



CIVILIAN OFFICE OF POLICE ACCOUNTABILITY

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January 24, 2019

Max A. Caproni
Executive Director, Chicago Police Board
30 North LaSalle Street, Suite 1220
Chicago, Illinois 60602

VIA Email and U.S. mail

RE: Request for Review, Log No. 1079109

Dear Executive Director Caproni:

Pursuant to Municipal Code of Chicago Section 2-78-130 and Police Board Rules of Procedures Section VI, please consider this letter a Request for Review of a non-concurrence between the Civilian Office of Police Accountability (COPA) and the Superintendent in the above captioned investigation.¹

The factual background and analysis are set forth below. The Department bears the affirmative burden of proof in overcoming COPA's recommendation. In this case, the dispute relates *only* to the appropriate disciplinary recommendation (or, non-disciplinary, as the Department recommends). The Department fails to meet its burden. COPA therefore respectfully requests the Chicago Police Board reject the Department's disciplinary recommendation and accept COPA's recommendation of a 10-day suspension for the sustained misconduct.

I. BACKGROUND

A. Factual Background

On February 2, 2016 around 6:30 p.m., off-duty Officer Timmie Deberry was in a Walgreens at 3100 W. Armitage; his children waited in his parked vehicle outside. While in the store, Officer Deberry heard a commotion near the registers, and so he walked toward them to investigate. As he approached the registers he saw a man – later identified as [REDACTED] – fleeing the store and an off-duty Cook County deputy sheriff attempting to stop [REDACTED]. Deberry gave chase out of the store and pursued [REDACTED] to an alleyway.

During the chase, Officer Deberry says he saw [REDACTED] reach for his waistband, causing Officer Deberry to draw his firearm. [REDACTED] attempted to scale a chain link fence but was

¹ As required by the Police Board Rules of Procedure, enclosed are copies of COPA's Final Summary Report, the Department's January 2, 2019, non-concurrence letter, and a certificate that the parties met and conferred.

unsuccessful. As █████ attempted to scale the fence, Officer Deberry caught up to █████ and – with his firearm in hand – grabbed █████ and pulled him from the fence. As Officer Deberry grabbed █████ he accidentally discharged his firearm.

At this time, Officer Deberry called the 14th District for support officers. Once on scene, Officer Deberry provided those officers with an explanation of what happened; this synopsis did not include anything regarding the firearm discharge. Officer Deberry then left to take his children to get food and subsequently went home. As the Department concedes, only 1.5 hours *after* the incident did Officer Deberry report to the 14th District that he had discharged his firearm during the incident.

B. Disputed Findings & Recommendation

COPA sustained three allegations:

1. That Officer Deberry negligently handled his firearm, in violation of Rules 2, 10, 11, and 38.
2. That Officer Deberry accidentally discharged his firearm, in violation of Rules 2, 10, 11, and 38.
3. That Officer Deberry failed to immediately report that he had discharged his firearm, in violation of Rules 3, 5, 6, 10, 11, and 39.

COPA recommended a 15-day suspension for the sustained allegations.

The Department *concurred* with the sustained finding for Allegation 3, but did not concur with the sustained finding for Allegations Nos. 1 or 2. The Department recommended a finding of “Sustained – Violation Noted, No Disciplinary Action” for Allegation 3.

During the meet and confer with the Department, COPA agreed that the findings for Allegations Nos. 1 and 2 would be changed to the Department’s recommended findings (unfounded for No. 1 and exonerated for No. 2). COPA also agreed to reduce the penalty recommendation to a 10-day suspension for Allegation 3.

Thus, the only remaining dispute is the appropriate discipline (or, non-discipline as the Department proposes) for Allegation 3, which both COPA and the Department agree should be sustained.

C. Legal Background

Department General Order G03-02-03, under Section IV “Immediate Notifications” requires: “[f]or any firearm-discharge incidents, including unintentional discharges ... the discharging member will *immediately notify* the Office of Emergency Management and Communications (OEMC) of the firearms discharge providing all relevant information and requesting additional resources.” (Emphasis added.)

Rule 38 expressly prohibits: “[f]ailure to *immediately* make an oral report to the desk sergeant at the District of occurrence ... whenever a firearm is discharged by a member.” (Emphasis added.)

II. ANALYSIS

Although COPA had concerns with Officer Deberry’s *use* and *handling* of his firearm in the course of this encounter, we were persuaded by the Department’s arguments with respect to that conduct. COPA cannot, however, agree to a non-disciplinary penalty (or, a penalty less than a 10-day suspension) for Officer Deberry’s failure to immediately report his firearm discharge.

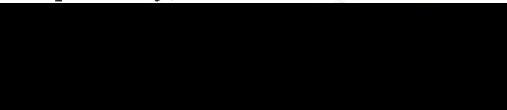
An officer’s decision to draw – and in this case discharge – his firearm is a serious one. For that reason, Department policy demands that officers *immediately* report such conduct. Failure to report such conduct carries huge risk for the City and the Department; it risks undermining the credibility of the officer’s report, and it fundamentally impedes the ability of any investigation into that discharge, among others. Not to mention the fact that the accidental discharge of a firearm while an officer is hands-on with an offender places that officer at risk, places the offender and the public at risk, and – in this case – placed Officer Deberry’s own children at risk.

The Department agrees Officer Deberry’s failure to immediately report his firearm discharge is misconduct. The Department contends, however, that it is mitigated by the fact that he was also “dealing with his three upset children who had just seen their father run after a fleeing offender.”² COPA does not disagree that is relevant, but Officer Deberry made the decision to chase a fleeing offender (who Officer Deberry believed to be armed) in front of his children and then – after taking that police action – failed to follow through and report a highly material piece of information. For the reasons the Department notes, COPA agreed to lessen its disciplinary recommendation from the original 15-day suspension to a 10-day suspension. COPA cannot, however, agree to anything lesser given the seriousness of this conduct and, more importantly, the message that must be clearly conveyed to all Department members about the seriousness of this reporting obligation.

III. CONCLUSION

For the reasons stated, Officer Deberry’s failure to immediately report his firearm discharge is clearly misconduct and should not be treated lightly. COPA respectfully requests that the Police Board reject the Department’s recommendation of a non-disciplinary finding and instead accept COPA’s recommendation for a 10-day suspension.

Respectfully,



Sydney R. Roberts
Chief Administrator
Civilian Office of Police Accountability

² Non-concurrence letter at 3.