



CITY OF PORTLAND, OREGON



Bureau of Police

Tom Potter, Mayor

Rosanne M. Sizer, Chief of Police

1111 S.W. 2nd Avenue • Portland, OR 97204 • Phone: 503-823-0000 • Fax: 503-823-0342

Integrity • Compassion • Accountability • Respect • Excellence • Service

MEMORANDUM (CONFIDENTIAL)

May 7, 2007

TO: Lieutenant Jeffrey Kaer #23818
Southeast Precinct

SUBJECT: Proposed Discipline: Termination
IAD #2006-B-2004

You are hereby notified that your conduct, while employed with the Portland Police Bureau, has not met standards acceptable to the Bureau.

Brief Statement of Charges

On January 4, 2006, you were involved in the use of a deadly force event outside of your sister's home that ended with the death of Dennis Young.

You made a number of poor decisions leading up to the use of deadly force that, in their totality, violate Bureau policy. These decisions are outlined below in the "Supporting Facts" section of this letter. These decisions demonstrate poor judgment; a number of your decisions were inconsistent with training or training principles, as well. In their totality your decisions constitute unsatisfactory performance under Directive 315.30. They also violate Directive 1010.10 in two ways: Your actions precipitated the use of deadly force, contrary to the policy, and you shot at a moving vehicle in violation of the policy.

Your decision to use deadly force is not at issue in this disciplinary process. Your poor judgment and decision-making leading up to the deadly force decision are the basis for this proposed action.

Under City of Portland Human Resources Administrative Rule 5.1 (8), a violation of federal or state law, or of the City Charter, ordinances or any City rules or regulations including bureau-specific policies is cause for disciplinary action.

Community Policing: Making the Difference Together
An Equal Opportunity Employer

Police Information Line: 503-823-4636, TTY (for hearing and speech impaired): 503-823-4736 Website: <http://www.portlandpolicebureau.com>

Bureau Policies

The official Manual of Policy and Procedure of the Portland Police Bureau provides, in relevant part, as follows:

315.30 – Unsatisfactory Performance

Members shall maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Members shall perform their duties in a manner that will maintain the highest standards of efficiency in carrying out the functions and objectives of the Bureau. Unsatisfactory performance may be demonstrated by a lack of knowledge of the application of laws required to be enforced; an unwillingness or inability to perform assigned tasks; the failure to conform to work standards established for the rank, grade or position; the failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving police attention; or absence without leave.

In addition to other indications of unsatisfactory performance, the following examples could be considered prima facie evidence of unsatisfactory performance: performance deficiencies or a written record of infractions of rules, regulations, directives or orders of the Bureau.

Bureau Directive 1010.10 is an important policy governing the Portland Police Bureau and its law enforcement officers - the Use of Deadly Force policy. Directive 1010.10 was significantly revised and issued in August 2005. The revisions incorporated a "Sanctity of Life" statement, and significantly expanded a section called "Shooting at a Moving Vehicle".

In relevant part, Directive 1010.10 states:

The Portland Police Bureau recognizes and respects the integrity and value of human life, and that the decision to use deadly force is the most important decision that a member will make in the course of his/her career. The use of deadly physical force will emotionally, physically and psychologically impact the member involved, the subject the deadly physical force was directed at, and the family and friends of both and can impact the community as well.

Members are to be aware that this directive is more restrictive than state statutes. Members of the Portland Police Bureau should ensure their actions do not precipitate the use of deadly force by placing themselves or others in jeopardy by engaging in actions that are inconsistent with training the member has received with regard to acceptable training principles and tactics.

The revisions to the "moving vehicle section" of the policy were designed to strongly discourage officers from shooting at a moving vehicle because it is a rare situation when shooting at a moving vehicle would be an effective act. Directive 1010.10 is attached to this letter of proposed discipline, but it states that:

- A moving vehicle itself shall not presumptively constitute a threat that justifies the member's use of deadly physical force.
- Members threatened by an oncoming vehicle should attempt to move out of its path instead of discharging a firearm at it or any of its occupants.

The policy reminds members to be mindful of a number of things, including that bullets fired at occupants of moving vehicles are extremely unlikely to stop or disable the moving vehicle and that moving to cover, repositioning and/or waiting for additional responding units to gain and maintain a superior tactical advantage maximizes officer and public safety and minimizes the necessity for use of deadly physical force.

Employment History and Training

You have been employed with the Portland Police Bureau since April 26, 1990. You were promoted to the rank of Lieutenant in July of 2003. In November of 1995, you received Command Counseling for failing to write reports involving use of force before the end of your shift.

Your background includes approximately 3000 hours of training, supervisory responsibilities at the precinct level, and certification as an instructor in a number of areas between 1994-1998. In 1998 you worked as a lead instructor in Patrol Tactics.

Along with other training designed to develop sound judgment, police officers at PPB are taught Tactical Guidelines. The Guidelines have been a part of PPB skills training since at least the mid-1980's. The Guidelines are designed to assist officers in resolving events with the lowest possible level of force, while maintaining as much safety as is possible for police, the involved subject(s) and the public.

Background Facts

In November of 2005, your nephew Kent Kotsovos was involved in a road rage incident where he was shot in the face. The suspect was known but not yet in custody at the time of this shooting event. As a result, your sister's address was flagged with BOEC for a two-car response.

Supporting Facts for Proposed Action

On January 4, 2006 at approximately 0210 hours, you received a telephone call from your sister, Brenda Kotsovos, regarding a suspicious vehicle in front of her residence (64th and Alameda).

You were working at the time although your sister's residence is not in your precinct. Based on the information from your sister you said you did not feel it was necessary to notify BOEC for a two-car response and made the decision to respond to your sister's address.

On arrival you found a car parked at an angle in the street with the engine running and the back-up lights on. You identified yourself to BOEC by unit and number, gave your location, and asked for cover.

You decided to approach the car. You believed that you were dealing with a DUII as the driver, Dennis Young, appeared to be slumped over, the car was in gear and he had his foot on the brake pedal.

As you walked up to the driver's window you noted that the engine was running, that both the brake and reverse lights were on, that the trunk lock and driver's door lock were punched out and the steering column was broken. You also noted there was a beer bottle in the passenger compartment, that the driver had a pry tool in his lap and appeared to have a knife on the seat next to him.

Yet, you decided to make contact with the slumped over driver. You unlocked the driver's door and after telling the driver several times to put the car in park, struck the driver with your palm, reached in and shifted the car into park. You then placed the driver in a control hold and started to give him commands to unlatch his seatbelt.

The cover officer, Officer Keller, arrived with little to no information about the situation he was covering. He could see that you had Young in a control hold and were instructing Young to unlatch his seat belt. Keller was concerned because he could not see the driver's right hand, which was between the seats. Officers know that not being able to see a subject's hands presents a higher risk situation.

When you told the suspect to turn off the car, he responded by saying that he could not turn the car off because he did not have keys to the car. You said you asked him, "is this a stolen car or something" and at that point you noticed the driver's expression changed. The driver grabbed the gearshift lever and shifted the car into gear, going forward and causing the doorframe of the car to strike your arm and spin you around about a quarter turn. The car went a short distance and you observed the driver move the gearshift lever. At this point you had drawn your handgun and yelled several times for the driver to stop the car. You said the suspect vehicle came back towards you in reverse. You said you fired two rounds out of fear of being hit by the car. Mr. Young died as a result of the use of deadly force.

Examples of your poor judgment and decision-making in this event are:

1. You drove to 64th and Alameda to check out the suspicious car yourself, rather than allowing it to be dispatched and handled by patrol officers.

2. On arrival you contacted BOEC but you did not broadcast the license number of the vehicle or provide information about the nature of the problem, or do anything to create a comprehensive call. Officers are taught to broadcast the license plate number, location, and nature of the problem. This approach informs those who may be monitoring the call or may respond as cover.
3. You did not run the license plate at all. There was nothing about the situation that was exigent. Running the plate would have revealed that the vehicle was stolen. Officers are taught that stolen vehicles present a higher risk situation and to evaluate accordingly.
4. You decided to approach the car before cover arrived. Again, there was nothing about the situation that was exigent. Officers are taught that numerical superiority, time and distance can provide tactical advantages.
5. From the beginning of your approach to the vehicle you noticed the engine was running and both the brake and reverse lights were on, both of which should have indicated a higher risk tactical situation.
6. You made decisions based on your assumption that you had a DUII in a junker car. Officers are taught not to assume. Running the plate would have checked your assumption and provided you better information on which to evaluate your response to this situation. Additionally, a number of observations that you made at the scene should have caused you to check your assumption, specifically, the damaged locks, steering column, and pry bar. It seems you failed to recognize the signs of a stolen vehicle, a higher risk tactical situation.
7. Despite the increasing number of "red flags" indicating a higher risk situation, you continued on with your decision to make contact with the slumped over driver while alone. Officers are taught to wait for cover.
8. You engaged in a one on one encounter with Mr. Young by shoving him towards the passenger side, reaching in with your left hand, and putting the car into park. Officers are taught that reaching into vehicles is inherently risky. They are also taught that one on one encounters are competitive in nature and that control is "essential and noncompetitive".
9. You did not communicate with Officer Keller on his arrival to cover you. He arrived to find you in the middle of a quickly developing event that your actions triggered. Officers are taught to have a plan and communicate. You did not do that and put Officer Keller in a difficult cover situation.
10. Asking the driver if the car was stolen was not a sound decision in light of the all of the risk factors previously identified.

Summary

The Performance Review Board recommended a conclusion that your actions violated Directive 315.30 – Unsatisfactory Performance and Directive 1010.10 – Use of Deadly Force.

Your decisions and poor judgment as described above constitute unsatisfactory performance. Your actions also are precipitating factors causing the use of deadly force, which is prohibited by 1010.10. In addition, they violate the shooting at a moving vehicle portion of Directive 1010.10, which was designed to prevent members from shooting at a moving vehicle. Some of your actions were inconsistent with a number of training principles that are taught by the Bureau. As a member of the command staff of the Bureau, and former training officer, you are expected to model sound decision-making in events like this.

Your termination is proposed based on the charges above.

You may respond to these charges in writing or in a meeting with Chief Rosanne Sizer and me. If you wish to appear in person, please contact 503-823-0326 within seven (7) days of the date of the receipt of this letter to schedule an appointment. You have the option of having a union representative present. If you do not call to make an appointment it will be assumed you do not wish to respond orally. If you choose not to make an oral presentation, however, please notify me of that choice in writing.

You will be notified of the final disposition based upon your response. If you do not respond orally or in writing, a final decision will be made based upon the information that is currently available.



Mayor Tom Potter
Commissioner of Police

050907
Date

Lieutenant Jeffrey Kaer #23818
I certify that I have read and received a copy of this notice.

Date/Time

- c: PPCOA
Bureau of Human Resources, Personnel File
Director, Bureau of Human Resources
Police Bureau Personnel File (201)