

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

**DECISION AND FINDINGS
In the Matter of the Appeal of Benjamin J. Bender**

Hearing Date: May 19, 2022

Hearing Location: City Hall, 200 East Wells Street, Milwaukee Wisconsin
Room 301-A at 8:30 A.M.

Commissioners: Chair, Edward Fallone, Esq.
LaNelle Ramey
Dana World-Patterson

Hearing Examiner: Dennis P. Moroney, Esq.

Appearances: For the City, Police Chief Jeffrey B. Norman
Robin A. Pederson, Esq.
Office of the City Attorney

For Appellant, Benjamin J. Bender
Brendan P. Matthews, Esq.
Cermele & Matthews, S.C.

PROCEDURAL HISTORY

On February 7, 2021, while on limited duty in the lobby of District 7 of the Milwaukee Police Department, Police Officer Benjamin Bender (“Officer Bender”) was approached by a citizen who reported that he had been shot at while in his vehicle at 3226 North 35th Street, Milwaukee Wisconsin (crime scene). An investigation was commenced by the Internal Affairs on February 19, 2021 after the citizen complained about his treatment while at District 7. The Chief of the City of Milwaukee Police, Jeffrey B. Norman, made the following charges against Officer Bender on March 3, 2022 pursuant to Personnel Order 2022-19:

CHARGE NO. 1 Core Value 1.00-Competence, referencing Guiding Principle 1.03: Failing to render service to the community promptly and efficiently. (“Charge 1”)

CHARGE NO. 2 Core Value 1.00- Competence, referencing Guiding Principle 1.05, referencing Standard Operating Procedures relating to

Crime Scene Investigations, Section 725.15(A)(2)(6)(9)(13): Failure to comply with department procedures relating to crime scene investigations. ("Charge 2")

CHARGE NO. 3 Core Value 3.00-Integrity, referencing Guiding Principle 3.10: Failure to be forthright and candid in connection to an administrative inquiry. ("Charge 3")

The City of Milwaukee Police Department called Lieutenant Benjamin Fellers as a witness, as well as calling adversely, Officer Bender. The Appellant, Officer Bender, did not call any witnesses.

SUMMARY OF PROCEEDINGS

At the beginning of the hearing, Officer Bender, by his attorney, Brendan P. Matthews, addressed the Fire and Police Commission Board ("FPC") assigned to hear the case, that he did not dispute the violations in the Personnel Order 2022-19 dated March 3, 2022 relating to Charge 1 and Charge 3. He waived his right to a hearing on whether or not he committed the violations on each of them. He stipulated that the factual assertions contained in the specified charges of 1 and 3 are true, correct and that the District Level Written Reprimand ordered relative to Charge 1 can stand. Additionally, the ten (10) day suspension without pay can stand as the appropriate penalty for the violation in Charge 3. Accordingly, those facts are established by stipulation, and Phase I and II of the proceedings are completed as to Charge 1 and Charge 3 respectively. A Phase I proceeding will be necessary relative to Charge 2.

The Milwaukee Police Department had Lieutenant Benjamin Fellers as its hearing officer, and the hearing was recorded by a stenographer.

This matter is before the FPC for a hearing in that Officer Benjamin J. Bender has timely appealed MPD Personnel Order 2022-19.

FINDINGS OF FACT

We find the following facts have been established by a preponderance of the evidence:

1. That February 7, 2021 was Officer Benjamin J. Bender's first day back to work following a medical leave. He was assigned to limited duty at the lobby desk of the District 7 Police Station. A citizen presented himself advising that he had been shot at in his vehicle at 3226 North 35th Street, Milwaukee, Wisconsin. The charge involved was Endangering Safety by Use of Dangerous Weapon ("ESBUODW"). Identification was presented by the victim and he advised that his car was parked just outside of

District 7. The car was not inspected by Officer Bender and his identification not copied. The victim was told to return to the crime scene without an accompanying police escort. Fortunately, police officers had been dispatched to the crime scene in response to a ShotSpotter report of 6:14 P.M. The victim had come to the District 7 Police Station at 6:16 P.M. Officer Bender did dispatch police officers to the crime scene, but other police officers were already at the crime scene.

2. That Police Sergeant, Christopher Jackson, responded to a ShotSpotter dispatch at 3226 North 35th Street, Milwaukee, Wisconsin and came upon a citizen named Robert E. Meeks ("Mr. Meeks") who had returned to the crime scene after reporting an ESBUDW complaint to lobby desk personnel at the District 7 Police Station. The citizen was sent back to the crime scene without a police escort and the car was never checked by Officer Bender. A spent bullet was found in the car by the investigating officers. (*See Exhibit 12*).

3. Sergeant Raymond Hewitt ("Sergeant Hewitt") prepared the Internal Affairs Memorandum on July 27, 2021 (*See Exhibit 1*) directed to Captain Craig D. Sarnow of the Milwaukee Police Department. This formed the basis for finding that the Standard Operating Procedure relative to a citizen's complaint was not followed (*See Exhibit 4*). In addition, the Standard Operating Procedure relative to Crime Scene Investigation was not followed by Officer Bender (*See Exhibit 11*). On October 15, 2021, Lieutenant Fellers of Internal Affairs concluded that Officer Bender and Officer Juwon Madlock had violated all the charges set forth (*See Exhibit 2*). It should be noted that Sergeant Hewitt had requested an extension of time to complete his investigation which was approved (*See Exhibit 8*) on May 18, 2021. Formal charges were recommended on December 14, 2021 (*See Exhibit 7*), and ultimately, the Personnel Order 2022-19 (*See Exhibit 10*) was issued.

4. Seeing as how issues concerning crime scene investigation (Charge 2) are all that remain in this case following the stipulation of violation to Charges 1 and 3, Standard Operating Procedure 725.15 (2)(6)(9) and (13) (*See Exhibit 11*) are all that is involved. Officer Bender did not go to the crime scene of 3226 North 35th Street, Milwaukee, Wisconsin on February 7, 2021. Even though the car involved was right outside of the District 7 Police Station, he never inspected it. There was never a perimeter marking the crime scene or potential evidence (car). The witnesses were not all identified or interviewed by Officer Bender. When identification was obtained from Mr. Meeks, it was never copied. In addition, there were no checks run on Mr. Meeks as to his being wanted.

5. Sergeant Hewitt and Sergeant Burtch reviewed the lobby cameras, and ascertained that identification was presented by Mr. Meeks, but returned to him.

CONCLUSIONS OF LAW

6. This appeal is governed by the seven (7) just cause standards set forth in Wis. Stat. Sec 62.50 (17)(b). The FPC must find by a preponderance of the evidence that there is just cause to sustain the violation in Charge 2. Preponderance of the evidence means "more likely than not" rather than just possible. See e.g. *US v Johnson*, 342 F.3d 731, 734 (7th Cir. 2003).

7. The Appellant, Officer Bender, interposed a Motion to Dismiss Charge 2 at the close of the City of Milwaukee Police Department case in chief, indicating there was no violation of Standard Operating Procedure 725 or that the City had not proven its case under just cause standards 3 and 4 as a matter of law in that more than ninety (90) days was taken to investigate the matter. This was denied by the FPC Board assigned to hear the case in private session, and the Appellant, Officer Bender, then rested his case.

8. After final arguments were made in Phase I relative to Charge 2, the FPC Board assigned to hear the case concluded that the City of Milwaukee Police Department failed to prove Charge 2 by a preponderance of the evidence, and that Charge 2 should be dismissed. Specifically, with respect to Charge 2, the FPC Board concluded that the Milwaukee Police Department did not prove its case under just cause standard 4 based on the amount of time involved in completing the investigation and under the circumstances presented here.

DECISION

Charge 1 and Charge 3 are hereby affirmed as violations, and the recommended penalties should be imposed. In that regard, as to Charge 1, a Written Reprimand at the District Level will be given. As to Charge 3, a ten (10) day suspension without pay is the appropriate penalty. As to Charge 2, this charge is to be dismissed.

Ed Fallon
Chair, Edward Fallon, Esq.

6/2/2022
Date

LaNelle Ramey

Date

Dana World-Patterson

Date



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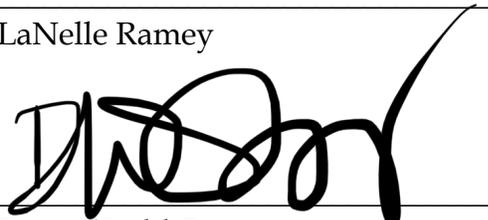
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Chair, Edward Fallone, Esq.

Date



LaNelle Ramey

June 6th, 2022

Date

Dana World-Patterson

Date