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CITY OF SAN ANTONIO
HUMAN RESOURCES DEPT

2015 OCT -7 AM 9:58

FEDERAL ADVISOR CFC
OCT 05 2015

CITY AND COUNTY OFFICE
SAN ANTONIO, TEXAS

Officer Herbert Smith, #0658
San Antonio Police Department
San Antonio, Texas

Fire Fighters' and Police Officers' Civil Service Commission
111 Soledad, Suite 123
San Antonio, Texas 78205

AGREED SUSPENSION

Commissioners and Officer Herbert Smith:

WHEREAS, Officer Herbert Smith, pursuant to Article XXVIII, Section 2 of the Collective Bargaining Agreement by and between the City of San Antonio and the San Antonio Police Officers' Association, was served on September 18, 2015, with a forty-five-day contemplated suspension; and

WHEREAS, pursuant to said contract, Officer Smith was given an opportunity to rebut those charges being brought against him to Police Chief Anthony L. Treviño, Jr.; and

WHEREAS, said opportunity was exercised by Officer Smith; and

WHEREAS, Officer Smith and Chief Treviño have agreed to reduce the discipline in this matter to a three-day suspension without pay; **NOW THEREFORE**:

The undersigned parties hereby enter into this suspension agreement wherein it is provided that Officer Smith shall be suspended without pay from the San Antonio Police Department for a period of three days, commencing on October 19, 2015, and ending on October 21, 2015. Officer Smith waives any rights to appeal this Agreed Suspension and agrees no administrative or judicial body shall have power to review this Agreed Suspension or alter the terms of this agreement.

Officer Smith has violated Subsection C of Rule XIII of the City of San Antonio Fire Fighters' and Police Officers' Civil Service Commission Rules, said rules having been adopted on February 23, 1998, and thereafter from time to time amended, by the Fire Fighters' and Police Officers' Civil Service Commission as the Civil Service Rules for the Fire and Police Departments of the City of San Antonio. The particular civil service rules violated by Officer Smith and grounds for suspension are as follows:

- (12) Violation of an applicable fire or police department rule or special order.

The Rules and Regulations and Procedures of the San Antonio Police Department which Officer Smith has violated are as follows:

RULE 4.03 - REQUIREMENT TO TAKE ACTION: On-duty members are required to take prompt and effective police action conforming to departmental policies with respect to violations of laws and ordinances and matters affecting public safety coming to their attention, or of which they have knowledge.

PROCEDURE 409 – MOBILE VIDEO RECORDING (.06)
RECORDING (A) All officers shall begin recording the following events upon receipt of call and continue recording until it is concluded; any deviations will require a supervisor's approval and must be documented in the officer's report or CFS comment entry field. (1) DWI stops.

The factual basis for the instant disciplinary suspension is as follows:

On or about May 15, 2015, Officer Herbert Smith was dispatched to 12020 Perrin Beitel for a possible assault of a child in progress. Officer Smith N-Coded the call after writing on the Incident Detail Report that he was unable to locate anyone involved in the incident, including the complainant. Officer Smith added that he had spoken to store employees who allegedly advised him they did not witness an assault or see anyone matching the descriptions given by the caller. Officer Smith did not activate his COBAN upon receipt of this call, as required, and did not record his contact with the employees he claimed he contacted.

SAPD's Automated Vehicle Locator (AVL) shows Officer Smith arrived at the location no sooner than 12:30 p.m. and left the location no later than 12:37 p.m. AVL records further show Officer Smith driving to the area of Alamo Blanco and Guadalajara Drive, arriving there at 12:43 p.m. and staying at that location until he N-Coded the call at 1:16 p.m. Officer Smith also did not notify the dispatcher of his return to service immediately upon completion of the call, as required.

On or about July 16, 2015, Officer Smith came to SAPD's Internal Affairs Unit to respond to allegations in this case. During his response, Officer Smith stated he didn't get out of his vehicle to go into the location to investigate the possible assault of a child in progress because the manager of the location was not the original caller. Officer Smith added that he stayed in his patrol vehicle and parked outside the location to see if the suspect fitting the description that had been given would walk out of the location. Officer Smith failed to take the necessary action to properly investigate the May 15, 2015 call for the possible assault of a child in progress.

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A copy of the instant disciplinary suspension order is being filed with the Fire Fighters' and Police Officers' Civil Service Commission.

AGREED TO BY:

A. Treviño
ANTHONY L. TREVIÑO, JR.
CHIEF OF POLICE
SAN ANTONIO POLICE DEPARTMENT

9/30/15
DATE

H. Smith
OFFICER HERBERT SMITH, #0658
SAN ANTONIO POLICE DEPARTMENT

10/05, 2015 858
DATE TIME

On this 5 day of October, 2015, I hereby acknowledge receipt of the original of the foregoing Agreed Suspension. I acknowledge having received notification that I have fifteen days from the date of receipt of this suspension during which to file a written appeal of this suspension with the Personnel Director of the City of San Antonio requesting either arbitration or the hearing of my appeal by the Fire Fighters' and Police Officers' Civil Service Commission. I acknowledge that I have been informed that if I appeal to a hearing examiner/arbitrator, I waive all rights to appeal to a district court except as provided by subsection 143.057(j) of the Texas Local Government Code. I also acknowledge that I have been informed that my right to appeal the decision of a hearing examiner/arbitrator to district court pursuant to section 143.057 of the Texas Local Government Code may have been modified by the provisions of article 28 of the current Collective Bargaining Agreement by and between the City of San Antonio and the San Antonio Police Officers' Association. I further acknowledge that in light of my entry into this Agreed Suspension, I shall have no right to appeal said suspension nor will any administrative or judicial body have power to review same or alter its terms. I do hereby waive any and all rights to appeal said suspension and no administrative or judicial body shall have power to review same or alter its terms.

H. Smith
OFFICER HERBERT SMITH, #0658
SAN ANTONIO POLICE DEPARTMENT

WITNESSED BY:

M. Hernandez 3343

TIME: 0858

DATE: 10/05/15

[Signature] 3160

TIME: 31600858

DATE: 10/05/2015

FILED on this the 07 day of October, 2015, with the Fire Fighters' and Police Officers' Civil Service Commission.

Alicia D. Ramirez
DIRECTOR, FIRE FIGHTERS' AND POLICE OFFICERS' CIVIL SERVICE COMMISSION

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