



Proposed Resolution Report

MNCO CC2020-012 Audit Report

I. Allegations of Misconduct

Allegation 1-Conduct Unbecoming an Employee of the Department

Allegation 2-Discourtesy

Allegation 3-Profanity

Allegation 4-Self-control

Allegation 5-Devoting time to duty

Allegation 6-Adherence to Policy & Rules: Time computation

Allegation 7-False Statements

Allegation 8-Lack of Professionalism

II. Summary Complaint:

On April 10, 2020, [REDACTED] ("Complainant") reported an incident to the MNCO by email regarding an incident that occurred one day prior on April 9, 2020. Complainant was later interviewed in-person by the Assistant Director and an MNCO Investigator. Complainant reports that Captain [REDACTED] ("Captain") cursed, was hostile and acted in a manner unbecoming an employee of the Department.

Specifically, Complainant alleges that while nannying for three minor children, ages 7, 5 and 3-years-old, the Captain played loud music that included offensive language, cursed at her and the children, called her offensive names, and threatened to turn on his sprinkler system in order to make them leave from a community bike path.

III. Policy Violations

MNPD Manual 4.20.040 (D) Conduct unbecoming an employee of the Department

1. The conduct of department employees, on or off-duty may reflect directly or indirectly upon the Department, therefore, a police department employee's ability to perform his or her duties is dependent upon the respect and confidence communities have for the representatives of the law enforcement agency in general.

2. A police officer is the most conspicuous representative of government, and to the majority of the people, the officer is a symbol of stability and authority upon whom they can rely. An officers' conduct is closely scrutinized, and when the officer's actions are found to be excessive, unwarranted, or unjustified, they are criticized far more severely than comparable conduct of persons in other walks of life.
3. Employees shall at all time conduct themselves in a manner which does not bring discredit to themselves, the Department, or the City. Conduct that is inconsistent with the provisions within this policy shall be considered a violation. *(Offense Category varies by severity of violation)*

MNPD Manual 4.20.040 (G) Courtesy

Employees shall be courteous, civil, and respectful to all persons and shall make every effort to meet the needs of citizens requesting assistance. *(Category F)*

MNPD Manual 4.20.040 (J) Profanity

Employees shall not use abusive, indecent or profane language or gestures in the workplace, in the performance of the duties or in the presence of a member of the public. *(Category F)*

MNPD Manual 4.20.040 (O) Self-Control

Employees shall not argue unnecessarily with any person or otherwise show a lack of self-control. *(Generally, a Category D but may vary by severity of violation)*

MNPD Manual 4.20.050 (J) Devoting Entire Time to Duty,

During their period of duty, employees shall devote their entire time and effort to their duties. Employees shall not conduct personal business, sleep on duty, or cease to perform their duties before the end of the work period, except with the prior approval from their immediate supervisor. *(Category varies by severity of the violation)*

MNPD Manual 1.30.030 Oath of Office & Law Enforcement Code of Ethics

I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. *(Category not specified)*

MNPD Manual 4.20.050 Official Obligations: Honesty & Truthfulness

Employees shall be honest and truthful. Truthfulness shall apply when an employee knowingly or intentionally makes a materially false statement. A statement is material when, irrespective of its admissibility under the rules of evidence it could have affected the course or outcome of an investigation, an official proceeding, or any inquiry regarding employment or job-related duties or responsibilities. *(Category AA)*

MNPD Manual 4.20.040 (A) Adherence to Policy & Rules

Employees shall adhere to all policies, procedures, rules, regulations, ethical codes, and administrative or executive orders as established by the department or Metropolitan Government. *(Category: varies by corresponding violation, but generally classified as Category D unless otherwise stated).*

MNPD Manual 3.60.020 (J) Time computation

It shall be the policy of the Metropolitan Police Department that all employees adhere to the provisions within this order concerning time accounting, compensation, and related practices. Failure to adhere to these standards may be cause for disciplinary/corrective action.

IV. Executive Director Review

The Executive Director Fitchard received the Audit Report, and it contained the following information, which was carefully reviewed:

EXHIBIT LIST:

YouTube Video of Incident
OPA Investigative Summary
Satellite image of location of incident
Time Sheet for 03/30/2020 through 4/15/2020
Recorded Interview of Captain
Apology letter written from Captain to Complainant

IV. Findings of Fact

Based upon the review of MNCO's Audit Report and Exhibits, the Executive Director finds by a preponderance of the evidence the material facts to be:

1. On the video recording of Complainant and Captain's interaction on April 9, 2020, Captain is clearly heard saying "ass," "fucking," "fuck," and "shit."
2. He is also heard saying he would turn on the sprinklers in response to the Complainant saying she'd stay on the community bike path as long as they wanted.
3. Captain admitted that the recording was a factual account of the incident, that he did use profanity, and that he violated policy regarding conduct unbecoming of an employee of the department.
4. During the investigation with OPA investigators, Captain asserted that he was not working at the time of this incident.
5. When confronted with his time sheet that indicated he was working, Captain amended his statement by saying he was working earlier that morning but was not working later in the day during the time of the incident. Captain claimed he didn't adjust his work hours

to reflect this because “it was a bad habit” and he did so much work during off hours, it would be difficult to show on a timekeeping system exactly when he was working.

6. According to interviews with his supervisor and time-keeping documents, Captain was working from home that day. If Captain were not working at all, then they would need to let the assistant know. The assistant was not notified Captain would not be working from home that day. The supervisor also remembered speaking specifically with the Captain that morning, and it was his belief and expectation that Captain was working the day this incident occurred.

V. Discussion/Analysis

There is no dispute that Captain violated policy with regard to cursing, conduct unbecoming, discourtesy, self-control and lack of professionalism.

Following the incident, although Captain wrote a letter of apology and during the disciplinary proceedings with OPA and MNCO and expressed regret and contrition, he also mischaracterized his status as not working on two separate occasions to investigators. First, he said he was not working at all in his initial interview. And then again, when confronted with his time sheet on a follow-up interview, Captain double-downed and said that while he may have been working in the morning, he was not working later in the day. He asserted that he had just not informed anyone.

The OPA found that this was a policy violation by way of not recording his time properly. By a preponderance of the evidence, however, the Executive Director finds that Captain’s statements to the investigators on both of these occasions violate MNPDP policy regarding false statements.

Captain’s supervisor explained that Captain was working from home that day and that he specifically remembered speaking to Captain that morning. It was the supervisor’s belief and expectation that Captain was on the clock. That is also what is reflected in the timesheets. If Captain were not working later in the day, policy dictates that Captain would have notified the assistant in order to inform the supervisor and someone else would be put in charge of his responsibilities. No notification was given, and no replacement was appointed. For these reasons, the Executive Director finds that Captain violated MNPDP on giving false statements.

VI. Mediation

Mediation was not offered in this case based on the nature of the complaint.

VII. Conclusion

The Executive Director concludes that after careful review of the MNCO Audit Report and Exhibits, there were no deficiencies found in the Office of Professional Accountability’s conclusions as it relates to 3 of the 8 allegations:

- Conduct Unbecoming MNP Manual 4.20.040 (D) (category C, 1st offense)
- Profanity MNP Manual 4.20.040 (J) (Category E, 1st offense – aggravated due to presence of children), and
- Adherence to Policy and Rules MNP Manual 4.20.040 (A) (Category D, 1st offense) by violating Time Accounting MNP Manual 3.60.020 (J).

However, the Executive Director does conclude there were deficiencies in the OPA's conclusions as it relates to five additional policy violations (in **bold** below):

- Allegation 1 - Conduct Unbecoming MNP Manual 4.20.040 (D) (*Category varies*)
- **Allegation 2 – Discourtesy MNP Manual 4.20.040 (G) (Category F)**
- Allegation 3 - Profanity MNP Manual 4.20.040 (J) (*Category F*)
- **Allegation 4 - Self-control MNP Manual 4.20.040 (O) (Category D)**
- **Allegation 5 - Devoting Time to Duty MNP Manual 4.20.050(J) (No category specified)**
- Allegation 6 - Adherence to Policy: Time Computation MNP Manual 4.20.040 (A) by way of MNP Manual 3.60.020 (J) (*Category D*)
- **Allegation 7 - False Statements MNP Manual 4.20.050 (Category AA)**
- **Allegation 8 - Lack of professionalism MNP Manual 1.30.030 (No category specified)**

A category AA, 1st offense disciplinary action is dismissal.

VIII. Recommended Action

The OPA sustained 3 violations, and disciplined him with 11 days total:

- Conduct Unbecoming (category C, 1st offense, 6 days),
- Profanity (Category E, 1st offense, 3 days – aggravated due to presence of children), and
- Adherence to Policy and Rules (Category D, 1st offense, 2 days) by violating Time Accounting.

In 2009, Captain received a written reprimand for a traffic accident. He had no other disciplinary history.

Captain no longer works at the MNP.

The Executive Director recommends that, although the Captain retired after this investigation, based on the reported sustained allegations contained in this report a “Ineligible

for Rehire” letter be submitted to Metro Human Resources and maintained in Captain’s HR and MNPD personnel file.

Submitted to the Community Oversight Board for Approval on Wednesday, October 27, 2021.

Jill Fitchard
Executive Director

Date

Board Recommendations:

_____ Accept/Send to MNPD Chief of Police

_____ Accept, but Modify

_____ Reject

_____ Return to MNCO Staff

BOARD RECOMMENDED MODIFICATION:

Andres Martinez
Chair

Date