

DECISION AND AWARD

In the Matter of a Controversy between the

**BERKELEY POLICE ASSOCIATION,
COREY SHEDOUDY,
Grievant**

And

**CITY OF BERKELEY,
Employer**

For the Grievant:

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For the Employer:

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Arbitrator:

David A. Weinberg

PROCEDURAL BACKGROUND

Pursuant to the Memorandum of Understanding between the Berkeley Police Officers Association (hereinafter “Association”), and the City of Berkeley (hereinafter “City”); the parties selected David A. Weinberg as Arbitrator in the above referenced case. The Arbitrator conducted Arbitration hearings in the City of Berkeley, CA on September 6, 7, 8, 2022, and via Zoom on October 18, 2022. The parties filed their closing briefs on January 28, 2023 with the Arbitrator. The parties stipulated that the issue to be decided by this Arbitrator is as follows:

“Was there just cause for the termination of Corey Shedoudy; if not, what shall be the remedy?”

In addition, the parties stipulated the matter is properly before the Arbitrator for resolution and that jurisdiction may be retained to resolve any disputes over the meaning or application of the Decision and Award.

RELEVANT CONTRACTUAL and OFFICIAL DOCUMENTS

1. Memorandum of Understanding between Berkeley Police Officers Association and City of Berkeley
2. BERKELEY POLICE DEPARTMENT POLICE REGULATIONS
 - 248- Obey Laws
 - 251- False Reports
 - 401(h)- Individual Responsibilities of Officers and Employees

STATEMENT OF FACTS

The following is a summary of the facts of the case, which were necessary to decide the matter. A more detailed finding may be found in the Analysis and Discussion section of this Award when appropriate.

Corey Shedoudy (hereinafter “Grievant”) began his employment with the Berkeley Police Department in 2014 as a Police Officer. He was a member of the Modesto Police Department for two years prior to being hired by the Berkeley Police. He served as an FTO from 2017 through 2020 and was at the time of this incident a member of the Bike Force and had previously been a member of the downtown task force. The Grievant applied to be a member of the Bike Force and was selected when it was formed in 2020. The Grievant like other members of the Bike Force attended a four-day training program, which was designed as a train the trainer course to teach bike officers to train other bike officer students riding skills. The course had two components: basic riding skills for police work and instructor level training. The Grievant after the course was noted as passing level 1 but was not noted as passing the Trainer level 1.¹

On November 22, 2020, the Grievant began his shift at 1:30 pm, which was later than his normal 11:00 am start time to begin his ten-hour shift. At this time the other bike officers scheduled, Stern and Michalczyk were already paired up working in a patrol vehicle. The Grievant left the police station at about 2:15 pm and began his shift on his bicycle by himself. According to CAD activity records for the Grievant on 11/22/20 at 14:35:50 he put himself out on a security

¹ Employer Exhibit #45

check at 2200 Shattuck Ave until 14:56:04. At 14:56:04 he puts himself doing a security check at 2300 Shattuck Ave until 15:16:50 when he places himself at 2500 Durant Ave until 16:20:02. At this time, the Grievant put himself on a flag down at 2300 Bancroft Way until 16:54. There was no BWC footage for any of these CAD entries. Officer Shedoudy was using Officer Pickett's BWC on this date, due to his BWC battery being dead according to the Grievant.

The Grievant received a text or phone call from Officer Michalczyk at some point after 4:00 pm, who was working that day on bike patrol with Officer Stern and told the Grievant they would be taking off soon and it would be nice to see him. Around 4:53 pm the Grievant was riding westbound on Bancroft Way and collided with a Camry that was stopped at a stop sign at the intersection of Bancroft Way and Ellsworth and then moved forward into the intersection intruding partly into the bike lane. The Grievant activated his BWC after the collision which captured the prior 30 seconds before activating his BWC.

The BWC footage shows the Grievant riding eastbound on the sidewalk of Bancroft Way, he then makes a U-turn off the sidewalk onto the bike lane and peddles downhill in a westbound direction. The BWC captures the Camry stopped and not in the bike lane path and the Grievant at this point is about 111 feet from the Camry and traveling at about 15mph. The Camry begins to move out slowly past the limit line and into the intersection of the bike lane while the Grievant is seen pedaling his bike towards the Camry and straddling the bike lane pathway at about 17mph. He is about 86 feet away when the Camry stops halfway into the bike lane. The Grievant is moving downhill in the left bike lane

and can be seen to apply the brake and stops pedaling about 55 feet away from the Camry as the Camry stops. The grievant begins to move his bike to the right and then left and right again at about 25 feet away from the Camry and the bike begins to slow down to less than 14 mph.² The bike can be seen moving to the right almost past the front right bumper of the Camry and then left back towards the front hood when the Grievant collides with the Camry at about 5mph. The Grievant goes onto the front hood and slides off the hood face and hands down onto the ground in front of the Camry.

The Grievant after falling on the ground used his radio to request a Code 3 and remained on the ground until other officers and emergency medical arrived. The Grievant was treated by the Berkeley Fire Department and transported to the hospital via ambulance. Officer Johnson who responded to the collision took the Grievant's statement at the hospital and told him he was heading back to the station at the time of the accident. The Grievant wrote in the Employee Incident Report on 11/22/20 that: *"I was riding my department issued bike in the protected bike lane W/B on Bancroft Way. I was on bike patrol riding back to the police station. A vehicle was driving N/ B on Ellsworth and drove into my bike lane. I collided with the vehicle in the bike lane and was ejected from my bike. I landed on the hood of the vehicle and rolled onto the ground."*³ The Grievant went on leave as a result of the accident and filed a Workers' Compensation Claim on

² The time and distance measurements from both the City's experts and the Grievant's experts, [REDACTED], are almost exactly the same, and I have accepted [REDACTED] calculations.

³ Exhibit #4

November 23, 2020. On this form the Grievant wrote *“Was riding patrol bicycle when I collided with a vehicle in the bike lane.*

Sergeant Kacalek after being informed of the collision was sent a video of the accident by Lieutenant Reese, which was obtained from the UC campus RSF garage. He testified that after reviewing the video he thought the accident didn't look right. He said it looked like he slows down and jumps on the car right before making impact with the car. He also testified that he believed he could have avoided the car but then veered back into the car. Kacalek after talking with Lieutenant Montgomery authorized him to look into the accident and picked up multiple videos from the UC garage cameras. On December 23, 2020 Sergeant Kacelek wrote a memo to Chief Greenwood about the collision involving the Grievant.⁴ In this memo he wrote that he reviewed 4 separate videos:

Shedoudy's BWC, Interior RSF camera surveillance(long and short versions), and exterior RSF camera surveillance. He stated in the Memo that: 1. *“The collision looked staged. Officer Shedoudy's actions and movements during the BWC footage appeared inconsistent with an average person or bike officer riding in the bike path traveling along his same route.*

2. *From the BWC footage it seemed apparent that Officer Shedoudy could have avoided a collision with the involved vehicle.*

3. *Officer Shedoudy's reported injuries did not seem to match that of the collision footage. The left side of his body made more contact with the vehicle but, he stated his right leg had the most pain.*

⁴ Joint Exhibit #1

4. *There was slight to no damage done to Officer Shedoudy's bicycle and almost no damage done to the involved vehicle.*
5. *Several citizens at the scene of the collision offered to help Officer Shedoudy up but, he refused and wanted to wait for his partner to get there.*
6. *Several members of BPD that I spoke with about the RSF video or the BWC footage seem to think that Officer Shedoudy's collision looked suspicious.*
7. *It was suspicious that he was riding by himself as, generally, Bike Force officers ride together.*
8. *It was suspicious that he started his day at 1400 hours as this is very abnormal time to start for Bike Force members.*

On 12/11/20, I discovered that Officer Yu stated when he obtained the interior RSF camera video footage, it showed that Officer Shedoudy riding in the area of the collision just prior to the collision. It was this fact that prompted me to begin an initial investigation to prove or disprove any suspicions of Officer Shedoudy's possible misconduct." ...

Kacalek's Memo contained multiple observations regarding the amount and number of times Shedoudy spent in the area prior to the collision and documented 18 separate times riding his bicycle through the intersection in the 2 hours before the accident. He concluded that: *"I believe that based on my findings it was plausible that Officer Shedoudy could have researched, planned, practice, and carried out a fraudulent situation whereupon he claimed to be the victim of an auto versus bike collision on duty. I believe that there is sufficient evidence to warrant an IA investigation into Officer Shedoudy and his actions*

surrounding his collision on 11/22/20 in regards to apparent violations of PR 248. Obey laws (Workers Compensation Fraud) PR 251 Make False Reports PR 401h Adherence to Department Rules...”

Based on Kacelek’s Memo, Chief Greenwood assigned Sergeant Rashawn Cummings of the IA Division to conduct an official investigation. Sergeant Cummings interviewed and or took statements from Officers Michalczyk, Stern, Johnson, Loeliger, Yu, and Sergeant Kacalek, He also obtained statements from the Camry driver, witness to the collision [REDACTED], and the Grievant. He reviewed all of the videos from UC and the various BWC videos including the Grievant’s. Cummings found that based on Shedoudy’s BWC, which lasted 3 minutes and 59 seconds that Shedoudy appeared just prior to contact to turn his handle bars to the right, away from the vehicle and then appeared to abruptly turn his handle bars to the left and in the direction of the vehicle. Based on the RWC video he noticed that Shedoudy’s bike front tire did not broadside the stopped vehicle and it appeared the front tire actually slid across the right side of the bumper and after contacting the vehicle, his body appeared to be rigid as if he had braced himself for impact. Cummings noted that sudden and unexpected impacts often cause a rag doll effect. Shedoudy appeared to methodically slide off of the hood on his stomach before he lowered his body on the ground. He noted the bike brakes were functional when tested. Cummings reviewed the CAD entries and compared them to footage of the Grievant riding in the area around the collision when he put himself out on security checks in a different location. Video shows the Grievant was captured on

the RSF garage camera around Bancroft and Ellsworth at 14:44:09, 14:52:18, 14:53:30, and 14:54:18 when he was at 2200 Shattuck Ave on a security check. While at 2300 Shattuck Ave on a security check from 14:56:04 he was captured on the RSF video camera in the Bancroft Way/Ellsworth area at 14:57:14, 14:58:31, 15:00:14, 15:00:22, 15:06:20, and 15:07:22. According to the CAD log he was at 2500 Shattuck at 15:16:49 until 16:20:02 but is seen on the RSF video at 15:18:44. Shedoudy put himself at 2300 Bancroft Way at 16:20:02 and was captured on the RSF video camera and was not seen by Cummings to be interacting with any reporting parties or transients. He notes that the Grievant was riding on the same path multiple times as the ultimate collision.

Cummings noted in his report that Shedoudy stated in his interview he was responding to an incident at Cream which is located at 3299 Telegraph Ave for a “skirt peeper” and was frustrated because he was cancelled from the call by Adam 6, and said the “peeper” matched the description of his drug dealer suspect he was looking for that day. There was no record of a call to Cream on 11/22/20. This call actually took place on 11/20/20. The IA report was sent by Cummings to Interim Chief Louis on March 18, 2021.⁵

Shedoudy in his interview with Cummings on 3/12/21 said the problem he was trying to solve that day was drug dealing at the church and hung out on Ellsworth for a long time to look for a guy on a distinctive green and black scooter who he believed was a dealer based on information he had been given. He said

⁵ Exhibit #D

that just prior to the collision he was looking left for the suspect and that he was then heading back to the station to meet Michalczyk.⁶

On April 9, 2021, Interim Police Chief Louis issued a Notice of Intent to Recommend Termination.⁷ Chief Louis reviewed the video footage along with other materials contained in the IA report prior to issuing her Notice to the Grievant. In the Notice she determined that the Grievant violated the following policies and the reasons for these findings. She wrote in the Notice that *“based on the information and evidence above and contained in the Internal Affairs Investigation Report, it is apparent that you:*

- 1. Violated Police Regulation 248 when you intentionally created a bicycle versus automobile collision and filed a claim with the Berkeley Police Department, City of Berkeley and/or Innovative Claim Solutions to receive Workers Compensation benefits that include paid time off from work and/or related to healthcare benefits.*
- 2. Violated Police Regulation 248 when you intentionally created a bicycle versus automobile collision to receive Workers Compensation benefits that include paid time off from work and/or related health care benefits*
- 3. Violated Police Regulation 248 when you intentionally created a bicycle versus automobile collision to receive Workers Compensation benefits that include paid time off from work when you completed and signed the required forms per General Order P – 24.*

⁶ Exhibit #30

⁷ Exhibit #C

4. *Violated Police Regulation 248 when you intentionally created a bicycle versus automobile collision to receive Worker's Compensation benefits and healthcare benefits that include doctor's visits and/ or physical therapy*
5. *Violated Police Regulation 251 when you led members of BPD, the City of Berkeley and ICS to believe that you were the victim of a bike versus vehicle collision that you did not intentionally create*
6. *Violated Police Regulation 401H when he violated the aforementioned policies.*

In this Notice, Interim Chief Louis stated she questioned the Grievant's truthfulness due to the fact that he placed himself according to his CAD logs at certain locations and times, and he was captured on the RSF video to not be at those locations and instead was in the area where the accident eventually occurred. She also noted that he was not seen on the video interacting with transients or any reporting party. She also stated that in reviewing the RSF video of the accident he did not appear to be looking around for a reported drug suspect as he had stated, and instead appeared to be fixated westbound on Bancroft Way and that his speed was inconsistent with an officer conducting an area check for a suspect. She also noted that the Grievant's statement in his interview that he responded to a call at Cream for a "skirt peeper" that day was contradicted by the evidence that the call to Cream took place two days earlier. Interim Chief Louis stated in this Notice that: *"I reviewed the BWC that you were wearing and the RSF garage videos. The time that you spent in the area of Bancroft Way and Ellsworth St did not appear to be connected to an area check*

for a suspect. It appeared to be reconnaissance and or practice runs for the eventual collision. The collision did not appear to be authentic. In fact, it appeared calculated and intentionally created. As a result of the injury that you reported, you fraudulently received an array of worker's compensation benefits. Based on the totality of the information provided in the internal affairs investigation, I called into question your credibility and integrity. When considering your statements, locations, timelines and activity captured via surveillance video, I do not believe that you were truthful regarding the circumstances leading to the collision and the collision itself."

A Skelly meeting was held on April 28, 2021, with Interim Chief Louis as the Skelly Officer. On May 7, 2021, she issued a Step 2 Disciplinary Appeal Decision Upholding Notice of Intent to Recommend Termination.⁸ In this Step 2 letter Chief Louis stated that she again reviewed the IA investigation and considered the points presented by the Grievant and his representative and upheld her decision to seek termination.

Under the terms of the MOU a second Skelly was held before Deputy City Manager David White on July 1, 2021. On August 31, 2021, he delivered to the Grievant a Final Notice of Employment Termination. In this Final Notice he sustained in its entirety the April 9, 2021 Notice of Intent to Terminate and the May 7, 2021 Step 2 made by Interim Chief Louis.

⁸ Exhibit #B

Position of the Parties

The following represents a summary of the arguments raised by the parties in this arbitration.

Employer's Arguments:

The Employer argues that although the standard of proof in a disciplinary matter is a preponderance of the evidence, and even if the arbitrator assigns a "clear and convincing" evidentiary standard the City has met that burden. The evidence is clear that Shedoudy engaged in fraud by staging his bicycle-vehicle collision and then lied about it, which was dishonest.

The Employer argues that Shedoudy violated Berkeley Police regulation 251 which prohibits making a false oral or written report. He also violated California Penal Code Section 550, which makes it a felony to file a false or fraudulent insurance claim. The evidence shows that Shedoudy intentionally staged the November 22, 2020 collision. The video footage shows that he spent the day preparing and practicing for a bicycle/vehicle collision on the corner of Bancroft Way and Ellsworth Street. The video shows Shedoudy at the location on more than a dozen occasions between 2:44pm, rehearsing or attempting collisions until his actual collision at 4:53pm. The video shows Shedoudy repeatedly riding his bike on the bike path on Bancroft Way towards the intersection until the conditions were right enough to execute the collision. In the final collision attempt, the Grievant can be seen looking at the Camry waiting at the stop light on Ellsworth/Durant intersection, and then he rides back to his starting position on Bancroft and makes a quick U-turn and begins pedaling

towards the Camry as it approaches the Bancroft/Ellsworth intersection. He then stops pedaling and slows his bike down before hitting the vehicle with his front tire and landing on the hood of the car. The BWC video shows the Grievant feathering his brakes and steers his bike into the wrong lane to line up his bike with the car.

The Employer argues the Grievant's explanation that he was searching for a drug dealer who may have been a skirt peeper are not credible. There is no evidence from the video of him looking for a suspect and he made no report at the location where he was staging his accident. The Grievant called in his location at a different location than where he appeared on the video in order to cover his tracks. The Grievant also started his shift later than normal that day so that he would be riding solo and not paired up with a partner.

The Grievant's explanation for his actions that day are not credible and his testimony at the hearing contradict his IA interview. At the hearing Shedoudy said he put his location that day at Shattuck and Durant when he was actually at Bancroft and Ellsworth was because Sergeant Kacalek required him and others to log there location in downtown even if they were not located there. The Grievant never made these claims in his IA interview or workers compensation hearing. The Grievant's explanation for why he spent so much time in the Bancroft area where the collision took place was based on an anonymous tip, which was unrecorded, and he gave contradictory statements about the location of the tip. The Grievant also gave incorrect statements about responding to a skirt peeper call which took place two days prior to the incident and not that day.

His shifting explanation about that day is illogical and destroy his credibility. He also added many more details in his testimony at the hearing about what he was doing that day than he gave during his IA interview, which was much closer to the date of incident when he would remember more details.

The Grievant's experts' testimony only concentrated on the 30 seconds leading up to the actual collision and do not take into account his actions earlier that day, which show him practicing and rehearsing an attempted collision. Their conclusion that this was an accident and not intended contradicts all the available video evidence, which proves the Grievant was aware of the location of the Camry way before the moments before impact. Chief Louis, who did not review the experts video evidence at the Skelly, testified that after viewing the experts video it supported her original conclusions and clearly showed he had ample time to stop his bike or avoid the collision. The experts testified that even if the Grievant did not see the Camry until 4.2 seconds before the collision would have been sufficient time for 95% of riders to avoid the collision.

The Grievant's claims of bias against him by Sergeant Kacalek are unfounded and unsupported by any evidence. Shedoudy's claim of lack of training is also unsupported by sufficient evidence and he exaggerates his lack of riding skill and is contradicted by the fact he completed his bike training.

The Employer argues that termination is the only appropriate penalty for untruthful police officers and Shedoudy not only was untruthful but also required an unnecessary use of emergency services and could have caused injuries to the public. The Grievant's past record is not a valid reason to mitigate such

serious misconduct and the Arbitrator should give deference to the City's actions and uphold the termination.

Grievant's Arguments:

The Grievant argues the City bears the burden of proof and that a clear and convincing standard should apply. When the allegations involve moral turpitude or breach of the law a higher standard should apply. The allegations in this case certainly fall under this heightened standard of review.

The Grievant argues that the City has failed to meet their burden of proof that Officer Shedoudy intentionally caused the collision. Sergeant Kacalek's investigation should not be afforded any weight as he was biased and presumed from the start that the collision was staged. Officer Seaton testified that Kacalek does not even go into the field to watch officers and is not a hands on supervisor and stays in the office so he cannot evaluate Shedoudy. Officer Shedoudy was an inexperienced bicycle rider and Seaton testified that he was inattentive and unable to multitask while on the bike. The Grievant's actions that day were consistent with a below average bike rider, and Sgt. Kacelek's opinion that he could have avoided the collision did not take into account the human factors involved in the accident. Officers Johnson and Loeliger who investigated the accident concluded that the driver of the car was at fault and Johnson said that Shedoudy was trying to brake, and his bicycle was wobbling.

Traffic accident reconstructionist [REDACTED] testified that Shedoudy began to brake and stopped pedaling when he was 86 feet away and traveling at 17 miles per-hour and it was unknown if he was aware of the car at this point. At

the point where the car came to a second stop and intruded into the bike lane it was an immediate hazard and the Grievant was 40 feet away and traveling at 19 mph. At 25 feet away and still traveling at 19 mph the Grievant can be seen to ride erratically where he veers left, right, left and right again just prior to impact. At this point he slows down and in [REDACTED] opinion was out of control of his bike. He also said that the bike was washing out at this point and leaning left. [REDACTED] evaluated the accident using the IDDR response time system and stated that 95 percent of people presented with similar stimuli would have a response time of two seconds or less with an average response in 1.3 seconds. [REDACTED] estimated that the 95th percentile of riders would require 3.94 seconds and 74 feet to stop when traveling at 17mph (1.3 seconds for response and 1.94 for braking), and the average ride would require 3.24 seconds and 56 feet to stop. While it is unknown when Shedoudy first perceived the hazard the evidence does show him taking evasive action and reducing his speed at 25 feet or one second from impact.

Other officers who saw Shedoudy after the accident told IA he appeared to be in pain and a medical doctor established that Shedoudy suffered a hip injury as well as spine and sciatic nerve pain and was even scheduled for surgery which he had to cancel due to terminations of his benefits. From the beginning of his investigation Kacelek doubted the Grievant's injuries and his investigation is tainted.

The Grievant argues that he had good reason to be in the area as Bancroft is part of the downtown area, which was the target area of the bike

force. He was investigating a reported drug dealer who had been dealing from the church at Bancroft and Ellsworth. The Grievant like many other officers used Bancroft to travel westbound and Kacalek's opinion that he does not use this route was contradicted by his own statements and shows his bias. Kacalek provided no evidence to back up his assertion that the Grievant may have been using a gadget to time the traffic light at Durant and Ellsworth, and he had no evidence the lights were on a timer. Kacalek's report is filled with assumptions and beliefs, not evidence. The evidence shows that Shedoudy attempted to avoid the collision but was unable to stop in time and collided with the car at 5mph. It was Kacalek who had suspicions and not any other officers.

The evidence contradicts Kacalek's opinion that it was suspicious that the Grievant was riding alone that day. The evidence shows that he often rode alone, and his starting time was not abnormal as Kacalek asserted. His assertion that there was no reason for the Grievant to spend time in the area of the collision as it had not been on the radar as a problem area is contradicted by Officers Stern and Michalczyk investigating the area that same day to remove an unwanted person from the church. This was omitted from his report. Kacalek's opinion that Shedoudy was downtrodden is unsupported by any other officer. Kacalek was proven to be dishonest in the hearing with regard to testimony that he encouraged arrest quota of 100 per-day. His own text messages contradict his rebuttal testimony that he had no quota. Kacalek's dishonesty should invalidate his entire investigation.

The Grievant argues his practice of not activating his BWC for every encounter is consistent with department practices as testified to by Officer Seaton. The fact that Shedoudy did not have the name of the citizen who reported illegal activity to the Grievant is consistent with the habit of many citizen reporters of drug dealers. The Grievant did not receive any specific training regarding reporting their whereabouts during the shift. Seaton testified that some officers did and some did not.

The Grievant argues that Sgt. Cummings accepted Kacalek's investigative findings and did not conduct his own investigation regarding Shedoudy's bicycle skills or to investigate his perception response time or the distances required to stop the bicycle. Cummings did not investigate any of the Grievant's assertions that he was following a suspected drug dealer. The whole investigation was designed to support Kacalek's opinion that the Grievant staged the accident.

Officer Shedoudy had no reason to intentionally cause the collision and the Grievant's sale of his house did not infer any consciousness of guilt. The City failed to consider mitigating evidence such as the fact the Grievant was an inexperienced bike rider and that the City did not provide adequate training for bike patrol. The Grievant was mocked by his peers and Sergeant for his poor riding skills. This evidence was not considered in the investigation. The Grievant had no prior discipline and an excellent reputation regarding his work ethic and truthfulness. The imposition of termination is unreasonable and excessive and there is no just cause for workplace capital punishment and there is not sufficient proof that the Grievant intentionally caused his accident which was a result of

inattentiveness and poor training. The Grievant should be made whole and returned to work.

ANALYSIS AND DISCUSSION

In a discipline case the employer has the burden to prove that it had proper or “just cause” to terminate the grievant. While arbitrators may differ in nuance over the level of weight given to the different elements of just cause, there is broad consensus over its main components. The components can be summarized in the following manner: 1) Did the grievant violate some rule or procedure for which discipline is warranted? 2) Was the grievant aware of, or should have been aware of the rule? 3) Does the Employer have sufficient proof that the grievant engaged in this act? 4) Was the Employer’s chosen discipline reasonable for the offense committed? 5) Is there some reason this discipline should be mitigated, i.e., disparate treatment, seniority, or procedural defect?

It is well understood that the Employer must have sufficient evidence to support the stated charges in the Notice of Discipline. In this case the essential issue to decide is whether the City has proven the Grievant intentionally created a bicycle versus automobile collision on November 22, 2020. Given the nature of this type of allegation I agree with the Association’s argument that the City must present clear and convincing evidence that he intentionally created this collision. The City sustained and charged the grievant with six separate policy violations, of which three, (Allegations 2, 3, and 4) specifically relate to intentionally creating the collision to obtain Workers Compensation benefits.

The Grievant argues that Sergeant Kacalek's initial investigation which was used by the City was biased from the start and should not be given any weight. There was evidence offered that in another instance of a bike accident in the Department, Kacalek seemed to want to place blame on the officer involved. Kacalek in his Personnel Complaint made findings which I believe he did not have sufficient evidence to prove as evidence of misconduct. This included the supposition that Shedoudy's reported injuries did not seem to match that of the collision footage given the limited damage to the bike and car, the fact that several citizens offered him help to get up, but he refused and waited for his partner to get there, and that he was riding by himself and started later that day.

The fact that Shedoudy's injuries did not seem to match that of the collision is not persuasive. Having been involved in bike accidents myself, the initial collision and fall may not be where an injury occurs and there is no immediate cause and effect in such bike accidents. Likewise, the amount of damage to a bicycle and vehicle is not a strong guide as to injuries suffered, as the fall off the bike and/or car can be the main cause of pain, and the initial contact can be of minimal consequence. The fact that the Grievant wanted to wait to get up can be indicative of shock and is not proof of a staged accident. Finally, while there is reason for the Grievant to have wanted to ride alone if he was planning a staged accident, there was not sufficient proof offered by the City to show that riding alone was rare, or that a flex start time was unusual. These last two arguments are too speculative to be given weight. I have not considered

Kacalek's Personnel Complaint in my determination and rely upon the source videos and other direct evidence.

As noted above, there are several allegations related to workers compensation fraud. I am not finding violations of these specific policies (Allegations 2, 3 and 4) for the following reasons. There was not specific evidence regarding what constitutes workers compensation fraud. It may be true that even though the Grievant intentionally crashed his bicycle into the car, he did injure himself in the process. Additionally, there was not sufficient evidence offered that he did so in order to obtain workers compensation benefits. His Workers Compensation Claim Form (Exhibit 41) simply states that he collided with a car while riding his bike, which is a factual statement. This is separate from the assertions he may have made in his workers compensation appeal hearing, which I am making no determination of regarding their accuracy or truthfulness.

However, I find that the City has met their burden to show the Grievant violated City Policy's 248 and 251, when he intentionally created a bicycle versus automobile collision as alleged in Allegations 1, 5 and 6. There are three main reasons why I believe the City has met their burden. The evidence taken from the RSF video shows the Grievant on multiple occasions between 2:44 pm and the collision at 4:53 pm repeatedly riding the same route as the accident. The evidence regarding him starting at a similar point, time and again, and riding through the intersection where the collision takes place is convincing evidence that there was planning involved. This video coupled with the fact that the Grievant placed himself via CAD in a different location on almost all these

occasions is strong circumstantial evidence that he was attempting to deceive the Department as to where he was and what he was up to. The fact that there is no evidence from the videos of the Grievant engaging in activities which would suggest he was looking for a suspect, and instead there is repeated evidence of him riding the same route and paying attention to the road in front of him. The speed at which the Grievant repeatedly rides the route, including during the collision is not indicative of looking for a suspect, which would normally be done at much slower speeds.

The Grievant presented evidence that the BWC footage and the RSF video does not prove the accident was intentional. The testimony of [REDACTED] and [REDACTED] is certainly reasonable that the collision may not have been preventable for a rider going 17 mph if they had less than 4 seconds to stop. However, their argument is based upon the supposition that the Grievant was not aware of the car until after this margin of accident preventability had passed. When looking at the RSF and BWC videos I believe the City's conjecture is more reasonable that the Grievant was aware of the Camry way before the time needed to stop. The Grievant was very familiar with this exact location as he was observed multiple times that day in the same location. He would have instinctively known that cars going from Ellsworth to Bancroft Way would normally stop and then move slowly out to make the left turn as the Camry did at this time. The Camry was easy to spot and the videos do not show that the Grievant was distracted or looking in any other direction than straight down Bancroft Way. While it is impossible to know exactly where the Grievant's gaze

was, it is more reasonable given his speed at 17-19 mph that he was looking straight ahead. The fact that the Grievant moved into the left bike lane close before impact suggest intent to collide as he would have avoided the car if he had been further to the right lane, which is the more normal bike path route for going downhill and avoiding cars which are stopping before turning. When looking at the entire sequence of events from the RSF video the Grievant can be seen on Ellsworth, where he could see the approaching vehicles, and then returning to Bancroft Way where he was observed making a quick U-turn and riding down Bancroft Way quickly. There is no evidence of being out of control at any point until close to impact and every reason to suggest he could see the Camry from much further away as the City suggests.

The Grievant suggested that he was an inexperienced bike rider and that his training was not sufficient. While it may be true that the training was not POST approved and the bike team may have needed more training, there is not clear evidence that the Grievant was an incompetent and dangerous bike rider. He applied for the position on the bike team knowing he was going to be on a bike, and while he may not be an experienced and elite rider, it is hard to accept that someone with 7 children had not been riding a bike in the normal course of his life and was competent to do so, and at a minimum had 4 days of training along with many weeks of riding the bike while on patrol prior to the accident. The video of him that day certainly did not indicate he was unable to effectively maneuver his bike.

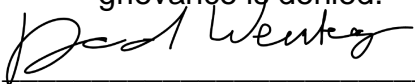
In summation, the fact that the Grievant was seen on multiple occasions that day observing and riding the same route as the eventual collision while documenting his presence elsewhere, the lack of any verifiable evidence of him looking for suspects, and the evidence of him looking towards the collision intersection on his ride down Bancroft and maneuvering his bike directly into the Camry, has made a convincing case that the Grievant intentionally crashed his bike into the Camry. For this type of conduct and associated policy violations, termination is not an unreasonable or excessive penalty. There was just cause for the termination of the Grievant and the grievance is denied.

I have considered all of the evidence and arguments made by both parties. I, however, may not have repeated every item of documentary evidence or testimony, nor may I have repeated completely all of the arguments presented in the respective briefs.

AWARD

Having received and considered all of the evidence and arguments relevant to this matter, I make the following award:

1. There was just cause for the termination of Corey Shedoudy. The grievance is denied.



David A. Weinberg
Arbitrator
April 8, 2023