



POLICE DEPARTMENT

October 29, 2021

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2020-22054
Police Officer Richard Moore	:	
Tax Registry No. 947811	:	
61 Precinct	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Sharon Cheren, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Richard Moore, while on-duty and assigned to the 61st Precinct, on or about December 9, 2018, did fail to provide Complainant¹ with a Right to Know Act business card.

P.G. 203-09

PUBLIC CONTACT – GENERAL
GENERAL REGULATIONS

2. Said Police Officer Richard Moore, while on-duty and assigned to the 61st Precinct, on or about December 9, 2018, did improperly use his Body Worn Camera, to wit: said Police Officer did turn said Body Worn Camera off prior to the conclusion of the police action said Police Officer was involved in.

P.G. 212-123

USE OF BODY-WORN CAMERAS
COMMAND OPERATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on September 24, 2021. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Gregory Finch and Police Officer Thomas Hionas as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Guilty of the charged misconduct; I further recommend a penalty of four vacation days and retraining.

ANALYSIS

The following is a summary of the facts which are not in dispute.

On December 9, 2018, at approximately 1835 hours, Respondent and Police Officer Thomas Hionas responded to a 911 call which directed them to Complainant's residence² in the 61st Precinct. Upon their arrival, they had a conversation with Complainant, who had made the

¹ The identity of Complainant is known to the Tribunal, but that pseudonym will refer to him/her in order to protect his/her privacy.

² The address of the Complainant's residence is known to the Tribunal but will be referred to by that pseudonym to protect the Complainant's privacy.

emergency call. Complainant spoke to the officers from a balcony and never left his/her residence. The police officers' Body Worn Cameras (BWC) captured portions of their interaction with Complainant in video recordings.

After their initial encounter with Complainant, both police officers left the scene. Still, they were called back there approximately 30 minutes later after another call was made to 911 requesting assistance for a suspected emotionally disturbed person. When they returned, they interviewed two individuals who identified themselves as Complainant's sister and niece. Respondent and Hionas prepared a Domestic Incident Report, then waited for the Patrol Supervisor to respond. When the Patrol Supervisor arrived, she decided to request assistance from an Emergency Services Unit before attempting to make contact with Complainant. While awaiting the arrival of an ESU team, the Patrol Supervisor decided to enter Complainant's residence with Respondent, Hionas and her operator. The four officers entered the residence and looked for Complainant but were unable to locate him/her. ESU eventually found Complainant in a neighbor's apartment; he/she was transported to a hospital for evaluation.

The following is a summary of the relevant trial evidence.

The Department offered Exhibits 1A, 1B, 2, 3A, and 3B in evidence.

Body Worn Camera Recordings

1. Police Officer Hionas BWC (Department Exhibit 2)

Department Exhibit 2 is a 6:13 minute video recording captured by Police Officer Thomas Hionas' BWC. The recording runs from 18:35:21 to 18:41:34 hours. Respondent's Exhibit A is a transcription of the recording.

When Respondent and Police Officer Hionas responded to the 911 call directing them to that location, Complainant had claimed that two of her relatives had driven to his/her home,

threatened him/her and his/her mother, and that one of the relatives had a firearm (Dept. Ex. 2; Resp. Ex. A, p. 1). He/she interacted with both officers from the third-floor balcony of a three-family home while Respondent and Hionas stood on the outdoor stairs. Complainant explained, "They just came by, threatened me, threatened my mother, who lives on the first floor, they threatened me with elder abuse, I'm a physician's assistant, so therefore it was against my license and [unintelligible]. This is for the FBI and CIA, and my ex-[spouse is] an undercover narc. Your precinct, and every other precinct, has not ever helped me" (*Id.*). When Hionas replied, "We're trying to help you now," Complainant replied, "Honestly, you've never helped me. Your CO never helped me. I'm not coming down" (*Id.*).

When Hionas asked Complainant if they could come up to her apartment, he/she replied, "Nope. Unless you've got a warrant, you ain't coming up here at all." Hionas acknowledged his/her right to refuse entry to his/her home and then asked Complainant if he/she had taken any medication, to which he/she replied, "No sir. I don't drink, I don't smoke, I don't do [unintelligible]" (Dept. Ex. 2; Resp. Ex. A, p.1).

Respondent and Hionas then began walking down the stairs, and Respondent said, "Have a good day, [redacted]." Complainant responded, "You too. I want a Sergeant and a Patrol Officer." Respondent responded to Complainant, saying, "You don't want to talk to us, so." Complainant replied, "That's okay, I'll call IAB right now," to which Respondent said, "Yeah, go ahead. And tell them you didn't want to come down." (*Id.*).

At that point, Complainant asked both police officers for their business cards, saying, "Can you give me your cards and leave them on the front door here." Hionas spoke with an EMT who had responded to the location, saying, "He/she's probably – I think he/she's the EDP. I don't know if – he/she's very uncooperative, he/she's saying that there were two people here,

he/she has mentioned that one of them has a firearm and left.” Complainant then said, “Leave your card at my doorstep, or you’re gonna be reported to IAB” (*Id.*). When Hionas attempted to verbally provide his name and shield number, Complainant again demanded, “Leave your card here.” Hionas again recited his name and shield number, but Complainant replied, “Not good enough, I need to write it down.”

Hionas, in response to Complainant’s request for business cards, told Respondent, “I don’t have to give him/her a card, it’s not a stop” and “They’re for stops only” (Dept. Ex. 2; Rep. Ex. A, p. 2). After Hionas changed his mind and decided to leave a business card, Respondent told him: “You’re not leaving a card, don’t leave a card,” “Don’t leave a card. He/she’s an EDP; you’re going to leave a card with an EDP³?” and “You don’t even know if he/she’s an EDP. We’re thinking that he/she is, but that’s it” (*Id.*).

Complainant continued berating Respondent, using profanity, and threatening to contact IAB and CCRB. After Hionas left his business card in Complainant’s door, he and Respondent departed the scene.

2. Respondent’s BWC (Department Exhibit 3A)

Department Exhibit 3A is a 10:34 minute video recording captured by Respondent’s BWC. The recording runs from 19:14:12 to 19:25:16 hours.

The relevant portion of the recording begins with Hionas stepping from the drivers’ seat of his vehicle and walking toward the rear. Respondent, who is off-camera, removes a Plexiglas shield from the cargo area. Respondent and Hionas walk over to two women who step from their car to speak to the officers. The women, who identify themselves as Complainant’s sister and niece, state, “She’s crazy” and “off her rocker” (referring to Complainant). Complainant’s sister

³ I take judicial notice that the term “EDP” is an acronym for Emotionally Disturbed Person.

explained that Complainant had sent numerous text messages to her, which she felt were harassing, and that she “was definitely drinking or doing something.” She gave Respondent several examples of bizarre behavior, which she attributed to Complainant, and stated that she wanted an order of protection. Respondent explained that she would have to complete a Domestic Incident Report (DIR) and make an application in Family Court. As the officers assist the women in preparing the DIR, the recording stops.

3. Respondent's BWC (Department Exhibit 3B)

Department Exhibit 3B is a 13:36 minute video recording captured by Respondent's BWC. The recording runs from 20:27:29 to 20:41:05 hours.

This recording begins as Respondent, Hionas, the Patrol Supervisor, and her operator are inside Complainant's home, staging on a stairway before going upstairs to look for him/her. The recording shows four officers walking through the residence, illuminating rooms with flashlights and calling for Complainant. After a search of the residence, they determine that Complainant is not present.

Complainant's Statement

CCRB Investigator Gregory Finch interviewed Complainant on December 19, 2018; her recorded statement and the transcript of that recording were entered into evidence as Department Exhibits 1A and 1B.

In the relevant portion of his/her statement⁴, Complainant described an exchange of text messages between his/her sister and niece regarding an automobile insurance claim. The discussion devolved into an argument involving personal attacks upon him/her. While the

⁴ In Complainant's statement, he/she alleges that he/she is a survivor of domestic violence. In connection with that assertion, Complainant made several unverified accusations against family members. In addition, Complainant revealed information about his/her medical history. For all these reasons, those portions of Complainant's statement are not summarized in this memorandum but are available for the Police Commissioner's review.

argument was ongoing, Complainant, who was on a third-floor balcony, saw police vehicles arriving at his/her home. He/she referred to the identification number of the police vehicle that stopped in front of the residence and Police Officer Hionas' name and shield number.

Complainant told investigators that she obtained Hionas' information from a business card he left on the ground at his/her request. He/she claimed that when she asked Respondent to leave his card, he "threw his hands up in the air and blew [him/her] off" (Dept. Ex. 1B, at 6).

Complainant then told investigators that Respondent used gloves and burglars tools to enter [his/her] home⁵. He/she claimed that he/she asked Respondent why he "was breaking and entering" and concluded that "he was gonna not just burglarize my home, but robbing [sic] 'cause I'm inside" (*Id.* at 6-7). Complainant also told investigators that he/she photographed Respondent as he entered his/her home⁶ (*Id.* at 7).

Complainant acknowledged that he/she called 911 and told the operator that the text messaging between he/she and her family members was becoming volatile and threatening; Complainant asserted that she knew there was a weapon in his/her mother's apartment on the first floor and that his/her sister might use it to shoot Complainant.⁷ (*Id.* at 17). Complainant explained that he/she left the apartment by jumping onto a neighbor's balcony (Dept. Ex. 1B at 19-20).

Testimonial Evidence

Investigator Gregory Finch testified remotely that after taking a statement from Complainant on December 19, 2018, he requested BWC video from Respondent and Police Officer Hionas (T. 27-29, 33-36). He also agreed on cross-examination that Complainant made

⁵ I note that the Department did not charge Respondent with unlawful entry.

⁶ The Department presented no evidence of the photographs.

⁷ The Department offered no evidence of a 911 call by Complainant.

nine CCRB complainants against other police officers before the complaint concerning Respondent (T. 62).

Police Officer Thomas Hionas testified that he was on patrol on December 9, 2018, at approximately 1835 hours, when he and Respondent responded to a 911 call regarding a firearm at Complainant's residence (T. 84-85, 87). Upon their arrival, they attempted to meet with Complainant by ringing the doorbell; Complainant did not respond but appeared on a third-floor balcony (T. 88). Hionas testified that his BWC was on during this encounter (*Id.*).

As Respondent and Hionas were standing on the landing by Complainant's door, he/she asked them for their business cards; Hionas recalled him/her asking several times (T. 89-90, 107). He and Respondent had a discussion, the details of which he did not recall, before Hionas left his business card stuck between the front door frame and the door (T. 91, 109). He and Respondent then departed from the location (T. 95).

Hionas and Respondent returned to Complainant's residence a second time after receiving another 911 call. When they returned to the location, they had a discussion with Complainant's sister and niece. Hionas testified that after their discussion, he completed a Domestic Incident Report (*Id.*).

Hionas and Respondent asked for the Patrol Supervisor, Sergeant Figueroa, to respond (T. 97). Once Sergeant Figueroa arrived and was briefed by the two officers, they attempted to speak with Complainant (T. 98). Hionas later learned that Complainant had been drinking, was intoxicated, and might be a danger to them (T. 96, 107).

Hionas testified that Complainant came to a window and eventually threw an object from it; she was aggressive, loud, and irate (T. 98). Sergeant Figueroa then determined that

Complainant needed medical attention and directed one of the police officers to contact Emergency Services (ESU) to enter the premises (*Id.* 101, 104).

Hionas testified that after he prepared the Domestic Incident Report and waited for the Patrol Supervisor, he turned off his BWC, believing the investigation had concluded; he did not turn it on again until he and the other officers were inside Complainant's residence (T. 100-105, 112-113).

Respondent testified that on December 9, 2018, he and Police Officer Hionas responded to Complainant's home in response to a radio run concerning a firearm (T. 123). Respondent recalled that he activated his BWC as he and Hionas knocked on the front door to the premises; they received no answer but a person, later identified as Complainant, came out onto a balcony and began speaking to them (T. 124).

According to Respondent, Complainant was not paying attention to him as they attempted to elicit his/her complaint and essentially refused to cooperate with them; instead, he/she was interested in obtaining their names (T. 126-127). When Respondent asked Complainant if they could come inside, he/she responded, "No, not unless you get a warrant" (*Id.*). He then asked if he/she would come downstairs; Complainant replied, "No" (*Id.*).

Respondent acknowledged that during the encounter, Complainant asked him for his business card. He testified that based upon his training, he believed the cards were reserved for situations where he conducted a stop or a frisk, conducted a search of a residence, or stopped citizens at a checkpoint (T. 127-128). While he conceded that he had business cards in his bag, he told Hionas that he did not think the situation fit the criteria outlined in the Patrol Guide because Complainant never actually met with them (T. 129-130, 145-146). While he believed

that he could give a business card to anyone he wanted, Respondent did not believe it was required in that situation (T. 130, 147, 158-160).

Respondent acknowledged turning off his BWC after his first encounter with Complainant, which he designated a "91-L," uncooperative (T. 131, 145). Approximately 30 minutes later, he and Hionas were sent back to Complainant's residence, this time on an emotionally disturbed person call (T. 131-132). When they returned to Complainant's residence, they met Complainant's sister and niece, seated in a car outside the residence (T. 132).

Respondent acknowledged activating his BWC when he arrived on the scene for the second time (T. 132-133). When Respondent interviewed the two women, they told him that they were scared and wanted to obtain an order of protection against Complainant (T. 133). Respondent further acknowledged that he removed a Plexiglas shield from the trunk of his car upon his return to Complainant's residence, as captured on Department Exhibit 3A (T. 133-134).

Respondent and Hionas prepared a Domestic Incident Report for the two women; when they finished doing so, Respondent deactivated his BWC because he "thought the investigation was over and we were just waiting" (T. 136, 151, 155-156). Respondent also testified that he deactivated his BWC to preserve its battery life (T. 148, 152, 154-155). He testified that his understanding was that "once you're done with getting all the information that you need, you could deactivate it" (*Id.*). Respondent explained that he and Hionas had called for the Patrol Supervisor, Sergeant Figueroa, to respond to the location (T. 137). When she arrived, Respondent and Hionas briefed her, leading her to direct them to wait in their cars while she called for ESU to assist in entering the residence (T. 138-139).

After waiting for ESU for a time, Sergeant Figueroa decided to enter Complainant's residence immediately; according to Respondent, the officers found the door unlocked and

entered the premises before waiting by a stairway (T. 140-141). At that point, Respondent turned his BWC back on (T. 141, 161-162). Respondent testified that he saw that “none of the body-worn cameras were flipped up,” he realized that none of the four officers had their BWC activated (T. 162).

Respondent acknowledged that he recognized his BWC recording in Department Exhibit 3B (*Id.*). While Respondent and the other officers could not locate Complainant, ESU found him/her on a neighbor’s balcony (T. 142). When ESU encountered him/her, he/she was “belligerent. She was kicking at us, and ESU had to drag her out of the neighbor’s apartment” (T. 143). Complainant was then taken to a hospital (*Id.*).

I find Gregory Finch, Police Officer Hionas, and Respondent to be credible witnesses. The testimony each provided was internally and externally consistent, as well as corroborated by Body Worn Camera evidence.

I make no findings regarding Complainant’s credibility since Respondent admitted that he did not provide him/her a business card.

Specification 1: Failure to Provide Right to Know Act Business Card

I find that the Department Advocate has met her burden of proof by a preponderance of the relevant, credible evidence that Respondent wrongfully failed to provide Complainant a Right to Know Business card.

Patrol Guide procedure 203-09 (10/19/18) requires uniformed members of service to “offer a business card, as appropriate, to members of the public upon conclusion of certain law enforcement activities” (P.G. 203-09). These activities are:

- a. Noncustodial questioning of individuals suspected of criminal activity (**Level 2 Encounter**)

- b. Stop where an officer has an individualized, reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime and where a reasonable person would not feel free to end the encounter (**Level 3 Encounter**)
- c. Frisk (**Level 3 Encounter**)
- d. Search of persons or property, including vehicles
- e. Roadblock or checkpoint stops, including checkpoints related to enforcement of Article 31 of the Vehicle and Traffic Law (Alcohol and Drug-Related Offenses), but not including planned security checks of vehicles at sensitive locations or street closures for public events or emergencies
- f. Home search
- g. Assigned Detective Only: First in-person questioning of victims and/or witnesses to a crime.

(*Id.*). UMOS are directed to offer a pre-printed RIGHT TO KNOW BUSINESS CARD at the conclusion of the law enforcement activities listed above, “unless providing this information would impair a criminal investigation, or exigent circumstances are present (*i.e.*, physical resistance, flight, imminent danger of physical injury or damage to property, or other factors make such procedure impractical)” (*Id.*).

“Uniformed members of service may offer business cards, as appropriate, and at their discretion, in situations that fall outside of the defined law enforcement activities. In addition, members are also to provide business cards, as appropriate, at the request of members of the public” (P.G. 203-09).

Based upon the evidence in the record, particularly the BWC footage in Department Exhibit 2 and the transcript of the recording in Respondent’s Exhibit A, I find by a preponderance of the evidence that Respondent did not provide a business card to Complainant because he believed it was inappropriate to leave such a card with a person he believed was emotionally disturbed. While Respondent is not an expert in diagnosing mental illness, and neither party offered evidence to establish Complainant’s emotional state on December 9, 2018,

there is sufficient evidence to support a layperson's surmise that Complainant may have had some emotional difficulties.

Even if Complainant were mentally ill, that fact alone would not exempt Respondent from the requirement to provide him/her with a business card upon his/her request, "as appropriate." Since that term is employed several times within the procedure but is never defined, it is left to this Tribunal to discern what it means in this context.

I take judicial notice that the Right to Know Act took effect on October 19, 2018. As described on the Civilian Complaint Review Board webpage, the relevant portion of the Act:

"outlines New York City Police Department (NYPD) officers' obligation to identify themselves, including by providing their name, rank, command, and shield number to civilians at the beginning of certain interactions. The law also requires officers to have business cards that contain this information. These business cards direct civilians to where they can comment or complain about an encounter with an officer and where they may request any body-worn camera footage of their interaction. Under the Right to Know Act, civilians may always ask an officer for this business card. Still, officers are only required to offer the card in certain circumstances, such as during a frisk, searches of your person, property, vehicle, or home, or at sobriety checkpoints."

(<https://www1.nyc.gov/site/ccrb/complaints/right-to-know-act.page>).

A fair reading of the procedure reasonably suggests that its purpose is to direct UMOS to facilitate the public's ability to seek redress for police interactions that interfere with their liberty by providing sufficient information to identify the police officer(s) involved. These interactions comprise the portion of the procedure where the UMOS must offer a business card, regardless of whether the citizen asks for one. The scenario in this case does not fit into any of the seven categories outlined in the procedure where the offer of a business card is mandatory. The exceptions to the mandatory offer requirement, outlined in the procedure, make no mention of citizens who appear to be mentally ill; thus, there is no explicit exclusion of mentally ill people from the protection of the Act.

There is also no dispute that Complainant asked for Respondent's business card several times during their initial encounter. According to the procedure, UMOS "are also to provide, business cards . . . at the request of members of the public," but that apparent imperative is modified by the phrase, "as appropriate" (P.G. 203-09 *Additional Data*). According to the procedure, the cards must contain the UMOS name, rank, shield number, and command; either the command telephone number or the UMOS Department cellphone number are sufficient (P.G. 203-09). Except for the telephone numbers, this information may be ascertained by a citizen merely by reading the UMOS' nameplate, shield, and collar brass. An interested party may obtain the command telephone number by conducting a simple internet search (<https://www1.nyc.gov/site/nypd/bureaus/patrol/find-your-precinct.page>).

Since the procedure does not define what "as appropriate" means in this context, the Tribunal will construe the term broadly to mean a rational reason; that, of course, does not mean a reason which was arbitrary or a reason based upon an improper consideration. For example, a UMOS could not refuse a request for a business card because the request was made: (1) on a particular day of the week; (2) by a person who spoke accented English; (3) by a person wearing distinctively religious garb; (4) based upon a person's apparent gender; (5) based upon a person's race; or (6) based upon a person's apparent disability.

I find Respondent's stated belief that he did not have to provide a business card to a person he believed was an "EDP" was not a sufficiently rational basis to deny the Complainant's request. I also find that his stated belief that he only had to provide a business card to a citizen he had stopped was incorrect and based upon a mistaken understanding of the procedure.

I have considered whether, despite the finding above, that Respondent's actions nevertheless do not constitute misconduct because they were made in good faith. In the absence

of evidence proving either a bad faith motive or ignorance of available facts which would be considered negligent, this Tribunal has sometimes found technical violations of the Patrol Guide to have been made in good faith (*see Disciplinary Case Nos. 2015-14067 & 2015-14068* [October 20, 2016]). In this case, however, while Respondent's rationale should not be considered bad faith, excluding someone from the protection of the law based upon a dubious reason certainly cannot be considered good faith.

Based upon the foregoing, I find Respondent Guilty of Specification 1.

Specification 2: Improper Use of Body Worn Camera

I find that the Department Advocate has met her burden of proof by a preponderance of the relevant, credible evidence that Respondent improperly used his Body Worn Camera by turning it off before the conclusion of the police action in which he was involved.

Patrol Guide procedure 212-123 (1/8/18) requires UMOS to activate Body Worn cameras in ten situations:

- a. Potential crime-in-progress assignments;
- b. Interior patrols of New York City Housing Authority buildings;
- c. Public interactions that escalate and become adversarial;
- d. Interactions with an emotionally disturbed person;
- e. Interactions with persons suspected of criminal activity;
- f. A search of an individual and his/her belongings, except for strip searches;
- g. Vehicle stops;
- h. Summonses, except for a Notice of Parking Violation;
- i. Use of force as defined in P.G. 221-03; and
- j. Arrests.

(P.G. 212-123). Once a BWC is activated, a UMOS must "continue recording until the investigative, enforcement, or other police action is concluded" (*Id.*).

It is undisputed that Department Exhibit 3A is a recording from Respondent's BWC, which he activated upon his return to Complainant's residence. The video recording shows

Respondent removing a Plexiglas shield from the trunk of his car. The recording runs for 10 minutes, 34 seconds before it shuts off. Department Exhibit 3B is also a recording from Respondent's BWC, but this recording commences one hour, 2 minutes, 13 seconds after the recording in Department Exhibit 3A terminates. The video shows the Patrol Supervisor, her operator, Hionas, and Respondent, standing on a landing inside the premises, preparing to ascend a staircase toward Complainant's apartment.

Respondent admitted that it was not until he had entered the premises and was waiting for a direction from the Patrol Supervisor to climb the staircase that he realized he had not reactivated his BWC. His explanation for deactivating the BWC was that he knew the Sergeant was on her way to the location, and he decided to turn it off until she arrived to preserve the battery life.

While Respondent's justification for deactivating his BWC may seem plausible on its face, the Patrol Guide procedure makes no provision for deactivation of a BWC to preserve battery life.

Based upon the foregoing, I find Respondent Guilty of Specification 2.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on July 21, 2008, has been found guilty of failing to provide a Right to Know business card and turning off his Body Worn Camera before the conclusion of a police action in which he was involved. The Department has recommended a penalty for the forfeiture of four (4) vacation days. Based upon the evidence in the record, I believe the recommended penalty is appropriate.

The Disciplinary Guidelines set forth a presumptive penalty of three days for failure to provide a business card upon request; the mitigated penalty is training. The presumptive penalty for commencing or terminating a BWC recording at an improper time is one penalty day; the mitigated penalty is training.

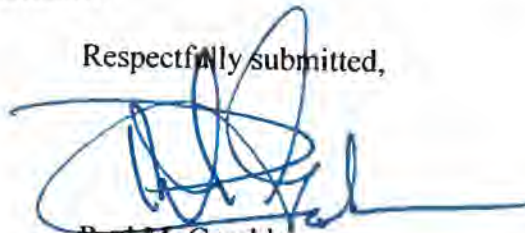
Even if some might criticize the requirement that MOS provide business cards to emotionally disturbed persons as unnecessarily indulgent, in the view of the Tribunal, such so-called indulgence is a core value of this Department. MOS encounter citizens of this city daily and meet them where they are found; regardless of their station in life or the personal challenges they face, they are all deserving of consideration. While Respondent may not have been able to address Complainant's issues to his/her satisfaction on this occasion, denial of a business card was an unwarranted denial of his/her status as a citizen. It also tended to diminish the standing of MOS in the eyes of the public.

While I have found Respondent Guilty of Specification 1, the evidence also supports a finding that his denial of Complainant's request was based on a misunderstanding of the Patrol Guide procedure. While MOS always have discretion, here it was exercised for an inappropriate reason: a disability. If he had an articulable and specific security concern, then "as appropriate" would apply.

With respect to Specification 2, Respondent's stated reason for deactivating his BWC, while logical, must yield to the Department's overriding interest in transparency and accountability. Encounters with emotionally disturbed persons are the most unpredictable scenarios MOS are likely to encounter during a tour. The ability to document how they perform their duties in such a circumstance is critical to good order and discipline. While there was no evidence of Respondent deactivating his BWC to avoid recording unauthorized activity, his decision to do so denied the chain of command the ability to review procedures and revise training, if necessary.

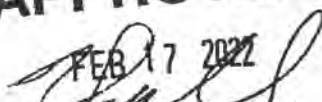
Accordingly, I recommend Respondent forfeit four vacation days; I further recommend that Respondent be retrained on Right to Know business card procedures and Body Worn Camera procedures. Given the unique circumstances of this case, I believe that training, in addition to the forfeiture of penalty days, is warranted.

Respectfully submitted,



Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED


FEB 17 2022
KERCHANT L. SEWELL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER RICHARD MOORE
TAX REGISTRY NO. 947811
DISCIPLINARY CASE NO. 2020-22054

Respondent was appointed to the Department on July 21, 2008. On his three most recent annual performance evaluations, he twice was rated as “Exceptional” for 2019 and 2020 and received an overall rating of “Exceeds Expectations” for 2018. He has been awarded two medals for Excellent Police Duty, four medals for Meritorious Police Duty, and one Commendation.

Respondent has no disciplinary record. He was placed on Level 2 Performance Monitoring from March 2012 to February 2014.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials