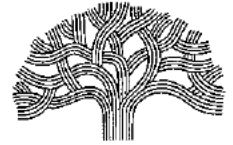


CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE C • OAKLAND, CALIFORNIA 94612-2010

Police Department
Internal Affairs Division

Telephone Device for the Deaf (510) 238-7629
Administrative Section (510) 238-3161
Investigation Section (510) 238-3161
Fax (510) 238-3014

September 11, 2013

Mr. Joseph Fesmire

(b)(5)(A)

Dear Mr. Fesmire:

Pursuant to Section III 6(a) of Ordinance 8979 C.M.S., you are hereby notified that I have suspended you from your position as a Police Officer for one (1) working day (8 hours), without pay. The date of this suspension will be established by your supervisor and documented on the Suspension Letter Attachment. This suspension shall be served no later than 11 Oct 13.

This suspension results from the findings of Internal Affairs Division investigation number 12-0756. The investigation disclosed a preponderance of evidence to determine that you failed to activate your PDRD, failed to inform Communications that your partner was in a foot pursuit, and failed to inform Communications of your walking stop, in violation of law and/or OPD rules, regulations, or policies.

By your actions, you violated the following section of the Manual of Rules:

➤ **314.39-2 Performance of Duty – General**

This suspension is based on the totality of the violations in this case. You are hereby notified that you may file a grievance regarding this action, as provided in the Memorandum of Understanding between the City and the Oakland Police Officer's Association.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Whent".

Sean Whent
Chief of Police

CW: laa

Service Certification:

Name: L Johnson

Serial Number: 7806

Date: 11 Sep 13 Time: 0100

Receipt number if service by registered

Mail: _____

Summary of Skelly Hearing, Officer Joseph Fesmire 8757
Report Date: Wednesday, July 24, 2013
IAD Case #12-0756

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Hearing Date/Time: July 24, 2013, 1000 Hrs – 1100 Hrs

Hearing Officer: Freddie Hamilton, Lieutenant of Police

Subject: Officer Joseph Fesmire

Representative: Doug Foley, Attorney at Law for Rains, Lucia, Stern

Allegation: During a walking stop, Officer Fesmire failed to advise communication of the walking stop, failed to activate his PDRD and failed to advise communication that his partner was in a foot pursuit.

MOR Violation: 314.39-2 Performance of Duty – General

Proposed Discipline: One [1] work day [8 hours] suspension without pay

Recommended Discipline: One [1] work day [8 hours] suspension without pay

Pre-Hearing Review

- The Skelly Files prepared by the Internal Affairs Division, the Executive Force Review Board's report for case 12-0756, the Pre- Discipline report , Officer Fesmire's last two rating.

Post-Hearing Review

- The Skelly Files prepared by the Internal Affairs Division, the Executive Force Review Board's report for case 12-0756, the Pre- Discipline report, Officer Fesmire's last two rating.

Hearing Summary

Officer Fesmire appeared with his representative, Doug Foley. I orally provided introductions of the individuals present and explained the purpose of the hearing. Mr. Foley affirmed they received and reviewed all relevant *Skelly* materials giving rise to this hearing. Officer Fesmire and Mr. Foley affirmed they understood the purpose of the hearing. I explained Officer Fesmire had been sustained for conducting a walking stop without advising communication, failing to activate his PDRD, and failing to advise communication his

Summary of Skelly Hearing, Officer Joseph Fesmire 8757
Report Date: Wednesday, July 24, 2013
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partner was in a foot pursuit during the walking stop. This was a MOR violation of Performance of Duty- General 314.39-2 and a one day suspension was recommended as discipline for this MOR Violation. At this point, Mr. Foley stated they felt the discipline was inappropriate for the below listed reasons.

- Mr. Foley stated Officer Fesmire was trained and a SNF entry was placed in Officer Fesmire's supervisory notes files by his supervisor, addressing the issues in question on this incident. Mr. Foley believes this incident should have remained a training issue and handled informally. Mr. Foley stated the Department usually handles incidents of this nature as training issues when there is not a pattern of the misconduct.

(b)(3)

- Mr. Foley stated the incident occurred very fast and Officer Fesmire did not have time to put the stop out and turn on his PDRD due to officer safety. Officer Fesmire stated he always try to follow Departmental directives, but this situation made it difficult to comply due to the circumstances.
- Mr. Foley indicated he did think it was appropriate for Officer Fesmire to have been interviewed as a witness on this incident. This caused Officer Fesmire to give the interview without an attorney being present to represent him.

Discussion

Officer Fesmire and his partner were en-route as a third unit on a fight call when they observed three subjects walking on 90th Ave between Birth and Olive. They both suspected one of the subjects was armed based on the subjects' actions. The Executive Force Review Board found Officer Fesmire and his partner should have notified the Communication Section that they were conducting a walking stop for officer safety reason. Especially due to the fact they were stopping someone they believed was armed. By failing to put out their walking stop, additional units had no idea of their location. Officer Fesmire and his partner also created an officer safety issue for the units responding to the fight call, due to those officers believing they had two additional officers responding to the scene of the fight.

Officer Fesmire first came on the air and advised communication that he and his partner was at 90th and Olive and to restack their last call after his partner was already in a foot

Summary of Skelly Hearing, Officer Joseph Fesmire 8757
Report Date: Wednesday, July 24, 2013
IAD Case #12-0756

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pursuit. Fesmire believed his partner was in pursuit of an armed suspect but did not relay this information to communication. Due to this lack of information, dispatch and other officers were never made aware of the exigency for 1 minute and 10 seconds. Officer Fesmire's partner was pursuing an armed subject alone, without any cover from responding units. Officer Fesmire eventually advised that his partner was pursuing a male black on foot by Booker's liquors after being asked by a supervisor what they had at 90th and Olive.

Per DGO I-15.1 , PDRD shall be activated prior to making contact with an individual to confirm or dispel a suspicion that the person may be involved in criminal activity. The investigation revealed Officer Fesmire failed to activate his PDRD prior to making contact with the suspects on the incident. It appeared he had time to do so while he observed the suspects prior to making the contact with them. Officer Fesmire did eventually activate his PDRD , but wasn't until his partner became involved in the foot pursuit.

The Executive Force Review Board found that Officer Fesmire failed to advise communication of his walking stop, failed to turn on his PDRD and failed to advise communication that his partner was in a foot pursuit of a suspected armed suspect. The foot pursuit ended with Officer Fesmire partner discharging his duty weapon and striking the suspect. I concur with the board's findings.

This incident is Officer Fesmire's first sustained finding for MOR section 314.39-2 Performance of Duty – General

Conclusion

Based on the above listed details, the sustained finding appears sound. This hearing did not bring any facts to light that would give reason to change the finding or proposed discipline.

Sustained Findings – Performance of Duty 314.39-2

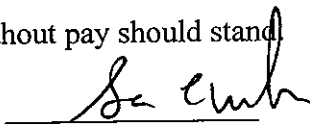
Level of Discipline

Recommendation

A one [1] work day [8 hours] suspension without pay should stand



Freddie Hamilton
Lieutenant of Police
Criminal Investigation Division



Sean Whent
Interim Chief of Police

Designated Suspension Dates Personnel Division Notification

11 Sep 13

Mr. Joseph Fesmire Serial # 8757

Pursuant to Section III 6(a) of Ordinance 8979 C.M.S., you have been served a suspension certification letter from your position as an Officer for one (1) working day (8 hours), without pay. This suspension results from the findings of Internal Affairs Division investigation number 12-0756. This suspension shall be served no later than 11 Oct 13.

Your supervisor has established the following date(s) of this suspension; you are not to report to work on the date(s) listed below.

From Date 28 Sep 13 to Date 28 Sep 13 Beginning time 0800 Ending Time 1600

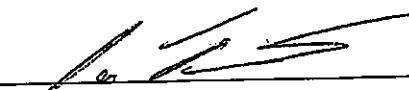
and/or

Date _____ Beginning Time _____ Ending Time _____

Date _____ Beginning Time _____ Ending Time _____

I understand I shall not report to work and my payroll status will be Suspended LWOP (SNP) on the date(s) and times listed above. Please forward the original signed form to the **Internal Affairs Division** for processing.

Please complete your time card(s) to reflect the information you have provided above.

Employee Signature  Date 9-25-13

(Please retain a copy of this attachment for your records)

