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7 **BONNEY LAKE CIVIL SERVICE COMMISSION**

8 **TERRY CARTER,**

9 **Petitioner,**

NO. 01-2012

10 **v.**

**DECISION OF THE BONNEY LAKE
CIVIL SERVICE COMMISSION**

11 **BONNEY LAKE POLICE DEPARTMENT,**

12 **Respondent.**
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14

PROCEDURAL HISTORY

15 Pursuant to notice, a hearing was held before the Bonney Lake Civil Service
16 Commission on December 11, 2012, continued to and concluded on December 14, 2012.
17 Commissioners Bunk and Nishiroyi were present. Chairman Dalton was ill and unavailable.
18 The parties were consulted and no objection was raised to the Commission proceeding on its
19 quorum. The Commission was assisted by Hearing Officer W. Scott Snyder and Secretary
20 Chief Examiner Jenna Richardson.

21 **NATURE OF APPEAL**

22 Officer Terry Carter (hereinafter "Officer Carter") appealed a suspension without pay of
23 eighty hours. Officer Carter is assigned to a 10-hour shift, so eighty hours is the equivalent of
24 eight working days. The suspension was reduced in an internal appeal to the City Administrator
25 to forty hours or four working days. The City asserts the appealed suspension is that imposed by
26 Chief Powers; eighty hours. The Commission finds that it has jurisdiction to hear the appeal.

1 During the course of the hearing, the Commission was directed by the parties to the
2 following issues:

- 3 1. Was the disciplinary action taken "in good faith for cause?"
- 4 2. Was there a "political motivation" for the disciplinary action? Religious
5 motivation was not alleged by the appellant.
- 6 3. Was a full and fair investigation conducted?
- 7 4. Was the severity of the discipline appropriate both in terms of the offense and the
8 disciplinary history within the department?

9 The City has the burden of proof in this proceeding and must establish its case by a
10 preponderance of the evidence. CSR 20.13.

11 FINDINGS OF FACT

12 Except as noted, there was no significant factual dispute regarding the core counts upon
13 which the discipline was based.

14 On May 10, 2012, at 20:42 hours (8:42 PM), acting Sergeant Byerley and Officer Carter
15 were dispatched to an attempted suicide call. The individual was reported to have agonal
16 breathing and to be foaming at the mouth. Pill bottles and wine bottles were present at the scene
17 along with a suicide note. A call of this nature is a priority call under departmental policy in
18 that an individual's life may be at stake. Witness testimony indicated that suicide calls are
19 treated as potential homicides until circumstances indicate otherwise. By policy, such calls are
20 to be responded to "without delay." Departmental Policy Manual 5.2.3.

21 Officer Carter was at Quiznos sub shop about to begin a meal break with Officer David
22 Thaves. Neither Officer Thaves nor Officer Carter were paying close attention to the radio calls
23 and were unaware that the address of the apparent suicide was less than one mile from their
24 location. At Officer Thaves' suggestion, Officer Carter used his cell phone to call Officer
25 Bourbon and request that Officer Bourbon cover the call. Officer Bourbon was a probationary
26 officer who received his field training from Officer Carter as his field training officer. Officer

1 Bourbon agreed to cover the call although he was in the middle of a traffic stop involving a
2 criminal (as opposed to an infraction) offense. Officer Bourbon's location was approximately
3 3.8 miles away from the victim's location. Accordingly at 20:43 hours (8:43 PM) Officer
4 Bourbon called dispatch indicating he would respond to the call for Officer Carter when Officer
5 Bourbon cleared his traffic stop. Officer Carter called that he will be taking a meal break. ("7A
6 portable.")

7 At 20:45 hours (8:45 PM), Officer Johnston was arriving on duty in her patrol car.
8 Officer Johnston contacted dispatch to take the call for Officer Bourbon. She was on Highway
9 410, making her a quicker responder than Officer Bourbon. At 20:48 hours (8:48 PM) Officer
10 Johnston and acting Sergeant Byerley arrived at the scene. Undisputed evidence indicated that
11 although the response of six minutes was good, had Officer Carter responded, he would have
12 been on the scene in 3 minutes or less.

13 Given the dispute and the employer's burden of proof, the Commission makes no
14 finding regarding evidence offered to show that Officer Carter was being deceptive in his call to
15 Officer Bourbon. Officer Carter's motivation and any deception are secondary to the
16 Commission's findings. By simply calling Officer Bourbon rather than responding
17 immediately, Officer Carter delayed response to the victim.

18 The only significant factual dispute involved what Officer Carter said to Officer Bourbon.
19 Officer Bourbon testified that Officer Carter indicated that he was just arriving at his residence
20 for dinner while Officer Carter denies indicating where he was or who he was with.

21 POLICY VIOLATIONS

22 During the course of the hearing, the City asserted that Officer Carter violated seven
23 Standard Operating Procedures (SOPs) of the Bonny Lake Police Department. They are:

24 4.15.5 Attention to Duty

25 4.17.8 Unbecoming Conduct

26 4.16.9 Neglect of Duty

1 4.1.11 Meal Periods

2 5.2.2 Calls for Service

3 5.2.3 Response to Crimes Against Persons

4 1.7 Code of Ethics.

5 The Commission finds just cause exists to find violation of the following Standard
6 Operating Procedures of the Department:

7 **SOP 4.15.5 Attention to Duty.** This SOP provides:

8 As most police work is necessarily performed without close
9 supervision, the responsibility for the proper performance of an
10 officer's duties lies primarily with the officer. An officer carries a
11 responsibility for the safety of the community and fellow officers.
12 The officer discharges that responsibility by the faithful and
13 diligent performance of their assigned duties. Anything less
14 violates the trust of the public and nothing less qualifies as
15 professional conduct.

16 By Officer Carter's own admission, he was not paying close attention to the calls on his
17 radio and was unaware of the location of either Officer Bourbon or the suicide victim. Officer
18 Carter did nothing to inform himself. The Commission finds that Policy 4.15.5 was violated.

19 **SOP 4.16.8 Unbecoming Conduct** stated in pertinent part:

20 Conduct unbecoming a member shall include that which brings the
21 Department into disrepute [sic] reflects discredit upon the member,
22 or that which impairs the operation of efficiency of the Department
23 or member.

24 The Commission finds that Officer Carter's inattention to dispatch and his choice to take
25 a meal break rather than respond to a suicide to which he was the closest responder is conduct
26 unbecoming a member of the department.

27 **SOP 4.16.9 Neglect of Duty** provides in its entirety:

28 While on duty members will remain attentive to their assigned
29 responsibilities. They will not mangle or shirk their duties.

30 By Officer Carter's admission he was not attentive to his responsibilities.

31 **SOP 1.7 Code of Ethics** generally sets forth the aspirational goals of the Department. It
32 requires officers to "safeguard lives" and refers to the officers' duties as a "public trust." The

1 Commission finds that this SOP was violated by Officer Carter's actions.

2 The Commission finds that just cause does not exist to find a violation of the following
3 SOPs:

4 **4.1.11 Meal Periods/Breaks. M, P, and B.**

5 This SOP provides in pertinent part

6 While on duty, Officers will be permitted to suspend patrol or other
7 assigned activity upon notification to the Communications Officer
8 for one meal period...

8 **SOP 5.2 Response to Calls for Services** This SOP provides in pertinent part that:

9 [r]eassignment will occur only at the direction of a supervisor, the
10 Communications Center or as outlined in 5.2.1.

11 [5.2.1 deals with situations in which an "intervening incident"
12 requires an officer to take another assignment without supervisor
13 direction based upon the "comparative urgency and the risk to life
14 and property of the assigned call and the intervening incident."]

13 The Commission finds that while these SOPs were not followed by Officer Carter, the
14 requirement that officers report to the Communications Officer for meal breaks or to a supervisor
15 for reassignment is uniformly disregarded by members of the department. The emergent
16 circumstances provision of 5.2.1 were not implicated because Officer Carter chose to divert from
17 a call in order to have a meal, not deal with a higher priority call. However, the Commission
18 finds that it would inappropriate and unfair to penalize Officer Carter for violating a provision
19 that is not observed by other members of the department on a daily basis.

20 **SOP 5.2.3 Response to Crimes Against Persons** states:

21 All calls for service alleging or describing a potential, real or
22 imagined threat of injury will immediately be responded to without
23 delay.

23 While testimony indicated that suicides were treated by the department as potential
24 homicides and therefore fell under SOP 5.2.3 and while it is clear that Officer Carter failed to
25 respond without delay, this SOP was cited in neither the notice of investigation nor the notice of
26 discipline. Accordingly, while the evidence indicated a clear violation of this SOP, the
Commission finds that the department has violated Commission rule CSR 19.02.01 by its failure

1 to notify Officer Carter of this potential offense. The Commission has used SOP 5.2.3 to
2 determine whether the call on May 10, 2012 was a priority call.

3 **DEPARTMENTAL MOTIVATION AND FULL AND FAIR INVESTIGATION**

4 Much of Officer Carter's presentation and cross examination of witnesses related to the
5 employer's motivation for the disciplinary action. The Commission notes that no "religious"
6 motivation was alleged. The evidence indicated no traditional "political" motivation in that the
7 internal politics of the department as opposed to the more traditional meaning of partisan politics.
8 While there may have been some animosity between Sergeant Keller and Officer Carter, the
9 testimony indicated a clear and undisputed set of facts upon which findings of violation of
10 departmental SOPs are found. While Officer Carter and Sergeants Keller and Maras may have
11 had prior issues, they were grounded in Officer Carter's conduct. Other violations of department
12 policy with Officer Carter resulted in a prior written reprimand. Officer Carter's conduct put him
13 in the sights of his supervisors, and the Commission finds that any inappropriate motivation was
14 irrelevant to this proceeding.

15 **FULL AND FAIR INVESTIGATION**

16 Officer Carter questioned the participation of Sergeant Keller in the investigation.
17 Several of the witnesses were initially contacted by Sergeant Keller and acting Lieutenant
18 Alfano's investigation incorporated statements taken and information provided by Sergeant
19 Keller.

20 The Commission agrees that it is not best practice for a complainant, Sergeant Keller, to
21 participate in an investigation. It is however, common practice for supervisors to conduct
22 preliminary inquiry to determine whether a potential violation of departmental policy occurred.
23 Given that Officer Carter admits to the allegations upon which discipline is based, there is no
24 significant dispute regarding any of the key facts. The Commission finds that the participation of
25 Sergeant Keller, while not best practice, did not impair the investigation nor result in any
26 fundamental unfairness to Officer Carter.

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PRIMARY FINDING

The Commission finds that Officer Carter was suspended without pay in good faith for cause.

SEVERITY OF DISCIPLINE

As noted in the introduction, Chief Powers levied eighty hours of suspension without pay (eight working days). This was reduced by the City Administrator in an internal appeal to forty hours or four working days off without pay. The Commission finds that RCW 41.12.090 as interpreted by the courts of the state of Washington and the rules of the Commission permit it to impose such discipline as it deems appropriate. *See* CSR 20.17; *City of Kelso*, 137 Wash. 2d 166, 169 (1999).

The record indicates that within the last seven years, there have been several suspensions without pay of three working days based on similar policy violations. The Commission notes that these disciplines were levied by the prior police chief, not Chief Powers.

The Commission also feels that the potential severity of the incident, both in terms of the risk to the life of a Bonney Lake citizen and the potential negative impacts to the department, make this a significant and severe violation of departmental policies and common sense. Had Officer Carter been attentive to his duties and exercised better judgment, these violations would not have occurred. This failure casts disrepute on the department. Had the victim died, the City and Officer Carter could have suffered significant liability.

On the other hand, the Commission notes that Officer Carter has, as the City Administrator noted, a strong work history, and with the exception of two recent incidents, both a clean record and a strong value to the department. While the verbal warning and clear written reprimand which preceded this discipline make it progressive in nature, the Commission, in its judgment, wishes to strike a balance and issue discipline which indicates both the severity of the event and Officer Carter's prior and hopefully future value to the department.

Accordingly, the Commission imposes a suspension of sixty hours or six working days or

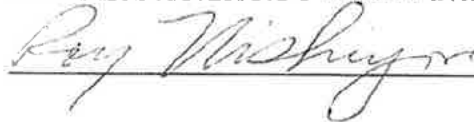
1 shifts, without pay.

2 DONE this 20th day of December, 2012.

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4 COMMISSIONER RAYMOND BUNK

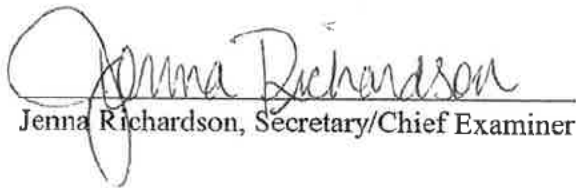
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6 COMMISSIONER ROY NISHIYORI

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9 ATTEST:

10 By

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Jenna Richardson, Secretary/Chief Examiner