



January 6, 2021

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 #1091843

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 July 31, 2020 (SRI), there is a compelling legal and evidentiary basis to support COPA's disciplinary recommendation for a 180-day suspension based on the finding that Officer Cedric Taylor (Officer Taylor) engaged in misconduct by using excessive force against [REDACTED] (Mr. [REDACTED]) in violation of General Orders G03-02 and G03-02-01.¹

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 November 28, 2018, Commander Michael Pigott notified COPA of a use of force incident captured on video from November 25, 2018, involving Officer Taylor. In the video, Officer Taylor is shown striking Mr. [REDACTED] around the shoulders while holding handcuffs, and then forcefully taking Mr. [REDACTED] to the ground. After interviewing Officer Taylor, other witness officers, and reviewing certain videos, COPA determined that Officer Taylor committed misconduct by using excessive force and failing to activate his body-worn camera (BWC). COPA recommended a 180-day suspension.

¹ As required by the Police Board Rules of Procedure, COPA encloses copies of the SRI, the Superintendent's October 26, 2020 non-concurrence letter, and the Certificate of Meeting.

² A detailed factual summary is set forth in the SRI.

B. Legal Background

The main issue in evaluating every use of force is whether the amount of force the officer used was objectively reasonable in light of the totality of the circumstances faced by the officer.³ The analysis of the reasonableness of an officer's actions must be grounded in the perspective of "a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" and "allow for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation."⁴

The factors to be considered in assessing the reasonableness of force include, but are not limited to, (1) the severity of the crime at issue; (2) whether the subject was posing an immediate threat to the safety of officers or others; and (3) whether the subject was actively resisting arrest or attempting to evade arrest by flight.⁵ In all uses of force the goal of a Department member's response is to "resolve the incident with the foremost regard for the preservation of human life and the safety of all persons involved."⁶

C. Disputed Findings & Recommendation

As the Superintendent states in the enclosed letter, he does not concur with COPA's disciplinary recommendation to suspend Officer Taylor for 180 days. The Superintendent argues that COPA lacks sufficient evidence to support 1 of its 3 Sustained allegations, and offers mitigation regarding the other findings for which he has concurred. Ultimately, the Superintendent suggested a 10-day suspension.

After reviewing the totality of the evidence, COPA found by a preponderance of the evidence that Officer Taylor's use of force was excessive, both when he struck Mr. [REDACTED] while holding handcuffs, and when he forcefully took Mr. [REDACTED] to the ground. These findings were based largely upon video evidence and eyewitness accounts. COPA maintains that a 180-day suspension for Officer Taylor is appropriate under these circumstances.

II. ANALYSIS

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

This is an administrative proceeding, pertaining only to *how* Officer Taylor 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 Officers' 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.

³ General Order G03-02 (III)(B) (effective October 16, 2017 to February 28, 2020)

⁴ *Plumhoff v. Rickard*, 572 U.S. 765, 775 (2014) (internal quotations and citation omitted)

⁵ General Order G03-02 (III)(C)(1)

⁶ *Id.* (II)(A)

The preponderance standard is met when a proposition is more probably true than not.⁷ Thus, the existence of *any* doubt in this case in no way justifies a different outcome than that reached by COPA. Therefore, 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's recommended discipline is inappropriate.⁸

1. The Superintendent's Argument Regarding the Emergency Takedown as a Permissible Use of Force Ignores Relevant Department Policy

In his non-concurrence, the Superintendent points out that Mr. ██████ became an active resister during his encounter with Officer Taylor, and therefore Department directives allow for an emergency takedown to be utilized. Indeed, under General Order G03-02-01, emergency takedowns are authorized, along with holding techniques and other compliance measures, to arrest an active resister. However, as indicated in COPA's SRI, G03-02-01 *also requires* members to "use only the force that is proportional to the threat, actions, and level of resistance offered by a subject" and to "use de-escalation techniques to prevent or reduce the need for force when it is safe and feasible to do so based on the totality of the circumstances."⁹ These policies are consistent with the Department's general policy to eliminate or reduce the use of force when possible.

In the instant case, Officer Taylor grabbed Mr. ██████ by the collar, initiated a takedown, and struck Mr. ██████ five times while holding handcuffs in his striking hand, all within ten seconds of coming into contact with Mr. ██████. Officer Taylor admitted that he did not attempt any de-escalation techniques before striking Mr. ██████ nor did he attempt to communicate with the officers already on scene. In fact, the Officers who had been dealing with Mr. ██████ for several minutes prior to Officer Taylor's arrival were attempting to de-escalate the situation and gain voluntary compliance. In short, the mere fact that a takedown technique was a potential option for Officer Taylor does not mean that he can rush into it indiscriminately. This is underscored by his failure to de-escalate the situation or communicate with officers who had already been dealing with Mr. ██████. Officer Taylor's conduct in this regard was clear misconduct under any comprehensive reading of G03-02-01.

2. The Superintendent's Mitigation Does Not Justify a Downward Departure from COPA's Recommended 180-day Suspension.

The Superintendent acknowledges that Officer Taylor was in violation of Department policy when he struck Mr. ██████ while holding handcuffs. Nonetheless, he insists that a significant penalty reduction is appropriate because Officer Taylor used the base of his hand rather than the handcuffs to strike Mr. ██████. The Superintendent also points out that Officer Taylor de-escalated his use of force after forcefully taking Mr. ██████ to the ground, and that Mr. ██████ never complained of any injury.

COPA does not concur with the Superintendent's characterization of Officer Taylor's behavior. As detailed in its SRI, COPA found that Officer Taylor struck Mr. ██████ with closed fists while holding handcuffs, which is best characterized as direct mechanical strikes. Furthermore, the video shows that the free end of Officer Taylor's handcuffs struck Mr. ██████ back. As a result, Officer Taylor improperly struck Mr. ██████ with handcuffs functioning an impact weapon. Finally, COPA does not find it compelling mitigation that Officer Taylor eventually de-escalated his use of force under these

⁷ *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005)

⁸ *See*: Municipal Code of Chicago Section 2-78-130(a)(iii)

⁹ General Order G03-02 (III)(B)(2-3)

circumstances. To the contrary, Officer Taylor needlessly escalated the situation within seconds of arriving on scene. Because Officer Taylor at some point stopped using excessive force against Mr. [REDACTED] when it was never appropriate in the first place, does not justify a reduced disciplinary recommendation. Nor is it mitigation that Mr. [REDACTED] avoided serious injury. As the Superintendent concedes in his non-concurrence, Officer Taylor should have re-holstered his handcuffs prior to striking Mr. [REDACTED] to avoid any potential injury.

III. CONCLUSION

The Superintendent has failed to meet his affirmative burden of showing COPA's disciplinary recommendation was unreasonable and not supported by a preponderance of the evidence. COPA correctly found that Officer Taylor's conduct was unjustified and recommended 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 suspend Officer Taylor for 180 days.

Respectfully,

[REDACTED]

Sydney Roberts
Chief Administrator
Civilian Office of Police Accountability

encl: Final Summary Report of Investigation
Superintendent's Non-Concurrence letter
Certificate of Meeting

cc: Superintendent David Brown
Dana O'Malley (Department General Counsel)
Kevin Connor (COPA General Counsel)