



City of Cleveland

Justin M. Bibb, Mayor

Department of Public Safety

Karrie D. Howard, Director
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August 5, 2022

Patrol Officer Michael Phelps #1074
C/o Bureau of Traffic
2001 Payne Avenue
Cleveland, Ohio 44114

Re: CPD2020-0113

Patrol Officer Phelps #1074:

This letter is to advise you, Patrol Officer Michael Phelps #1074, of the result of the administrative pre-disciplinary hearing you attended on Friday, July 8, 2022. The hearing was held to address the results of internal investigation wherein you were alleged to have engaged in improper procedures and/or misconduct. You were charged with a series of rule violations, which follow:

FACTUAL SUMMARY

On or about November 15, 2020, you, Patrol Officer Michael Phelps #1074, diminished the esteem of the Division of Police when you engaged in a physical fight with other members of the Division of Police while off-duty at 1303 West 58th Street (the Zone Car Lounge) which caused physical harm to another member of the Division of Police and resulted in you being criminally charged with Assault (Cleveland Codified Ordinance 621.03). Subsequently, you failed to report this misconduct.

STATEMENT OF POLICY

In part: The Manual of Rules sets forth the conduct and behavior to be followed by officers and employees. Any violation of these rules shall be a basis for disciplinary action. Disciplinary action includes, but is not limited to, verbal and written reprimands and the preferring of divisional charges which can result in suspension, loss of pay, demotion or termination. The rules and standards contained in this manual shall apply whether the officer or employee is on or off duty. Where a conflict exists between a Rule and a General Police Order, the Rule provision shall be adhered to.

RULES, POLICIES AND PROCEDURES

City of Cleveland, Codified Ordinance 621.03: Assault (effective: 4/19/13)

General Police Order 1.1.08: Violence in the Workplace (effective: 3/1/02)

General Police Order 1.1.03: Standards of Conduct and Courtesy (effective: 3/1/02)

General Police Order 1.07.05: Internal Complaints of Misconduct (effective: 2/21/20)

**Manual of Rules for the Conduct and Discipline of Employees of the Cleveland Division of Police:
2.01, 4.12, 5.01, 5.08 and 5.09**

SPECIFICATIONS

Specification #1: (CPD2020-0113) On or about November 15, 2020, you, Patrol Officer Michael Phelps #1074, while off duty, at 1303 W. 58th Street (The Cleveland Police Patrolmen's Association/Zone Car Lounge) did engage in workplace violence when you became involved in a physical fight with other members of the Cleveland Division of Police, all in violation of General Police Order 1.1.08. (*Group III Violation*)

Specification #2: (CPD2020-0113) On or about November 15, 2020, you, Patrol Officer Michael Phelps #1074, while off-duty at 1303 West 58th Street (The Cleveland Police Patrolmen's Association/Zone Car Lounge) did engage in a physical fight with other members of the Cleveland Division of Police which resulted in you being criminally charged for City of Cleveland Codified Ordinance 621.03: Assault (2020-CRB-013796). This charge was dismissed on Rule 29 by the court, in violation of Manual of Rules 2.01. (*Group III Violation*)

Specification #3: (CPD2020-0113) On or about November 15, 2020, you, Patrol Officer Michael Phelps #1074, while off duty at 1303 West 58th Street (The Cleveland Police Patrolmen's Association/Zone Car Lounge), failed to report officer misconduct after observing and becoming aware that multiple members of the Cleveland Division of Police, including yourself, were engaged in or attempted to engage in a physical fight, in violation of General Police Order 1.07.05. (*Group III Violation*)

Specification #4: (CPD2020-0113) On or about November 15, 2020, you, Patrol Officer Michael Phelps #1074, while off duty did engage in acts that tend to reasonably diminish the esteem of the Division of Police when you attempted to fight another member of the Division of Police, in violation of General Police Order 1.1.03 and Manual of Rules 5.01, 5.08 and 5.09. (*Group II Violation*)

These specifications are in violation of the rules and procedures of the Division of Police, Department of Public Safety.

PREDISCIPLINARY HEARING

In attendance at the administrative pre-disciplinary hearing that I presided over, were you, President Jeffrey Follmer, Second Vice President Andrew Gasiewski and Attorney Joseph Delguyd of the Cleveland Police Patrolmen's Association, Assistant Director Amanda Boutton of the Department of Law, Sergeant Justin Cajka of the Internal Affairs Unit, Lieutenant Charles DePenti of the Case Preparation Unit, Sergeant Kelly Smith and Assistant Director Jakimah Dye of the Department of Public Safety

During the hearing, you acknowledged receipt of the charge letter; you and your representatives waived the reading of your charge letter and were then afforded the opportunity to be heard. You entered a plea of "Not Guilty" to all four (4) specifications as set forth in the charge letter.

HISTORY, FINDINGS AND CONCLUSIONS

Discipline History

11/13/2018-1/4/2021—WCS Violation, Pursuit Violation (Lack of Due Regard)—2 day suspension

Findings and Conclusions

- ***Mitigating and Aggravating Factors***

Aggravating: Active discipline, multiple violations.

Mitigating: None.

- ***Anomalies***

None.

Disciplinary Conclusion

A thorough review was conducted by the Department of Public Safety. I have carefully reviewed the evidence incorporated into the record by reference, statements made at the hearing, and pertinent rules, policies and procedures. I have determined that you, Patrol Officer Michael Phelps #1074, violated Manual of Rules 2.01, 5.01, 5.08 and 5.09 and General Police Orders 1.07.05 and 1.1.03. These violations occurred when you engaged in a physical fight with other members of the Cleveland Division of Police; when you failed to properly report this fight and the involvement of other Cleveland Division of Police officers; your actions this day did diminish the esteem of the Division of Police.

First, with regard to Specification #1, I do not find sufficient support for a consequential finding. General Police Order 1.1.08 defines Workplace Violence as behavior or conduct consisting of, but not limited to, oral and written threats, harassment, intimidation, physical attack or property damage, *either occurring at, or arising from, the employee's place of work with the city, and occurring outside the normal course of law enforcement activities (emphasis added)*. Here, none of the facts at issue stemmed from having occurred or arose from the members' place of work.

To the larger issue, this is a pretty shameful event, being an act of violence, involving all Cleveland Police Officers. From the facts, as best ascertained from credible officers, this incident began from an insulting exchange of banter between two officers that went too far. This back and forth resulted in an unfortunate physical altercation between officers, with little or no attempt of de-escalation. Further it is unreasonable to conclude the three-on-one could be perceived as mutual combat. A lot of bad judgment was exercised here. With all of what could only be described as orchestrated confusion and misinformation, there are several facts which support the aforementioned finding of guilt to all specifications that are undisputable. P.O. Phelps, your actions were largely responsible for this incident culminating to a physical altercation. You engaged in what was consistently described by a back-and-forth banter between you and P.O. Melendez. It was after this back forth, that you laid your wallet and keys down next to P.O. Ogle to go outside because you wanted to fight. The strongest and most consistent testimony of all related parties was that you wanted to fight P.O. Melendez. This was a completely avoidable altercation, had reasonable minds prevailed. Instead of recognizing that P.O. Melendez was leaving with his minor child and seeing this as an opportunity to deescalate and let it go, you choose to escalate the situation with more hostility violent conduct. You also failed to report this incident to a supervisor. All of which, was conduct that diminished the esteem of the Cleveland Division of Police as you are in a position of reverence to the community. These events were not simply a mistake in judgement, they were a choice.

Based on the foregoing, I find you **"Not Guilty"** of Specification #1 and **"Guilty"** of the administrative charges in Specification #2, Specification #3 and Specification #4 and find there is just cause to impose discipline. As such, I am issuing you a **twenty (20) workday suspension without pay for one (1) First Group II Violation and two (2) First Group III Violations**. This corrective action is within the First Group II and First Group III violation range of the discipline matrix where aggravating factors (*active discipline, multiple violations*) outweigh mitigating factors (*none*).

The above imposed suspension shall commence, and be effective the next working day after you are served with this notice. You shall surrender your badge, police identification card, unloaded departmentally issued firearm and three (3) loaded magazines plus one (1) live round to your Commanding Officer or designee at the end of your shift. Upon completion of the suspension days, you shall retrieve the aforementioned property from your Commanding Officer or designee upon reporting for duty. **Additionally, you shall, within five (5) work days of returning from suspension, read General Police Order 1.07.05, General Police Order 1.1.03 and Manual Rules 2.01, 2.07, 5.01, 5.08 and 5.09; and be reinstructed by a superior officer on those Orders and Rules. Upon completion of the reinstruction, you will email a Form-1 (as an attachment) indicating reinstruction, and endorsed by the same superior officer, to the Case Preparation Unit (caseprep@clevelandohio.gov) and The Department of Public Safety (publicsafetyadmin@clevelandohio.gov).**

It is the Division's earnest desire that that this letter will serve as a deterrent against future acts of this nature. Any prospective acts of same or similar conduct may lead to progressive discipline. Pursuant to the terms and conditions of the collective bargaining agreement between the City of Cleveland and the CPPA, a record of the disciplinary actions or penalties will not be considered after three (3) years from the date of the action.

Sincerely,



Karrie D. Howard, Chief Director
Department of Public Safety

KDH:dad:kas

cc: Dornat A. Drummond, Chief, Cleveland Division of Police
George Coulter, Assistant Director, Department of Public Safety
Jakimah Dye, Assistant Director, Department of Public Safety
Joellen O'Neill, Deputy Chief, Executive Officer
Daniel Fay, Deputy Chief, Administrative Operations
Harold Pretel, Deputy Chief, Homeland Special Operations
Sammy Morris, Acting Deputy Chief, Field Operations
Brian Carney, Commander, Bureau of Compliance
Mark Maguth, Commander, Bureau of Support Services
Christopher Viland, Superintendent, Internal Affairs Unit
William Mokshefsky, Officer-in-Charge, Personnel Section
Cynthia Oliver, Sergeant, Officer-in-Charge, Timekeeping Unit
Melissa Dawson, Sergeant, Officer-in-Charge, Employee Assistance Unit
Jeffrey Follmer, President, Cleveland Police Patrolmen's Association
Paul Patton, Chief Human Resources Officer
George E. Coulter, Assistant Director, Department of Public Safety
William Menzalora, Chief Assistant Director of Law
Amanda Boutton, Assistant Director of Law, Public Safety
Richard Rosenthal, Member, Monitoring Team
Michael Evanovich, Investigator, Department of Justice
Hassan Aden, Federal Monitoring Team

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Jason Goodrick, Executive Director, Cleveland Community Police Commission