

CITY OF OAKLAND



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Office of the City Administrator

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March 26, 2015

Mr. Mark Castillo

(b)(6)(C)

Dear Mr. Castillo:

Pursuant to Section III 6 (a) of Ordinance 8979 C.M.S., you are hereby notified that I am releasing you from your position as an Officer with the Oakland Police Department, effective upon service of this letter.

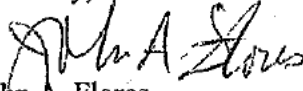
The termination results from the findings of Internal Affairs Division investigation number 14-0037. The investigation disclosed sufficient evidence to determine that you pointed your firearm at the complainant and that use of force was unreasonable, you failed to report a Level 4 Use of Force in violation of DGO K-4, you knowingly wrote an inaccurate police report, and you provided information that was untrue during the course of the investigation in violation of law and/or OPD rules, regulations, or policies.


By your actions in this case you violated the following sections of the Manual of Rules:

- 370-27-1 Use of Physical Force – Comparable to Level 4
- 314.39-2 Performance of Duty – General
- 370.45-1 Reports and Bookings
- 398.80-1 Truthfulness

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,


John A. Flores
Interim City Administrator
JAF: laa

Service Certification: 
Name: Leroy Johnson
Serial Number: 7906
Date: 3 Aprils Time: 1305
Receipt number if service by registered mail: _____

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Hearing

Date/Time: Tuesday, January 6, 2015, 1330

Hearing

Officer: Paul Figueroa, Assistant Chief of Police

Subject: Officer Mark Castillo, 8751

Representative: Douglas Foley
Law Offices of Rains Lucia Stern

Allegations: A complainant alleged that Officer Castillo, off duty, used unreasonable force against him. Additionally, the allegations of Truthfulness, Reports and Bookings, and Performance of Duty were added during the investigation.

MOR Violations: 370.27 -1, Use of Physical Force Comparable to Level 4
398.80 -1, Truthfulness- General
370.45 -1, Reports and Booking
314.39 -2, Performance of Duty- General
370.27 -1, Use of Physical Force Comparable to Level 2

Proposed Discipline: The proposed discipline in this matter is termination.

Recommended Discipline: After reviewing the documents, employee's response, and facts in the case, I recommend the Manual of Rules violations in this case be upheld. As a result of the findings, I recommend the discipline recommendation of termination be imposed.

Pre-Hearing Review:

In preparation for this Skelly Hearing, I reviewed the Skelly Hearing file prepared by the Internal Affairs Division.

Hearing Summary:

Officer Castillo appeared with his attorney, Douglas Foley. Caryl Casden and Veronica Harris, from the Oakland City Attorney's Office, were present at the hearing.

Mr. Foley presented the following information and arguments:

(b)(6)(B)

- **(b)(6)(B)** stated the first two officers pointed their guns at him and the officers were in uniform. This did not occur and the uniformed officers did not show up until much later.

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- (b)(6)(B) has credibility issues based on his statements of the events.
- Further, (b)(6)(B) should be deemed not credible because he provided statements that were not true and he has a motive to lie. Lying is a tactic used by arrestees to avoid a criminal case or make their case better given the circumstances.

(b)(6)(B)

- She said the officer pushed (b)(6)(B) into a pole and told him to “shut up.” Castillo then twisted (b)(6)(B) ear. This did not occur.
- After several questions by the investigator she said that “he could have pointed the gun” but could not recall.
- She also said the woman brought a bag from the office.
- It was very dark that evening and her statements conflict.
- Although (b)(6)(B) was found credible by the investigator, she should have been found not credible because she asserted that certain events occurred which did not occur and she had motive to help (b)(6)(B) with his case.

(b)(6)(B)

- (b)(6)(B) gave a statement to Off. Martinelli at the scene. He stated that Off. Castillo pointed his weapon. He also gave a statement to Sgt. Pope that Off. Castillo drew his weapon. He gave a statement to Sgt. Oliver in two subsequent interviews that Off. Castillo drew his black service pistol and said “Freeze.” Then a bag was brought over to Off. Castillo.
- This case hinges on (b)(6)(B) and Castillo’s recollections. There is doubt between the witness statements.
- (b)(6)(B) wanted to help and was mistaken about what he saw, probably because he wanted to help the officer.

(b)(6)(B)

- She was with (b)(6)(B) and in the room when the event took place. She recalled that an off duty officer was involved. The officer pulled out his gun and held it with both hands. She remembered a bag being brought to the officer.
- There was not a great deal of detail in (b)(6)(B) statement about the incident.
- She may have discussed the case with (b)(6)(B) and could have been influenced.

Additionally, Mr. Foley argued:

Excessive Force- Level 2: The IA finding was unfounded, which means that IAD concluded that Officer Castillo told the truth regarding the alleged Level 2 use of force and (b)(6)(B) and (b)(6)(B) lied.

Use of Force- Level 4: IAD should have come to an unfounded rather than a sustained finding. (b)(6)(B) said two officers pointed guns at him and that did not occur. It took investigators three attempts to get (b)(6)(B) to say the gun was pointed at (b)(6)(B) and (b)(6)(B)

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lied about the overall force. (b)(6)(B) may have wanted to help Castillo but was mistaken about what he saw.

It was reasonable to believe that the orders given by Off. Castillo may have been heard differently by different people. This accounts for the discrepancies in witness statements regarding orders to get on the ground.

Grabbing or bringing the bag to Officer Castillo: Any discrepancy between witness statements was a result of perception and Off. Castillo offered his recall of the events as he remembered them. Others present may have perceived or saw this event differently. The orders given to (b)(6)(B) and the bag are not relevant to the case and should not be part of the untruthfulness.

This case boils down to Off. Castillo's and (b)(6)(B) recollection of events. There is doubt between witness statements and Off. Castillo's career hangs in the balance.

Officer Castillo presented the following statements:

Off. Castillo reviewed the case findings and discussed his character. Prior to working at OPD, Off. Castillo worked as an IT manager for the YMCA and resigned so he could work at OPD. Off. Castillo is 48 years old with 5 grandchildren, and he is OPD because of his dedication to the profession. During his career, Off. Castillo achieved the following:

- Earned the highest Academic Achievement in the police academy.
- Earned a bachelor's degree.
- The latest evaluation was "Exceeds Expectations."
- Received several letters of appreciation.
- Earned a transfer to Criminal Investigation Division (CID).
- Made the Sergeants Promotional List.
- Worked as a Field Training Officer.

Off. Castillo believed (b)(6)(B) confused Castillo holding a black cell-phone case with holding a gun. (b)(6)(B) was about 25 feet away. Off. Castillo has written level 4 reports many times and would have written such a report after this incident if he had pointed his weapon. Off. Castillo stated that he would not risk everything for a level 4 use of force. It is not objectively reasonable to believe Off. Castillo would lie about this incident. Off. Castillo is committed to being an OPD officer and wishes to be fully reinstated.

In closing, Doug Foley provided the following statement:

Based on evaluations, Off. Castillo is hardworking, knowledgeable, respected, proactive, and maintains a respectable approach/manner. Off. Castillo received a rarely-given

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“Exceeds Expectations” in 2012-2013. In previous evaluations, Off. Castillo was rated “Fully Effective.”

The Internal Affairs Division (IAD) conceded that (b)(6)(B) may have had a motive to embellish, and IAD recognized that they did not totally trust him. Nothing of what (b)(6)(B) stated occurred. (b)(6)(B) had to be asked three times before she said Off. Castillo pointed a gun at (b)(6)(B). Castillo stated that he un-holstered his weapon and put it back. This could have easily been confusing to others.

The credibility and witness confusion leads to doubt in this case.

Analysis/Assessment

I considered the evidence in the case and the statements provided in the Skelly Hearing. I will address significant points below.

Credibility

I believe the credibility assessment completed by IAD indicating that (b)(6)(B) and (b)(6)(B) were credible was not appropriate. (b)(6)(B) stated that she had been drinking with (b)(6)(B) that evening. (b)(6)(B) stated several times that she didn't remember the events while being interviewed. (b)(6)(B) was in a relationship with (b)(6)(B) at the time of the incident, and (b)(6)(B) was facing criminal charges. (b)(6)(B) may have reason to provide false statements to benefit (b)(6)(B) criminal case. Additionally, she provided statements regarding some events that did not appear to have occurred that evening. (b)(6)(B) has reason to provide false statements to benefit his criminal case and he had been under the influence of alcohol that evening. For these reasons, (b)(6)(B) and (b)(6)(B) should be deemed as not credible.

I concur with IAD's finding that (b)(6)(B) is not credible. A significant portion of her credibility assessment hinged upon being friends with Off. Castillo, and she had significant discrepancies in her statement as compared to credible witnesses.

I concur with IAD's “not credible” assessment for Off. Castillo. I am deeply troubled by Off. Castillo's lack of credibility in this case. He has a previous sustained finding for failing to complete an accurate report (13-0318). Finally, I firmly believe the pointing of a firearm by an officer is not an easily “forgotten” event and failing to report it is not merely an “oversight.” Pointing a firearm is a significant use of force--not an easily confused or forgotten fact.

The fact that an individual has been deemed “not credible” does not mean his or her statements are completely discounted. Rather, credible witness statements or other types of evidence can provide support to verify their statements.

The statements of (b)(6)(B) and (b)(6)(B) are central to this case, and I agree with IAD's findings that these witnesses are credible. Although it is clear they were supportive of Off.

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Castillo, I do not believe they made up facts. The IAD report raises two issues with respect to their statements. In the credibility assessment for (b)(6)(B) the investigator wrote:

“...Although there is no known motive to provide false or misleading testimony, it struck me as odd that (b)(6)(B) was so well-versed in police procedures and had such a detailed recollection of events. (b)(6)(B) referred to Castillo’s weapon as “Standard issue”; (b)(6)(B) stated Castillo didn’t use any “unnecessary force”; (b)(6)(B) referred to Castillo’s clothing as “regular street clothes”; (b)(6)(B) mentioned the Manager and Castillo’s wife were good friends and he came to drop something off for her daughter; (b)(6)(B) stated Castillo, “Didn’t use any unnecessary force but he got him on the ground. He didn’t slam him on the ground. He holstered his weapon, grabbed him by the arm, put him on the ground, and kept telling the guy, “Don’t move.” Finally, (b)(6)(B) stated he stayed with Castillo because he was by himself and he was “more concerned about [Castillo’s] safety than anything else.” (b)(6)(B) stated he was there to help Castillo out if he needed to. (b)(6)(B) motive for providing such a detailed account of the incident could have been to stay in the good graces of the Motel Manager (b)(6)(B) as a favor to her family friend Castillo. This information does not make (b)(6)(B) less credible, it just highlights a possible motive for (b)(6)(B) being such an informed witness.” (IAD Report of Investigation (ROI), p. 16).

I do not find it odd that (b)(6)(B) seemed knowledgeable about police procedures or that he had such a detailed recollection of events. (b)(6)(B) was physically close to the events as they occurred. In fact, at one point during the incident he handed his phone to Off. Castillo. This close proximity allowed him to provide very detailed statements to IAD. Additionally, (b)(6)(B) is a Navy veteran, which likely accounts for the terminology in his statements.

Additionally, the investigator found (b)(6)(B) credible but stated:

“...It is noteworthy that when we first made contact with (b)(6)(B) she repeated several times that she didn’t want to confuse matters and insisted that we speak to (b)(6)(B). She provided us a detailed statement but it was odd that she expressed concern about providing information that may have conflicted with what (b)(6)(B) and (b)(6)(B) reported.” (ROI p. 16).

I found (b)(6)(B) very credible. I do not find it odd that she was initially reluctant to speak with investigators; such reluctance is not unusual. (b)(6)(B) was not with her while she provided the interview to IAD and she answered the investigator’s questions independently. (b)(6)(B) appears extremely credible in her video-recorded statement to IAD and recalled events very well despite the fact that IAD took the statement several months after the incident.

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I concur with the "credible" determinations for the officers who responded to the scene.

Findings

1- *Did Officer Castillo use Level 2 unreasonable force against Complainant (b)(6)(B)?*

- Allegation #1: Castillo picked him up and started throwing him.
- Allegation #2: Castillo twisted (b)(6)(B) Arm.
- Allegation #3: Castillo pulled (b)(6)(B) ear.
- Allegation #4: (b)(6)(B) ran into a pole/pillar while in control of an officer.

There is a preponderance of evidence to support the unfounded findings for all of these allegations. I concur with the investigator.

2- *Did Off. Castillo point a gun at (b)(6)(B)*

Off. Castillo denied pointing his firearm at (b)(6)(B). He stated he drew his gun and then put it back in the holster. He claimed that the gun never came up past the muzzle pointing directly at the ground; he quickly returned his weapon and then pulled out his cell phone. Castillo argues that (b)(6)(B) must have confused his Castillo's cell phone with a gun.

The key statements on this issue are from witnesses (b)(6)(B) and (b)(6)(B). Both were very clear that Off. Castillo pulled his firearm and pointed it at (b)(6)(B).

After careful consideration, I reject Castillo's claims. (b)(6)(B) is very familiar with weapons based on his military background. It is not likely (b)(6)(B) mistook a cell phone for a gun, particularly given his vantage point. Even if (b)(6)(B) was not as familiar with weapons as (b)(6)(B) it is doubtful that she would have confused an individual holding a cell phone with pointing a gun. Moreover, (b)(6)(B) provided a credible statement to investigators that it was he (b)(6)(B) who called 911 and he handed his phone to Castillo to use.

There is a preponderance of evidence to prove Off. Castillo pointed his weapon at (b)(6)(B) during this event.

3- *Was Off. Castillo's pointing of his gun a reasonable use of force?*

I concur with the IAD investigator's assessment of the force used by Off. Castillo. There is a preponderance of evidence to show this use of force was unreasonable given the circumstances.

4- *Did Off. Castillo fail to report a Level 4 Use of Force?*

There is a preponderance of evidence to prove this allegation. The investigation established that a level 4 use of force actually took place. I also believe the pointing of a

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firearm by the officer isn't easily forgotten by the officer or an oversight in the report. This is a significant use of force and not an easily confused or forgotten fact.

5- Did Off. Castillo knowingly write an inaccurate police report?

I concur with the Investigator's finding. For the reasons explained above, there is a preponderance of evidence to prove this allegation.

6- Was Off. Castillo untruthful during the course of the investigation?

Allegation #1: Castillo was untruthful when he stated he did not tell (b)(6)(B) to get on the ground.

I believe it is likely that Castillo told (b)(6)(B) to get on the ground but I don't believe there is enough evidence to prove or disprove that Castillo intentionally lied about this. It is possible that in the course of this dynamic event Castillo forgot having given such an order. I recommend a Not Sustained for this portion of the truthfulness allegation.

Allegation #2: Castillo was untruthful when he stated he did not ask (b)(6)(B) to get his bag/backpack from the Motel office.

There is a preponderance of evidence to prove this allegation. Off. Castillo claimed that he used handcuffs that were in his pants pocket to take (b)(6)(B) into custody; during the Skelly hearing Castillo insisted that he always keeps his handcuffs in his pocket, even while off-duty. However, (b)(6)(B) and (b)(6)(B) both provided compelling statements that Off. Castillo retrieved his handcuffs from his bag, which he had asked (b)(6)(B) to retrieve from the motel office. (b)(6)(B) also stated that while Castillo had (b)(6)(B) on the ground he asked a woman to go get his bag for him, which she did. This was a significant event during the course of the incident and not a fact about which Off. Castillo would likely be confused or remember incorrectly.

Allegation #3: Castillo was untruthful when he stated he did not point his firearm at (b)(6)(B)

There is a preponderance of evidence to prove this allegation. See the discussion regarding the pointing of the firearm in item #2 above.

Level of Discipline

Off. Castillo has had a good work history at OPD. However, the discipline matrix dictates that the required discipline for a sustained finding of either Truthfulness or Reports and Bookings is termination. I believe termination is the appropriate level of discipline in the case.

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Conclusion/Recommendation:

Based on my analysis, I recommend the IAD's findings be upheld as follows:

- 1- 370.27 -1, Use of Physical Force Comparable to Level 4 – Sustained
- 2- 398.80 -1, Truthfulness- General – Sustained
- 3- 370.45 -1, Reports and Booking – Sustained
- 4- 314.39 -2, Performance of Duty- General – Sustained

(b)(9)

Discipline: As a result of the recommended findings, I recommend that Officer Castillo's employment be terminated.

Respectfully,



Paul Figueroa
Assistant Chief of Police

Approved



Sean C. Whent
Chief of Police