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Human Resources Dept

MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Joya Hayes, Acting Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: October 12, 2015

SUBJECT: Indefinite Suspension of Police Detective Darin Wesley # 3268
Internal Affairs Control Number 2015-0472

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, and Rule 10, Rules of Procedure for the Firefighters', Police Officers' and Emergency Medical Service Personnel's Civil Service Commission, I have indefinitely suspended Police Detective Darin Wesley # 3268 (hereafter "Wesley") from duty as a City of Austin, Texas police officer effective October 12, 2015.

I took this action because Detective Wesley violated Civil Service Commission Rule 10.03, which sets forth the grounds for disciplinary suspensions of employees in the classified service, and states:

No employee of the classified service of the City of Austin shall engage in, or be involved in, any of the following acts or conduct, and the same shall constitute cause for suspension of an employee from the classified service of the City:

- L. Violation of any of the rules and regulations of the Fire Department or Police Department or of special orders, as applicable.

The following are the specific acts committed by Detective Wesley in violation of Rule 10:

On April 28, 2015, Wesley was assigned to the North Bureau, Region I, Detective Unit. Wesley's regularly scheduled work hours were Monday – Friday, 7:00 am to 3:00 pm. On April 28, 2015, Wesley asked his supervisor, Sergeant James Kettleman if he could adjust his work hours for Thursday April 30, 2015 and come in at 10:00 am. Sergeant Kettleman approved the request. Unbeknownst to Sergeant Kettleman, Wesley had received a subpoena on April 8, 2015 to appear in Municipal Court on April 30th at 8:30 am.

On April 30, 2015, Wesley attended Municipal Court pursuant to the subpoena. At 9:00 am that day, Wesley texted Sergeant Kettleman and advised him that he was in court. Sergeant Kettleman was perplexed as Wesley two days earlier requested approval to come into work at 10:00 am that day. Sergeant Kettleman instructed Wesley to see him when he was released from court. When Wesley arrived at the office Sergeant Kettleman asked him about the change in schedule and Wesley lied to him when he stated that he needed the schedule change in order to have home repairs performed on April 30th and cancelled those repairs on April 29th once he realized he had a subpoena for Municipal Court on the 30th. These lies were confirmed by Internal Affairs, who contacted the homebuilder and subcontractor who stated that they never had any repairs scheduled for Wesley's home on April 30, 2015. The homebuilder and subcontractor confirmed that the repairs were scheduled on April 15, 2015, with the work to be performed on April 27, 2015. They also confirmed that Wesley never cancelled the repairs on April 29th. In fact, there were no repairs to cancel on April 29th as they had already been performed on April 27th.

Sergeant Kettleman asked Wesley if he submitted an overtime request for court, to which Wesley replied that he did (4 hours). Sergeant Kettleman asked Wesley if he changed his schedule in order to receive court overtime, to which Wesley responded "no." Wesley insinuated that he did not even think about putting in for overtime until he was advised that morning by Beverly Sabin, the APD Municipal Court Liaison, that he was eligible for court overtime. Sergeant Kettleman instructed Wesley to go to the Court Liaison and pull his overtime request as it was not going to be approved since Wesley was scheduled to begin work at 7:00 am that morning. Ms. Sabin told IA that Wesley told her that his Sergeant told him he was not authorized for overtime for this court appearance. A Detective who was present in the Court Liaison's office at that time stated that Wesley was upset that his Sergeant denied the overtime and confirmed that Wesley stated his Sergeant told him to go to the Court Liaison and pull the overtime request. Sergeant Kettleman believed that Wesley changed his work scheduled solely to earn overtime, which he would not have been entitled to since his work day would have already begun when the 8:30 court appearance occurred. Sergeant Kettleman informed Wesley that his work hours for April 30th would be recorded as 8:30 am to 4:30 pm.

On May 18, 2015, Wesley resubmitted the previously denied April 30th overtime request to the Court Liaison (he submitted the same piece of paper that was pulled on April 30th). Wesley told Ms. Sabin that he had spoken with some co-workers who stated he was eligible for the April 30th court overtime (what other employees allegedly told him is irrelevant since his immediate supervisor previously denied the request). Ms. Sabin recognized that this was the same request that Wesley had previously submitted and was denied. Ms. Sabin notified Sergeant Joaquin Perez, who is responsible for ensuring the accuracy of overtime request submitted to the Court Liaison. Sergeant Perez notified Sergeant Kettleman that Wesley resubmitted his request for overtime for April 30th despite Wesley being told by Sergeant Kettleman on April 30, 2015 that the overtime request was denied. It was readily apparent to Sergeant Kettleman that Wesley was insubordinate in that he surreptitiously submitted the previously denied overtime several weeks later without his knowledge or approval.

A significant fact is that the week before the April 30th court date, Ms. Sabin confirmed that Wesley called her and asked if he could receive overtime for a court appearance outside of his normal work hours. Wesley told her that he had a witness interview that morning, which was not true. Ms. Sabin knows it was Wesley because he identified himself and she asked for his badge number.

Sometime between April 30th and May 18, 2015, Wesley spoke with Sergeant Kevin Covington. Wesley claims that Sergeant Covington told him that since he did not take vacation to work overtime and only adjusted his hours, he was eligible for the court overtime, and should resubmit the request. Sergeant Covington confirmed a conversation about the incident but denied he told Wesley it was acceptable for him to receive overtime under these circumstances and denied he suggested he resubmit the request. IN addition to being insubordinate by resubmitting the previously denied court overtime request, Wesley stated on the form that he worked the hours of 10:00 am to 6:00 pm on April 30th despite Sergeant Kettleman telling him that his hours for that day would be recorded as 8:30 am to 4:30 pm.

Wesley was untruthful with Sergeant Kettleman on April 30, 2015 regarding the following matters:

- When he told Sergeant Kettleman that he did not change his schedule to receive overtime on April 30th (a preponderance of the evidence supports the conclusion that he did).
- When he stated that he needed the schedule change due to home repairs being performed on April 30th (the home repairs were scheduled for and occurred on April 27th. There were never any home repairs scheduled for April 30th and cancelled).
- That he cancelled the April 30th home repairs once he became aware of the subpoena for April 30th (He received the subpoena on April 8, 2015 and called Ms. Sabin the week before asking if he could receive overtime for court outside his normal work hours).

- That he was not aware that he could receive overtime for the April 30th court appearance until Ms. Sabin advised him that morning (April 30th) he was eligible for overtime (Wesley contacted her the week before regarding court overtime outside his normal work hours).

Wesley was interviewed by Internal Affairs on July 2, 2015. During that interview Wesley admitted that:

- He told Sergeant Kettleman that he had his schedule changed so that home repairs could be performed on April 30th.
- He told Sergeant Kettleman that he did not have his hours changed so that he could receive court overtime for April 30th.

During the July 2, 2015 interview, Wesley was untruthful with IA regarding the following matters (not an all-inclusive list):

- He stated that he told Sergeant Kettleman that he would go and talk to the Court Liaison about what was going on and Sergeant Kettleman told him there was no need to do that (Sergeant Kettleman denies he said that).
- He stated that Sergeant Kettleman did not tell him to pull his overtime request, but rather, he went and pulled it on his own (Sergeant Kettleman states that he told Wesley to pull the overtime request). Wesley was untruthful when he stated that Sergeant Kettleman was lying about this fact.
- He stated that he did not call Ms. Sabin the week before the April 30th court date and ask about overtime (Ms. Sabin confirms that he did).
- He told IA that he changed his work hours on April 30th because he had home repairs scheduled for that day (IA confirmed with the homebuilder and contractor there was no work scheduled for April 30th, but rather it was scheduled for an completed on April 27th).
- He told IA that he cancelled the home repairs on April 29th since he had court on the 30th and no work was performed (The homebuilder and subcontractor confirmed there was no work scheduled for April 30th, no cancellation notice received on April 29th, and the work was performed on April 27th).
- He told IA he did not think about overtime until Ms. Sabin suggested that he was eligible for it on April 30th (Ms. Sabin confirms their phone conversation about court overtime the week before).
- He told IA that he discussed the court overtime with Sergeant Covington, who advised him he was eligible for overtime and he should resubmit the request (Sergeant Covington denies he told Wesley the overtime should be approved and denies he suggested that he should resubmit the request).
- He failed to disclose to IA that the home repairs were performed on April 27th.

IA contacted the homebuilder and subcontractor; they were able to confirm that Wesley lied to Sergeant Kettleman and during his first IA interview regarding the home repairs. A second IA interview was conducted on August 4, 2015. During the second interview Wesley continued to make false statements, including but not limited to:

- He stated that he did not complete the overtime request for April 30th prior to submitting it to Ms. Sabin for approval and only after she suggested that he fill it out (Ms. Sabin confirms that the overtime request was already completed and he simply handed it to her. The Detective who was present in the office never heard Ms. Sabin suggest to Wesley that he fill out the overtime request).
- He was not home when the repairs were done on April 27th.

During the August 4, 2015 IA interview, Wesley admitted the following, which proves that he lied to Sergeant Kettleman on April 30th and IA on July 2, 2015:

- There never were any home repairs scheduled for April 30th.
- That he never cancelled the April 30th home repairs on April 29th.
- His home repairs were performed on April 27th.

During the August 4, 2015 interview, Wesley was again untruthful with IA regarding the following matters (not an all-inclusive list):

- He repeated his claim that Sergeant Kettleman did not tell him to pull his overtime request, but rather, he went and pulled it on his own.
- He denies that he said to Ms. Sabin or said in the presence of the Detective that his Sergeant told him to pull the overtime request. Both Ms. Sabin and the Detective state that he did make that statement.
- He denied that he walked into Ms. Sabin's office with an overtime sheet in his hand. Both Ms. Sabin and the Detective stated that he did.
- He initially stated that he did have repairs scheduled for April 30th but eventually admitted that he did not.
- He repeated his claim that he did not think about overtime until Ms. Sabin suggested that he was eligible for it on April 30th.

During his Dismissal Review Hearing (DRH) on October 12, 2015, Wesley refused to admit that he was untruthful.

By these actions, Detective Wesley violated Rule 10.03(L) of the Civil Service Rules by violating the following rules and regulations of the Austin Police Department:

➤ **Austin Police Department Policy 110.4.4: Organizational Structure and Responsibility - Insubordination**

110.4.4 Insubordination

Employees will not be insubordinate. The willful disobedience of, or deliberate refusal to obey any lawful order of a supervisor is insubordination. Defying the authority of any supervisor by obvious disrespect, arrogant or disrespectful conduct, ridicule, or challenge to orders issued is considered insubordination whether done in or out of the supervisor's presence

➤ **Austin Police Department Policy 900.3.1(a)(c): General Conduct and Responsibilities: Honesty**

900.3.1 Honesty

Honesty is of the utmost importance in the police profession. Employees are expected to be truthful at all times in the performance of their duties.

- (a) Employees will speak the truth at all times and reflect the truth in all reports and written communications. Any statement or omission of pertinent or material information which intentionally misrepresents facts or misleads others through an official statement will be considered a false official statement. The following are examples of an "official statement":
 - 1. Documents prepared by an officer in connection with their official duties, including but not limited to incident reports or supplements, sworn affidavits, and citations.
 - 2. Verbal or written statements made by an officer in connection with their official duties to:
 - (a) An investigator conducting an administrative or criminal investigation of the officer or another person's conduct.
- (c) Employees will not attempt to conceal, divert, or mitigate their true culpability in a situation, nor will they engage in efforts to thwart, influence, or interfere with an internal or criminal investigation.

➤ **Austin Police Department Policy 935.2.8: Court Overtime**

935.2.8 Court Overtime

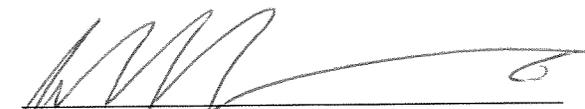
The guidelines on overtime granted to employees who appear in court are outlined in the current Meet and Confer Agreement

- (c) Before an employee submits an overtime request two weeks or more past the date of any related subpoena or court overtime, the employee will first submit a memorandum explaining the delay to the chain-of-command. The chain-of-command will review the circumstances described in the memorandum. A copy of the memorandum will be attached to the overtime form sent to Court Liaison.

In determining the appropriate discipline, I took into consideration the fact that Wesley was angry with Sergeant Kettleman, retained the rejected overtime request for several weeks, and tried to surreptitiously sneak through the same overtime request a second time. Furthermore, not only was Wesley dishonest with Sergeant Kettleman, he was dishonest during his Internal Affairs interviews and with his chain of command during the DRH. He was also dishonest in that the resubmitted overtime request stated that he worked 10:00 am to 6:00 pm on April 30th after his supervisor told him his work hours for that day were 8:30 am to 4:30 pm. Pursuant to the APD Disciplinary Matrix, the recommended discipline for a first occurrence of dishonesty with an investigator conducting an administrative investigation is indefinite suspension. The chain of command unanimously recommended indefinite suspension, a recommendation I concur with.

By copy of this memo, Detective Wesley is hereby advised of this indefinite suspension and that the suspension may be appealed to the Civil Service Commission by filing with the Director of Civil Service, within ten (10) calendar days after receipt of a copy of this memo, a proper notice of appeal in accordance with Section 143.010 of the Texas Local Government Code.

By copy of this memo and as required by Section 143.057 of the Texas Local Government Code, Detective Wesley is hereby advised that such section and the Agreement Between the City of Austin and the Austin Police Association provide for an appeal to an independent third party hearing examiner, in accordance with the provisions of such Agreement. If appeal is made to a hearing examiner, all rights of appeal to a District Court are waived, except as provided by Subsection (j) of Section 143.057 of the Texas Local Government Code. That section states that the State District Court may hear appeals of an award of a hearing examiner only on the grounds that the arbitration panel was without jurisdiction or exceeded its jurisdiction, or that the order was procured by fraud, collusion or other unlawful means. In order to appeal to a hearing examiner, the original notice of appeal submitted to the Director of Civil Service must state that appeal is made to a hearing examiner.


ART ACEVEDO, Chief of Police

10/12/2015
Date

TO WHOM IT MAY CONCERN:

I hereby acknowledge receipt of the above and foregoing memorandum of indefinite suspension and I have been advised that if I desire to appeal that I have ten (10) calendar days from the date of this receipt to file written notice of appeal with the Director of Civil Service in accordance with the provisions of Chapter 143 of the Texas Local Government Code.

Darin Wesley 3268
Police Detective Darin Wesley # 3268

10/12/15
Date