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MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Joya Hayes, Director of Civil Service

FROM: Joseph Chacon, Chief of Police

DATE: September 6, 2022

SUBJECT: Temporary Suspension of Police Corporal Brian Yarger #6499
Internal Affairs Control Number 2022-0269

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, and Rule 10, Rules of Procedure for the Firefighters', Police Officers' and Emergency Medical Service Personnel's Civil Service Commission, I have temporarily suspended Police Corporal Brian Yarger #6499 from duty as a City of Austin, Texas police officer for a period of ten (10) days. The temporary suspension is effective beginning on September 7, 2022, and continuing through September 16, 2022.

I took this action because Cpl. Yarger violated Civil Service Commission Rule 10.03, which sets forth the grounds for disciplinary suspensions of employees in the classified service, and states:

No employee of the classified service of the City of Austin shall engage in, or be involved in, any of the following acts or conduct, and the same shall constitute cause for suspension of an employee from the classified service of the City:

- L. Violation of any of the rules and regulations of the Fire Department or Police Department or of special orders, as applicable.

The following are the specific acts committed by Cpl. Yarger in violation of Rule 10:

Ofc. J was assigned to the Downtown Area Command, George 100s Patrol shift. In November 2021, Ofc. J was injured while on duty and she was placed on “No Duty” status by her physician, which was approved by APD’s Risk Management unit on behalf of myself (Chief Chacon). Ofc. J returned to “Full Duty” status on or about March 17, 2022.

On March 21, 2022, Ofc. J made an outcry to a detective from Risk Management due to the culmination of work-related issues. Ofc. J advised the detective that she had been in the women’s locker room in the Patrol Building at the Main Station. While there, she heard voices next door in the gym. She recognized Cpl. Brian Yarger’s voice and several other males from her shift. This group had been talking poorly about her and she did not want to listen to them belittle her, so Ofc. J stated that she departed from the area.

Ofc. J reported that minutes later, a message appeared on a shift text message thread. The message included a photograph of a damaged poster from the gym. The poster was an image of Ofc. J and another officer (Ofc. M) on the George 100s riding bicycles. This was one of several Department publicity posters displayed in the gym. One of the officers on the text thread posted the image of the damaged poster for everyone on the thread to see and stated in the text message, “*Someone punched [Ofc. J] in the face and [Ofc. M] in the boobs!*” Cpl. Yarger then made a joke in the thread as to whom he suspected damaged the poster.

Ofc. J explained to the detective that she was not sure who had damaged the poster. [Although investigated, it is unknown who damaged the poster.] Ofc. J also explained, while she was on “Light Duty/No Duty” status, before she returned to work in March, she received a telephone call from someone handling her injury claim. [IA was able to verify that this person was a third-party investigator assigned to investigate Ofc. J’s injury status. That investigation did not find any wrongdoing on Ofc. J’s part.]

Also, Ofc. J advised that Cpl. Yarger was open about his dislike for her and he gossips negatively about her to other members of the shift. As a result, he was isolating her socially from the shift with the exception of Ofc. M. Ofc. J reported Sgt. Sellers was aware of what had occurred but did not take any corrective actions.

The detective to whom Ofc. J made the outcry then forwarded this information and screenshots of the related text messages to his Chain-of-Command. Internal Affairs (IA) then received an initial complaint from the Commander of the George 100s. The complaint also addressed the damaged poster and indicated that multiple members of the shift may have violated department policy and/or state law.

IA Investigation

The investigation revealed a series of text threads that included Cpl. Yarger, and several of his subordinates, and intentionally excluded some of his other subordinates. The threads date back to at least September 14, 2021.¹ Sgt. Sellers was added to the threads after the September 14, 2021, thread was created. The September 14, 2021, thread was created by Cpl. Yarger and he referred to it as a “*shit talking group thread minus [Ofc. X],*” who Cpl. Yarger identified to IA as one of his subordinates disliked by him and many members on his shift. The threads included the abovementioned March 21, 2022, thread—referencing Ofc. J,—and many others, including the following theme:

There was a pattern of behavior within the text threads, where the topic had nothing to do with Ofc. J, but Cpl. Yarger would interject Ofc. J’s work status and directly/indirectly inferred she was malingering. The investigation also showed that Cpl. Yarger openly questioned the legitimacy or the degree of Ofc. J’s injury and he repeatedly expressed his “*level of annoyance*” and frustration with Ofc. J to her peers. This behavior contributed to the division of the shift or negatively impacted the camaraderie within the George 100s.

Multiple officers from the George 100s were interviewed by IA. Many of them expressed that they were aware of the joking culture of the George 100s. Several of the officers expressed that there was discord, division, or “*shift drama*” within the George 100s, including but not limited to Ofc. J. They described the relationship between Cpl. Yarger and Ofc. J as “*tenuous at best*” or “*strained*” and understood that Cpl. Yarger was “*annoyed*” with or “*angry*” about Ofc. J’s extended absence from work due to her injury.

Cpl. Yarger himself did not dispute these facts. He acknowledged that he “*joked*” and vented his frustrations about Ofc. J and other officers. He rationalized to IA that somehow his behavior was acceptable since he only contributed to what was already a preexisting culture or discord that existed within the shift. Moreover, the investigation showed Cpl. Yarger did not undertake efforts to resolve any of the issues or detract from the discord.

Conclusion

Cpl. Yarger’s creation or participation in these multiple text threads were inconsistent with APD General Orders (GO). This would be true for any APD officer who engaged in the same conduct—let alone someone who has been entrusted with a supervisory role. Cpl. Yarger’s conduct undermined the Departmental goal of maintaining professionalism within APD by potentially creating a wrong perception, among Cpl. Yarger’s subordinates, that it is acceptable for a supervisor to denigrate and use degrading language in reference to subordinates; and potentially training or setting a bad example to these subordinates to adopt this behavior when they promote to supervisory roles.

¹ The reference to the September 14, 2021, thread is an act that is outside the 180-day statutory period to impose discipline. While this thread (and the existence of other threads outside the 180-day statutory period) is referenced, it is not the basis for this temporary suspension. Instead, it is included to show a pattern of behavior rather than an isolated incident. My decision to suspend Cpl. Yarger is based on his actions within the 180-day statutory period to impose discipline.

This form of ridicule, mocking, and/or derogatory conduct, is inconsistent with APD philosophy, mission, vision, and ICARE values. Moreover, if Cpl. Yarger felt that any of his subordinates, including Ofc. J were not adhering to APD GOs and Standard Operating Procedures (SOPs), it was incumbent on him to take corrective actions by conducting counseling sessions, documenting all of their deficiencies, and initiating a Employee Success Plan. If these problems continued to be unresolved at Cpl. Yarger's level of supervision, then escalating certain issues to higher-ranking officials within the Chain-of-Command, IA, and/or Risk Management would have been an appropriate way to handle these issues.

Cpl. Yarger's failure to properly supervise or support all of his employees, and his decision to instead vent his frustration by creating/participating in these text threads, either left Ofc. J's (actual or perceived)² performance issues unresolved or insufficiently addressed in accordance with my and his Chain-of-Command's expectation of him or any Corporal at APD. Cpl. Yarger's conduct may have indirectly caused or exacerbated Ofc. J to feel more isolated at work, may have created more discord amongst Cpl. Yarger's subordinates, and may have negatively impacted the overall professionalism and camaraderie within the unit.

Of pertinent note, Cpl. Yarger's initial failure to recognize or acknowledge to IA that he violated any of the GOs listed in this Notice of Sustained Allegations was troublesome to me and his Chain-of-Command. His subsequent acknowledgement to me and his Chain-of-Command at his Disciplinary Review Hearing (DRH) that his indiscretions were inconsistent with our expectations of him, is the first step towards correcting these shortcomings, to help begin the process of rebuilding the trust, professionalism, camaraderie, and morale of the George 100s shift.

By these actions, Cpl. Yarger violated Rule 10.03(L) of the Civil Service Rules by violating the following rules and regulations of the Austin Police Department:

➤ **Austin Police Department Policy 900.4.3: General Conduct and Responsibilities: Neglect of Duty**

900.4.3 Neglect of Duty

Employees will satisfactorily perform their duties. Examples of unsatisfactory performance include, but are not limited to:

- (b) Unwillingness or inability to perform assigned tasks.
- (h) Failure to follow department standardized training and tactics when it was objectively reasonable to do so.

² During his IA interview, Sgt. Sellers indicated that he and Cpl. Yarger had counseled Ofc. J prior to her November 2021 injury and that Ofc. J had corrected her actions in accordance with his (Sgt. Sellers) delineated expectations from that counseling session.

➤ **Austin Police Department Policy 900.5: General Conduct and Responsibilities: Responsibility to Coworkers**

900.5 Responsibility to Coworkers

Cooperation among employees of the Department is essential to effective law enforcement.

- (a) Employees are expected to treat each other with respect.
 - 1. Employees will be courteous and civil at all times in their relationships, perform their duties in a cooperative and supportive manner, and not threaten, display physical aggression toward, or use insolent or abusive language with one another.

➤ **Austin Police Department Policy 900.5.1: General Conduct and Responsibilities: Supporting Fellow Employees**

900.5.1 Supporting Fellow Employees

- (a) Employees will not knowingly aid, abet, or assist another Department member in violating any Department directive or order.
- (b) Employees will cooperate, support, and assist each other at every opportunity.
- (c) Employees will not publicly criticize the work or the manner of performance of duty of any other employee.

Cpl. Yarger is advised that this suspension may be considered by the Chief of Police in a future promotional decision pursuant to General Order 919.

By copy of this memo, Cpl. Yarger is hereby advised of this temporary suspension and that the suspension may be appealed to the Civil Service Commission by filing with the Director of Civil Service, within ten (10) days after receipt of a copy of this memo, a proper notice of appeal in accordance with Section 143.010 of the Texas Local Government Code.

By copy of this memo and as required by Section 143.057 of the Texas Local Government Code, Cpl. Yarger is hereby advised that such section and the Agreement Between the City of Austin and the Austin Police Association provide for an appeal to an independent third-party hearing examiner, in accordance with the provisions of such Agreement. If appeal is made to a hearing examiner, all rights of appeal to a District Court are waived, except as provided by Subsection (j) of Section 143.057 of the Texas Local Government Code. That section states that the State District Court may hear appeals of an award of a hearing examiner only on the grounds that the arbitration panel was without jurisdiction or exceeded its jurisdiction, or that the order was procured by fraud, collusion or other unlawful means. In order to appeal to a hearing examiner, the original notice of appeal

submitted to the Director of Civil Service must state that appeal is made to a hearing examiner.



JOSEPH CHACON, Chief of Police

9/6/2022

Date

TO WHOM IT MAY CONCERN:

I hereby acknowledge receipt of the above and foregoing memorandum of temporary suspension, and I have been advised that if I desire to appeal that I have ten (10) calendar days from the date of this receipt to file written notice of appeal with the Director of Civil Service in accordance with the provisions of Chapter 143 of the Texas Local Government Code.



BRIAN YARGER #6499, Police Corporal

9/6/22

Date