



POLICE DEPARTMENT CITY OF NEW YORK

December 22, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Frank Alverio
Tax Registry No. 921914
Patrol Borough Bronx
Disciplinary Case No. 2015-13580

Charges and Specifications:

1. Police Officer Frank Alverio, while on-duty and assigned to Patrol Borough Bronx Community Affairs Unit, on or about April 16, 2014, failed to safeguard his firearm in that he failed to follow proper procedures for handling and cleaning said firearm resulting in the discharge of one (1) round. *(As amended)*
P.G. 204-08, Page 2, Paragraph 7 – FIREARMS-GENERAL
REGULATIONS
2. Police Officer Frank Alverio, while on-duty and assigned to Patrol Borough Bronx Community Affairs Unit, on or about April 16, 2014, failed and neglected to utilize the available firearms safety station located in the 48th Precinct while attempting to unload his firearm. *(As amended)*
P.G. 204-08, Page 3, Paragraph 17 – FIREARMS-GENERAL
REGULATIONS

Appearances:

For Department Advocate's Office: Jamie Moran, Esq.
For Respondent: Michael Martinez, Esq.

Date of Hearing:

November 9, 2015

Decision:

Guilty

Trial Commissioner:

ADCT Paul M. Gamble, Sr.

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 9, 2015. Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A Stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

The facts in this case are not in dispute and Respondent readily admits to the charged misconduct. On April 16, 2014, Respondent was on-duty in the Patrol Borough Bronx Community Affairs Unit, located on the second floor of the 48th Precinct. At approximately 1545 hours, Respondent was sitting at a desk showing another member of the service, Detective Carrington, how to properly clean her firearms (Tr. 13-14; DX 2). There were five other members of service present in that office at that time (Tr. 36). Once Respondent had finished with Detective Carrington's firearms, he decided to clean his own off-duty Glock 26 firearm (Tr. 15, 22, 34). Respondent explained that he usually cleans his firearms at home, though he was aware of the Department requirement to use an unloading station when loading/unloading firearms in Department facilities (Tr. 20). While seated at his desk, with the firearm pointed down, Respondent removed that magazine, racked the slide once and at that point the firearm discharged (Tr. 22). The discharged round went through a portion of his left hand and he was quickly taken to the hospital (Tr. 23-24). As a result of the damage caused by the gunshot wound,

Respondent elected to have his left pinky finger surgically amputated (Tr. 25-26).

Respondent recovered at home for approximately one month. Thereafter, he was placed on limited duty for about two months before being restored to full duty approximately three months after the incident (Tr. 28, 30).

A subsequent inspection of Respondent's firearm by the Department's Firearms and Tactics Section found no pistol modifications or defects and determined that the firearm was capable of functioning within both factory and Department specifications (DX 1). Respondent testified that to this day, he does not know what caused the accidental discharge of his firearm (Tr. 32).

PENALTY RECOMMENDATIONS

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 August 31, 1998. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

As Respondent has pled guilty to the charges in this case, the only question to be addressed here is whether the forfeiture of 20 vacation days is an appropriate penalty. Respondent's attorney argued that Respondent's penalty should be mitigated by the fact that he has "suffered greatly" as a result of this incident in that he lost one of his fingers (Tr. 51). Respondent also argued that he did everything he could to get back to work as quickly as possible, including electing to have his finger amputated, rather than enduring a number of surgeries that would have reconstructed his finger, but significantly lengthened his recovery time (Tr. 25-26). Respondent's attorney added that this incident represents an aberration for an individual who has many years of experience with

firearms outside of his duties as a police officer and who, by all measures, takes meticulous care to ensure the proper working of his firearms (Tr. 15, 50).

There are many factors to be considered in determining if a penalty should be mitigated. These include the nature and seriousness of the offense; the notice provided to Respondent that the behavior was improper; Respondent's past work record, which includes the length of service and past performance on the job; the consistency of the penalty imposed for similar misconduct; and Respondent's demonstration of an understanding of the wrongfulness of his or her actions and ability to be rehabilitated.

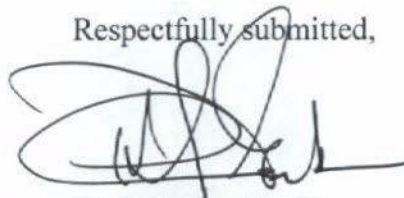
In this case, the misconduct charged is undeniably serious. Moreover there were other members of service present at the time and it was fortunate that no one else was injured. It is also an aggravating factor that Respondent knew that there was an unloading station in the 48th Precinct, but did not think to use it.

Respondent, however, suffered a serious injury as a result of the accidental discharge of his firearm. Respondent is a seventeen-year member of this Department with consistently high performance evaluations. Despite the amputation of his finger, Respondent is fully capable of performing his duties as a police officer. His desire to return to duty as quickly as possible is indicative of his dedication to his job and this Department.

Accordingly, I find the forfeiture of 17 vacation days sufficient to address Respondent's misconduct. *See Case No. 2015-13779* (October 14, 2015) (negotiated penalty of ten vacation days was appropriate where a five-year police officer with no prior disciplinary history failed to properly safeguard his firearm while cleaning it at his residence and accidentally shot one round through his hand) and *Case No. 2015-13495*


(July 23, 2015) (ten vacation days and a letter of instruction was appropriate where a two-year police officer with no prior disciplinary history failed to properly safeguard his off-duty firearm while cleaning it resulting in the discharge of one round, which went through another house).

Respectfully submitted,



Paul M. Gamble, Sr.
Assistant Deputy Commissioner Trials

APPROVED

JAN 28 2018

WILLIAM J. BRATTON
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER FRANK ALVERIO
TAX REGISTRY NO. 921914
DISCIPLINARY CASE NO. 2015-13580

Respondent was appointed to the Department on August 31, 1998. He received an overall rating of 4.5 "Extremely Competent/Highly Competent" on his last three annual performance evaluations. He has received four medals for Excellent Police Duty and three medals for Meritorious Police Duty. In his 17 years of service, he has reported sick on [REDACTED]

Respondent has been the subject of one prior adjudication. In 2012, he forfeited ten vacation days after pleading guilty to making a written statement providing character opinion and information regarding Department operations to a governmental agency in an official capacity without permission. In that case, Respondent submitted a character letter to the Bronx District Attorney's Office identifying himself as a member of the service on behalf of an arrested individual.

Paul M. Gamble, Sr.
Assistant Deputy Commissioner Trials