

CITY OF OAKLAND



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

Police Department
Internal Affairs Division

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November 27, 2013

Mr. Miguel Masso

(b)(5)(A)

Dear Mr. Masso:

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 three (3) working days (24 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 10 Jan 14.

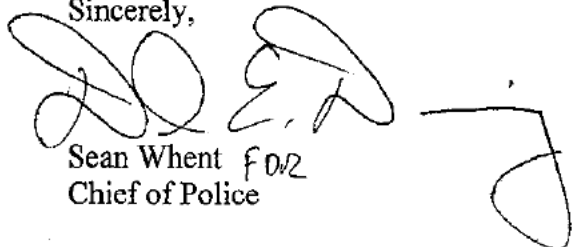
This suspension results from the findings of Internal Affairs Division investigation number 12-0756. The investigation disclosed a preponderance of evidence to determine that you used improper tactics during a foot pursuit of an armed suspect, you failed to activate your PDRD, and failed to inform Communications 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 F.O./R.
Chief of Police

Service Certification:

Name: _____

Serial Number: _____

Date: _____ Time: _____

Receipt number if service by registered

Mail: _____

CW: laa

Summary of Skelly Hearing, Officer Miguel Masso 9059
Report Date: October 24, 2013
IAD Case #12-0756

September 16, 2013, 1400 Hours – 1500 Hours

Hearing Officer: Freddie Hamilton, Lieutenant of Police

Subject: Officer Miguel Masso 9059

Representative: Harry S. Stern , Attorney at Law for Rains, Lucia, Stern

Allegation: During a walking stop, Officer Masso failed to advise communication of the walking stop, failed to activate his PDRD and used improper tactics during a foot pursuit.

MOR Violation: 314.39-2 Performance of Duty – General

Proposed Discipline: Three [3] work days [24 hours] suspension without pay

Recommended Discipline: Three [3] work days [24 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 Masso'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 Masso' s last two rating.

Hearing Summary

Officer Masso appeared with his representative, Harry Stern. I orally provided introductions of the individuals present and explained the purpose of the hearing. Mr. Stern affirmed they received and reviewed all relevant *Skelly* materials giving rise to this hearing. Officer Masso and Mr. Stern affirmed they understood the purpose of the hearing. I explained Officer Masso had been sustained for conducting a walking stop without advising communication, failing to activate his PDRD, and using improper tactic during a foot pursuit. These are MOR violation of Performance of Duty- General 314.39-2. Three (3) days suspension was recommended as discipline these MOR Violations. At this point, Mr. Stern stated they felt the discipline was inappropriate for the below listed reasons.

Summary of Skelly Hearing, Officer Miguel Masso 9059

Report Date: October 24, 2013

IAD Case #12-0756

- Mr. Stern stated Officer Masso was conducting proactive police work in a high crime area. Officer Masso admits to not putting the stop out but believes it should be training a issue. Mr. Stern stated, Officer Masso has no documentation in his personnel or supervisory notes files memorizing that Officer Masso had an issue with not advising communication of his stops. (b)(3)
[REDACTED]
- Mr. Stern stated Officer Masso did not turn his PDRD on prior to the stop because he had only had a PDRD for approximately 4 weeks. Officer Masso believes this was not enough time to train himself to the point where he could remember to turn the PDRD on during stressful encounter such as this incident. Mr. Stern stated that this should also be a training issue.
- Mr. Stern stated Officer Masso believes being sustained for improper tactics is Monday morning quarterbacking. Base on the totality of the situation he does not believe his tactics can be classified as improper.

Discussion

Officer Masso 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 Masso and his partner should have notified the Communication Section 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 Masso 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 to assist them.

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 Masso failed to activate his PDRD prior to making contact with the suspects on this incident. It appeared he had time to do so while he observed the suspects prior to making contact with them.

The Executive Force Review Board found that Officer Masso used improper tactic during his foot pursuit of Blueford. The investigation revealed from the onset of Masso's foot pursuit of Blueford , Officer Masso suspected he was possibly armed with a firearm. Officer Masso's suspicion heightened when he saw Blueford removing his right hand from his waistband and appeared to be holding a firearm. The investigation revealed Officer Masso continued pursuing Blueford, and at no time did he consider creating a

Summary of Skelly Hearing, Officer Miguel Masso 9059

Report Date: October 24, 2013

IAD Case #12-0756

buffer or taking cover. All Masso did was offset his position from Blueford during the foot pursuit. He was pursuing an armed subject alone; therefore, he should have increased his distance from Blueford instead of closing the distance when Blueford showed signs of getting tired. Masso should have tried to contain Blueford in a perimeter and utilized additional officers to capture Blueford instead of attempting to capture him by himself. The foot pursuit ended with Officer Masso discharging his duty weapon and striking Blueford .

Based on the above facts, the facts in the Skelly package and Officers Masso's defense during the Skelly hearing, I concur with the board's findings.

This incident is Officer Masso's second sustained finding for MOR section 314.39-2 Performance of Duty – General. Per the OPD discipline matrix, the discipline range for a second sustained finding for MOR section 314.39-2 is a written reprimand to 5 days suspension. The proposed discipline falls within this range.

Conclusion

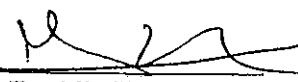
Based on the above listed details, the sustained finding appears sound. This hearing did not bring any new facts to light that would give reason to change the finding or proposed discipline.

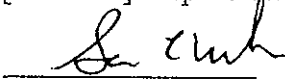
Sustained Findings – Performance of Duty 314.39-2

Level of Discipline

Recommendation

The recommendation of three [3] work days [24 hours] suspension without pay should stand.


Freddie Hamilton
Lieutenant of Police
Criminal Investigation Division


Sean Whent
Interim Chief of Police

Approved

Designated Suspension Dates Personnel Division Notification

27 Nov 13

Mr. Miguel Masso Serial # 9059

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 three (3) working days (24 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 10 Jan 14.

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 _____ to Date _____ Beginning time _____ Ending
Time _____

and/or

Date _____ Beginning Time _____ Ending Time _____

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 Leave Without Pay (SNP) on the date(s) and times listed above. I further understand that the Internal Affairs Division will be forwarding this original form to the Personnel Division for processing.

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

Employee Signature _____ Date _____

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

Attachment to Suspension Letter