



November 16, 2020

Mr. 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 #1075644

Dear Mr. Caproni,

Pursuant to the Municipal Code of Chicago Section 2-78-130 and Police Board Rules of Procedure 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 of the Chicago Police Department (Department) in the above captioned matter.

As set forth in detail in COPA's Summary Report of Investigation dated June 28, 2020 (SRI)¹, there is a compelling legal and evidentiary basis to support COPA's disciplinary recommendation for separation based on a finding that Officer Reginald Murray (Officer Murray) engaged in misconduct when he physically abused [REDACTED], [REDACTED] ([REDACTED]), and later made a series of false or misleading statements, in violation of Department Rule 14.

The Superintendent bears the affirmative burden of proof in overcoming COPA's disciplinary recommendation. COPA respectfully requests that the Board reject the Superintendent's non-concurrence in this matter for the reasons set forth below.

I. BACKGROUND

A. Factual Background²

On June 12, 2015, COPA received a notification alleging that Officer Murray committed misconduct earlier that day between 1:00 a.m. and 3:00 a.m. The alleged misconduct related to a domestic incident between Officer Murray and [REDACTED] who was 13 at the time. [REDACTED] accused Officer Murray of striking him on the buttocks with an open hand; striking him with a belt about the body several times; punching him about the body several times; handcuffing him; sitting on his arms; striking him on the buttocks and back with a baton; and dragging him on the floor by his neck. COPA conducted a lengthy investigation that uncovered evidence supporting the allegations of misconduct, including without limitation, witness and victim interviews, medical records, Department detective reports, and Department of Children and Family Services (DCFS) reports.

¹ As required by the Police Board Rules of Procedure, enclosed are copies of COPA's final summary report, the Department's September 28, 2020, non-concurrence letter, and the certificate of meeting.

² A more detailed factual summary can be found in COPA's SRI.

B. Legal Background

Department Rule 8 prohibits disrespect to or maltreatment of any person, while on or off duty. Rule 9 prohibits engaging in any unjustified verbal or physical altercation with any person, while on or off duty. In relation to these Rules, there is a comment that “Rules 8 and 9 prohibit the use of any excessive force by any member. These rules prohibit all brutality, and physical or verbal maltreatment of any citizen while on or off duty, including any unjustified altercation of any kind.”³

Department Rule 14 prohibits officers from “making a false report, written oral.”⁴ To sustain such an allegation, a preponderance of the evidence must demonstrate that “(1) the officer willfully made a false statement; and (2) the false statement was made about a fact that was material to the incident under investigation.”⁵

C. Disputed Findings & Recommendation

As the Superintendent states in the enclosed letter, he does not concur with COPA’s Sustained Findings concerning either the physical abuse of ██████████ or the Rule 14 violations. Regarding the abuse of ██████████ the Superintendent primarily argues the inconsistencies of statements given by ██████████ and other witnesses. As to the Rule 14 violations, the Superintendent asserts that Officer Murray was asked vaguely worded questions, and his responses were taken out of context.

After reviewing the totality of the evidence, COPA ultimately found by a preponderance of the evidence that Officer Murray struck ██████████ about the body with an object without justification, and that he provided false or misleading statements during his interviews. These findings were based largely upon a credibility determination informed by corroborating physical evidence and eyewitness accounts. COPA recommended that Officer Murray be separated from the Department.

II. ANALYSIS

A. The Superintendent Fails to Apply the Preponderance of the Evidence Standard

This is an administrative proceeding, pertaining only to whether Officer Murray should be disciplined for misconduct. It is not a criminal proceeding, which is governed by the much more stringent reasonable doubt standard. Unlike in a criminal trial, the Officer’s liberty is not at stake. Thus, administrative proceedings such as this are governed by the preponderance of the evidence standard, a significantly lower standard than the reasonable doubt standard. This point is of particular importance in this non-concurrence, as the Superintendent notes that Officer Murray was released without *criminal* charges after being arrested for conduct at issue in this investigation. However, the disposition of the criminal investigation is not controlling of the findings in a related administrative review of alleged misconduct.

³ <https://www.chicago.gov/dam/city/depts/cpb/PoliceDiscipline/RulesofConduct.pdf>

⁴ *Id*

⁵ Agreement between the City of Chicago and the Fraternal Order of Police Lodge No. 7, July 1, 2012 - June 30, 2017, Sec. 6.1M

The preponderance standard is met when a proposition is more probably true than not.⁶ Thus, the existence of *any* doubt in this case in no way justifies a different outcome than that reached by COPA. The only determination that must be made in this non-concurrence review process is whether the Department has met its affirmative burden of showing that COPA was incorrect in finding it more probable than not that Officer Murray committed misconduct by striking [REDACTED] or by providing false or misleading statements about it after the fact.⁷

1. The Superintendent Has Failed to Meet the Affirmative Burden of Showing That COPA's Findings Are Not Supported by a Preponderance of the Evidence.

The Superintendent fails to meet his affirmative burden, and seemingly applies a more stringent standard than the preponderance of the evidence that governs these proceedings.

a) The Superintendent's Position Concerning Victim and Witness Statements is Contradicted by the Physical Evidence, and Ignores the Complex Nature of Domestic Violence Incidents.

As mentioned above, and fully articulated the attached SRI, COPA reached its findings only after conducting a credibility analysis that is supported by the overwhelming physical evidence. At the outset, COPA found [REDACTED] initial account more credible than Officer Murray's statements to COPA. For one, [REDACTED] initial account was given on the same day of the incident, at a time when the events were most fresh in his mind. At that time, it is also less likely that [REDACTED] account would be affected by the complex family dynamics commonly associated with domestic violence incidents. Additionally, the available physical evidence supports [REDACTED] outcry statements, as his medical records indicate he was treated for injuries that were diagnosed as "child physical abuse," and he told hospital staff that Officer Murray hit him with a belt about his body. Moreover, witness statements also corroborate [REDACTED] initial account. To that end, what is perhaps most problematic is Officer Murray's contention that every material witness was dishonest, except for him. In essence, Officer Murray insists that the reason his story differs from that of [REDACTED] mother, and fellow Department members, is that they were all lying for various reasons. To accept such a proposition, especially in light of physical evidence to the contrary, would be absurd and untenable.

b) The Superintendent's Argument Regarding the Rule 14 Violations Relies on an Inaccurate or Incomplete Reading of the Record, and a Misunderstanding of Hearsay and its Application to This Administrative Investigation.

Again, Officer Murray's credibility is clearly in question given his assertion that everyone is lying but him. In spite of this, the Superintendent argues that the statements provided by Officer Murray that formed the basis of the findings related to Rule 14 violations were in response to questions that were vague and confusing. COPA reaffirms its finding with regard to both Rule 14 findings, and notes that Officer Murray's answers unambiguously demonstrate that he understood the questions. Next, the Superintendent seems to argue that Department and DCFS reports are inadmissible hearsay because they cannot be cross-examined, and therefore cannot be considered in the Rule 14 findings. However, there is no support offered for the proposition that COPA cannot rely on hearsay in its administrative investigations. Additionally, the Superintendent's understanding of the hearsay

⁶ *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005)

⁷ *See*: Municipal Code of Chicago Section 2-78-130(a)(iii)

doctrine is flawed, as Officer Murray's statements from those reports would, in fact, be admissible as statements by a party-opponent.⁸

III. CONCLUSION

Based on all of the foregoing, the Superintendent has failed to meet his affirmative burden of showing COPA's findings in this case were unreasonable and not supported by a preponderance of the evidence. COPA correctly found that Officer Murray's conduct was unjustified misconduct, and recommended an appropriate discipline. Accordingly, COPA respectfully requests that the Chicago Police Board reject the Superintendent's non-concurrence in this matter and accept COPA's recommendation to separate Officer Murray.

Respectfully,



Sydney Roberts
Chief Administrator
Civilian Office of Police Accountability

Encl:
COPA's Final Summary Report of Investigation
The Department's September 28, 2020, Non-Concurrence letter
The Certificate of Meeting

cc:
COPA General Counsel Kevin Connor
CPD Superintendent David Brown
CPD General Counsel Dana O'Malley

⁸ See: USCS Fed Rules Evid R 801(d)(2), and Ill. R. Evid. 801(d)(2)