

**BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE CITY OF MILWAUKEE**

**In the Matter of the Appeal of Alex Lopez, Jr.
Personnel Order 2013-105**

Hearing Date: September 5, 2014

Hearing Location: 200 East Wells Street, Room 301A, City Hall
Milwaukee, Wisconsin

Commissioners: Kathryn A. Hein
Steven M. DeVougas
Michael M. O'Hear

Hearing Examiner: Steven M. DeVougas

Appearances: Adam B. Stephens, Assistant City Attorney
For the Milwaukee Police Department

Attorney William R. Rettko
For Appellant Alex Lopez, Jr.

PROCEDURAL HISTORY

The Chief of Police, Edward A. Flynn, charged Police Officer Alex Lopez, Jr. in Personnel Order 2013-105 dated November 4, 2013, with the following violations of Milwaukee Police Department Rules and Procedures:

1. Core Value 3.00 – Integrity, referencing Guiding Principle 3.05: Failure to obey state law.

Lopez, the Appellant in this matter, filed an appeal with the Milwaukee Fire and Police Commission from the order of the Chief of Police and a hearing was held.

SUMMARY OF HEARING PROCEEDINGS

The hearing was conducted on September 5, 2014. The hearing was recorded by a stenographic reporter. Testimony was taken from the following witnesses:

For the Chief of Police: Lieutenant Johnny Sgrignuoli, Milwaukee Police Department
 Chief Edward Flynn, Milwaukee Police Department

For the Appellant: Sergeant Alex Lopez, Jr., Milwaukee Police Department
 Police Officer Michael Lopez, Milwaukee Police Department
 Lieutenant Sean Hanley, Milwaukee Police Department

Based upon the evidence received at the hearing, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Sgt. Alex Lopez, Jr. (Lopez) began working for the Milwaukee Police Department on May 12, 1997. (Ex. 12.) Prior to the personnel order at issue in this proceeding, Lopez had an extensive disciplinary record. (Ex. 12.) However, since 2000, he has only had three written reprimands and no suspensions. (Ex. 12.)
2. At the time of the alleged incident that formed the basis for his discharge, he had multiple pending/open internal affairs cases with a similar theme of improper conduct with women. (Exs. 11 and 12.) In addition, in 2012, Lopez had three complaints involving female subordinates regarding either inappropriate comment(s) and/or touching. (Ex. 14.) Lopez denies the veracity of these allegations.
3. On August 11, 2013, the State of Wisconsin charged Lopez with one felony count of stalking, in violation of Wis. Stat. § 940.32(2). (Ex. 5.) The criminal charges were brought based on a criminal investigation pertaining to allegations made by Jillian Atkinson (Atkinson). (Exs. 1 and 5.)
4. In January 2013, Atkinson started dating Lopez. (Ex. 5.) They met on an online dating site called "Plenty of Fish." (Ex. 3.) In March 2013, Atkinson attempted to terminate the relationship, however, Lopez convinced her to continue the relationship. (Ex. 5.) As the relationship progressed, Lopez became more controlling. (Ex. 5.) The investigation revealed that between March and August, Lopez engaged in off-duty conduct which caused Atkinson to fear for her safety and that Lopez might cause her bodily injury. (Ex. 1.)
5. In late May-early June, Lopez was allegedly sexually violent towards Atkinson, and she stopped seeing him. (Ex. 5.) Atkinson cancelled dates, did not answer phone calls or

respond to Facebook messages. (Ex. 5.) In early June, Lopez continued his attempts to communicate with Atkinson, via an exorbitant amount of text messages and telephone calls. (Ex. 5.)

6. On June 18, 2013, Lopez appeared and remained at Atkinson's residence for several hours, pounding on the door, ringing the doorbell and yelling for Atkinson to speak to him. (Ex. 5.) Atkinson was not at home, but her mother was in the residence. (Ex. 3.) Atkinson reported to investigators that her mother was scared because Lopez was being loud, looking into windows and pounding on the entrance door. (Ex. 3.) Atkinson's mother hid from Lopez by lying on the floor. (Ex. 3.) Atkinson said she did not call the police because Lopez was an officer. (Ex. 3.)
7. Lopez denied some of Atkinson's allegations. (Ex. 2.) Lopez claims that he was invited to Atkinson's residence to take care of her after a medical procedure. (Ex. 2.) After trying to contact her repeatedly, he became irritated with her and worried about her well-being. (Ex. 2.)
8. Between June 19, 2013 and August 5, 2013, Lopez sent 367 text messages to Atkinson, a number of which were threatening:

U are an evil and sadistic person...but I hope u do die...what u put me thru was wrong and horrible and i

Ur a whore and a liar

I can treat u like ur pimp or dealer if u want...;-) do the rape thing you like so much

I wish u would have died for all the lied [sic] abd bs u put me thru..i didn't deserve that..u could have just told me the truth.

If u want me to leave u alone I get the hint loud clear now...just let me know..i don't need to lose my job..i just hate being ignored and u do it purposely all the time..

(Ex. 5.)

9. On August 2, 2013, Lopez forwarded a video of Atkinson masturbating to a man who was trying to date Atkinson. (Ex. 3.) In addition, he told the man that Atkinson has a substance abuse problem. (Ex. 3.) Lopez informed Atkinson that he sent the video to her potential suitor. (Ex. 3.)

10. Lopez attempted to contact Atkinson on her job; called her grandfather in New Mexico to find out how she was doing because he had not heard from her in a while. (Ex. 3.) In addition, Lopez contacted a friend of Atkinson on Facebook and claimed that there was a warrant out for Atkinson's arrest and he needed to know where she was. (Ex. 3.) In addition, Lopez asked the young woman for oral sex, completely out of the blue. (Ex. 3.)
11. On August 2, 2013, Atkinson called Internal Affairs and reported Lopez' ongoing behavior, which launched a criminal investigation. (Ex. 3.) Lopez was charged with a Class I Felony Count of Stalking. (Ex. 5.)
12. The Internal Affairs investigation, and recommendation, is documented in Exhibits 3 and 4. The investigation led to a decision to charge Lopez with a single count of violating Core Value 3.00, referencing Guiding Principle 3.05. (Ex. 1.)
13. After reviewing the charge, the Internal Affairs investigation, and Lopez's record of service on the force, Chief Edward Flynn and his command staff determined there were five aggravating factors that warranted Lopez's discharge from the Milwaukee Police Department: (1) the incident involved citizens; (2) other law enforcement agencies became involved; (3) Lopez's level of experience in the force; (4) Lopez acted intentionally; and (5) Lopez's long record of misconduct. (Ex. 11.) At the hearing, Lieutenant Johnny Sgrignuoli testified that Lopez' conduct "was as a black eye to the department."
14. Chief Flynn testified that this was a case where there was severe and pervasive behavior that was very serious. Lopez was a potential problem for female subordinates and the public.
15. On March 13, 2014, Lopez pled guilty to a Class B Misdemeanor of Unlawful Use of Telephone. (Exs. 6-9.) On March 28, 2014, Lopez was sentenced to probation. He was also prohibited from having any contact with Atkinson or any witnesses named in the prosecution's witness list and his social media accounts were subject to monitoring. (Ex. 10.)
16. Lopez has accepted responsibility for his offense, as shown in Exhibits 7-10. Lopez's record shows that despite his lengthy discipline record, he has not had a suspension since 2000.
17. Police Officer Michael Lopez, brother to the Appellant, as well as Lieutenant Sean Hanley, who served as Lopez' immediate supervisor, testified that Lopez was a hardworking, knowledgeable supervisor, with a strong sense of fairness. Further, this incident was not in line with Lopez's personal character.

18. However, we do note that this positive testimony notwithstanding, Lopez appears to have a pattern of poor judgment as it relates to the opposite sex. For example, on July 9, 2013, Lopez was counseled not to park in front of “Club 200” after it was reported that he was attempting to pick up female patrons. (Ex. 13; *see also* Exs. 14-16.) Lopez denied the truthfulness of this complaint as well.
19. At the hearing, both sides seemed in agreement as to the essential facts establishing Lopez’s violation of state law (that is, his conduct toward Atkinson constituting Unlawful Use of Telephone). The two sides presented more sharply contrasting views of the other incidents for which Lopez has been disciplined in the past or for which he was under investigation at the time of his discharge. Although Lopez consistently denied or downplayed the significance of these other incidents, we do not find him very credible in this regard; there does seem persuasive evidence of a long-term pattern of misconduct.

CONCLUSIONS OF LAW

20. This appeal is governed by the seven just cause standards set forth in Wis. Stat. §62.50(17)(b). For purposes of this appeal, Lopez has conceded that he violated Core Value 3.00 as charged in Personnel Order 2013-105. He further admits that the first five just cause standards are satisfied. Even apart from these admissions, and as outlined above, there is substantial evidence in the record in support of the first five just cause standards. Therefore, we determine that the charge is sustained by a preponderance of the evidence, and we turn our attention to “whether the good of the service requires that [Lopez] be permanently discharged,” in light of the sixth and seventh just cause standards. *See* Wis. Stat. §62.50(17)(a). In answering this question, we take into account our own rules on trial procedures (Ex. 20), including the evidence that we are authorized to receive under Section 14 of Rule XVI (i.e., evidence regarding “character, work record, and the impact of the misconduct on the complainant, department, and community”).
21. The sixth just cause standard is “Whether the chief is applying the rule or order fairly and without discrimination against the subordinate.” The Chief based his decision in this case on an extensive investigation of Lopez’ conduct, and further testified as to the various legitimate considerations that governed his decision. (*See* ¶¶ 12-13 above) No evidence was presented indicating that the Chief was motivated by personal animus against Lopez or otherwise took into account improper considerations.
22. In response to a request by Lopez’ counsel, the department prepared and submitted a list of other officers charged with misdemeanors, as well as the discipline they received during Chief Flynn’s tenure. (Ex. 19.) By and large, the “comparables” involved drunk driving incidents. Lopez stressed at hearing that he should receive a suspension because one officer who was involved in a drunken brawl, off-duty, and charged in another

county, only received a 5 day suspension, despite being charged with Battery and Felony Strangulation charges. We do not find this instance or other instances involving Police Officers charged with misdemeanors to be comparable. A drunken brawl between an off-duty officer and another patron does not amount to a systematic pattern of stalking, verbal and physical intimidation and sexual abuse. In actuality, Lopez's behavior was singular in his terrorization of Atkinson. (*See Ex. 11.*) None of the comparables presented involved an offense of that nature. However, the Chief highlighted that substance abuse, especially with alcohol, has been a problem and remains a problem with officers, one that he has worked hard to address.

23. We conclude, for the foregoing reasons that the Department has satisfied the sixth just cause standard by a preponderance of the evidence.
24. The seventh just cause standard is "Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the chief's department." In making decisions regarding the seventh just cause standard and what the good of the service requires, we sometimes rely on a principle of limited deference to the Chief's judgment. We wish to be clear that it is not necessary for us to rely on that principle in this case. In other words, even if we were to assume that the Chief had to carry a burden of proof with respect to these matters and benefitted from no presumptions in his favor, we would still affirm the Chief's decision.
25. The violation in this case was undeniably a serious one. First, Lopez violated a criminal law. Any time a police officer commits a crime, public confidence in the Department as a whole is put at risk. Second, the particular crime that Lopez committed was directly harmful to another person. Third, Lopez frankly should have known better. As a sergeant with supervisory responsibility, his lack of judgment undermines his authority to supervise junior officers and staff.
26. At Lopez's sentencing hearing, the Hon. Stephanie Rothstein articulated precisely the gravity and severe nature of Lopez' conduct:

What's concerning about this case, and all cases of this nature is that these are adults. I don't know a lot about the victim—not a lot has been presented to the Court about the victim in terms of whether she's employed, what kind of a lifestyle she has, what her education is. But the Court's been made aware enough about the defendant to know that, especially by virtue of his training professionally, he should know when behavior crosses the line. He should know when an individual, in his opinion, begins to display behaviors that might impact him professionally, as well as personally. He should be enough of a judge of human behavior to

engage in some conduct that would preserve his own livelihood and protect himself. Instead, even if we view the victim in the most critical light, which I don't, this defendant of all people should have known when to stop.

....

And to engage in behavior that of the nature that's been described in this court on the day of this offense on June 18th, repeated text messages, driving out a distance to this individual's home, standing outside, imploring constantly, constantly that there be contact between the two of them indicates a certain lack of control that shows a potential for harm to the victim or to the community in general. (Ex. 10, bates pp. 336-337, 338.)

27. To counter the seriousness of the violation, Lopez principally relies on his good character and work record, his passion for the job, acceptance of responsibility, and commendations he received in apprehending two robbery suspects. We do not understand the Department to dispute any of these matters. Rather, the Department's view is that the nature and seriousness of the violation in this case, as well as the pattern of other complaints involving women, simply outweigh any mitigating considerations. We share this view. We find that the proposed discipline reasonably relates to the seriousness of the alleged violation and to Lopez's record of service, and that the good of the service requires that Lopez be discharged.

DECISION

The charge against the Appellant, Alex Lopez, Jr. is sustained, and he is ordered discharged from the Department.

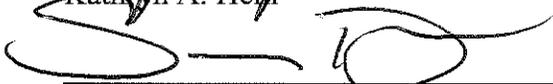
Dated at Milwaukee, Wisconsin.

BY THE COMMISSION:



Kathryn A. Hejn

September 18, 2014



Steven M. DeVougas

September 18, 2014



Michael M. O'Hear

September 18, 2014