



POLICE DEPARTMENT CITY OF NEW YORK

July 6, 2017

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Alan Chau
Tax Registry No. 940986
67 Precinct
Disciplinary Case No. 2016-15913

Charges and Specifications:

1. Said Sergeant Alan Chau, while on-duty, while assigned to Strategic Response Group No. 3, in Kings County, on or about January 1, 2016 through February 28, 2016, did fail and neglect to properly supervise twelve (12) subordinates on multiple occasions, to wit: said Sergeant on approximately ten (10) occasions allowed subordinates to take extended meals, failed to scratch subordinates' Activity Logs, failed to visit and document subordinates' activity while on patrol, and allowing subordinates to remain inside the stationhouse for extended periods of time.
P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT
2. Said Sergeant Alan Chau, while on-duty, while assigned to Strategic Response Group No. 3, in Kings County, on or about January 1, 2016 through February 28, 2016, did fail and neglect to perform all of his duties as directed by competent authority on multiple occasions, to wit: said Sergeant on approximately ten (10) occasions failed to visit and make entries in the Integrity Monitoring File and failed to make proper entries in the Interrupted Patrol Log.
P.G. 203-05, Page 1, Paragraph 1 – PUBLIC CONTACT – PROHIBITED CONDUCT
P.G. 212-10 – INTERRUPTED PATROL LOG
3. Said Sergeant Alan Chau, while on-duty, while assigned to Strategic Response Group No. 3, in Kings County, on or about January 1, 2016 through February 28, 2016, improperly extended his meal period on approximately ten (10) occasions without permission or authority.
P.G. 212-02 – MEAL PERIOD
4. Said Sergeant Alan Chau, while on-duty, while assigned to Strategic Response Group No. 3, in Kings County, on or about January 1, 2016 through February 28, 2016, did fail and neglect to maintain an accurate Activity Log, as required.
P.G. 212-08, Pages 1-2 – ACTIVITY LOGS

5. Said Sergeant Alan Chau, while on-duty, while assigned to Strategic Response Group No. 3, in Kings County, on or about January 1, 2016 through February 28, 2016, did improperly utilize a Department computer for non-Departmental purposes.

P.G. 219-14 – DEPARTMENT COMPUTER SYSTEMS

Appearances:

For the Department: Javier R. Seymore & Cindy Espinosa, Esqs.
Department Advocate's Office
One Police Plaza, 4th Floor
New York, NY 10038

For Respondent: John D'Alessandro, Esq.
The Quinn Law Firm
399 Knollwood Road, Suite 220
White Plains, NY 10603

Hearing Date:

May 24, 2017

Decision:

Guilty

Trial Commissioner:

ADCT David S. Weisel

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on May 24, 2017. Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. Captain Anthony Longobardi also testified on Respondent's behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the mitigation hearing, assessing the credibility of the witnesses, and Respondent having pleaded Guilty to all charges, the Court finds Respondent Guilty.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent testified that he had held various positions as a sergeant in the Department. Sometime in 2015, he applied for a position to join the newly formed Strategic Response Group. As part of the application process, Respondent was interviewed and received specialized training about responding to serious incidents like active shootings. Respondent eventually was selected for a position within SRG 3 (Tr. 15-16).

Respondent was transferred to his new command on September 21, 2015. Upon arriving at SRG 3, Respondent was assigned to work the 1800x0200 tour. Respondent testified that this tour best accommodated his family commitments, which, at the time, included [REDACTED]

Respondent furthered that he specifically requested this tour during his interview for the assignment (Tr. 11-12).

Sometime thereafter, Respondent was transferred to the midnight tour based on the command's needs. He was notified about the tour change only two days before it went into effect. Respondent stated that the tour change was mentally and physically taxing, which, in turn, led to his poor work performance. For example, around the time of the charged misconduct, Respondent typically would get home around 0900 hours, and then sleep for three to four hours before going to pick up his daughter from school around 1230 hours. He then would stay up with his [REDACTED] until it was time to pick up [REDACTED] around 1400 hours. Respondent

then would [REDACTED]. Only then would Respondent visit his [REDACTED] before reporting for duty (Tr. 11-13, 17).

Respondent testified that he approached his supervisor to request that his tour be changed back to 1800x0200, but was told he had to remain there until the command received another sergeant. Respondent acknowledged that he did not seek assistance within the Department for his problems. He did not believe that working the midnight tour would have such an adverse effect on his physical and mental condition. Respondent believed that the lack of sleep made his judgment poorer. This led to "poor decisions" such as taking extended meals and failing to sign his officers' logs (Tr. 17-18, 21).

Respondent conceded that he sometimes would sleep in the stationhouse when he was supposed to be working. Respondent also admitted to having engaged in the misconduct charged in the remainder of the specifications, although the fifth specification, concerning Department computer usage, referred merely to checking his personal email (Tr. 19-22).

In March 2016, shortly after the time period covered by the charges. Respondent was transferred from SRG 3 to the 67 Precinct. He was placed back on the 1800x0200 tour, however. Respondent's current executive officer, Captain Anthony Longobardi, testified that Respondent was a hard worker with great leadership skills. He was so impressed with Respondent's work performance that he appointed Respondent to supervise the cabaret unit. Longobardi indicated that he was more than satisfied with Respondent's leadership of that unit (Tr. 14, 23-27).

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 31, 2006. A confidential memorandum identifying relevant

information obtained from Respondent's personnel record, which the Court considered in connection with the underlying penalty recommendation, is attached hereto.

The Department recommended a penalty of the forfeiture of 30 vacation days and one year dismissal probation. The Advocate referred to the severity of Respondent's misconduct in conjunction with the specialized duties and responsibilities of Respondent's command at the time that he engaged in the charged misconduct (Tr. 31-33).

In contrast, Respondent's counsel recommended that this tribunal impose a penalty of the forfeiture of 19 vacation days based on Respondent's otherwise unblemished service record and the particularly sympathetic facts of this case. Counsel argued that a penalty of less than 20 days would avoid monitoring and thus allow Respondent to be promoted to Lieutenant, a position for which he already has passed examination. Also, counsel contended, the prospect of termination should not be in play in a case of this nature. Respondent had been punished significantly already (Tr. 28-30).

Further, there was another sergeant involved in this case, who was charged with similar misconduct and pleaded guilty previously, receiving the same penalty as recommended by the Advocate for Respondent (see *Case No. 2016-15914* [July 12, 2016]). Counsel suggested this other sergeant took the plea so that he could retire more quickly, as it was too severe of a penalty under the facts to be considered precedential (Tr. 5-6).

On the one hand, it is to Respondent's credit that he accepted responsibility for his misconduct in this matter. Nevertheless, the Court is not persuaded by Respondent's explanation that his family commitments and lack of sleep following the tour change affected his judgment to such a degree that he was caused to engage in the underlying misconduct. Rather, the Court finds that Respondent could have handled his family commitments in a more professional manner.

Further, the Court finds that Respondent engaged in serious misconduct in this matter. The common thread underlying these various acts of misconduct is Respondent's intentional failure to carry out the duties and responsibilities required of him in his capacity as a sergeant assigned to a specialized unit. Respondent basically ignored much of his supervisory responsibility on 10 occasions out of the approximately 40 tours during the time period in question. Based on Respondent's multiple instances of on-duty misconduct while assigned to SRG 3, a significant penalty is warranted. Moreover, the tribunal cannot recommend a low penalty as a means of allowing Respondent to be more easily promoted to Lieutenant when the misconduct involved Respondent failing to properly act as a supervisor.

On the other hand, Respondent already has lost his position at SRG. It is unlikely that this unique set of circumstances will re-occur in a patrol assignment as he currently holds. The Court is satisfied from the testimony of Respondent's executive officer that he is providing useful leadership for the Department. He has an excellent prior record. As such, the Court recommends that Respondent forfeit 30 vacation days as a penalty.

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED

NOV 03 2017

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT ALAN CHAU
TAX REGISTRY NO. 940986
DISCIPLINARY CASE NO. 2016-15913

On his last three annual performance evaluations, Respondent received two overall ratings of 4.5 ("Extremely Competent/Highly Competent") for 2016 and 2014, and one overall rating of 4.0 ("Highly Competent") in 2015.

Respondent has been awarded seven medals for Excellent Police Duty.

Respondent was transferred for cause from SRG 3 to the 67 Precinct on March 26, 2016. On September 19, 2016, he was placed on Level I Disciplinary Monitoring, which remains ongoing pending the disposition of the charges and specifications filed in connection with the above-referenced case.

Respondent has no prior formal disciplinary history.

David S. Weisel
Assistant Deputy Commissioner Trials