



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Mark Washington, Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: January 10, 2014

SUBJECT: Indefinite Suspension of Police Officer Ricardo Zapata #6706
Internal Affairs Control Number 2013-0900

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, and Rule 10, Rules of Procedure for the Firefighter's and Police Officer's Civil Service Commission, I have indefinitely suspended Police Officer Ricardo Zapata #6706 from duty as a police officer of the City of Austin, Texas, effective January 10, 2014.

I took this action because Officer Zapata 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 Officer Zapata in violation of Rule 10:

On August 30, 2013, at approximately 11:10 p.m., Officer Ricardo Zapata was stopped in his personal vehicle by DPS Trooper Reuben Corbell due to Officer Zapata's third brake light on his vehicle not working as he turned off of North FM812 onto Mesa Drive, in Bastrop County. Upon making the traffic stop, Trooper Corbell made contact with Officer Zapata and immediately detected the odor of an alcoholic beverage coming from Officer Zapata, and also noted that Officer Zapata's speech was slurred. When Trooper Corbell asked Officer Zapata to exit his vehicle, Trooper Corbell noted that Officer Zapata stumbled and almost fell down as he exited his vehicle. Trooper Corbell also observed that Officer Zapata was swaying and unsteady on his feet.

Trooper Corbell administered the Standardized Field Sobriety Tests (SFST's) to Officer Zapata. Trooper Corbell then placed Officer Zapata under arrest after observing numerous clues during the SFST's. Officer Zapata refused to provide a specimen of his breath or blood. Officer Zapata was transported to the Bastrop County Jail where a blood specimen was obtained from him pursuant to a search warrant. Officer Zapata was then booked into the Bastrop County Jail for driving while intoxicated.

The Texas Department of Public Safety Crime Laboratory analyzed Officer Zapata's blood sample and the blood alcohol content was determined to be more than twice the legal limit. The State of Texas suspended Officer Zapata's Texas driver's license from October 9, 2013 to April 6, 2014 for his refusal to provide a breath specimen when he was arrested for Driving While Intoxicated on August 30, 2013. Officer Zapata's criminal case is pending with the Bastrop County District Attorney's Office.

During his Internal Affairs interview, Officer Zapata admitted that he had consumed six beers in less than two and one half hours, including five beers prior to leaving his home. Officer Zapata further admitted that he did not have a plan to get home other than by driving himself.

By these actions, Officer Zapata 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 900.1.1: General Conduct and Responsibilities: Responsibility to Know and Comply**

900.1.1 Responsibility to Know and Comply

The rules of conduct set forth in this policy do not serve as an all inclusive list of requirements, limitations, or prohibitions on employee conduct and activities; employees are required to know and comply with all Department policies, procedures, and written directives.

- (a) Employees will maintain a working knowledge and comply with the laws, ordinances, statutes, regulations, and APD written directives which pertain to their assigned duties.

To Wit:

Texas Penal Code Section 49.04: Driving While Intoxicated

- (a) A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.
- (b) Except as provided by Subsections (c) and (d) and Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.
- (c) If it is shown on the trial of an offense under this section that at the time of the offense the person operating the motor vehicle had an open container of alcohol in the person's immediate possession, the offense is a Class B misdemeanor, with a minimum term of confinement of six days.
- (d) If it is shown on the trial of an offense under this section that an analysis of a specimen of the person's blood, breath, or urine showed an alcohol concentration level of 0.15 or more at the time the analysis was performed, the offense is a Class A misdemeanor.

➤ **Austin Police Department Policy 900.3.2: General Conduct and Responsibilities: Acts Bringing Discredit Upon The Department**

900.3.2 Acts Bringing Discredit Upon The Department

Since the conduct of personnel both on-duty or off-duty may reflect directly upon the Department, employees must conduct themselves at all times in a manner which does not bring reproach, discredit, or embarrassment to the Department or to the City.

- (a) Employees will not commit any act which tends to destroy public confidence in, and respect for, the Department or which is prejudicial to the good order, efficiency, or discipline of the Department

In determining the appropriate discipline, I took into consideration the fact that not only does Officer Zapata's conduct potentially constitute a criminal offense but his actions

unnecessarily posed an unreasonable risk of injury to himself and to the citizens that he is charged with protecting. As exemplified by the recent "Home for the Holidays" and "Arrive Alive" initiatives, all Austin Police officers, including myself, are continuously working to keep our roadways and communities safe by enforcing the law and educating the public on the dangers of drinking and driving. Officer Zapata's failure to act responsibly and his decision to drink and drive in violation of law and APD policy bring discredit to APD, and tend to destroy public confidence in, and respect for the Department's initiatives and goals. The circumstances of Officer Zapata's misconduct is further aggravated by the fact that his blood alcohol concentration level was more than twice the legal limit and exceeded 0.15, which makes him potentially guilty of a Class A misdemeanor.

Consequently, under all of the facts and circumstances of this case, indefinite suspension is warranted and appropriate, and is the chain of command's unanimous recommendation to me.

By copy of this memo, Officer Zapata 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) 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, Officer Zapata 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

1/16/2014
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) 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.



Police Officer Ricardo Zapata #6706



Date