



**TAKE NOTICE THAT A SPECIAL MEETING
OF THE CIVIL SERVICE COMMISSION
OF THE CITY OF PHARR, TEXAS
WILL BE HELD AT CITY HALL, COMMISSIONERS' ROOM,
118 S. CAGE BLVD., 2ND FLOOR, PHARR, TEXAS
COMMENCING AT 3:00 PM ON
TUESDAY, MAY 18, 2021**

If during the course of the meeting, the Civil Service Commission should determine that a closed or executive session of the commission is required, then such closed or executive session or meeting is authorized by Section 551.071 to 551.084 of the Texas Government Code. Notice of closed or executive session will be given after the commencement of the meeting covered by this notice.

Should any final action, decision or vote be required in the opinion of the Civil Service Commission with regard to any item discussed during the closed meeting, then such final action, decision or vote shall be made during the open meeting covered by this notice upon the reconvening of the public meeting pursuant to Section 551.102 Government Code V.T.C.S.

In compliance with Section 551.041 et seq. of the Texas Government Code V.T.C.S. (Open Meetings Act), notice is hereby given that the Civil Service Commission will meet at the time and place indicated to consider and act upon the following:

1. CALL TO ORDER:

A) Roll call and possible action on the excusing of any absent member.

2. PUBLIC TESTIMONY: *(Ordinance No. O-2019-45). A person intending on addressing the governing body may speak at a scheduled meeting of the governing body following registration with the presiding clerk and prior to the scheduled meeting. A registered speaker may speak only on items on the agenda and may not exceed 1.5 minutes when addressing the board regarding an agenda item. A registered speaker may not donate time to another speaker. A sign-in form for public testimony shall be promulgated by the presiding clerk and be made available at the city clerk's office. A person may sign up for public testimony beginning at the time the agenda is posted for the meeting. A person may not sign up later than one hour before the posted meeting is scheduled to begin. No registered speaker may be allowed to speak regarding an item once the public testimony portion of the agenda has ended.*

3. REGULAR AGENDA - OPEN SESSION:

A) Consideration and possible action on the Motion to Dismiss Eloy Salazar's Notice of Appeal for lack of jurisdiction.

B) Consultation with Civil Service Commission legal counsel, pursuant to Section 551.071, Texas Government code, to provide advice and counsel in connection with the Civil Service Commissions' duties, obligations, privileges under Chapter 143, Texas Gov't Code and the rules and regulations adopted thereunder.

4. ADMINISTRATIVE REPORTS.

5. CIVIL SERVICE DIRECTORS REPORTS.

6. CIVIL SERVICE COMMENTS.

7. CLOSED SESSION: *In accordance with Chapter 551 of the Texas Gov't. Code, the Civil Service Board of Commissioners hereby gives notice that it may meet in closed session to discuss the items listed on the public portion of the meeting agenda, in accordance with the following below:*

Pursuant to Section 551.071, the Commission may convene in a closed, non-public meeting with its attorney and discuss any matters related to **legal advice on pending or contemplated litigation, settlement offer, and/or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.** The City and its attorney may also discuss such issues with the appropriate staff so as to obtain necessary and relevant information so that such discussion is informative and developed.

Pursuant to Section 551.074, the Commission may convene in a closed, non-public meeting to discuss any matters related to **appointment, employment, evaluation, reassignment, duties and discipline or dismissal of a public officer or employee and to hear any complaints or charges against an officer or employee.** The City and its attorney may also discuss such issues with the appropriate staff including members so as to obtain necessary and relevant information so that such discussion is informative and developed.

Pursuant to Section 551.076, the Commission may convene in a closed, non-public meeting to discuss any matters on the **deployment, or specific occasions for implementation, of security personnel or devices.** The City and its attorney may also discuss such issues with the appropriate staff so as to obtain necessary and relevant information so that such discussion is informative and developed.

Pursuant to Section 551.084, the Commission may convene in a closed, non-public meeting to discuss any matters involving an **investigation and may exclude a witness from hearing during the examination of another witness in the investigation.** The City and its attorney may also discuss such issues with the appropriate staff so as to obtain necessary and relevant information so that such discussion is informative and developed.

8. RECONVENE into open session and consider action, if necessary, on any item(s) discussed in closed session.

9. ADJOURNMENT.

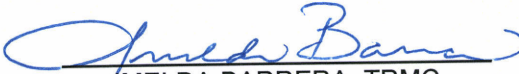
NOTICE OF ASSISTANCE AT THE PUBLIC MEETING

City Hall is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Clerk's Office at 956/402-4100 ext. 1003/1007 or FAX 956/702-5313 or E-mail hilda.pedraza@pharr-tx.gov or imelda.barrera@pharr-tx.gov for further information. Braille is not available.

I, the undersigned authority, do hereby certify that the above notice of said Regular Meeting of the Civil Service Commission of the City of Pharr was posted on the bulletin board at City Hall and on the City's web page at www.pharr-tx.gov. This Notice was posted on the 14th day of May 2021 at 12:00 pm and will remain posted continuously for at least 72 hours preceding the scheduled time of said Meeting, in compliance with Chapter 551 of the Government Code, Vernon's Texas Codes, Annotated (Open Meetings Act).

WITNESS MY HAND AND SEAL, this 14th day of May 2021.




IMELDA BARRERA, TRMC
ASSISTANT CITY CLERK



AGENDA MEMORANDUM



BOARD: Civil Service Commission

AGENDA ITEM #: 3.A.

DATE SUBMITTED: May 14, 2021

MEETING DATE: May 18, 2021

FROM: Imelda Barrera, Assistant City Clerk

DEPARTMENT: HR

DIRECTOR: Anali Alanis

Agenda Item: Consideration and possible action on the Motion to Dismiss Eloy Salazar's Notice of Appeal for lack of jurisdiction.

Classification: Regular

(* If closed session, City Attorney must review and approve.)

Issue:

Fiscal Consideration:

Staff Recommendation: Staff recommends approval.

Alternatives:

Exclude Material from Public Packet? No

Reason:

ROUTING:

Imelda Barrera

Created/Initiated - 5/14/2021

Anali Alanis

Final Approval - 5/14/2021

**BEFORE THE
FIRE AND POLICE CIVIL SERVICE COMMISSION
FOR THE CITY OF PHARR, TEXAS**

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In the Matter of	§	
the Appeal of	§	
	§	
Eloy Salazar,	§	
Grievant	§	Appeal Filed 4/30/2021
	§	
and	§	
	§	
City of Pharr, Texas,	§	
Respondent	§	

**CITY OF PHARR, TEXAS’ MOTION TO DISMISS
APPEAL FOR LACK OF SUBJECT MATTER JURISDICTION**

=====

NOW COMES The CITY OF PHARR, TEXAS (“CITY”), and files this Motion to Dismiss the Appeal of Eloy Salazar for Lack of Subject Matter Jurisdiction for the reasons stated below.

I. INTRODUCTION

On April 22, 2021, Fire Chief Leonardo Perez served Deputy Chief Eloy Salazar with a “Notice and Order of Disciplinary Suspension of Five (5) Days; and Notice of Appellate Rights.” *Exh. A.*

On April 30, 2021, Grievant Eloy Salazar (hereafter “Grievant”) by and through his attorney, filed a document with the Civil Service Director entitled, “Appeal of the Notice and Order of Disciplinary Suspension of Five (5) days and Notice of Appellate Rights.” *Exh. B.*

The Greivant’s Notice of Appeal must be dismissed as it fails to properly and timely invoke the jurisdiction of the Civil Service Commission as described more thoroughly below.

II. ARGUMENT

A. The Notice of Appeal Must Be Dismissed For Lack of Jurisdiction as it is Fatally Defective and Cannot Be Amended.

The Texas Local Government Code provides an explicit and unambiguous roadmap with regard to how to appeal a disciplinary action to the Civil Service Commission:

- (a) Except as otherwise provided by this chapter, if a fire fighter or police officer wants to appeal to the commission from an action for which an appeal or review is provided by

this chapter, the fire fighter or police officer need only file an appeal with the commission within 10 days after the date the action occurred.

- (b) The appeal must include the basis for the appeal and a request for a commission hearing. The appeal must also contain a statement denying the truth of the charge as made, a statement taking exception to the legal sufficiency of the charge, a statement alleging that the recommended action does not fit the offense or alleged offense, or a combination of these statements.

Tex. Loc. Gov't Code Ann. § 143.010

These instructions and the citing reference of where to find this information were provided to the Grievant in the “Notice and Order of Disciplinary Suspension of Five (5) Days; and Notice of Appellate Rights.” *See Exh. A pgs. 3-4.*

The appeal must include one or more of the statements required in paragraph (b) of Section 143.010, this language is mandatory. *City of Temple Firemen's and Policemen's Civil Service Commission v. Bender*, 787 S.W.2d 951-52 (Tex. 1990). When an employee's notice of appeal does not include any of the required statements, a condition precedent established by this section, appeal is not perfected and the commission's jurisdiction over a suspension is not invoked. *Id.* Moreover, if the appeal which was filed within the ten-day period fails to invoke the jurisdiction of the commission, the Grievant cannot then circumvent the time limitation under section 143.010(a) by filing an amended notice of appeal after the ten-day period. *Id.* at 953. *See also City of Plano Firefighters' and Police Officers' Civil Service Commission v. Maxam*, 685 S.W.2d 125 (Tex.App.- Dallas 1985, writ ref d n.r.e.)(A letter to the commission from a suspended employee's attorney which recited the fact of legal representation, reiterated what the employee had been charged with, and stated that the employee "wishes to appeal," did not contain any of the statements required by Section 143.010, which are an essential prerequisite to substantially comply with the section.).

The Grievant was given a disciplinary suspension of five (5) calendar days for his role in failing to conduct Firefighter Task Tests within the required time and was charged with several rule/regulation violations under the Civil Service Commission's Rules and Regulations, the Phar Fire-Rescue Policies and Procedures Rules a& Regulations, and the City of Pharr, Texas' Personnel Policy Manual. *Exh. A.* Nevertheless, while the Grievant attempted to file an appeal within 10 days, he completely failed to include any of the required information under 143.010. *Exh. B.* At no time in his appeal did the Grievant deny the truth of the charge, make a statement

taking exception to the legal sufficiency of the charge, nor did he allege that the recommended action did not fit the offense. *Exh. B*.

In addition, as made clear in the above cited Texas Supreme Court case *City of Temple Firemen's and Policemen's Civil Service Commission v. Bender*, the jurisdictional ten-day time period has passed and the Grievant cannot now amend his appeal to come into conformity with the requirements of 143.010.

For all of the aforementioned reasons, the Grievant has failed to invoke the jurisdiction of this Commission and his appeal must be dismissed.

CONCLUSION & PRAYER

Based on the foregoing reasons, Grievant Eloy Salazar's Notice of Appeal filed on April 30, 2021 must be dismissed for want of civil service jurisdiction.

The City further requests that after consideration of the pleading and filings before the Commission, that the Commission enter an Order of Dismissal for Want of Jurisdiction considering the untimely and improperly filed appeal in this matter by Grievant.

SIGNED on the 5th day of May, 2021.

Respectfully submitted,

**DENTON NAVARRO ROCHA
BERNAL & ZECH**

A Professional Corporation
701 E. Harrison Ste 100
956/421-4904
956/421-3621 (Fax)

By: *John-Michael W. Hayward*

JOHN-MICHAEL W. HAYWARD
State Bar No. 24087693

**COUNSEL FOR CITY OF PHRR, TEXAS AND
THE PHARR FIRE DEPARTMENT**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document has been served on the persons or parties identified below in accordance with one or more of the recognized methods of service by the Texas Rules of Civil Procedure on the 5th day of May, 2021.

Javier Pena
The Pena Law Firm
203 S. 10th Street
Edinburg, Texas 78539
Attorney for Grievant

Via Email: office@penavelalaw.com

John-Michael W. Hayward
JOHN-MICHAEL W. HAYWARD



Pharr



MAYOR Ambrosio Hernandez, MD

COMMISSIONERS Eleazar Guajardo | Roberto "Bobby" Carrillo | Ramiro Caballero, MD | Daniel Chavez | Ricardo Medina | Itza Flores

FROM: FIRE CHIEF LEONARDO PEREZ

TO: DEPUTY CHIEF ELOY SALAZAR

**RE: NOTICE AND ORDER OF DISCIPLINARY SUSPENSION OF FIVE (5) DAYS; AND
NOTICE OF APPELLATE RIGHTS**

DATE: April 22, 2021

Deputy Chief Eloy Salazar:

Please be advised that pursuant to the authority provided to me as the Chief of the Fire Department, I am hereby Ordering a Disciplinary Suspension of five (5) calendar day for the reasons more specifically set out below. This suspension will begin April 26, 2021 @ 8:00 A.M and will end April 30, 2021 @ 5:00 P.M. You will be expected to return to duty on May 3, 2021.

This Order of Disciplinary suspension is based on the facts outlines below, which I find to be both true and correct, and which support violations of the City's and the Department's rules, regulations, and policies set out below. These findings serve as just cause to impose this order of disciplinary suspension against you.

I also find that all the procedural protections which you are entitled by the current CBA and state law have been satisfied.

Please be advised that any additional misconduct may result in suspension of days up to and including indefinite suspension.

FACTUAL GROUNDS OF THE PROPOSED DISCIPLINARY ACTION

1. This charge stems from a failure to conduct Firefighter Task Tests within the required time for both Carlos Marquez and Adalia Pedraza.
2. On Monday December 7, 2020 I held a meeting in which you, AC Jacob Salinas, DC Manuel Renta, Fire Marshal Carlos Arispe, and DC Pilar Rodriguez were in attendance.
3. You were told at this meeting by both Assistant Chief Salinas and I to conduct those test and to go ahead and conduct them while the Firefighter Task Test were being conducted for the entry-level agility test.
4. Despite this understanding and despite being specifically ordered to make sure the Exit Agility test was done timely, this did not occur.
5. You again were reminded by Assistant Chief Salinas in January to conduct those tests and you finally conducted them on January 19, 2021 for Carlos Marquez and January 22, 2021 for Adalia Pedraza AFTER her probationary period and in violation of my orders.

6. As you are aware, these tests need to be done no later than 2 weeks before the end of their probationary period.
7. You have stated that you did not know when their probationary period ended and that you asked the probationary Fire Fighters when their probation ended but did not receive a response. It is not the employees' responsibility to advise you of their status, it is your responsibility. In addition, you were sent two emails regarding the probationary Firefighters hire dates.
8. You also stated that the firefighter boots that probationary Firefighter Adalia Pedraza was issued were not safe and were not NFPA compliant. However, the firefighter could have used the department issues Hi-Tech Steel Toe boots for the Agility Exam. Instead, you chose not to test her and did not bother to tell anyone.

RULES VIOLATIONS IMPLICATED BY YOUR CONDUCT

In addition to the foregoing factual finding in this case, I also find that your conduct is in violation of the following rules, regulations and policies specified below:

CITY OF PHARR, TEXAS FIREFIGHTER & POLICE OFFICER CIVIL SERVICE COMMISSION'S RULES AND REGULATIONS

SECTION VII. PERFORMANCE & CONDUCT

RULE 24. ADOPTION OF RULES RELATING TO DISCIPLINE [§143.008; §143.051, TLGC]

- B. The rules adopted herein which prescribe cause for removal or suspension of a fire fighter or police officer fall within one or more of the following subject matter areas specified by §143.051, TLGC, specifically:

4. Neglect of duty;
8. Conduct prejudicial to good order;
12. Violation of any applicable fire/police department rule or special order.

And/Or;

PHARR FIRE-RESCUE POLICIES AND PROCEDURES RULES & REGULATIONS

REPOSIBLITIES OF PERSONNEL: M.P. 100.14 Page 1&2: Responsibility of Officers

Officer shall:

- (D.) Conduct tests, examinations, and quizzes as needed to determine the competency level of their personnel
- (J.) File, in orderly manner, reports and records relative to their position.
- (M.) Preserve all orders, notices, communications, and records pertaining to the operations of their respective units until the purpose of such records has been served.

OBEDINENCE TO ORDERS: M.P. 100.15: Obey Lawful Orders

Members shall obey all lawful orders and directions given by Superior Officers. Such obedience shall be prompt and willing.

COMPREHENSIVE HEALTH/FITNESS PROGRAM PHYSICAL PERFORMANCE ASSESMENT:

M.P. 300:23 Page 4: Probationary Firefighter

During the probationary period, the firefighter's job performance will be carefully observed by the immediate supervisor. Weaknesses in performance or attitudes shall be brought to the employee's attention in an appropriate manner by the immediate supervisor so that the employee has an opportunity to correct such weaknesses. At any time within the one-year probationary period, but not later than two weeks prior to the completion of the probationary period, the probationary Firefighter shall take the Firefighter Task Test and shall attain a passing score by performing the test in seven (7) minutes and forty-five (45) seconds or less. Probationary Firefighters shall be terminated from employment if he/she fails to attain a passing score prior to the completion of the probationary period. A determination to grant regular status or discharge the probationary Firefighter shall be made by the Fire Chief.

And/Or;

City of Pharr, Texas Personnel Policy Manual

Chapter 38. Grounds for Discipline

Section 2. Grounds for discipline include, but are not limited to the following types of misconduct:

- A. Job Duty Related Conduct such as:
 - (4) Failure or inability to perform the duties of a job assignment;
 - (5) Disobedience of lawful orders;
 - (6) Neglect of or disregard of duties;
 - (7) Failure to comply with any one or more of the city's policies, procedures, or directives set by management and/or supervisory personnel.

FINDING OF JUST CAUSE & DISCIPLINARY CONSIDERATION

In considering the appropriate level of discipline warranted in this matter, I have also taken into account your explanation for the incident noted above. It is disappointing to me that at your rank as Deputy Chief, you refuse to take any responsibility for tasks that are clearly part of your duties. Therefore, given the factual findings I have made above, including taking into account your leadership role as a Deputy Chief, your lack of acceptance of responsibility, and the rules and regulations applicable to your conduct, I find that the appropriate level of discipline should not be anything less than five (5) calendar days.

NOTICE OF APPELLATE RIGHTS

You are hereby notified, pursuant to §143.010 and §143.052, Texas Local Government Code ("TLGC"), that you have a right to appeal this disciplinary action by requesting, in writing, a hearing before the Pharr Fire & Police Civil Service Commission.

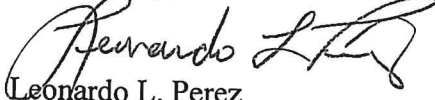
Alternatively, and pursuant to §143.057, TLGC, and at your election, you may request a hearing before an independent third-party hearing examiner instead of a hearing before the Civil Service Commission. Be aware that if you elect to appeal to a hearing examiner instead of the Commission, you will waive all rights to appeal to a district court, except as provided by §143.057(j), TLGC.

You must present your written request for appeal to the Civil Service Director within ten (10) days from the date of this disciplinary order, as per §143.010 and §143.052, TLGC.

NOTICE OF FILING WITH CIVIL SERVICE COMMISSION

A copy of this Notice of Disciplinary Suspension shall serve as the written statement filed with the Civil Service Commission giving the reason for the discipline imposed against you. This Notice shall be on file within 120 hours of delivery of this Notice of Disciplinary action to you.

Respectfully,


Leonardo L. Perez
Fire Chief

Cc; Ed Wiley / Interim City Manager
Anali Cantu / Assistant City Manager
Civil Service Commission
File

THE PEÑA LAW FIRM

A Professional Limited Liability Company

• Javier Peña
• Francisco I. Peña M.D., J.D.
of counsel

203 S. 10th Street, Edinburg, Texas, 78539 • 956-383-0751 • 956-383-5980 (fax)

April 30, 2021

FROM: Eloy Salazar, Deputy Chief
TO: Civil Service Director Anali Alanis

RE: Appeal of the Notice and Order of Disciplinary Suspension of Five (5) days and Notice of Appellate Rights

Dear Mrs. Alanis,

I am writing to appeal the decision of disciplinary action, a Five (5) day suspension ordered by Fire Chief Leonardo "Lenny" Perez on April 22, 2021 and request a full hearing as required under the TexasLocal Government Code.

The grounds for the appeal include but are not limited to the following:

- 1) Adalia Pedraza turnout boot was damaged and not safe to climb or perform her physical assessment test.

Carlos Marquez had signed his Personnel Action Form more than a month prior to his probationary year being over stating he was a full civil servant fulfilling requirements.
- 2) Chief Jacob Salinas approached me and stated there might be too many applicants the day of physical assessment, that we may need a second day. Civil Service Director approached me during the entrance exam and asked if it was possible to test about 30 applicants in one (1) day. With the concern of having too many people test in one (1) day, why would we test our probationary Firefighters.
- 3) No orders were given other than Chief Salinas having a short conversation about the agility test in the hallway. He stated, "you might consider testing the probationary Firefighters when we test the applicants." Chief Salinas advised me I should have tested Adalia Pedraza with her high-tech uniform boots. This was after her new boots were assigned and physical assessment was done.
- 4) I am not the Immediate Supervisor in charge of the Suppression Division. The Suppression Deputy Chief and Lieutenants were asked by me to confirm the probationary date. The Suppression Chief reports to the Assistant Chief.
- 5) The Fire Chief violated the Garrity Rights discussing this investigation with Deputy Chief, Manuel Renta. Manuel Renta advised me before my hearing that Chief Perez told him he was going to give me a 3–5-day suspension.
- 6) Physical assessment has been altered.
- 7) The department has not provided current active policies or procedures to the employees and as such any disciplinary action based on violations of policies which are not in fact adopted or discriminated is improper.
- 8) The Chief has retaliated against my client and anyone else that has questioned the poor leadership at the Pharr Fire Department which has lead to low moral and a fire department that is down to only one fully functional fire truck.

We are asking that my Client's disciplinary action be overturned and that the Fire Chief clearly identify what SOP's we are using.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Javier Peña', with a large, stylized flourish extending from the end.

Javier Peña
Attorney for Eloy Salazar

Cc: Ed Wiley
Interim City Manager
Email: ed.wylie@pharr-tx.gov

**BEFORE THE
FIRE AND POLICE CIVIL SERVICE COMMISSION
FOR THE CITY OF PHARR, TEXAS**

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**In the Matter of
the Appeal of**

**Eloy Salazar,
Grievant**

and

**City of Pharr, Texas,
Respondent**

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Appeal Filed 4/30/2021

**ORDER GRANTING CITY OF PHARR, TEXAS' MOTION TO DISMISS APPEAL
FOR LACK OF SUBJECT MATTER JURISDICTION**

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On this day came to be heard the City of Pharr's Motion to Dismiss appeal for lack of subject matter jurisdiction, the Notice of Appeal filed by Grievant Eloy Salazar on April 30, 2021. After consideration of the Motion, the exhibits and arguments presented, and the applicable legal standards, the City of Pharr Civil Service Commission finds that the Motion to Dismiss filed by the City of Pharr has merit and should be in all things GRANTED.

It is therefore Ordered that the City of Pharr's Motion to Dismiss appeal for lack of subject matter jurisdiction is hereby GRANTED and that the Notice of Appeal filed by Grievant Eloy Salazar is hereby DISMISSED WITH PREJUDICE.

SIGNED on the _____ day of _____, 2021.

City of Pharr Civil Service Commission

**BEFORE THE FIRE AND POLICE CIVIL SERVICE
COMMISSION FOR THE CITY OF PHARR, TEXAS**

IN THE MATTER OF THE APPEAL OF

ELOY SALAZAR,

Grievant

and

CITY OF PHARR, TEXAS

Respondent

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APPEAL FILED 4/30/2021

**RESPONSE TO CITY OF PHARR'S MOTION TO DISMISS APPEAL FOR LACK OF
SUBJECT MATTER JURISDICTION**

Now Comes the Grievance, Eloy Salazar, and file this response to City of Pharr's Motion to Dismiss for Lack of Subject Matter Jurisdiction, for the reasons below.

I .

ARGUMENT

They City's sole basis for requesting a dismissal is the claim that the Grievant failed to list one of the required statements contained in Tex. Loc. Gov't Code Ann. § 143.010 (b). The notice of appeal listed 7 denials of truth of facts which were the basis for the suspension. Such denials are as follows:

- 1) Adalia Pedraza turnout boot was damaged and not safe to climb or perform her physical assessment test.

Carlos Marquez had signed his Personnel Action Form more than a month prior to his probationary year being over stating he was a full civil servant fulfilling requirements.

- 2) Chief Jacob Salinas approached me and stated there might be too many applicants the day of physical assessment, that we may need a second day. Civil Service Director approached me during the entrance exam and asked if it was possible to test about 30 applicants in one

(1) day. With the concern of having too many people test in one (1) day, why would we test our probationary Firefighters.

- 3) No orders were given other than Chief Salinas having a short conversation about the agility test in the hallway. He stated, “you might consider testing the probationary Firefighters when we test the applicants.” Chief Salinas advised me I should have tested Adalia Pedraza with her high-tech uniform boots. This was after her new boots were assigned and physical assessment was done.
- 4) I am not the Immediate Supervisor in charge of the Suppression Division. The Suppression Deputy Chief and Lieutenants were asked by me to confirm the probationary date. The Suppression Chief reports to the Assistant Chief.
- 5) The Fire Chief violated the Garrity Rights discussing this investigation with Deputy Chief, Manuel Renta. advised me before my hearing that Chief Perez told him he was going to give me a 3–5-day suspension.
- 6) Physical assessment has been altered.
- 7) The department has not provided current active policies or procedures to the employees and as such any disciplinary action based on violations of policies which are not in fact adopted or discriminated is improper.

Each of these statements are denials of the truth of the alleged facts which were the basis of the City’s grounds for the suspension. The Notice of Appeal also clearly stated that the appeal was being requested. The Texas Local government code has been satisfied and in case the City needs issues to be spelled out in more clear terms and considering today is the 10th day from the

date of the suspension, the above seven statements are **denials of the truth** of the facts the City used to wrongfully suspend my client.

II.

CONCLUSION

The City's Motion to Dismiss for Lack of Subject Matter Jurisdiction should be denied since Tex. Loc. Gov't Code Ann. § 143.010 (b) has been complied with. We request that a date for the hearing on the appeal be set at the earliest date available so that the grievance my clear his name and record.

Respectfully submitted.

/s/ Javier Pena

Javier Pena

The Pena Law Firm PLLC

203 South 10th Street

Edinburg, Texas 78539

Phone: (956)3830751

Fax: (956)3835980

Email: office@penalawfirm.com

State Bar No. 24005092

Federal ID No. 1734609

CERTIFICATE OF SERVICE

I hereby certify that on May 6th, 2021 a true and correct copy of the foregoing document was served on all counsel of record in accordance with the Texas Rules of Civil Procedure.

Joselin Jimenez
Email: jjimenez@rampagelaw.com

Ed Wiley
Interim City Manager
Email: ed.wylie@pharr-tx.gov

Anali Alanis
Email: anali.alanis@pharr-tx.gov

John Michael Hayward
jmhayward@rampagelaw.com

Veronica Duron
Email: vduron@rampagelaw.com

/s/ Javier Pena

Javier Pena

The Pena Law Firm PLLC

203 South 10th Street

Edinburg, Texas 78539

Phone: (956)3830751

Fax: (956)3835980

Email: office@penalawfirm.com

THE PEÑA LAW FIRM

A Professional Limited Liability Company

• Javier Peña
• Francisco I. Peña M.D., J.D.
of counsel

203 S. 10th Street, Edinburg, Texas, 78539 • 956-383-0751 • 956-383-5980 (fax)

April 30, 2021

FROM: Eloy Salazar, Deputy Chief
TO: Civil Service Director Anali Alanis

RE: Appeal of the Notice and Order of Disciplinary Suspension of Five (5) days and Notice of Appellate Rights

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- 3) No orders were given other than Chief Salinas having a short conversation about the agility test in the hallway. He stated, “you might consider testing the probationary Firefighters when we test the applicants.” Chief Salinas advised me I should have tested Adalia Pedraza with her high-tech uniform boots. This was after her new boots were assigned and physical assessment was done.
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- 6) Physical assessment has been altered.
- 7) The department has not provided current active policies or procedures to the employees and as such any disciplinary action based on violations of policies which are not in fact adopted or discriminated is improper.
- 8) The Chief has retaliated against my client and anyone else that has questioned the poor leadership at the Pharr Fire Department which has lead to low moral and a fire department that is down to only one fully functional fire truck.

We are asking that my Client's disciplinary action be overturned and that the Fire Chief clearly identify what SOP's we are using.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Javier Peña', with a large, stylized flourish extending to the right.

Javier Peña
Attorney for Eloy Salazar

Cc: Ed Wiley
Interim City Manager
Email: ed.wylie@pharr-tx.gov



AGENDA MEMORANDUM



BOARD: Civil Service Commission

AGENDA ITEM #: 3.B.

DATE SUBMITTED: May 14, 2021

MEETING DATE: May 18, 2021

FROM: Imelda Barrera, Assistant City Clerk

DEPARTMENT: HR

DIRECTOR: Anali Alanis

Agenda Item: Consultation with Civil Service Commission legal counsel, pursuant to Section 551.071, Texas Government code, to provide advice and counsel in connection with the Civil Service Commissions' duties, obligations, privileges under Chapter 143, Texas Gov't Code and the rules and regulations adopted thereunder.

Classification: Regular

(* If closed session, City Attorney must review and approve.)

Issue:

Fiscal Consideration:

Staff Recommendation:

Alternatives:

Exclude Material from Public Packet? No

Reason:

ROUTING:

Imelda Barrera
Anali Alanis

Created/Initiated - 5/14/2021
Final Approval - 5/14/2021