



City of Albuquerque
Albuquerque Police Department



Timothy M. Keller
Mayor

Michael J. Geier
Chief of Police

Interoffice Memorandum

January 3rd, 2020

To: Ed Harness, Director, CPOA

From: Chief Michael Geier

Subject: Non-Concurrence Memo, Off. J. L., re: CPC 144-19

I held a Pre-Disciplinary Hearing (PDH) on December 17, 2019 in regards to this case. While I concurred with all the findings of the CPOA, I was not in agreement with their proposed disciplinary recommendations.

As noted in SOP 3-44, F5, "The Chief has discretion over, and whether, and at what level to impose discipline. If the Chief's decision differs from the CPOA's recommendation, the Chief sends a memo to the CPOA Executive Director within 30 days of the CPOA's recommendation, explaining the reasons the recommendation was not followed."

I do agree that Off. L. could have handled this call in a more professional manner. He should have documented the incident and could have issued a citation for Criminal Trespass. His interpretation of the McClendon ruling was not accurate. He also should have tagged the drill into evidence for safekeeping.

I do not believe there was a clear determination of untruthfulness as indicated in the investigative findings. In regards to the disposition of the drill, for example. I cannot show a preponderance of evidence that his statement indicating "he returned later and pushed the drill over the wall" was either true or untrue. He admitted to taking the drill, which is consistent with the witnesses' statements but he later relates that he did not tag the drill but disposed of it later back at the scene of the original call. No witness offered any evidence to disprove his account of what happened. The preponderance standard would have required at the minimum, a 51%-49% outcome. While instinctively I had my doubts, I am obligated to address this fair and objectively.

I do agree there are concerns as to lack of corroboration as to where the drill was removed from L... unit and left at the residence.

I also disagreed with the investigator's interpretation of NM State Statute 30-14-8. He relies on his interpretation as a basis in determining the veracity of Off. L... While the "breaking or dismantling" part is one key element of the crime of Breaking and Entering, this case lacks evidence of the second element, that being the actual entry or a literal "breaking of the plain" into the structure in question. From past experience I know that at best this could have be a criminal damage, not a 4th degree felony. The District Attorney's Office would not have prosecuted on such a case without both elements.

There is no doubt many of Off. L... other statements are misleading and evasive. However, I can only rely on my past experiences with issues of "untruthfulness" and I have found many different examples of what might be considered to meet the criteria. These range from a small "white lie" to a comprehensive and deliberate falsification of statements or documents to cover up misconduct or even criminal activity.

The Chart of Sanctions for one of the charges involving untruthfulness, SOP 1-1-4D20, range from a 1-5. While this is an example of a sustained policy violation, I do not agree that this falls into what I would consider the higher end of that arbitrary scale. There is no definitive definition in our policy at this time that clarifies what would define or clearly explain, an example of each level in that broad range of sanctions. With that in mind, I chose to impose discipline on that particular policy violation as a sanction 5. The recommended discipline for that is an 8 to 32 hour suspension. I chose to go with a 16 hour suspension, with 8 hours to be held in abeyance, all consistent with this sanction. My total recommendation in this case was as follows:

RECOMMENDATIONS:

SOP: 2-60-4 A 1&5	SUSTAINED	Written Reprimand
SOP: 1-1-4-87	SUSTAINED	8 hours Suspension/4 in Abeyance
SOP: 2-73-2A	SUSTAINED	8 hours Suspension/4 in Abeyance
SOP:1-1-4D20	SUSTAINED	16 hours Suspension/8 in Abeyance

Total 32 hours Suspension/16 in Abeyance

As Chief of Police, I have certain institutional knowledge and insight that I consider before making a final decision in any of these cases. I carefully review the investigative files both prior to and after each PDH that I am involved in. I also review such relevant information as an officer's prior disciplinary history and performance evaluations. Additionally, I will conduct informal interviews with the officer's peers and past supervisors to gain a comprehensive understanding of the integrity, character and work ethic of the accused officer.

As Chief, I also have to consider the impact of my decision as relevant to current operational issues and concerns within the Department. While these are not disciplinary in nature, I often will often take additional corrective action to address the behavior or future conduct of an officer. In this particular case, Off. L was a Field Training Officer. Based on the Procedural Guidelines for the position, I removed him from that program. He will not be allowed to continue as an FTO and will not be entitled to any benefits or privileges associated with that program.



Chief Michael J. Geier