



POLICE DEPARTMENT

April 3, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Yvelyne Benoit
Tax Registry No. 941414
Police Service Area 2
Disciplinary Case No. 2012-8524

The above-named member of the Department appeared before me on December 5, 2013, charged with the following:

1. Police Officer Yvelyne Benoit, on or about November 22, 2011, wrongfully made false and or misleading statements to an insurance company while making an insurance claim regarding an automobile accident she was in, to wit: Officer Benoit stated that her vehicle was hit by another vehicle while her vehicle was parked when, in fact, Officer Benoit was driving her vehicle and hit a parked vehicle.

P.G. 203-10, Page 1, Paragraph 5 – CONDUCT PREJUDICIAL

2. Police Officer Yvelyne Benoit, on or about November 22, 2011, after being involved in an automobile accident where she hit a parked vehicle causing property damage, wrongfully left the scene of the accident and did not report the accident to the Police Department.

P.G. 203-10, Page 1, Paragraph 5 – CONDUCT PREJUDICIAL

3. Police Officer Yvelyne Benoit, on or about November 22, 2011, wrongfully operated a motor vehicle while her ability to operate such motor vehicle was impaired by the use of drugs, to wit: pain medication. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – CONDUCT PREJUDICIAL

The Department was represented by Daniel Maurer, Esq., Department Advocate's Office, and Respondent was represented by Craig Hayes, Esq.

Respondent, through her 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

Respondent, who was appointed to the Department on July 10, 2006, has been assigned to Police Service Area 2 since graduating from the Police Academy.

Because November 22, 2011 was a regular day off for Respondent, she arranged to have a [REDACTED] medical procedure, specifically a "[REDACTED]," performed that day at the office of her doctor. In preparation for this procedure, her doctor had provided her with a prescription for [REDACTED]. She filled this prescription prior to the procedure so that she would have this medication immediately available in case she experienced pain right after the procedure was performed.

Respondent went to her doctor's office on November 22, 2011 accompanied by her then-friend Person A. After the procedure was completed, her doctor provided a driver who transported her and Person A from the doctor's office in [REDACTED] to Respondent's residence in [REDACTED].

After Respondent and Person A arrived at Respondent's residence, Respondent's [REDACTED] telephoned Respondent and requested to be picked up. Respondent decided to drive her car herself to pick up her [REDACTED]. Person A accompanied her.

Respondent testified that although she may have taken some [REDACTED] pills, at the point when she drove away from her residence Respondent believed that she could drive safely because she felt fine. As Respondent drove into [REDACTED] on the way to pick up her [REDACTED], she fell asleep. She was awakened when Person A began "yelling and grabbing me." Person A exclaimed, "Yvelyne, you hit a car." Respondent testified that because she was just waking up, she experienced confusion and an altered state of mind. She did not report the accident to the Department and when, shortly afterwards, she called GEICO Insurance, which had issued her auto insurance policy, she reported that her vehicle had been hit by another vehicle while her vehicle was parked.

When the [REDACTED] wore off and she regained her normal state of mind, she realized that she had actually been driving at the time of the accident and that the information that she had provided to GEICO was incorrect. She "tried my best to piece everything together, and at that time, I said, you know what, let me pull my claim back because I am not too sure." She then called GEICO again and withdrew her claim. She paid for the damage to her own car. She does not know what happened regarding the damage to the other car. The [REDACTED] District Attorney's Office conducted an investigation into her actions but she was never arrested or charged and the Department did not refer her to the Counseling Unit for evaluation. She did not take any more [REDACTED] pills and only used [REDACTED] to alleviate her pain.

Respondent testified that in retrospect she should have called 911 and reported the car accident but that she had not done so because either the [REDACTED] pills or the pain medication her doctor had given her earlier that day had affected her judgment.

On cross-examination, Respondent confirmed that her doctor had provided her with round-trip car service to and from his office and that the purpose of having a car service drive her back to her residence was so that she would not be driving. She agreed that her doctor had provided her with "paperwork" that stated that she had "to be with somebody for 24 hours after the surgery" which is why Person A accompanied her back to her residence and remained there with her. She agreed that she and Person A are no longer friends as a result of what happened with this incident. Respondent confirmed that her doctor had given her pain medication during her surgery.

Respondent recalled that after her [REDACTED] telephoned and requested to be picked up, she got into the driver's seat of her car to go and pick up her [REDACTED] and that even though she did not tell Person A to follow her, Person A entered the front passenger seat of the car of her own "free will." She recalled that Person A woke her up and told her, "Yvelyne, you just hit a car." She then got out of the driver's seat so that Person A could drive the car home. Respondent testified that she did not look at the damage to her car or to the other car. She confirmed that she did not write down her name and contact information and place this information on the windshield of the other car.

Person A drove them back to Respondent's residence and Person A was present when Respondent telephoned GEICO. Respondent confirmed that she told a GEICO representative that she had parked her car so that she could go and buy food and that when she returned to her car she observed that her car had been hit. Respondent testified that she "found out later" that Person A had called 911 and that she had also reported Respondent to the Department's Internal Affairs Bureau (IAB). When Respondent was asked whether she had called GEICO to recant the claim she had made after Person A had

called 911 and IAB, Respondent answered, "Whatever order it happened in, I am not aware of." She testified that she had withdrawn her GEICO claim because after she "stopped taking the medication, that's when I started realizing bits and pieces of what happened and I withdrew my claim because I knew that wasn't true."

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 10, 2006. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Assistant Department Advocate (Advocate) recommended that Respondent forfeit 45 days (consisting of a 30 day suspension and the loss of 15 vacation days) and that she serve one year on dismissal probation. The Advocate did not cite any prior disciplinary decisions to support this penalty recommendation. Respondent has no prior disciplinary record.

Respondent has pleaded guilty to having operated a motor vehicle while her ability was impaired. In Case No. 2001-76805 (Apr. 5, 2004), a 12-year officer with no prior disciplinary record forfeited 33 days (consisting of six suspension days and 27 vacation days) and was placed on dismissal probation after she pleaded guilty to causing a vehicular accident while she was unfit for duty due to alcohol consumption and leaving the scene of that accident. In that case, as here, the officer was off duty when the officer's vehicle struck a parked car.

Respondent's counsel argued that her misconduct is mitigated by the fact that her impairment was the result of having taken a pain medication whose side effects she was not familiar with because she was not used to this medication. Because she was not used to taking this medication, Respondent's counsel asserted that the circumstances presented here differ from cases, such as the one cited above, where off duty members have operated vehicles while their ability was impaired as a result of overconsumption of alcohol. However, Respondent acknowledged that her doctor arranged for a car service to drive her back to her residence to ensure that she would not be driving and that her doctor had provided her with written notice that she should not even be alone during the 24 hour period following the surgery. Thus, Respondent was on clear notice that she should not drive a car and she did so anyway, despite the fact that Person A could have driven the car when they left Respondent's residence to pick up her [REDACTED].

More troubling is Respondent's post-accident misconduct of leaving the scene after she had hit an unoccupied parked vehicle and failing to report this accident to the Department because these actions reflect poorly on her personal integrity and demonstrate an unwillingness to take responsibility for her mistakes. In Case No. 2002-78294 (Jan. 21, 2004), a two-year officer who had no prior disciplinary record forfeited 44 days (consisting of 30 suspension days and 14 vacation days) after he pleaded guilty to leaving the scene of an off duty vehicular accident which resulted in property damage and failing to report the accident to the Department. More recently, in Case No. 2012-8106 (June 17, 2013), a 17-year detective, who had one prior disciplinary adjudication, forfeited 15 vacation days after he pleaded guilty to leaving the scene of a vehicle

accident without reporting the accident to police. The detective, who was off-duty, hit two parked vehicles and then drove away.

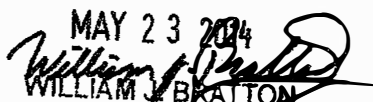
Most troubling is Respondent's misconduct of falsely claiming to her insurance carrier that her vehicle had been hit by another vehicle while her vehicle was parked. At the point when Respondent telephoned her insurance carrier, she knew that the reason that she had been driving her car was because she was going to pick up her [REDACTED] and she knew that she had fallen asleep and struck a parked vehicle. Yet Respondent invented a completely bogus story and reported to her insurance carrier that she had parked her car so that she could go and buy food and that when she had returned to her car she observed that her car had been hit while she was not there. That Respondent offered such a plausible, albeit completely false, scenario indicates that Respondent had her wits about her at the point when she made her false report to her insurance carrier.

Moreover, when Respondent was asked on cross-examination whether she had recanted and withdrawn this false claim only after she learned that Person A had called 911 and reported her to IAB, Respondent answered that she was "not aware of" the "order it happened in." This disingenuous answer leads to the inference that Respondent only withdrew her false claim because she knew that Person A had reported her. Yet Respondent asserted in her testimony that the reason she had withdrawn her false claim was because after she "stopped taking the medication, that's when I started realizing bits and pieces of what happened." This testimony shows that Respondent is still unwilling to acknowledge that the false statements she made to her insurance carrier were knowingly and intentionally made.


A one year period on dismissal probation has consistently been included in the penalties imposed on members who in reporting a vehicular accident have knowingly lied in order to avoid responsibility for having caused the accident. For example, in Case No. 2007-83258 (Oct. 21, 2009), a seven-year officer with no prior disciplinary record forfeited 30 vacation days and was placed on dismissal probation after pleading guilty to intentionally falsely listing on an accident report who had been driving when the accident occurred; and in Case No. 2006 81568 (Nov. 18, 2009), an 18-year officer with no prior disciplinary record forfeited 90 days (consisting of 60 suspension days and 30 vacation days) and was placed on dismissal probation after she pleaded guilty to having falsely stated on an accident report that she had been the operator when, in fact, her boyfriend had been driving when the accident occurred.

Therefore, consistent with the penalties that have been imposed for the misconduct that Respondent has pleaded guilty to having committed, it is recommended that Respondent be DISMISSED from the New York City Police Department, but that her dismissal be held in abeyance for a period of one year, pursuant to Section 14-115(d) of the Administrative Code, during which time she remains on the force at the Police Commissioner's discretion and may be terminated at anytime without further proceedings. It is further recommended that Respondent be suspended for 30 days and that she also forfeit 15 vacation days.

APPROVED

MAY 23 2014

WILLIAM J. BRATTON
POLICE COMMISSIONER

Respectfully submitted,


Robert W. Vinal
Assistant Deputy Commissioner - Trials

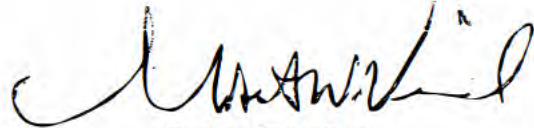
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER YVELYNE BENOIT
TAX REGISTRY NO. 941414
DISCIPLINARY CASE NO. 2012-8524

Respondent received an overall rating of 3.5 on her 2013 annual performance evaluation, 4.5 on her 2012 evaluation, and 4.0 on her 2011 evaluation. She has been awarded one Excellent Police Duty medal. [REDACTED]

[REDACTED] She has no monitoring records and no prior disciplinary record.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner – Trials