

CITY OF ALBUQUERQUE



CIVILIAN POLICE OVERSIGHT AGENCY

Police Oversight Board

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July 13, 2017

Gorden Eden Jr., Chief of Police
C/O Internal Affairs Unit
Albuquerque Police Department
400 Roma NW
Albuquerque, NM 87102

Re: I-10-17

Dear Chief Eden:

PO Box 1293

The shooting occurred on January 13, 2015. The Multi-jurisdictional Investigative team concluded its investigation May 7, 2015. APD Internal Affairs completed its investigation May 26, 2017.

Albuquerque

As to the officers who used Deadly Force,

NM 87103

§2-52-4 Use of Deadly Force

www.cabq.gov

A: The decision to use Deadly Force still falls under the general requirements for all uses of force as outlined in 2-52-3 of this policy. Additionally, the reasonableness of the officer's decision will include:

Reasonable belief the subject presents an immediate threat to cause serious physical injury to the officer, another officer, or another member of the public

Or

Probable cause for the officer to believe the subject has just committed a crime involving inflicted/threatened infliction of serious physical injury to another and deadly

force is necessary to prevent the escape of the subject on order to protect the public or another officer(s).

B: Officers need not exhaust lesser options of force in order to use deadly force.

Finding: The CPOA finds Officer F.'s conduct **EXONERATED** regarding the allegation of a violation of this SOP, which means the investigation determined, by a preponderance of the evidence that the alleged conduct did occur but did not violate APD policies, procedures, or training.

Finding: The CPOA finds Officer O.'s conduct **EXONERATED** regarding the allegation of a violation of this SOP, which means the investigation determined, by a preponderance of the evidence that the alleged conduct did occur but did not violate APD policies, procedures, or training.

STATEMENT OF THE CASE

On January 13, 2015 Officer H was dispatched to 2029 San Mateo BD NE regarding two suspicious males. The description was two white males rummaging through jewelry. Officer H while searching the area observed the two male subjects. Officer H exited his vehicle and immediately placed David Wayne Hickey in the back of his squad car. He failed to search Mr. Hickey or place him in handcuffs. The other subject John Edward O'Keefe fled on foot. Officer H gave chase. As soon as Officer H began his foot chase he broadcast a description of the fleeing subject. Other officers responded to the area of the foot chase.

Officer H momentarily lost sight of the subject, but was directed by a resident to the area of the hiding subject. As Officer H approached the area of the hiding subject, two gunshots were fired by the subject. Those gunshots can be heard on Officer H's lapel video. Officer H took cover and broadcast "shots fired."

Responding officers observed the subject, John O'Keefe running east bound across San Mateo into a park. Officer's O & F exited their vehicles and began chasing the subject on foot. The officers yelled commands for the subject to stop and show his hands. As soon as he was close enough for an effective deployment, Officer O fired his electronic control weapon at the subject. The ECW was not effective. It was later learned the subject was wearing body armor.

After the failed attempt to control the subject with the ECW, the subject turned, pointed a revolver at Officer F and fired a shot. Officers F & O returned fire. Officer O discharged his department issued handgun. Officer F discharged his department issued rifle. The subject

Letter to Chief Gorden Eden re: OIS I-10-17

July 13, 2017

Page 4

Review of the investigative file of Internal Affairs and any opinion expressed in this letter are pursuant to the duties of the CPOA as described in the POB Ordinance and are not intended for any other purpose.

Please contact me if there are questions or concerns. I look forward to your response to the concerns and recommendations contained in this letter.

Please ensure the findings are placed in the officer's retention file.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Edward Harness', with a stylized flourish at the end.

Edward Harness, Esq.

Executive Director

Civilian Police Oversight Agency

(505) 924-3770

I-10-17

Civilian Police Oversight Agency

EXECUTIVE DIRECTOR'S

Recommendation Form

Employee Involved: OFFICER H

SOP Violation(s): 2-19-3A 2-19-4

Date and Time of Incident: 1-13-15

Investigating Officer: DET ZANOBA

Date Investigation Completed: 5-26-17

Completed Case Reviewed by _____ Date: _____

Date to A/C: _____

Date Returned From Chief's Office: _____

Date to CPOA: _____

Date Returned From CPOA: 7-14-17

- 1. **Sustained** The investigation determined, by a preponderance of the evidence, the alleged misconduct occurred 2-19-13A 2-19-4 →
- 2. **Not Sustained** The investigation was unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred. →
- 3. **Sustained Violation not based on original complaint** The investigation determined, by a preponderance of the evidence, that misconduct occurred that was not alleged in the original complaint but discovered during the investigation →
- 4. **Unfounded** The investigation determined, by clear and convincing evidence, that the alleged misconduct did not occur or did not involve the subject officer →
- 5. **Exonerated** The investigation determined, by a preponderance of the evidence, that the alleged conduct did occur but did not violate APD policies, procedures, or training; →
- 6. **Administratively Closed** The policy violations are minor, the allegations are duplicative, or investigation cannot be conducted because of lack of information in the complaint, or resolved through mediation, →

7. **FIREARM DISCHARGE** Will be classified as:

JUSTIFIED

UNJUSTIFIED

ACCIDENTAL

RECOMMENDATIONS

NO DISCIPLINARY ACTION

VERBAL REPRIMAND

WRITTEN REPRIMAND

SUSPENSION _____ HOURS

TERMINATION

OTHER: _____

1ST LEVEL 6 VIOLATION

1ST LEVEL 7 VIOLATION

I-10-17

Civilian Police Oversight Agency
EXECUTIVE DIRECTOR'S
Recommendation Form

Employee Involved: OFFICER F

SOP Violation(s): 2-52-3A 2-52-4A

Date and Time of Incident: 1-13-15

Investigating Officer: DET ZAMBORA

Date Investigation Completed: 5/26/17

Completed Case Reviewed by _____ Date: _____

Date to A/C: _____

Date Returned From Chief's Office: _____

Date to CPOA: _____

Date Returned From CPOA: 7-14-17

- 1. **Sustained** The investigation determined, by a preponderance of the evidence, the alleged misconduct occurred ----->
- 2. **Not Sustained** The investigation was unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred. ----->
- 3. **Sustained Violation not based on original complaint** The investigation determined, by a preponderance of the evidence, that misconduct occurred that was not alleged in the original complaint but discovered during the investigation ----->
- 4. **Unfounded** The investigation determined, by clear and convincing evidence, that the alleged misconduct did not occur or did not involve the subject officer ----->
- 5. **Exonerated** The investigation determined, by a preponderance of the evidence, that the alleged conduct did occur but did not violate APD policies, procedures, or training; 2-52-3A 2-52-4A ----->
- 6. **Administratively Closed** The policy violations are minor, the allegations are duplicative, or investigation cannot be conducted because of lack of information in the complaint, or resolved through mediation, ----->

7. **FIREARM DISCHARGE** Will be classified as:
 JUSTIFIED UNJUSTIFIED ACCIDENTAL

RECOMMENDATIONS

- NO DISCIPLINARY ACTION VERBAL REPRIMAND
- WRITTEN REPRIMAND SUSPENSION _____ HOURS
- TERMINATION OTHER: _____

Civilian Police Oversight Agency
EXECUTIVE DIRECTOR'S
Recommendation Form

Employee Involved: OFFICER O

SOP Violation(s): 1-39-1B 2-52-3A 2-54-4A

Date and Time of Incident: 1-13-15

Investigating Officer: DET ZAMORA

Date Investigation Completed: 5/24/17

Completed Case Reviewed by _____ Date: _____

Date to A/C: _____

Date Returned From Chief's Office: _____

Date to CPOA: _____

Date Returned From CPOA: 7-14-17

1. **Sustained** The investigation determined, by a preponderance of the evidence, the alleged misconduct occurred 1-39-1B →
2. **Not Sustained** The investigation was unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred. -----→
3. **Sustained Violation not based on original complaint** The investigation determined, by a preponderance of the evidence, that misconduct occurred that was not alleged in the original complaint but discovered during the investigation -----→
4. **Unfounded** The investigation determined, by clear and convincing evidence, that the alleged misconduct did not occur or did not involve the subject officer -----→
5. **Exonerated** The investigation determined, by a preponderance of the evidence, that the alleged conduct did occur but did not violate APD policies, procedures, or training; 2-52-3A
2-52-4A →
6. **Administratively Closed** The policy violations are minor, the allegations are duplicative, or investigation cannot be conducted because of lack of information in the complaint, or resolved through mediation, -----→

7. **FIREARM DISCHARGE** Will be classified as:
- JUSTIFIED UNJUSTIFIED ACCIDENTAL

RECOMMENDATIONS

- | | |
|---|---|
| <input type="checkbox"/> NO DISCIPLINARY ACTION | <input type="checkbox"/> VERBAL REPRIMAND |
| <input checked="" type="checkbox"/> WRITTEN REPRIMAND | <input type="checkbox"/> SUSPENSION _____ HOURS |
| <input type="checkbox"/> TERMINATION | <input type="checkbox"/> OTHER: _____ |

1st LEVEL 6 VIOLATION