

INVESTIGATIVE SUMMARY AND FINDINGS

AMENDED 09/27/2024

PEACE OFFICER NAME: Gabriel Mercado Gaxiola

POST ID NUMBER: B49-S96

EMPLOYING AGENCY: Los Angeles Police Department

POST CASE NUMBER: 2302971

WRITTEN BY: LEC Robert Bringolf

DATE: 8/19/2024

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I. Executive Summary

This case was submitted by the Los Angeles Police Department (LAPD) which alleged the subject officer, Sergeant Gabriel Mercado Gaxiola, hereinafter "Respondent", was arrested off-duty for driving under the influence of alcohol on May 13, 2022. As an aggravating consideration, Respondent has been previously arrested for driving under the influence of alcohol on July 10, 2016, a case for which he received a misdemeanor conviction for 23152(b)VC and three years' informal probation.

II. Background Information

a. Identity of Respondent

At the time of the events at issue, Respondent was employed as a sergeant with the Los Angeles Police Department. This position is a peace officer as defined under Penal Code section 830.1(a).

b. Respondent's Service Record, Relevant Training, and Prior Complaints and Discipline

Respondent's LAPD disciplinary record[1] shows the following previous discipline at the Los Angeles Police Department:

- CF No. 01-4443 – Unbecoming Conduct – Admonishment
- CF No. 03-1751 – Failure to Appear – Admonishment
- CF No. 04-1816 – Unbecoming Conduct – Official Reprimand
- CF No. 04-1441 – Discourtesy – Not Resolved
- CF No. 09-3836 – Discourtesy – Not Resolved
- CF No. 13-3352 – Discourtesy – Not Resolved
- CF No. 16-1876 – DUI Arrest in LAPD Vehicle – 22-day suspension

[1] "Attachment A" – 2022 Letter of Transmittal - Page 3

Respondent has been listed as the subject officer in one other serious misconduct allegations:

- POST-2200163 – Demonstrating Bias – Unfounded at Agency Level

c. Prior Employment History

Respondent was hired by the Los Angeles Police Department on 10/26/1998. Respondent promoted to Sergeant on 07/07/2019. There are no other promotions or demotions listed in Respondent's EDI Profile Report[2].

d. Peace Officer Certification

Respondent is assigned POST ID B49-S96. He received the following peace officer certificates from Peace Officer Standards and Training (POST):

- Basic #99416 (04/28/2000)
- Intermediate #70050 (11/15/2000)
- Advanced #100133 (02/28/2005)

e. The Present Allegations of Serious Misconduct

1. *Penal Code Section 13510.8(b)(6) and Commission Regulation 1205(a)(6) – Acts that Violate the Law*

Acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public, as determined by the Commission.

III. Investigative Methodology

This report summarizes the findings related to allegations of serious misconduct. This investigation was conducted in accordance with the regulations and policies of POST. The investigation included the review of LAPD's administrative investigation, which contained interviews of witness officers and the subject officer.

[2] "Attachment B" - Respondent's EDI Profile – downloaded from POST on 08/19/2024.

Information obtained was analyzed by clear and convincing evidence standard. For purposes of this report, clear and convincing evidence means "evidence of a charge is clear and convincing so long as there is a 'high probability' that the charge is true. The evidence need not establish a fact beyond a reasonable doubt."

This report is necessarily summary in nature and does not include every fact or issue that might be found in the underlying investigation and attachments. It does, however, contain reference to that evidence that the Division finds establishes the requisite facts, and proves the serious misconduct charged, by clear and convincing evidence.

IV. Factual Summary

Second driving under the influence event – May 13, 2022:

On May 13, 2022, Respondent was off duty and driving his personal vehicle on State Route 110 in the area of the North Avenue 52 overpass. Respondent's vehicle collided with a stopped vehicle, which, in-turn, collided with another vehicle that had been stopped in the number 3 lane of traffic.[3] Respondent immediately contacted emergency services, which resulted in the California Highway Patrol (CHP) responding to the scene. The CHP officer observed Respondent had red, watery eyes, an odor of alcoholic beverages emitting from his breath and person, had an unsteady gait while walking around the traffic scene, and had slurred and delayed speech. Also, when one of the officers asked for his insurance card, Respondent handed him his debit card.

A CHP officer conducted a standardized Field Sobriety Test and determined Respondent had been driving while under the influence of alcohol. Respondent was arrested for Driving Under the Influence in violation of section 23152(a)VC[4].

[3] "Attachment C" - 2022 CHP Collision Report Page 1
[4] "Attachment D" - 2022 CHP Arrest Report Pages 4 through 11

Respondent refused to submit to a chemical test, at which time a search warrant was sought for a sample of Respondent's blood. The warrant was granted and executed on May 14, 2022 at 0122 hours (approximately five hours after the accident occurred).[5] Respondent was arrested for violation of section 23152(b)VC.

On May 17, 2022, a laboratory report showed that analysis of the blood sample from Respondent resulted in an average of 0.155% Blood Alcohol Concentration (BAC).[6] The legal limit is 0.08% BAC. An LAPD Subject Matter Expert later calculated that an average male of Respondent's build would have had an approximate BAC of .23% five hours prior to the collection of a .155% sample.[7]

As an aggravating factor, Respondent was found to be carrying a handgun in his waistband at the time of his arrest, while he was driving while intoxicated.[8]

On February 9, 2024, Respondent pled no contest to (and was convicted of) one misdemeanor count of driving under the influence of alcohol with a blood-alcohol content of over 0.08% - a violation of California Vehicle Code Section 23152(b).[9] During that same proceeding, Respondent admitted to a prior conviction for driving under the influence in Los Angeles County Superior Court Case 16HM08811, from January 25, 2017.

[5] "Attachment E" - 2022 Search Warrant for Respondent's blood.
[6] "Attachment J" - Lab report DR# 22-99-13551
[7] "Attachment I" - 2022 IA Report #CF 22-001392, Pg. 2.
[8] "Attachment D" - 2022 CHP Arrest Report - Page 7, Line 29.
[9] "Attachment F" - Court Records from LA County Superior Court (Municipal Division) – Case # LAM2MN02194-01

On February 9, 2024, Respondent was placed on summary probation for a period of 60 months. The conditions of that probation are that Respondent not operate a motor vehicle with any measurable amount of alcohol in his blood, do not drive a motor vehicle without a valid driver's license in his possession or without liability insurance in the minimum amounts required by law, comply if ordered by Department of Motor Vehicles to install an Ignition Interlock Device as a condition of probation, make restitution to the victim per Penal Code Section 1202.4(f) in an amount determined at the hearing, pay a probation revocation restitution fine pursuant to Penal Code Section 1202.44, which may be enforced in the manner provided for the enforcement of money judgment, in the amount of $150.00, obey all laws and orders of the court. Respondent was also ordered to serve four (4) days in "City Jail" as a condition of his probation and to pay a fine of $500.00 plus penalty assessments, and enroll within 21 days from the date of his court hearing or his release from custody, and successfully complete an approved, licensed, 18-month Driving Under the Influence program, as well as enroll in and complete a MADD Victim Impact Program, and attend 52 Alcoholics/Narcotics Anonymous meetings (at a rate of two per week).

In addition to his court proceedings, on January 26, 2024, Respondent signed a Rehabilitation Agreement with the Los Angeles Police Department in relation to this second DUI case. In that agreement, Respondent admitted he engaged in misconduct that warranted discipline and agreed he understood the Board of Rights was agreeing to hold his discipline in abeyance until he completed the terms of his Rehabilitation agreement.[10]

[10] "Attachment G" - Rehabilitation Agreement from LAPD BOR.

First DUI Event

(Considered pursuant to California Code of Regulations, Title 11, Section 1213).

On July 10, 2016, around 0207 hours, Respondent was off duty in the city of Laguna Beach, CA driving his assigned police vehicle. Respondent had been assigned to the SWAT team at the time of this event and had taken his city vehicle to a wedding in Huntington Beach, CA. At the wedding, Respondent had consumed mixed drinks but did not know how many. After leaving the wedding in his city vehicle, Respondent was stopped for a traffic violation by an on-duty Laguna Beach Police Officer.

During the traffic stop Respondent displayed objective signs of alcohol intoxication and was given a horizontal gaze nystagmus test and was arrested for violation of section 23152(a)VC, driving under the influence – a misdemeanor. After his arrest Respondent refused to submit to a preliminary alcohol screening test but did submit to a blood test. Respondent was found to have a blood alcohol content (BAC) of 0.202%

To further aggravate this situation, Respondent's city-owned vehicle had to be towed to Laguna Beach Police Department and secured in their sally port as the vehicle contained department-issued equipment and weapons. While the vehicle was being secured officers located an open bottle of beer in the front passenger compartment.[11]

Respondent ultimately received a 22-day suspension without pay[12] for the 2016 DUI arrest. In 2017, Respondent received a misdemeanor conviction for violation of section 23152(b)VC – the charge of 23152(a)VC was dismissed[13]. Respondent received three

[11] "Attachment H" - Laguna Beach Police Department Arrest Report – Case# 16-02672
[12] "Attachment A" - 2022 Letter of Transmittal - Page 3
[13] Orange County Court Documents, Case # 16HM08811

years of informal probation, a $140.00 fine, a mandated six-month first offenders' program, and victim impact counseling.

V. Analysis and Findings

a. Establishing Jurisdiction

The Commission on POST may initiate proceedings to revoke or suspend a peace officer's certification for conduct which occurred before January 1, 2022, if the employing agency makes a final determination regarding its investigation of the misconduct after January 1, 2022.[14] Respondent signed a Board of Rights Rehabilitation Agreement on 01/26/2024.

b. Does the alleged conduct violate Penal Code 13510.8(b)(6) and California Regulation 1205(a)(6) – Acts that Violate the Law?

Respondent has been arrested for violating the law on two occasions during his employment as a peace officer, more specifically, both arrests have occurred while Respondent has held the rank of Sergeant. While a repeated violation of the law alone may not always rise to the level of serious misconduct, it is the nature of these arrests and the aggravating factors that lead the Division to find clear and convincing evidence exists to prove Respondent has been involved in serious misconduct as described in Penal Code 13510.8(b)(6) and California Regulation 1205(a)(6).

The public has a right to expect high moral and ethical standards from the police. Respondent's wanton disregard for public safety on more than one occasion merits decertification. Further, the public has the right to be policed by individuals who are held to a higher standard. Respondent's actions and arrests do not meet this standard.

Respondent's blood alcohol concentration at each arrest was remarkably high. Expert opinion indicated that at the time of Respondent's recent accident, his blood alcohol content was likely around 0.23% - over three times the legal limit. Evidence from

[14] California Penal Code 13510.8(g)(1)(B) – Not attached.

Respondent's previous arrest for driving under the influence of alcohol showed his blood alcohol at the time of the sample was .202/.200%

For his part in these arrests and incidents, Respondent put numerous lives in jeopardy on at least two occasions - once in a city vehicle filled with his SWAT gear and weapons, and once in his personal vehicle while armed off-duty. The latter of the two resulted in a vehicle accident which caused damage to Respondent's vehicle and two additional vehicles. For these reasons I find the repeat offenses particularly egregious.

VI. Supporting Evidence and Documentation

Attachment "A" – 2022 Letter of Transmittal - Page 3

Attachment "B" – Respondent's EDI Profile – downloaded from POST on 08/19/2024

Attachment "C" – 2022 CHP Collision Report Page 1

Attachment "D" – 2022 CHP Arrest Report Pages 4 through 11

Attachment "E" – 2022 Search Warrant (and return) for Respondent's blood

Attachment "F" – Court Records from LA County Superior Court (Municipal Division) – Case # LAM2MN02194-01

Attachment "G – Rehabilitation Agreement from LAPD BOR.

Attachment "H" – Laguna Beach Police Department Arrest Report – Case# 16-02672

Attachment "I" – LAPD 2022 IA report # CF 22-001397, Page 2

Attachment "J" – LAPD Forensic Lab report DR# 22-99-13551

Attachment "K" – Court Records from Orange County Superior Court – Case #16HM08811

VII. Findings

Reasonable grounds exist to submit this case to the Peace Officer Standards Accountability Advisory Board and the POST Commission for consideration of revocation of Respondent's POST certification.