



POLICE DEPARTMENT

September 19, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Miryam Baez
Tax Registry No. 946765
75 Precinct
Disciplinary Case No. 2011 3680

The above named member of the Department appeared before me on May 29, 2013, charged with the following:

1. Said Police Officer Miryam Baez, assigned to the 79th Precinct, while on duty on January 1, 2010, at approximately 0430 hours, while in the vicinity of 12 Albany Avenue, Kings County, while assigned to RMP #2089, having become aware that an accident occurred with said vehicle, did fail to request that the Patrol Supervisor, precinct of occurrence, respond to the scene.

P.G. 217-06, Page 1, Paragraph 3 – DEPARTMENT VEHICLE ACCIDENTS

2. Said Police Officer Miryam Baez, assigned [sic] as indicated in Specification #1, at time, date and location indicated in Specification #1, having become aware that the operator of RMP #2089, Police Officer Steven Ramirez, Tax Registry #947829, 79th Precinct, had failed to report a motor vehicle accident involving property damage, in violation of NYS Vehicle and Traffic Law Section 600 (1)(a), did fail to report said misconduct to her Commanding Officer or the Internal Affairs Bureau.

P.G. 207-21, Page 1, Paragraph 1 – ALLEGATIONS OF CORRUPTION AND
SERIOUS MISCONDUCT AGAINST
MEMBERS OF THE SERVICE

3. Said Police Officer Miryam Baez, assigned as indicated in Specification #1, at time date and location set forth in Specification #1, having become aware of a police incident, to wit: an accident involving RMP #2089, did fail to document the incident in her Activity Log.

P.G. 212-08, Page 1, Paragraph 1 ACTIVITY LOGS

The Department was represented by Paul Gallagher, Esq., Department Advocate's Office, and Respondent was represented by Stephen Worth, Esq.

Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty as charged.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant John Flynn as its sole witness.

Sergeant John Flynn

Flynn has been a member of the Department for over 19 years and was appointed to the Internal Affairs Bureau (IAB) Group 54 in August of 2009. Flynn's duties at IAB include case investigations as well as administrative functions. Flynn said Group 54 primarily investigates police shootings and force allegations.

On February 3, 2010, Flynn received an investigative assignment alleging the use of excessive force that took place in an alleyway involving police officers. The initial call out consisted of excessive force, but later in the investigation it was learned that there was also an escaped prisoner and a radio motor patrol (RMP) vehicle accident.

Flynn testified that the allegation of excessive force was unsubstantiated and that the escaped prisoner allegation was substantiated. The RMP accident was also substantiated. While investigating the allegation for the escaped prisoner, Flynn found out that there was an RMP accident along with “memo book entries not being correctly filled out or not filled out at all, again, a force allegation, and just failure to notify IAB in regards to the incident.”

The RMP accident came to Flynn’s attention through a video showing the RMP accident and also through an eyewitness located in the area of the accident. The witness stated that “they had to jump out of the way of an RMP hitting a stop sign.”

A video released on the news showed the RMP accident, Flynn said. “We went out and we found out there was security cameras at the location, and we were able to speak to the security company that was in charge of those cameras and obtain [the] video.”

The RMP accident occurred sometime on New Year’s Eve into New Year’s Day in 2010. Flynn obtained the video of the accident in February 2010. Flynn obtained the video of the accident from the security company responsible for the security cameras. He was not sure what date the video of a melee that occurred was played on the news and clarified that the video did not actually show the RMP accident.

Reviewing Department’s Exhibit (DX) 1, Flynn recognized it as a video obtained from 7 Albany Avenue, labeled “Camera No. 7” with his initials marked on it.

While the video played, Flynn explained what was happening:

The tape is at four hours and 50 minutes. The RMP is coming, making a turn onto Albany Avenue, and strikes a stop sign pole which brings it down to the ground on the sidewalk. And the RMP is up on the curb now, and it hit

and stopped by a small wrought iron fence protecting a tree.

Flynn said the RMP had its lights on. Flynn pointed out on the video the female witness who was later interviewed. This witness told him that she had to jump out of the way of the stop sign or it would have hit her. Flynn explained at 4:51 a.m. in the video, Respondent is clearly seen at the end or beginning of the alleyway/sidewalk along with the patrol supervisor, Sergeant Mack. Later in the video, Flynn pointed out Respondent "in view standing in front on the sidewalk of the alleyway....with her arm outstretched." Flynn said at 4:54 a.m. in the video, there appears to be three individuals taken from the alleyway in handcuffs.

During his investigation, Flynn was able to determine the number on the RMP that crashed was 2089 and Police Officer Ramirez was the operator and Respondent was the recorder. Flynn examined the accident history of RMP 2089. He discovered it was involved in one motor vehicle accident on March 23, 2010 and no reports were made for a motor vehicle accident on January 1, 2010. Flynn discovered that there was property damage caused by the RMP accident that occurred on January 1, 2010.

Examining DX 2, Flynn said the photograph was taken at the corner of Albany Avenue and Decatur Street on April 14, 2010. Flynn testified that the photo shows "the metal portion of a stop sign, where a stop sign was, where it meets the concrete." It also showed a small wrought iron fence that protected a tree was bent. Flynn was not sure if he or Investigator Dylan took the photo. Flynn explained where the wrought iron fence was bent in the photo, where the post for the stop sign was and where the post was snapped off in the concrete. Flynn said there was no other damage reported other than the damage he just described in DX 2.

Under New York law, Flynn stated when a driver of a vehicle gets into an accident and causes property damage, that person is supposed to remain at the scene of the accident until the police arrive to take a report. According to Flynn, the operator of RMP 2089 failed to conform to the requirements of the New York State Vehicle and Traffic Law for reporting a motor vehicle accident by failing to prepare any reports.

Flynn testified that Mack was the patrol supervisor at the time of the accident. Flynn said Mack was not notified at the time of the accident because he was responding to the melee involving a large group of people. Based on Flynn's review of the video and interviews with witnesses, both Mack and Baez were present at the same time at the scene of the accident.

From reviewing the video, Flynn stated there was no evidence showing Mack and Baez talking at the scene of the accident. Mack told Flynn that he was never notified about the accident.

During his investigation, Flynn examined Respondent's Activity Log entries from January 1, 2010 (DX 3). The entries start on December 31, 2009 and go into January 1, 2010. Flynn explained there was an entry at 4:50 a.m. where the Respondent wrote "Assigned to impact auto 2089," and she put herself down as the recorder. At 5:00 a.m., Flynn noted, there was an entry of a "10-52 dispute" at 12 Albany Avenue. Flynn said at 5:05 a.m. Respondent has an entry she was "10-84" at the dispute, meaning she arrived on the scene for the 10-85, "Need Additional Unit," that was called in at 5:20 a.m.

Flynn testified Respondent made an Activity Log entry near the end of her tour indicating the mileage on the RMP, an inspection of contraband and that there was a half

tank of gas left. Flynn explained Respondent went end of tour at 6:05 a.m. and she did not indicate in her Activity Log that she had been involved in an RMP accident.

On cross examination, Flynn agreed that during his investigation he did not look at RMP 2089 for damage. Flynn could not say whether there was damage to the RMP. Flynn acknowledged that he never looked at the vehicle and did not think anybody on his team looked at the vehicle either.

Flynn conducted the official Department interview of Respondent on March 30, 2010. While viewing the video (DX 1), Respondent indicated to Flynn that she was not aware that the pole was even knocked over. Flynn disagreed that you can not see the pole knocked down by the RMP on the video.

Flynn agreed that although there were witnesses who had to jump out of the way of the pole that was hit, he never considered filing charges against Ramirez or Respondent for endangering a civilian by operation of a motor vehicle.

When viewing the video, Flynn did not recall seeing anybody jumping out of the way of the pole. Flynn admitted the picture (DX 2) was taken around four months after the accident and the pole had been cleaned up and taken away by the time he inspected the scene. Flynn acknowledged he did not start investigating the case until over a month after the incident happened and never saw the scene as it was at time of the accident.

Flynn agreed that during his investigation, he looked at a number of videos for other officers involved in the incident. Flynn admitted the video viewed in the court room (DX 1) did not show what was going on down the alley where the melee took place. Flynn acknowledged he saw Mack and Lieutenant Porto in other videos he had reviewed. In DX 1, Flynn indicated the time cars are seen leaving the area but could not pinpoint

the exact time RMP 2089 leaves the scene. Flynn narrowed down the time frame when RMP 2089 leaves the scene. Flynn saw RMP 2089 hit the pole at 4:50 a.m. on the video; then cars are seen leaving the area at 4:56 a.m. to 4:59 a.m. Flynn estimated there was about a six to nine minute difference from when RMP 2089 arrived on the scene to when it left.

Flynn agreed that Mack is in the video a couple yards down from the RMP. Flynn questioned Mack about the case but did not ask him if he observed the RMP and the pole. Flynn admitted that when the RMP was up against the pole, Mack and Porto were on the scene.

Flynn acknowledged that Respondent had indicated during her official Department interview that she did not believe a Police Accident Report (PAR) needed to be prepared for property damage only. Respondent thought if another vehicle or person was involved then a PAR should be prepared. Flynn agreed that the damage to the fence was minimal. He believed there had to have been a great deal of force to even dent a wrought iron fence. Flynn noted the wrought iron fence was bent and agreed that the photograph (DX 2) of the damage would "speak for itself."

Flynn agreed a 10-85 is one of the most important calls that are transmitted over the radio. At times, Flynn agreed with Respondent's counsel that officers use 10-13 and 10-85 interchangeably. Flynn agreed with the description by Respondent's counsel that a 10-85 means that an officer needs assistance. Flynn admitted it is the culture of the Department when an officer needs assistance that officers respond to the scene as soon as possible.

When responding to the scene of a 10-85, Flynn agreed an officer could be subjected to discipline for failing to respond, but interjected that an officer is supposed to respond as fast as possible in a safe manner.

Flynn acknowledged Respondent was not driving the RMP. When Respondent responded to the 10-85, there was a melee going on and officers were in need of assistance. Flynn agreed there was no doubt that Respondent responded to the 10-85.

Flynn described, while viewing DX 1, the time frame from when Respondent left the scene of the accident. Flynn testified at 4:58:26 a.m. of the recording, the driver's side door to RMP 2089 opened. Flynn pointed out the driver's side of the door involved in the RMP accident as well as other marked RMPs leaving Albany Avenue onto Decatur Street. Flynn stated, "And then RMP 2089 backs off the curb and onto Decatur and leaves at 4:59:17." Flynn said at 4:59:42 a.m. of the video, RMP 2089 goes from Albany Avenue down Decatur street and then goes out of view of the camera.

Respondent's Case

Respondent testified in her own behalf.

Respondent

Respondent has been a member of the Department since July of 2008 and was assigned to the 79 Precinct after graduating from the Police Academy.

On January 1, 2010 Respondent was working and assigned a foot post. At 4:30 a.m. during the course of her tour, Respondent said her assignment was changed.

Respondent's new assignment was the recorder in RMP 2089 with Ramirez who was the operator.

During the night of the incident, Respondent had been an officer for about a year and a half. She did not have much experience being in an RMP because most of her assignments before had been foot posts.

At 4:30 a.m., Respondent said she responded to a radio run of a 10-85, which is a high priority job of an officer in need of assistance. Respondent explained Ramirez was driving and it took them five minutes to get to the location. Upon arriving, Respondent noticed a big crowd and as other officers on the scene. Respondent testified her attention was focused on the crowd. Respondent said the RMP she was in came to a stop. She did not recall hitting a post or a fence. Respondent reiterated her concentration was focused on the crowd when arriving at the scene.

At the scene, Respondent immediately exited the RMP to help officers with the crowd on the corner and the alley way, which was indicated on the video. Respondent stated she helped with crowd control which is a normal police function in a large disorderly group.

Respondent was concerned for her fellow officers who were there so she took police action to assist them. Respondent said the video (DX 1), shows a time period of nine minutes from when she arrived at the scene in the RMP and when she leaves. Respondent explained the video accurately shows everything that happened between her arrival and departure from the scene.

Respondent stated Mack was present but did not notice Porto because there was a large crowd and it was a chaotic scene. When she got back in the RMP to leave,

Respondent did not notice any damage to the post or fence and did not think there was anything to report about the RMP at the time. At the end of her tour, Respondent returned the RMP and did not notice any damage to the vehicle. Respondent agreed that had she noticed any damage she would have made an Activity Log entry. At the end of her tour, Respondent searched the RMP for contraband, noted the mileage on the vehicle and how much gas was left in the car. Respondent put all of this information in her Activity Log.

During her official Department interview, Respondent recalled being asked by Flynn whether she knew she was supposed to report an accident involving an RMP. At the time of the interview, Respondent said she thought an RMP accident involved two vehicles or a pedestrian. Respondent did not think an RMP hitting an object without causing damage was something that had to be reported.

Because she was not aware that she hit something, Respondent was not aware of any accident about which she had to make an Activity Log entry.

On cross examination, Respondent agreed that during her official Department interview, she was shown the same video that was just observed at trial. Respondent disagreed that the video shows the RMP hitting a stop sign and knocking it down. Respondent said, "It's too far. I can't see it." Respondent acknowledged that she was now aware that the RMP knocked down the stop sign, but did not notice it the evening of the incident.

Respondent disagreed that, as the recorder of RMP 2089 when it crashed, she had an opportunity to look through the windshield. Respondent insisted that when they were pulling up to the scene, she was looking at the crowd and was looking forward.

Respondent claimed that she did not see the stop sign in front of the RMP and only saw the crowd.

Following the crash, Respondent admitted she engaged in crowd control but did not initially see a melee going on between police and partygoers. Respondent agreed she saw a lot of people at the scene. Respondent acknowledged she did not see Mack engage in police action that night but said, "I saw him come out. That was it." Respondent confirmed that she knew Mack was at the scene.

Respondent did not inform Mack of the RMP accident because she was not aware she was involved in one. Respondent believed an RMP accident had to involve two vehicles or a pedestrian and did not think she had to notify a supervisor for a vehicle accident causing just property damage. Respondent admitted she is now aware that is incorrect. At the time of the accident, Respondent agreed she did not understand the Patrol Guide requirements for reporting Department vehicle accidents.

Respondent acknowledged she is now aware that the operator in a vehicle accident, regardless of whether there is human injury or property damage, has to remain at the scene of the accident until a PAR is completed.

When questioned by the Court, Respondent said part of the vehicle inspection involves a search for contraband before leaving and returning to the precinct. Respondent stated she makes an Activity Log entry each time. Respondent testified she did not investigate or look at the RMP before leaving 12 Albany Avenue.

Respondent explained she would have conducted an investigation at the scene:

If it was involved in an accident with two vehicles, that I thought, or a pedestrian, yeah, we would check and put that in the accident report. But under the circumstances I didn't know that, you know, anything was damaged at the scene.

On redirect examination, Respondent explained the reason to check for contraband is in case the officers assigned to the RMP before her had a prisoner in the back seat, the prisoner could have put something under the seat. Respondent agreed that the reason for inspecting the RMP at the end of tour is to make sure there is nothing left in the back seat that would be the officer's responsibility.

FINDINGS AND ANALYSIS

Respondent is charged with (Specification No. 1) failing to request that the patrol supervisor respond to the scene of an accident with her patrol car, (Specification No. 2) failing to report to her commanding officer or the Internal Affairs Bureau that the operator of the patrol car failed to report the motor vehicle accident, and (Specification No. 3) failing to record the accident with the patrol car in her Activity Log.

In the early morning hours of January 1, 2010, police officers from the 79 Precinct responded to a serious incident in the area of Decatur Street and Albany Avenue in Kings County. The incident involved a group of New Year's Eve partygoers whose conduct had gotten out of control. When the police responded, the partygoers fought with the officers. The fight turned into a near riot. When the melee ended, a prisoner escaped and charges were brought against other officers for what happened, and those officers have already pled guilty and received penalties for those charges. Two of those officers were also charged with failure to report the same accident involving Respondent. Because these officers were not in the RMP and but were involved in the melee, the Assistant Department Advocate (Advocate) dismissed those charges against them.

While examining video surveillance tape of the melee, the Internal Affairs Bureau discovered the accident involving Respondent's RMP. This discovery led to the instant charges.

The night of January 1, 2010, Respondent and her partner, Police Officer Ramirez, responded to the 10-85 request for an additional unit to help with the melee. Respondent was the recorder and Ramirez was the operator.

The Department's investigation found that Respondent's RMP jumped the curb and hit a stop sign, which fell on the sidewalk. The RMP also damaged a small metal fence. The video of the accident played in the courtroom showed the RMP going over the curb, stopping suddenly, a sign falling and a pedestrian running away from the car.

Respondent never denied that the accident occurred. She claimed that she was not aware of the accident because she was the recorder. She said she was focused on the serious situation before her and got out of the car immediately.

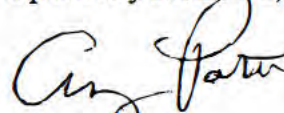
The impact from the car accident was strong enough to cause the stop sign to fall and the iron fence to be bent. As the Advocate argued, it is not credible that Respondent would not feel this impact from inside the car. Since Respondent would have had to have been aware of this accident, she should have notified her supervisor about the accident. She could have done this after the melee ended. She was also required to report her partner's failure to report the accident and to record the accident in her Activity Log. Respondent is therefore found Guilty of all three specifications.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 8, 2008. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department recommended a 10 vacation day penalty. On January 8, 2013, Respondent's partner, Ramirez, pled guilty to the same charges against Respondent for a recommended penalty of 10 days, which was approved by the Police Commissioner on March 20, 2013. *Case No. 3682/11* (March 20, 2013). Based on the disposition for Ramirez, it is recommended that Respondent forfeit 10 vacation days.

Respectfully submitted,



Amy J. Porter

Assistant Deputy Commissioner ■ Trials

APPROVED

OCT 01 2013
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MIRIAM BAEZ
TAX REGISTRY NO. 946765
DISCIPLINARY CASE NO. 2011-3680

Respondent received an overall rating of 3 "Competent" on her annual performance evaluations in 2012 and 2011 and a rating of 3.5 "Competent/Highly Competent" in 2010. [REDACTED]

Respondent has no prior disciplinary record.

For your consideration.



Amy J. Porter
Assistant Deputy Commissioner - Trials