Hernandez stated the music was a ring tone on his cell phone, which was continuously playing due to a repeated phone call he was receiving. Attachment 13 – Officer Hernandez's June 17, 2021 Statement to COPA, at 09:51 minutes.

⁴ Attachment 4 – Officer Hernandez's Body Worn Camera video, at 5:30 minutes.

⁵ Attachment 4 – Officer Hernandez's Body Worn Camera video, at 5:30 minutes – 17:58 minutes.

⁶ Attachment 5 – Bureau of Internal Affairs Report, Pages 13 - 14.

⁷ 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).

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. 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.”⁸

IV. ANALYSIS AND CONCLUSION

COPA finds the preponderance of the evidence establishes that Officer Hernandez was inattentive to duty when his weapon discharged unintentionally. As Officer Hernandez searched for armed subjects in the parking garage, he acted appropriately in his attempt to silence the music that was continuously playing from his cell phone. He erred, however, when he passed his weapon from his primary shooting hand to his non-primary hand, turning his attention away from safely holding his weapon so that he could operate his phone. Officer Hernandez should have silenced his phone prior to entering the garage with his weapon drawn, or used his left, non-primary hand to silence the phone. His actions were inconsistent with Department training and violated Rule 10 of CPD’s Rules and Regulations. Therefore, COPA finds that Officer Hernandez committed misconduct by discharging his firearm unintentionally, and the allegation is **sustained**.

V. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Complimentary and Disciplinary History

In considering disciplinary recommendations for sustained findings, COPA reviewed Officer Hernandez’s complimentary and disciplinary histories.⁹ No complaints are registered with the Chicago Police Department against Officer Hernandez, and he has received no disciplinary action within the Department in the last five years.

b. Recommended Penalty

COPA has found that Officer Hernandez violated Rule 10 when he was inattentive to duty, causing his weapon to discharge unintentionally. Officer Hernandez’s actions created a dangerous situation in which his weapon discharged in a public parking garage with others present around him in the course of police action. Officer Hernandez’s misconduct is somewhat mitigated by his immediate and repeated announcement to other officers that he had an accidental discharge. Considering Officer Hernandez’s record of service and the serious nature of the misconduct, COPA finds that a 20-day suspension is the appropriate penalty for this sustained allegation.

⁸ *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (2016).

⁹ Attachments 14 & 15.

Approved:



7/13/2021

Matthew Haynam
Deputy Chief Administrator – Chief Investigator

Date

Appendix A

Assigned Investigative Staff

| | |
|------------------------------------|-----------------|
| Squad#: | Six |
| Investigator: | Daniel Thetford |
| Supervising Investigator: | Steffany Hreno |
| Deputy Chief Administrator: | Matthew Haynam |