

TEXAS DEPARTMENT OF PUBLIC SAFETY

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January 28, 2016

Trooper Brian Encinia
Texas Highway Patrol
3714 FM 359, Bldg. B, Suite 1
Pattison, Texas 77466

Dear Trooper Encinia:

This is written pursuant to Texas Government Code § 411.007(e-1) which requires that the Department provide a written statement giving the reasons for the discharge, suspension, or demotion of a commissioned officer. The Department has completed complaint investigation OIG2015-0313. I have made the preliminary determination that there is just cause to terminate your employment with the Texas Department of Public Safety. The basis of my preliminary determination is as follows:

ALLEGATION I

During the traffic stop of Sandra Bland on July 10, 2015, you failed to remain courteous and tactful in the performance of your duties. You engaged in argumentative discussions with Ms. Bland and you failed to exercise patience and discretion throughout the contact.

The conduct described in Allegation I, if true, violates Department policies and regulations:

General Manual, Chapter 5, Section 05.17.00 Courtesy:

An employee of the Department of Public Safety shall be courteous to the public and to other employees. An employee shall be tactful in the performance of duties, shall control behavior, and shall exercise the utmost patience and discretion. An employee shall not engage in argumentative discussions even in the face of extreme provocation. Employees shall not express any prejudice concerning another's creed, politics, lifestyle or similar personal characteristics. In the performance of duties, an employee shall not use harsh, coarse, profane, or offensively suggestive language or gestures. An employee will not deliberately intimidate, degrade, undermine or humiliate another employee. An employee will not let personal feelings interfere with working relationships.

General Manual, Chapter 6, Section 06.10.01, DPS Ten General Orders

As a member of the department it shall be my duty:

- (1) To execute the mission of the department to protect and serve Texas.

- (2) To practice, at all times, the motto of the department: "Courtesy, Service, Protection."
- (7) To conduct my duties in a straightforward, honest, and respectful manner, relying upon poise, competence, and soundness of character.
- (10) To conduct myself, on and off duty, in a manner that merits the voluntary praise of those with whom I come in contact, so that my actions reflect well upon myself, the department, and the State of Texas.

ALLEGATION II

During the encounter described in Allegation I, you prolonged the traffic stop beyond the time reasonably necessary to complete the tasks associated with the traffic infraction. Consequently, you extended Ms. Bland's detention without a reasonable justification or legitimate investigative purpose for doing so.

The conduct described in Allegation II, if true, violates Department policies and regulations:

General Manual, Chapter, Section 05.02.04, General Doctrines and Policies

It is a solemn obligation of members of the Department of Public Safety to uphold the constitutions of the United States and the state of Texas as well as to enforce the statutory enactments. Constitutional provisions take precedence over statutory enactments. In the enforcement of the provisions of a statute, personnel of the Department of Public Safety will refrain from infringing upon the rights or privileges guaranteed by the constitutions.

General Manual, Chapter 6, Section 06.10.01, DPS Ten General Orders

- (4) To know and obey at all times the U.S. and state constitutions, federal and state laws, and lawful orders and instructions.

ALLEGATION III

During the encounter identified in Allegation I, you failed to follow the seven-step violator interview.

Texas Highway Patrol Manual, Chapter 4, Section 04.02.01. Violator Interview:

Troopers will follow the seven-step violator interview unless circumstances exist that make the use extraneous or non-applicable. The steps will be used in the following order:

1. Greeting and identification of the agency
2. Statement of violation committed
3. Identification of driver and check of conditions of violator and vehicle
4. Statement of action to be taken
5. Take action stated
6. Explain what violator must do
7. Leave

The violations of policy set out in this letter also constitute violations of administrative rules adopted by the Public Safety Commission. Specifically, Rule 1.114 found at Title 37, Texas Administrative Code, § 1.114 states:

Any of the major infractions listed as follows may be deemed sufficient cause for the discharge, suspension, demotion, or removal of any member of the Texas Department of Public Safety:

2. Violation of one or more of the ten general orders;
3. Violation of any rule, order, requirement, or failure to follow instructions contained in Department manuals;
13. Any act on or off duty which reflects discredit to the Department of Public Safety.

Aggravating Circumstances

In addition to the sustained acts of misconduct reflected in OIG2015-0313, there are aggravating circumstances that support this preliminary decision. Specifically, on January 6, 2016, the Grand Jury for the County of Waller, Texas indicted you under Texas Penal Code § 37.02 – Perjury. The indictment relates to the same underlying traffic stop that forms the basis of the allegations set out in this letter. The criminal charges against you remain pending as of the date of this preliminary decision to discharge you.

Preliminary Determination

Pursuant to my authority under Section 411.007(e), Texas Government Code, I have made a preliminary determination that there is just cause for termination of your employment from the Texas Department of Public Safety.

Opportunity to Respond

You may now provide any information which you believe should bear on my final decision. The burden is entirely upon you to come forward and present evidence to me. You may request a meeting with me or submit your position to me in writing. Up until the expiration of five (5) days from the date upon which you receive this letter, I will refrain from making a final determination regarding your employment to give you an opportunity to contact me.

You may request a meeting with me by contacting my assistant, Sophie Yanez, at (512) 424-7771 or submit your position to me in writing. A written submission may be faxed to (512) 424-5708, mailed to me at P.O. Box 4087, Austin, Texas 78773-0110 or emailed to Sophie.Yanez@dps.texas.gov, but it must be received by the deadline set forth above. The purpose of this opportunity is to allow you to provide information to me. Therefore, any meeting you request will not be conducted as an adversarial evidentiary hearing.

If I have not heard from you upon the expiration of the time set out above, your employment will be terminated effective that date. As an employee of the Department with more than one year of service, in the event that I do discharge you, you will have the right to appeal to the Public Safety Commission. Your rights regarding an appeal will be further explained to you at an appropriate time, if necessary.

Trooper Brian Encinia

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You will remain on suspended with pay status until you are notified of a change. If you have not already done so, you are to immediately surrender all Department equipment and property issued to you. You are to take no action for or on behalf of the Texas Department of Public Safety during the pendency of this matter.

Sincerely,

A handwritten signature in black ink that reads "Steven C. McCraw". The signature is written in a cursive style with a long, sweeping underline.

Steven C. McCraw
Director

SCM:DPA:js

cc: David G. Baker, Deputy Director, Law Enforcement Operations
Luis A. Gonzalez, Assistant Director, Highway Patrol Division
Duane Steen, Regional Commander, Reg. 2
Dwight Mathis, Major, Reg. 2
Norma Cortez, Deputy Assistant Director, Human Resources
Rhonda Fleming, Inspector General, Office of Inspector General
D. Phillip Adkins, General Counsel, Office of General Counsel
OIG2015-0313

Trooper Brian Encinia
OIG2015-0313

RECEIPT

I acknowledge receipt of the original document dated January 28, 2016, signed by the Director of the Department of Public Safety, regarding the status of my employment.

Signature: Brian J. Encinia Date/Time: January 29, 2016 1:09 pm
(Brian Encinia)

Witness: W. Michael W. [Signature] Date/Time: 01/29/16 1:09 pm