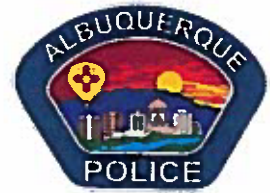




Timothy M. Keller
Mayor

City of Albuquerque

Albuquerque Police Department



Eric J. Garcia
Interim Superintendent of Police Reform

Interoffice Memorandum

January 10, 2022

To: Diane McDermott, Interim Executive Director, CPOA

From: Eric J. Garcia, Interim Superintendent of Police Reform/DCAO

Subject: Non-Concurrence of Findings and/or Discipline re: CPC 038-21

This memorandum serves to convey the articulation for APD's points of non-concurrence in the above captioned administrative investigation conducted by the Civilian Police Oversight Agency.

Summary of non-concurrence of finding(s):

Policy	CPOA Finding	APD Finding
3-13-3(B)(3)(a)	Not Sustained	Unfounded
1-1-4(J)(4)	Not Sustained	Unfounded

Rationale for non-concurrence of finding for 3-13-3(B)(3)(a) against Ofc. J A :

I concur with the recommendation provided by Commander G W and concurred by Deputy Chief J B as follows:

I concur with CPOA Investigator Coca on all findings of this case except for his finding on SOP 3-13-3B-3a:

"Officers shall abide by the following principles: Take appropriate action and render assistance in any instance that comes to their attention, whether on duty or off duty"

Investigator Coca reached a finding of "not sustained" meaning his investigation was unable to determine by preponderance of the evidence whether the officer complied with the policy. The allegation centers on whether Officer A knowingly allowed Operator G to drive her vehicle while intoxicated. The complainant did not offer sufficient evidence to establish any indication that Ms. G had been drinking alcoholic beverages beyond her own claims that it "reeked" in the house and that the non-itemized bill incurred at the restaurant was simply too high to be food. The Rio Rancho Police Department, an objective third party, stated they could not smell or observe any signs of intoxication and did not feel it necessary to stop the vehicle. Moreover, Officer A offered explanation of the alcohol bottles being out due to a previous event. Officers are not automatically given credit on their statements however no evidence was presented in the case or in the officer's retention file to cause me to question the credibility of that statement.

It is true there is no way for the investigation to completely establish that Operator G was not under the influence but the burden is not on her to prove she had not been drinking to the point of intoxication nor on Officer A to stop her from driving when the objective third party did not see evidence she should not be driving. I believe the proper finding in this case is UNFOUNDED.

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Rationale for non-concurrence of finding for 1-1-4(J)(4) against Tele Comm Op. M

G :

I concur with the recommendation provided by Commander C W and concurred by Deputy Chief J B as follows:

I concur with CPOA Investigator Coca on all findings of this case except for his finding on SOP 1-1-4J-4:

"Personnel will not use intoxicating beverages while off duty if such use renders them unable to report for their next scheduled tour of duty or if the use would bring discredit to the department"

Investigator Coca reached a finding of "not sustained" meaning his investigation was unable to determine by preponderance of the evidence whether the officer complied with the policy. The allegation centers on whether Operator G drank intoxicating beverages prior to a scheduled shift. The complainant did not offer sufficient evidence to establish any indication that Ms. G had been drinking alcoholic beverages beyond her own claims that it "reeked" in the house and that the non-itemized bill incurred at the restaurant was simply too high to be food. The Rio Rancho Police Department, an objective third party, stated they could not smell or observe any signs of intoxication and did not feel it necessary to stop the vehicle.

It is true there is no way for the investigation to completely establish that Operator G was not under the influence but the burden is not on her to prove she had not been drinking to the point of intoxication. Moreover, the investigation found no evidence Ms. G was unable to report for her next shift nor that her performance was substandard in any way. I believe the proper finding in this case is UNFOUNDED.

Conclusion:

The above information constitutes the totality of non-concurrence on the part of APD. No other aspect of the CPC investigation is contended.

Respectfully,



Eric J. Garcia
Interim Superintendent of Police Reform/DCAO
Albuquerque Police Department, Police Reform Bureau

cc: Harold J. Medina, Chief of Police