

**SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION
DIVISION OF LABOR AND MANAGEMENT**

MAXIMUS TAYLOR,

HF No. 10G, 2021/22

Petitioner,

v.

DECISION

CITY OF RAPID CITY,

Respondent,

This matter came before the South Dakota Department of Labor & Regulation, Division of Labor and Management (Department) pursuant to SDCL 3-18-15. The Department conducted a hearing on March 13 – 15, 2024. The matter was heard by Michelle M. Faw, Administrative Law Judge. Petitioner, Officer Maximus Taylor (Ofc. Taylor) was represented by Rex Hagg of Whiting, Hagg & Dorsey LLP. Respondent, City of Rapid City (City), was represented by its attorney, Jennifer Utter. The issues before the Department are:

1. Whether, pursuant to Rapid City Police Department policy and Fraternal Order of Police agreement (Agreement), the City failed to establish cause to terminate Ofc. Taylor's employment; and
2. Whether Ofc. Taylor met his burden of proving age discrimination in lieu of cause as the reason for his termination from the Rapid City Police Department (RCPD).

Facts:

Ofc. Taylor served in law enforcement for 39 years. He was hired by the RCPD in 2010 when he was fifty-three years old. Prior to the incident giving rise to this grievance,

the worst disciplinary infraction he received while working for the RCPD was a one-day suspension for leaving a piece of chewing gum on the dash of his patrol unit.

On September 20, 2021, Ofc. Taylor attended an annual training scenario. He was placed on a remedial training program to refresh his skills after he had failed to meet performance standards during a shooting skills test. Ofc. Taylor completed his shooting portion of remedial training and was placed back on patrol on November 1, 2021. That day, Ofc. Taylor and Ofc. Kristen O'Brien were dispatched to an incident. At the scene, Ofc. Taylor spoke with the alleged victim¹ who reported the disturbance. Ofc. Taylor interviewed Doe while Ofc. O'Brien spoke with other individuals at the scene. After concluding their duties at the scene, Ofc. Taylor drafted his report of the incident. Officer reports are reviewed by the sergeants. Ofc. Taylor's report was "kicked back" to him after it was rejected by Sgt. Seth Walker who noted three questions for him to answer to support the report. One of the issues raised by Sgt. Walker was "Victim stated that she was strangled by the suspect. Did you ask if she was still able to breathe or any of the other criteria that would change the offense to Agg?" Ofc. Taylor resubmitted the report with the questions answered. He wrote, Doe, the alleged victim, "claims she did not have trouble breathing and did not pass out" and "claimed her breathing was not stopped". The resubmitted report was reviewed and approved by a different sergeant.

Ofc. Taylor's performance plan was being developed by Lieutenant Christian Sigel. Lt. Sigel sent out a memo in December of 2021, to the supervising sergeants informing them that Ofc. Taylor was ordered to undergo remedial training. He requested

¹ For privacy and brevity purposes this woman will be referred to as Jane Doe (Doe).

the sergeants to pay attention to Ofc. Taylor and report back on both his good and bad performance.

Sgt. Walker, having received Lt. Sigel's memo, recalled the report he had kicked back for additional information in November. He went back and reviewed the report Ofc. Taylor resubmitted as the report had raised concerns in his mind about Ofc. Taylor's investigative ability. He was concerned by how quickly and effectively the issues he had raised had been documented and corrected. Sgt. Walker then reviewed call logs and the body camera footage from the original investigation. In his review, Sgt. Walker discovered Ofc. Taylor did not ask Doe if she had trouble breathing at the scene, nor did she make those claims regarding the incident. The call logs showed no calls for service were attached to Ofc. Taylor to indicate he attempted to follow up. Sgt. Walker found other issues with Ofc. Taylor's handling of the investigation, but specifically he could not identify a basis for the new information. Thus, he interpreted the statements in the report as a lie. Sgt. Walker sent a memo to Lt. Sigel summarizing his concerns and findings regarding Ofc. Taylor's report. Lt. Sigel reported the matter to Captain John Olson. Lt. Sigel was then assigned to investigate the matter.

On December 17, 2021, Investigator Amanda Swanson conducted a routine follow-up interview with Doe about the incident. Doe informed her that during the incident a hand was placed on her neck, but she could still breathe. Doe also denied any redness or bruising after the incident.

Lt. Sigel sent a memo to Captain Johns on December 22, 2021, summarizing his internal investigation including the background leading to the investigation and meetings with Ofc. Taylor. Lt. Sigel and Captain Johns met with Ofc. Taylor and his union representative on December 20, 2021. He informed Ofc. Taylor of the administrative

investigation and placed him on administrative leave with pay. During this meeting, Ofc. Taylor was asked why the information was in the report if the questions had not been asked. He replied that at the time of the incident, he asked Doe if she needed an ambulance for any injuries, and she said there were no injuries. Ofc. Taylor was asked if any follow-up was conducted to answer the questions on the report posed by Sgt. Walker. He admitted he had not conducted a follow-up. He based his report on his notes, statements, and his own recollection of the incident. Ofc. Taylor was informed that they were concerned he lied in his report. Ofc. Taylor responded it was an inaccuracy, not a lie. Lt. Sigel and Captain Johns further explained due to the circumstances around the kickback and the updated report, it was believed that Ofc. Taylor fabricated information to get the report approved. In his report on the meeting, Lt. Sigel stated, "I told Ofc. Taylor that I believe he purposely lied in his report to get it approved because he did a terrible job investigating on scene." HE 6² at 4. At the conclusion of the interview, Ofc. Taylor was informed his suspension would continue until he was notified otherwise. Ofc. Taylor requested to review his body camera footage and was permitted to do so.

Lt. Sigel and Captain Johns held a second meeting with Ofc. Taylor and his union representative on December 22, 2021. Ofc. Taylor had reviewed the footage prior to the second meeting. At the meeting, Lt. Sigel asked Ofc. Taylor if he had anything he would like to say after reviewing the body camera footage. Ofc. Taylor responded what they were perceiving as a lie was a reasonable conclusion based on the information he

² References to Hearing Exhibits will be noted by "HE" then the exhibit number followed by the page if relevant.

received. HE 6 at 4. Ofc. Taylor was advised his suspension continued. In the conclusion of his memo, Lt. Sigel stated,

After conducting my investigation outlined above and interview with Ofc. Taylor, it is my belief that Ofc. Taylor fabricated the information into the report to get it approved. His conclusion that the information he wrote was accumulative with all facts presented, however what he wrote was very specific and although not in quotes, eluded [sic] to the fact that the victim provided the information, either voluntary or provoked through questioning. My investigation proved that is not what occurred and that the information was solely created by Ofc. Taylor. Ofc. Taylor lied in his report.

HE 6 at 5.

On December 23, 2023, Captain Johns sent a letter to Ofc. Taylor informing him that his employment with the City would be terminated on December 30, 2021.

Analysis

Issue I

The first question before the Department is whether the City failed to establish cause to terminate Ofc. Taylor's employment. Article 39 of the Agreement deals with discipline and discharge and provides that discipline can only be imposed for cause. Section 39.01 states,

The City has the right to impose discipline upon employees for violations of the City's work rules, or for conduct that is detrimental to the Department or the City. The City shall only impose discipline for cause. Discipline may include discharge of an employee.

Pursuant to RCPD Rules and Procedures Policy No. 343-01 Section I, "Severe misconduct may result in the dismissal of the employee." Neither the policies nor the Agreement define what constitutes "severe misconduct". In their testimony, both Chief Hedrick and Captain Johns asserted that lying on a report constitutes severe misconduct.

At hearing, former Mayor Allender was asked what the consequences are for the City when an officer makes false statements in a report. He testified the City would no longer be able to use that officer as a future witness and the City would lose credibility as an organization. He further testified truthfulness has been a priority for the City, over the course of his career in the police department he saw a number of people dismissed for false statements. RCPD Rules and Procedures Policy No. 341-06 Section F. provides,

No employee shall knowingly falsify reports or cause inaccurate or improper information to be recorded on departmental records.

Ofc. Taylor argues the inaccurate statements in his report were merely misstatements, mistakes, or inaccuracies. He asserts he did not include them in the report with the intention to deceive and therefore, they are not lies. Throughout this matter, Ofc. Taylor has focused on the outcome of Investigator Swanson's post-incident interview with Doe. He believes it is critical to this matter that the information he included in the report turned out to be true. However, the issue is not whether Doe actually lost breath during the incident. The issue is whether she made that claim at the scene, as reflected in the report, and she did not. The body camera footage shows, she was not asked those questions.

Police reports are the foundation on which further proceedings are built. When an incident results in an arrest and eventual prosecution, the courts must be able to rely on the veracity of the information provided in those reports. It is necessary for police officers to be able to be presented as credible witnesses in criminal proceedings, and prosecutors are required to disclose incidents of false or inaccurate reporting to the court. *Giglio v United States*, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972).

Specifically in domestic disturbances, such as this instance, the testimony often becomes a “he said/she said” situation. Ofc. Taylor failed to accurately report what the alleged victim said at the scene and in so doing, brought any further testimony from Doe and the investigation itself under scrutiny. The fact that no further proceedings arose from this incident does not change the fact that this was ineffective and inaccurate policework on the part of Ofc. Taylor. Whether by intentional deceit or carelessness, the information Ofc. Taylor included in his report was false.

Ofc. Taylor asserts he did not knowing falsify the information, and it was merely a mistake. He claims he used his field notes to answer the questions proposed by Sgt. Walker. Ofc. Taylor did not ask Doe the questions and Doe did not make the claim he attributed to her so it would not have been in his notes. The Department is not persuaded that drawing information out of thin air can fairly be constituted a mere mistake. Further, Captain Johns testified the questions related to whether Doe had trouble breathing were not asked and, therefore, could not be put into the report. He believed the information was put into the report after the kickback so the report would get approved. Due to the way the report was written, kicked back, and then changed, it was viewed as a lie and not merely an inaccuracy. He further testified once a police officer’s credibility is brought into question and formalized in an investigation he cannot continue working as a police officer.

The Department concludes the City had reason to believe the inaccuracies presented in Ofc. Taylor’s revised report constituted severe misconduct. He changed his report and added information within a short time of the kickback. Ofc. Taylor included report elements from his analysis of the situation, and he attributed statements to a witness that the witness neither said nor about which she was questioned. Finally,

including inaccurate statements in reports is a violation of RCPD Rules and Procedures specifically RCPD Rules and Procedures Policy No. 341- 02 - Section A which provides,

All employees shall truthfully state the facts in all reports as well as when they appear before any judicial, departmental or other official investigation, hearing, trial or proceeding. The employee shall cooperate fully in all phases of such investigations, hearings, trials, or proceedings.

For these reasons, the Department concludes that there was cause to terminate the employment of Ofc. Taylor.

Issue II

Although the Department has found the City had cause to terminate Ofc. Taylor, to be thorough, the second issue will also be reviewed. The second question before the Department is whether Ofc. Taylor met his burden of proving age discrimination in lieu of cause as the reason for his termination from the RCPD. Ofc. Taylor has alleged two alternative reasons for his termination: 1) retaliation for an anonymous letter he allegedly wrote to City Council dated August 11, 2020, which was critical of the RCPD and 2) his age.

After reading the anonymous letter, the then Mayor Allender, thought it seemed similar in format to a letter Ofc. Taylor's wife had written concerning cardiovascular health. In the fall of 2020, Mayor Allender instructed Chief Johns to speak with Ofc. Taylor about the letter. Ofc. Taylor denied he or his wife had written it. No further investigation was done regarding the letter. During this meeting, Captain Johns asked him when he planned on retiring. Ofc. Taylor told him that he had children in college, needed the income and insurance, and was not considering leaving anytime soon. Ofc. Taylor was the only officer questioned about the letter. He believes he was terminated in retaliation for this letter which he did not write.

The City points to the fact the RCPD was putting time and resources into a performance improvement plan for Ofc. Taylor that would have been implemented had the issue with his report not been discovered. Lt. Sigel attempted to work with Ofc. Taylor to build a comprehensive improvement plan, but Ofc. Taylor would not provide input. Ofc. Taylor testified at hearing that he did not believe the training was necessary. Had the inconsistencies in the report been left undiscovered, Ofc. Taylor would still be employed by the City. Ofc. Taylor believes that Sgt. Walker's review of the report was somehow inappropriate. However, as Sgt. Walker testified at hearing, he reviewed the report to discern if the issues with the investigation should be addressed by Ofc. Taylor's performance plan. He had been concerned by the issues with the report and the number of questions needed to be answered in the kickback. He was behaving diligently as a sergeant to discover whether any deficiencies in Ofc. Taylor's investigation or report writing skills needed to be addressed during his remedial training. Sgt. Walker's actions do not indicate Ofc. Taylor was unfairly targeted for review. Additionally, Lt. Sigel's request for input from the sergeants does not show Ofc. Taylor was unfairly targeted. Asking for input from the personnel who review Ofc. Taylor's daily work is a reasonable way to learn in which areas he was doing well and in which he was doing poorly. Ofc. Taylor has not proven a connection between his remedial training, investigation, or termination with the suspicions surrounding the letter.

Ofc. Taylor also asserts age discrimination is the cause of his termination. At 65 years of age, he was the oldest member of the police force. Ofc. Taylor "retains the burden of persuasion to establish that age was the 'but-for' cause of the employer's adverse action". *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 177, 129 S. Ct. 2343, 2351, 174 L. Ed. 2d 119 (2009). He believes he was passed over for promotions due to

his age as no officer over the age of fifty-five has ever been promoted to detective or sergeant. He points to Captain Johns asking him about retirement as an indication the RCPD was focused on his age. However, as the chairman of the South Dakota Retirement System Board of Directors, Captain Johns was known for discussing retirement planning with the officers in the RCPD. The Department is not persuaded that not being promoted or being the oldest member of the RCPD proves that age was a factor considered in his termination. He was terminated because of the inaccurate information he submitted in his report.

ORDER

The Department finds pursuant to the Agreement, the City established cause to terminate Ofc. Taylor's employment; and

Ofc. Taylor failed to meet his burden of proving age discrimination in lieu of cause as the reason for his termination from the RCPD.

Ofc. Taylor's grievance is DISMISSED with prejudice.

Dated this day 23rd day of September 2024.

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION



Michelle M. Faw
Administrative Law Judge