



POLICE DEPARTMENT

May 20, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Melissa Logan  
Tax Registry No. 940792  
Military Extended Leave Desk  
Disciplinary Case No. 2013-10728  
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The above-named member of the Department appeared before me on March 11, 2015, charged with the following:

1. Said Police Officer Melissa Logan, assigned to the 5th Precinct, on or about October 27, 2013, while off-duty, in the confines of Freeport, NY, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did steal merchandise from BJ Wholesale Club, Freeport, NY.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS – PUBLIC  
CONTACT - PROHIBITED CONDUCT

NYS Penal Law Section 155.25 – PETIT LARCENY

2. Said Police Officer Melissa Logan, assigned to the 5th Precinct, on or about October 27, 2013, while off-duty, in the confines of Freeport, NY, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer was in possession of stolen property, to wit: a package of seafood and a clothing item

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS – PUBLIC  
CONTACT - PROHIBITED CONDUCT

NYS Penal Law Section 165.40 – CRIMINAL POSSESSION OF STOLEN  
PROPERTY IN THE FIFTH DEGREE

3. Said Police Officer Melissa Logan, assigned to the 5th Precinct, on or about October 27, 2013, while off-duty, in the confines of Freeport, NY, failed to notify the NYPD Operations Unit of her apprehension for theft BJ's Wholesale Club. *(As Amended)*

P.G. 212-32, Page 1, Paragraph 1-2 – COMMANDING OPERATIONS OFF  
DUTY INCIDENTS INVOLVING  
MEMBERS OF THE SERVICE

The Department was represented by Rudolph Behrmann, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. The Department called Detective Henry Ohuche and Mr. Ramazan Batuk as witnesses. Respondent testified on her own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

FINDINGS AND ANALYSIS

The following is a summary of the relevant facts that are undisputed. On the morning of October 27, 2013, Respondent woke up at about 04:45 hours. (Tr. 96). She was scheduled to work her regular tour of 07:05 by 15:40 hours in the 5<sup>th</sup> Precinct as a Traffic Safety Officer. (Tr. 93, 95). Respondent dropped her three year-old son and five year-old daughter at her mother's house and then commuted from Long Island to Chinatown. (Tr. 96). She performed her regular tour and left work at 15:40 hours. (Id.).

After leaving the precinct, Respondent picked up her children and drove to BJ's Wholesale Club to pick up dinner for that night and get groceries. (Tr. 97). She testified that she had been a BJ's member for over a decade and normally visited the store at least once a week to do food shopping. (Id.).

Respondent walked into BJ's with her children, as she explained that they do not like to sit in the shopping cart. (Tr. 98). Her daughter, wearing a bright pink jacket, is

seen pushing the shopping cart into the store on security camera footage with Respondent and her son right behind. (Department's Exhibit ("DX") 2). Respondent selected a piece of salmon from a refrigerated shelf, intending to cook it for dinner, and placed it in the large main basket of the shopping cart. (Tr. 99-100).

At some point after selecting the salmon, Respondent took both her children to use the restroom and then continued shopping. (Tr. 101). After shopping for about forty-five minutes, she selected a self-checkout line. (Tr. 100-01). Security camera footage shows Respondent standing in front of her cart and scanning items one at a time while occasionally turning her head back toward her children who were running back and forth, climbing on the cart and chasing each other. (DX2). Respondent's daughter was no longer wearing the pink coat that she was wearing when she entered the store.

Respondent purchased about ten items, totaling approximately \$117.00. (Tr. 44, 108, 116). She then appears to scan a credit card and begins walking toward the exit. (DX3). Respondent is then seen approaching the BJ's clerk who checks customer receipts near the door. This is where the video footage concludes. Counsel stipulated that the video does not capture Respondent crossing the exit threshold. (Tr. 56-57).

Respondent testified that as she was walking toward the exit, she was stopped by Ramazan Batuk, who identified himself as "loss prevention" and told her that she had failed to pay for some items. (Tr. 38, 61, 103). She handed him her receipt and said she paid. (Tr. 38, 103). Batuk then lifted up Respondent's daughter's jacket and pointed out the salmon. (Tr. 38-39, 103-04). Respondent told Batuk that it had been a mistake and she had been distracted by her children. (Tr. 60-61, 104). Batuk directed Respondent and her children upstairs to the security office. (Tr. 60-61, 104-05).

Store employees checked Respondent's cart against her receipt and found a knit hat that was also not paid for in the top basket. (Tr. 39, 105). The Freeport Police arrived at BJ's about five minutes later. (Tr. 107). The loss prevention manager, by phone, directed Batuk not to move forward with pressing charges against Respondent. (Tr. 40).

Batuk presented Respondent with two forms to sign. (Tr. 108). Batuk testified that generally if a customer refuses to sign, the police are called. (Tr. 79). Respondent testified that he represented to her that one of the forms provided that she would not be allowed back in BJ's for two years. (Tr. 124). Batuk explained that it was a "no trespass form" that "banished" her from the store. (Tr. 41).

The two documents in evidence that Respondent and Batuk both signed do not actually contain the word "trespass" or reference returning to BJ's. One document is a "Statement of Admission," that states "I . . . took from the above [blank] without making payment, without the permission of [blank] and for my own use or disposition the following . . ." and then lists the two items and their value. (DX 1A). The second signed document is a "Release" by which Respondent releases BJ's from any claims arising out of the incident. (DX 1B). After signing the forms, Respondent was permitted to leave the store with the items she purchased. (Tr. 109).

Respondent admitted that she did not inform the Department of the incident because she had not been arrested, summonsed or put in handcuffs so she felt there was "nothing to report." (Tr. 109, 122). The Freeport Police notified the Internal Affairs Bureau ("IAB") of the incident the next morning and explained there had been no arrest. (Tr. 15, 18). Respondent was suspended later that day and remained suspended for thirty

days. (Tr. 110). During the course of the investigation. Detective Henry Ohuche conferred with the Nassau County DA's Office who informed him they weren't interested in prosecuting the case. (Tr. 20).

**Specification One: Petit Larceny**

**Specification Two: Possession of Stolen Property**

Respondent is charged with stealing merchandise from BJ's Wholesale Club and being in possession of stolen property. The Department points to Section 155.25 of the Penal Code, petit larceny, in making the charge set forth in Specification One and to Section 165.40, fifth degree possession of stolen property, in Specification Two. Section 155.25 provides that "a person is guilty of petit larceny when (s)he steals property." Stealing property is defined as wrongfully taking, obtaining or withholding property with intent to deprive another of property or to appropriate the same to oneself. N.Y. C.L.S. Penal § 155.05. As to Specification Two, a person is guilty of fifth degree criminal possession of stolen property "when he knowingly possesses stolen property, with intent to benefit himself . . . or to impede the recovery by an owner thereof." *Id.* at § 165.40.

Respondent does not dispute that she did not pay for the salmon or the hat. The case therefore turns entirely on whether the Department has proved, by a preponderance of the evidence, that Respondent intended to wrongfully take merchandise from BJ's and whether this tribunal credits Respondent's testimony that she lacked such intent.

Respondent testified, "I didn't come there to steal fish. It was just a mistake. I didn't see it. My daughter took off her coat. Sometimes when we were in the supermarket she took off her coat and threw it in the basket. I didn't see when she took off her coat, but the coat was on the top of the fish. I scanned everything that was in the basket, but I

did not see the fish because it was underneath my daughter's coat . . . I was not pushing the coat down . . . I wasn't trying to conceal the fish with the coat." As to the hat, she explained that that her daughter tried on an adult ski hat while they were shopping and Respondent had instructed her to hang it back up, only realizing once they were stopped by Batuk that her daughter had instead placed it on the top tray of the cart. (Tr. 105-06).

Mr. Batuk, who is employed by S.E.B. Security Company, was working in BJ's on October 27, 2013 as a store detective whose focus is loss prevention. (Tr. 28-29). Batuk testified that he observed Respondent select salmon and then throw store flyers/circulars on top of it. (Tr. 32-33). He explained that this got his attention to watch her and make sure she paid but admitted that sometimes people place flyers on the items because they don't want it to drip or get damaged. (Tr. 34-35). Respondent testified that she pushed the fish back towards the wall of the shopping cart on top of the coupon circulars because fish tends to leak. (Tr. 100).

Batuk did not follow Respondent through the entire store but made a point of watching her check out. (Tr. 35). He viewed Respondent's choice of utilizing the self-checkout register as "big evidence right there." (Tr. 45). He stated that at the register, Respondent "took [a] jacket from out of sight and just throw on top of it, like cover up the item" and "move[d] [the jacket] to the side." (Tr. 33, 45). He specified that it was a pink children's jacket and stated that he found it odd that Respondent did not give the jacket to her daughter. (Tr. 37). He did note that it was "hot inside" the store. (Tr. 37).

On direct examination, Batuk testified that he believed the video, although "not too clear" showed Respondent removing a jacket and throwing it on top of the fish. (Tr. 46). He testified that, "once she start put the jacket on top of the item . . . I knew she

wasn't going to pay for the item." (Tr. 70). However, he stated on cross examination that he did not see when the jacket was actually removed and put in cart. (Tr. 68).

Both Batuk and the Department point to the security camera video (DX2) to bolster the claim that Respondent was actively concealing the salmon with her daughter's coat. Having watched the video, I find that it in no way supports Batuk's account or the Department's position. The video does not provide a close-up view of Respondent and the contents of her cart are not at all discernible. Even Batuk admitted the video was "not too clear." Respondent does not make any movements on the video that reveal she was actively pushing the coat down or pushing the fish to the side as Batuk testified. If anything, the video supports Respondent's account. Her two small children are seen running back and forth around the cart. Respondent turns back toward them more than once, making it apparent that she was not able to intently focus on the items she was scanning because she was trying to corral two small children through the line.

I do not doubt that Mr. Batuk had a good faith belief that Respondent may have been trying to conceal the salmon with her daughter's coat. He has no doubt seen such things before in his seven years as a loss prevention store detective. However, I note that his testimony was not entirely consistent. He asserted on direct examination that Respondent "took [a] jacket from out of sight and just throw on top of it, like cover up the item," (Tr. 33) but testified on cross examination that he did not see when the jacket was actually removed and put in cart. (Tr. 68).

With no video evidence supporting Batuk's claim that Respondent was pushing the jacket on top of the salmon, I credit Respondent's straightforward, plausible account that she simply did not see the fish because, at some point, her young daughter removed

her coat and tossed it on top. *Compare Case No. 74459/99* (June 19, 2001) (finding Respondent not guilty of shoplifting small items where Respondent gave a "credible account" of how items mistakenly landed in her bag and where security guard's recollection had lapses as to certain important details); *Case No. 71486/96* (May 20, 1998) (finding Respondent not guilty of shoplifting from wholesale club where evidence suggested only "careless neglect" to pay for a pack of batteries he had placed in his pocket), with, *Case No. 73017/98* (May 5, 1999) (finding Respondent guilty of shoplifting from grocery store where she provided an implausible story about "pre-bagging" all of her groceries with an intent to leave them at the exit while she returned home to go her credit card); *Case No. 70169/96*, (February 29, 1996) (Respondent found guilty of stealing perfume from a department store on the strength of a videotape that showed "a calculated and rational effort to detect the presence of store security and determine if she is being watched").

As to the second item, the knit hat, I also credit Respondent's account that she did not realize her five year-old daughter had placed the hat in the top section of the basket after Respondent had told her to return it to the shelf. Such behavior is not atypical of five year-olds. Moreover, there is no allegation that the hat was in any way concealed. It is difficult to believe that Respondent, a police officer and longtime BJ's customer, would not, if she intended to leave the store without paying for the hat, make some attempt to conceal it, knowing BJ's policy is to have a store clerk check the receipt and the cart at the exit.

Finally, the Department argues that Respondent admitted to unlawful removal of the items by signing the "Statement of Admission." (DX 1A). Respondent testified that



she signed the forms without reading them because signing would allow her and her children, who were scared and crying, to leave BJ's, and because she had been told she would be arrested if she didn't sign. (Tr. 121-22).

The form states, "I, Melissa Logan . . . took from the above [blank] without making payment, without the permission of [blank] and for my own use or disposition the following . . ." and then lists the two items and their value. (DX 1A). Respondent readily admits to taking the two items from the register without paying for them, just as the form states. However, she asserts the non-payment was a mistake made by a busy mother after a long day. The form speaks to the non-payment but says nothing about unlawful removal or intent to steal or misappropriate the goods. Therefore, I do not find it to be an admission to either the petit larceny or the stolen property specifications as it does not establish that Respondent attempted to remove the items without paying knowingly or intentionally, as is required to find Respondent guilty of these charges. Further, Respondent's testimony that, under stress, she signed the form without reading it, because she believed signing it was the only way she could take her children home and avoid prosecution, is also quite plausible.

Weighing all the evidence and testimony put forth before this tribunal, I find that the Department has failed to prove, by a preponderance of the evidence, that Respondent committed an intentional theft. Accordingly, I find her not guilty of Specifications One and Two.

**Specification Three: Failure to Notify the Department**

Respondent is charged with failing to notify the Department of her apprehension for theft in BJ's.

Patrol Guide 212-32 provides: "[w]hen an off duty uniformed member of the service is at an unusual police occurrence to which the uniformed member of the service is either a participant or a witness," the member must request response of a patrol supervisor who will then take the requisite steps to ensure that IAB is notified so that a proper investigation can commence. Respondent admitted that she did not notify the Department of the incident, testifying that she believed there was nothing of note to report as she was not arrested. (Tr. 109). As a seven-year police officer at the time, Respondent should have known that any incident where she was accused of a crime, especially one where local police responded, needed to be reported to the Department.

Accordingly, I find Respondent Guilty of Specification Three.

**PENALTY**

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974).

Respondent was appointed to the Department on January 9, 2006. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department's requested penalty of dismissal is inappropriate as Respondent has been found Not Guilty of Specifications One and Two. Respondent has been found Guilty of failing to notify the Department of her apprehension in BJ's for alleged theft.

She has already served thirty (30) suspension days as a result of this incident and has no prior disciplinary history.

In similar cases, where a respondent has been found Not Guilty of shoplifting but Guilty of failure to notify the Department of an arrest for shoplifting, the typical penalty is suspension days already served. *See Case No. 74459/99 (June 19, 2001) (sentencing Respondent to thirty (30) days served on pre-trial suspension for engaging in off-duty employment while on leave and failing to notify the Department of her arrest for shoplifting at Disney World); Case No. 71486/96 (May 20, 1998) (sentencing Respondent to fifteen (15) days served on pre-trial suspension for failing to notify the Department of his arrest for shoplifting batteries at BJ's).* Here, Respondent was not arrested but merely detained for a period of time in the store security office. She has no disciplinary record and has cooperated with this investigation. I recommend that the Respondent forfeit the time, pay, and benefits during seven (7) of the thirty (30) days she already served on pretrial suspension, and that the twenty-three (23) days she served on pretrial suspension be restored to her.

**APPROVED**

JUL 27 2013  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER

Respectfully submitted,



Rosemarie Maldonado  
Deputy Commissioner Trials

**POLICE DEPARTMENT  
CITY OF NEW YORK**

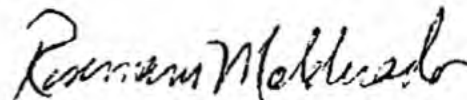
**From: Deputy Commissioner - Trials**  
**To: Police Commissioner**  
**Subject: CONFIDENTIAL MEMORANDUM**  
**POLICE OFFICER MELISSA LOGAN**  
**TAX REGISTRY NO. 940792**  
**DISCIPLINARY CASE NO. 2013-10728**

Respondent was appointed to the Department on January 9, 2006. Her last three annual evaluations were as follows: she received a 3.0 rating of "Competent" in 2013, a 4.0 rating of "Highly Competent" in 2012 and a 3.5 rating of "Highly Competent/Competent" in 2011. She has no medals.

Respondent has no prior formal disciplinary record.

In her nine years of service, [REDACTED]

For your consideration.



**Rosemarie Maldonado**  
**Deputy Commissioner – Trials**