



POLICE DEPARTMENT

June 25, 2010

MEMORANDUM FOR: Police Commissioner

RE: Police Officer Rance Camarena
Tax Registry Number 925017
48 Precinct
Disciplinary Case Nos. 84279/08 & 85488/09

The above-named member of the Department appeared before me on
March 8, 2010, and March 9, 2010, charged with the following:

Disciplinary Case No. 84279/08

1. Said Sergeant¹ Rance Camarena, while assigned to PSA-5, while on duty, on or about May 5, 2007, August 3, 2007, and September 2, 2007, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department, in that said Sergeant submitted an overtime slip on each of three above dates for compensation for overtime which said Sergeant did not perform.

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

2. Said Sergeant Rance Camarena, while assigned as indicated in Specification #1, on or about and between February 10, 2007, and October 18, 2007, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department, in that on thirty-six (36) separate occasions said Sergeant performed overtime without prior permission or authority.

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

3. Said Sergeant Rance Camarena, while assigned as indicated in Specification #1, on or about October 29, 2007, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department, in that said Sergeant signed in as on duty at 1450 hours when he in fact reported for duty at 1510 hours. (*As amended*)

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

¹ The Respondent held the rank of sergeant on the dates cited in these charges.

4. Said Sergeant Rance Camarena, assigned as indicated in Specification #1, on or about May 1, 2008, having changed his place of residence, failed and neglected to notify his Commanding Officer by submitting a Change of Name, Residence or Social Condition (PD 451-021) form as required.

P.G. 203-18, Page 1, Paragraph 2 RESIDENCE REQUIREMENTS

5. Said Sergeant Rance Camarena, assigned as indicated in Specification #1, on or about April 30, 2008, failed and neglected to properly safeguard his service firearm, to wit: a Smith and Wesson Automatic serial # BKD2127, in that said firearm was left unattended in the home of an individual, identity known to the Department.

P.G. 204-08, Page 2, Paragraph 7 – FIREARMS - GENERAL REGULATIONS

6. Said Sergeant Rance Camarena, assigned as indicated in Specification #1, while on duty, on or about January 12, 2008, at approximately 2000 hours, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Sergeant failed to conduct a proper investigation regarding found contraband within a Department vehicle.

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

7. Said Sergeant Rance Camarena, assigned as indicated in Specification #1, on or about March 1, 2008, at approximately 1530 hours, failed and neglected to properly safeguard his Department issued Metrocard, resulting in its loss.

P.G. 219-26, Page 2, Paragraph 17 – DEPARTMENT PROPERTY

8. Said Sergeant Rance Camarena, assigned as indicated in Specification #1, while on duty, and assigned as the PSA-5 Desk Officer, on or about March 14, 2008, at approximately 2200 hours, failed and neglected to monitor the desk radio in connection with calls for help by other members of the service.

P.G. 202-14, Page 2, Paragraph 28 – DESK OFFICER

9. Said Sergeant Rance Camarena, assigned as indicated in Specification #1, while on duty, on or about March 27, 2008, at approximately 1700 hours, at a location known to the Department, New York County, did engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that said Sergeant improperly took a personal break.

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

10. Said Sergeant Rance Camarena, assigned as indicated in Specification #1, on or about and between February 10, 2007, and October 18, 2007, failed and neglected to

properly maintain his Activity Log, to wit: there are no notations regarding times, and reasons for, overtime work. (*As amended*)

P.G. 212-08 Page 1 – ACTIVITY LOG

Disciplinary Case No. 85488/09

1.. Said Police Officer Rance Camarena, assigned to the 48 Precinct, on or about January 26, 2009, did engage in conduct prejudicial to the good order, efficiency and discipline of the Department in that said Officer wrongfully and without just cause altered an excusal from shaving memorandum issued by the Medical Division by changing the expiration date of the excusal from 1/26/09 to 4/26/09 thereby giving himself three additional months from being excused from shaving without authorization from the Medical Division.

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

The Department was represented by Hiram Lopez, Esq., Department Advocate's Office, and the Respondent was represented by Michael Martinez, Esq.

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

DECISION

Disciplinary Case No. 84279/08

The Respondent, having pleaded guilty, is found Guilty of Specification Nos. 3 and 7. The Respondent is found Guilty of Specification Nos. 1, 2, 5, 8 and 10. The Respondent is found Not Guilty of Specification Nos. 4 and 6. It is recommended that Specification No. 9 be Dismissed.

Disciplinary Case No. 85488/09

The Respondent, having pleaded Guilty, is found Guilty.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Captain George Mifsud, Deputy Inspector Stephen Capasso, Lieutenant Christopher Lord, and Lieutenant Daryl Miller as witnesses.

Captain George Mifsud

Captain George Mifsud, who was assigned to PSA-5 as the Special Operations Lieutenant and Acting Integrity Control Officer (ICO) in September, 2007, recalled that he saw the Respondent sign out of the command at 2347 hours on September 2, 2007. A day or two later, Mifsud was reviewing overtime (OT) slips and noticed that the Respondent had submitted a slip for cash OT for having worked two hours of OT on September 2, 2007. Mifsud informed his supervisor that the Respondent had requested two hours of OT that he had not worked. Mifsud's supervisor directed him to review previous OT slips the Respondent had submitted and Mifsud discovered other instances where the Respondent had submitted a slip for OT when he had not worked OT.

On January 12, 2008, the Respondent told Mifsud that he had discovered contraband inside a Department vehicle. Mifsud provided the Respondent with a UF 49 he had prepared regarding a similar discovery and he told the Respondent to follow the format in preparing his UF 49.

On cross-examination, Mifsud explained that after a member prepares an OT slip the member must submit it to the desk officer (DO) who signs the slip after confirming that the member is signing out at the time indicated on the OT slip. The DO who signs the slip also makes an entry in the command log denoting the time that the member signed out. Mifsud further explained that OT must be authorized by a supervisor "prior to" the member "working the overtime." When Mifsud was asked whether the Department is generally more willing to approve time OT than cash OT, he answered in the negative. Mifsud confirmed that the Respondent was brought in from home to work six hours of overtime (OT) on March 9, 2007. Mifsud approved the Respondent's request to take time OT for these six hours of OT.

Deputy Inspector Stephen Capasso

Deputy Inspector Stephen Capasso recalled that he was a captain assigned to PSA-5 in October, 2007. On October 29, 2007, he was standing near the front desk at 1510 hours when he saw the Respondent sign into the command log as on duty. When Capasso checked the Respondent's entry in the command log, he saw that the Respondent had entered 1450 hours in the log as his sign-in time.

Capasso recalled that on March 27, 2008, he observed the Respondent's marked RMP parked on 1st off of Housing Development property. When he pulled his vehicle up to the Respondent's marked RMP, he observed that the Respondent's driver had a container of food. The Respondent told Capasso that he "was taking a personal to give his operator something to eat." When Capasso was asked if taking a personal break to allow his operator to have something to eat was a violation of Department rules regarding

personal breaks, Capasso answered that personal breaks were covered by “the contract” not the Patrol Guide, that he “thought” that personal breaks “were bathroom necessities” and that “as far as I know if you are going to eat you have a meal period assigned for eating.”

On cross-examination, Capasso confirmed that there was no more than a 20 minute difference between the time of day the Respondent entered in the command log on October 29, 2007, and the time of day that he actually signed in as on duty. Capasso also confirmed that the Respondent would “normally” have been issued a Command Discipline (CD) for this infraction. Rather than issue the Respondent a CD, Capasso notified Miller about this because he knew that Miller was already conducting an investigation of the Respondent. When Capasso was asked if it was misconduct for a sergeant to allow his driver to take ten or 15 minutes to have something to eat because he had no opportunity to eat anything that day, Capasso answered that a sergeant had the discretion to allow his driver to have something to eat and drink such as “a power bar and a soda that would take 30 seconds.” Capasso confirmed that this was his own opinion because, based on his knowledge, this question is not addressed in a contract or in the Patrol Guide.

Lieutenant Christopher Lord

Lieutenant Christopher Lord recalled that during January, 2008, he was assigned as the ICO for PSA-5. He performed a non-ICO “umbrella OT” shift on January 12, 2008, supervising eight police officers. The next day, which was his regular day off, he received a telephone call at home from a sergeant at PSA-5 who asked him whether he

had signed out a van bearing vehicle number 9404 during his tour on January 12, 2008. Lord answered in the negative. The sergeant explained that a crack pipe containing no residue had been discovered inside that van by the Respondent. Lord testified that he was surprised that he had not received a telephone call at home from the Respondent regarding whether he had actually used vehicle number 9404. Lord testified that he “would expect to be called” at home by the Respondent.

The parties stipulated into evidence the UF 49 the Respondent initially prepared regarding the discovery of the crack pipe which states that the PSA-5 Roll Call and the Vehicle Assignment Sheet for January 12, 2008, both showed that Lord, and his driver Police Officer Rivera, were assigned vehicle number 9404 [Department’s Exhibit (DX) 3] and the UF 49 the Respondent subsequently prepared (DX 4) which noted that “further investigation revealed that” Lord had not used vehicle number 9404 January 12, 2008.

On cross-examination, Lord testified that he personally confirmed that the PSA-5 Roll Call and the Vehicle Assignment Sheet for January 12, 2008, both showed that he was assigned vehicle number 9404 during his tour but that these entries were inaccurate because he did not use that vehicle.

Lieutenant Daryl Miller

Lieutenant Daryl Miller, assigned to the Housing Bureau’s Investigations Unit (HBIU), testified that he conducted a review of OT request forms submitted by the Respondent when he held the rank of sergeant during 2007. Miller prepared a chart (DX 5) summarizing the information contained on these request forms. Miller determined that on 36 occasions between February 10, 2007, and October 18, 2007, the Respondent had

submitted OT slips for time OT without having received prior authorization from a supervisor to perform the OT. Miller also determined that on May 5, 2007, August 3, 2007, and September 2, 2007, the Respondent had written on his OT request forms that he was requesting OT for "Report Writing." Miller testified that sergeants were not eligible to receive OT for "Report Writing." Miller recalled that in March, 2008, he conducted an official Department interview of the Respondent regarding his 36 OT requests and that the Respondent stated that his August 3, 2007, request to receive two hours "cash" OT for "Report Writing (49)" was "a mistake."

Miller's testified that he was directed on May 1, 2008, to retrieve the Respondent's shield, ID card and firearm because the Respondent was being placed on modified assignment that day. He attempted to locate the Respondent by contacting his father and providing him with HBIU's telephone number. When the Respondent, who was at JFK airport, called HBIU, he told Miller that he did not have his firearm on him and he asked to meet Miller on the corner of 10th Street and Avenue A, Manhattan. When the Respondent arrived there, he told Miller that he had left his firearm inside the nearby residence of his girlfriend when he went to the airport. Seven days later, the Respondent told Miller for the first time that he had stored his firearm inside a safe, which he said he had purchased at Home Depot, at his girlfriend's residence and that this safe was bolted to the floor. The Respondent never produced any proof that he owned a safe.

Miller testified that he was informed by Deputy Inspector Julio Ordonez that on March 14, 2008, the Respondent was assigned as the DO at PSA-5 and that he was issued

a CD because he had failed to monitor the desk radio regarding a code 10-85 radio transmission from a Housing Bureau police officer who needed assistance.

On cross-examination, Miller confirmed that other than the Respondent's August 3, 2007, request to receive two hours "cash" OT for "Report Writing (49)," all of his other requests to receive OT were for "time" OT. Miller confirmed that he never went to the Respondent's girlfriend's residence to see if there was a safe bolted to the floor.

The Respondent's Case

The Respondent called Sergeant George Hellmer as a witness and testified in his own behalf.

Sergeant George Hellmer

Sergeant George Hellmer, who is presently assigned to Narcotics Borough Brooklyn North, stated that during 2007, he was assigned to PSA-5. Hellmer testified that he had told the Respondent that if he needed to perform administrative duties prior to the scheduled start of his tour, he could get permission to "put in for" pre-tour time OT but not cash OT.

On cross-examination, Hellmer confirmed that a member is never allowed to work OT before or after the start of his scheduled tour unless he has received the prior approval of a supervisor to perform the OT. Hellmer further confirmed that he never told the Respondent that he could submit a time OT slip without having received prior authorization from a supervisor to perform the OT the slip reflected.

The Respondent

Regarding Disciplinary Case No. 84279/08, Specification Nos. 1 and 2, the Respondent testified that as a result of the allegations contained in these charges, he was demoted from the rank of probationary sergeant to the rank of police officer in September, 2008. The Respondent could not recall why he submitted OT slips seeking compensation for overtime on May 5, 2007, August 3, 2007, and September 2, 2007. He testified that he may have had to work overtime on each of these three dates in order to prepare unusual occurrence reports.

With regard to the 36 occasions between February 10, 2007, and October 18, 2007, on which he submitted OT slips, he testified that although his tour commenced at 1500 hours, as a new sergeant he needed to spend 20 to 30 minutes prior to the start of his tour to get ready to conduct roll call. He consulted with other, more experienced, sergeants about this. They told him that if he came in early, it was “okay” to “put in for” pre-tour OT if he requested to be compensated in time only, not in cash. Based on this advice, on those occasions when he came in 20 to 30 minutes early to prepare for roll call, he would hand an OT slip to the DO. On each occasion, the DO signed and “approved” the OT slip he had submitted.

With regard to Specification No. 3, the Respondent admitted that on October 29, 2007, he signed in as on duty at 1450 hours when he actually reported for duty at 1510 hours.

Regarding Specification No. 4, the Respondent recalled that when he arrived at PSA-5 on December 4, 2006, he filled out a ten card listing his correct address: 601 W. 192 Street, Manhattan. He testified that he submitted a Change of Name, Residence or

Social Condition (PD 451-021) form (RX A) in late April, 2008, indicating that his place of residence changed from 617 W. 141 Street, Manhattan to 601 W. 192 Street, Manhattan.

With regard to Specification No. 5, the Respondent recalled that he was at JFK Airport when Miller called him to tell him that he needed to surrender his shield, ID card and firearm. The Respondent testified that he had left his firearm inside a locked safe at his girlfriend's house and that this safe was bolted to the floor.

Regarding Specification No. 6, the Respondent recalled that the clear, plastic, tube-like, crack pipe that he found in the vehicle contained no residue. Lieutenant Mifsud handed him an old UF 49 and told him to prepare a UF 49 regarding the discovery of the crack pipe by following the format of this old UF 49. The Respondent testified that he obtained the prior tour's vehicle assignment sheet and saw that the vehicle had been assigned to the "Impact Lieutenant." The Respondent then checked the prior tour's roll call and saw that the "Impact Lieutenant" was Lieutenant Lord. The Respondent believed that he had no right to call Lord, a superior officer, and question him regarding whether he had failed to properly search the vehicle that the crack pipe was found inside.

With regard to Specification No. 7, the Respondent admitted that he had lost his wallet and that his Department-issued Metrocard was inside the wallet at the time that he lost it.

Regarding Specification No. 8, the Respondent acknowledged that he was assigned as the DO on March 14, 2008, and that one of his duties was to monitor the desk radio in connection with calls for help. The Respondent further admitted that he heard a

code 10-85 radio transmission from a police officer indicating that the officer needed assistance. The Respondent testified that he took no action regarding this radio call because the officer did not identify himself as being assigned to PSA-5. The Respondent recalled that Deputy Inspector Ordonez issued him a CD for failing to monitor the desk radio in connection with this call for help. This CD was never adjudicated. The platoon commander and the patrol supervisor were also issued CDs.

With regard to Specification No. 9, the Respondent testified that a police officer is entitled to take two 20-minute "personals" during a tour for a personal necessity. The Respondent recalled that his driver had not yet taken a personal during this tour and since he had no opportunity to have a meal period, the Respondent allowed him 20 minutes to purchase a salad and eat it. The Respondent recalled that he did paperwork and monitored the RMP radio while his driver ate his salad. No radio calls requiring an immediate response were transmitted during this 20-minute period.

Regarding Specification No. 10, the Respondent acknowledged that between February 10, 2007, and October 18, 2007, he did not maintain his Activity Log by entering notations regarding what time he commenced OT and what the reasons were for the OT. The Respondent testified that making such "memo book" entries regarding the time of day he commenced performing OT and the reason for the OT was "redundant" because he had made entries regarding this OT in the Command Log and on the OT slips he submitted.

With regard to Disciplinary Case No. 85488/09, the Respondent testified that he was granted an excusal from shaving because he has a skin condition that is exacerbated by shaving. A memorandum was issued by the Medical Division which contained an

expiration date of "1/26/09" (DX 1). The Respondent admitted that he allowed his excusal to lapse and failed to apply to renew his permission to be excused from shaving. Instead, he altered the memorandum by changing "1" to "4" (DX 2) thereby falsely extending the expiration date on the excusal memorandum from January 26, 2009 to April 26, 2009. The Respondent admitted that he did this to give himself three additional months of being excused from shaving. The Respondent testified that he now regrets having done this and that altering the memorandum was a "silly mistake" because he had never been denied permission to be excused from shaving because of his skin condition. He still has permission to be excused from shaving.

On cross-examination, when he was asked to name the sergeants who had told him that he did not need to obtain prior approval from a superior officer to put in for pre-tour, "time only" OT if he came in early to get ready for roll call, he recalled that Sergeant George Helmer had told him this. Regarding his late April, 2008, change of residence, he asserted that he told Miller that the Change of Name, Residence or Social Condition (PD 451-021) form he had submitted had "apparently never got" properly processed and that he had never checked to see what address was listed in Department records as his residence address. The Respondent acknowledged that he had no photographs of the safe in which he had stored his firearm and which he had bolted to the floor. The Respondent testified that he is now aware that he is required to make a "memo book" entry denoting the time of day he commences performing OT even where he makes an entry containing this information in the Command Log and even if this information is on the OT slip he is submitting.

The Respondent confirmed that when he was serving as the PSA-5 DO on March 14, 2008, he heard a commotion and “screaming between a police officer in the street” that the officer needed assistance. The Respondent testified that he did not get on the radio and attempt to speak to the officer because the officer did not identify himself as being assigned to PSA-5. The Respondent acknowledged that there were three officers assigned to PSA-5 standing in front of the desk when this code 10-85 call came in but that he did not instruct the officers “to respond to the 85.” He told the officers to resume patrol.

FINDINGS & ANALYSIS

Disciplinary Case No. 84279/08

Specification No. 1

It is charged that the Respondent submitted OT slips seeking compensatory overtime on May 5, 2007, August 3, 2007, and September 2, 2007, even though he did not perform OT on those dates.

I credit Mifsud’s testimony that he saw the Respondent sign out of the command at 2347 hours on September 2, 2007, and that the Respondent could not have performed the OT he asserted he had worked on September 2, 2007, on the OT slip he submitted and that Mifsud reviewed. I also credit Miller’s testimony that he determined that on May 5, 2007, August 3, 2007, and September 2, 2007, the Respondent had written on his OT request forms that he was requesting OT for “Report Writing.” Miller testified that sergeants are not eligible to receive OT for “Report Writing” and that at his official

Department interview, the Respondent admitted that his August 3, 2007, request to receive two hours “cash” OT for “Report Writing (49)” was “a mistake.”

The Respondent offered unsupported testimony that he may have worked OT on each of these three dates in order to prepare unusual occurrence reports. This purely speculative explanation does not constitute a defense to the charged misconduct.

The Respondent is found Guilty.

Specification Nos. 2 and 10

It is alleged that on 36 occasions between February 10, 2007, and October 18, 2007, the Respondent performed OT and submitted OT slips even though he had not obtained permission to do so. I credit Miller’s testimony as to the accuracy of the chart he prepared (DX 5) based on OT slips submitted by the Respondent that on 36 occasions between February 10, 2007, and October 18, 2007, the Respondent submitted OT slips to receive time OT without having received prior authorization from a supervisor to perform the OT.

The Respondent argued that on every occasion when he worked OT, he submitted an OT slip to the DO and that the DO signed the slip. The Respondent sought to portray the DO’s post-performance of OT signing of the slip as an “approval” of the OT. However, I credit Mifsud’s testimony that OT must be authorized by a supervisor “prior to” the member “working the overtime.” This testimony was corroborated by Hellmer, who was called as a witness by the Respondent and who testified that a member is never allowed to work OT before or after the start of his scheduled tour unless he has received the prior approval of a supervisor to perform the OT, and that he never told the

Respondent that he could work pre-tour or post-tour OT without having received authorization from a supervisor prior to performing the OT. I find that the Respondent knew, or should have known, that he could not work OT or submit OT slips to receive compensatory time OT unless he had received prior authorization from a supervisor to perform the OT.

Regarding Specification No. 10, the Respondent acknowledged that between February 10, 2007, and October 18, 2007, he neglected to maintain his Activity Log by entering notations regarding what time he commenced OT and what the reasons were for the OT. The Respondent stated that in his opinion making such "memo book" entries regarding the time of day he commenced performing OT and the reason for the OT was "redundant" because he had made entries regarding this OT in the Command Log and on the OT slips he submitted. The Respondent's opinion is irrelevant, and he should have been aware then, as he testified he is now, that he was required to make these entries in his Activity Log.

The Respondent is found Guilty.

Specification No. 3

It is charged that the Respondent on October 29, 2007, signed in as on duty at 1450 hours when he actually reported for duty at 1510 hours. I credit Deputy Inspector Stephen Capasso's testimony that on October 29, 2007, he was at the front desk at 1510 hours when he saw the Respondent sign into the command log and that when Capasso checked the Respondent's entry in the command log, he saw that the Respondent had entered 1450 hours in the log as his sign-in time.

The Respondent is found Guilty.

Specification No. 4

It is charged that on or about May 1, 2008, the Respondent changed his place of residence but failed to notify his Commanding Officer of this change by submitting a Change of Name, Residence or Social Condition (PD 451-021) form.

I find the Respondent Not Guilty because the Department presented insufficient evidence to prove this charge.

It is not disputed that as of May 1, 2008, the Respondent's "ten card" listed his current, correct address. Also, the Respondent offered a Change of Name, Residence or Social Condition (PD 451-021) form (RX A) to corroborate his testimony that when he moved he submitted this form. Although the Department asserted that this form could have been backdated, the Department called no witness to testify that the Respondent could not have submitted this form in a timely manner.

The Respondent is found Not Guilty.

Specification No. 5

It is charged that the Respondent failed and neglected to properly safeguard his service firearm, a Smith and Wesson Automatic, by leaving his firearm unattended in the home of his girlfriend. I credit Miller's testimony that when he was attempting to locate the Respondent on May 1, 2008 (so that he could retrieve his shield, ID card and firearm because he was being placed on modified assignment), the Respondent, who was at JFK airport, called HBIU and asked to meet Miller on the corner of 10th Street and Avenue A,

Manhattan, and that when the Respondent arrived there he told Miller that he had left his firearm inside the nearby residence of his girlfriend when he went to JFK airport. I further credit Miller's testimony that the Respondent did not even mention the existence of a safe inside his girlfriend's residence until seven days later and that although the Respondent claimed that he had purchased this safe at Home Depot, he never produced a purchase receipt or any other evidence that he even owned a safe, much less that it was bolted to the floor of his girlfriend's residence. As a result, I reject the Respondent's uncorroborated assertion that when he went to the airport he stored his firearm inside a safe at his girlfriend's residence which was bolted to the floor.

The Respondent is found Guilty.

Specification No. 6

The Respondent is charged with having failed to conduct "a proper investigation" on January 12, 2008, regarding the clear, plastic, tube-like, crack pipe that he found in Department vehicle 9404. The Respondent's testimony that he was unfamiliar with how to investigate and report this type of incident was supported by Mifsud who provided the Respondent with a sample UF 49 to use as a template. Also, it is not disputed that the Respondent took proper investigative actions by checking the prior tour's vehicle assignment sheet (which showed that the vehicle had been assigned to the Impact Lieutenant) and by checking the prior tour's roll call (which showed that the Impact Lieutenant was Lieutenant Lord).

The Assistant Department Advocate (the Advocate) argued that the Respondent failed to conduct a proper investigation because he did not call Lord at home and ask him

whether he had actually used Department vehicle 9404. Although Lord opined that he “would expect to be called” at home by the Respondent regarding whether he had actually used Department vehicle 9404, the Advocate cited no Patrol Guide Section, Interim Order or FINEST message to establish that the Respondent was on notice that this call was a step that he was required to take in order to conduct “a proper investigation.” The fact that the second UF 49 the Respondent prepared (DX 4) noted that “further investigation revealed that” Lord had not used vehicle number 9404, does not constitute proof that the Respondent was required to telephone Lord at home.

The Respondent is found Not Guilty.

Specification No. 7

Since the Respondent admitted that his Department-issued Metrocard was inside his wallet when he lost his wallet, the Respondent is found Guilty.

Specification No. 8

It is charged that on March 14, 2008, at about 2200 hours, the Respondent failed and neglected to monitor the desk radio in connection with calls for help by other members of the service. Although the Department presented hearsay evidence to prove this charge, this hearsay evidence was supported by the Respondent’s testimony regarding his own actions.

The Respondent admitted that he was assigned as the PSA-5 DO on March 14, 2008, and that one of his duties was to monitor the desk radio in connection with calls from the field for help. The Respondent further admitted that he heard a code 10-85

radio transmission from a police officer in the field that the officer needed assistance. Even though he heard a “commotion” and “screaming between a police officer in the street” that the officer needed assistance, the Respondent admitted that he did not use his radio to attempt to contact the officer merely because the officer had not identified himself as a PSA-5 officer.

The Respondent further admitted that even though patrol officers were in front of the desk when he heard this 10-85 call, he did not order these officers to immediately respond to the 10-85 call. Rather, he merely told these officers to resume patrol.

The Respondent’s explanation that he did nothing because he was not sure if the officer was assigned to PSA-5, does not excuse the Respondent’s failure to attempt to make radio contact with the officer and try to obtain assistance for this officer.

The Respondent is found Guilty.

Specification No. 9

It is charged that on March 27, 2008, at about 1700 hours, the Respondent engaged in conduct prejudicial to the good order, efficiency and discipline of the Department by “improperly taking a personal break.” It is recommended that this charge be dismissed because the Department did not establish that the Respondent’s use of a personal break for the purpose of allowing his operator to have something to eat violated any Department rule or procedure.

The only witness called by the Department to prove this charge was Deputy Inspector Stephen Capasso. When Capasso was asked if it constituted misconduct for a sergeant to use a personal break to allow his operator to take 15 minutes or so to have

something to eat because there was no opportunity for him to eat anything that day, Capasso answered that a sergeant had the discretion to allow his driver to have something to eat and drink but that this could be accomplished in “30 seconds,” far less time than a 20 minute personal break. However, Capasso confirmed that personal breaks are authorized by “the contract” not the Patrol Guide, that it was only his opinion that a personal break should not be used for this purpose, and that as far as he knew this is not addressed in the union contract or in the Patrol Guide.

Therefore, it is recommended that Specification No. 9 be Dismissed.

Disciplinary Case No. 85488/09

The Respondent admitted that he altered an excusal from shaving memorandum issued to him by the Medical Division (DX 1) by changing the expiration date of the excusal from January 26, 2009 to April 26, 2009. He accomplished this by changing a “1” (representing the month of January) to a “4” (representing the month of April) on the memo (DX 2) so that he could have three additional months of being excused from shaving.

The Respondent, having pleaded Guilty, is found Guilty.

PENALTY

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

The Respondent was appointed to the Department on March 1, 2000. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Advocate recommended that the Respondent forfeit 45 vacation days and serve one year on dismissal probation as a penalty.

With regard to the recommendation that the Respondent forfeit 45 vacation days, I note that this recommendation included the misconduct charged under Specification Nos. 4, 6 and 9 of Disciplinary Case No. 84279/08. I have recommended that the Respondent be found Not Guilty of Specification Nos. 4 and 6 and that Specification No. 9 be dismissed.

Also, regarding the Respondent's failure to monitor the desk radio (Specification No. 8), he was issued a CD regarding this failure but this CD was never adjudicated. In addition, it must be noted that the Respondent pleaded guilty to Specification Nos. 3 and 7 by admitting that on a single occasion he started his tour 20 minutes later than the time he entered in the sign in log and that on one occasion he lost his Department-issued Metrocard. Both of these charges also constitute relatively minor misconduct which would normally have been adjudicated at the command level if not for the fact that the Respondent was already under investigation for other misconduct.

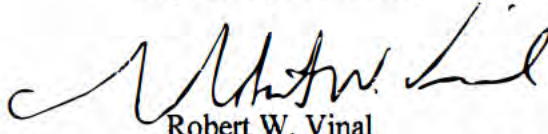
However, the Respondent's 2007 misconduct of seeking compensatory overtime for three dates on which he did not perform OT and of submitting OT slips on 36 occasions when he had not obtained prior permission to perform OT, both constitute serious misconduct, and his 2008 failure to properly safeguard his service firearm also constitutes serious misconduct.

Finally, under Disciplinary Case No. 85488/09, the Respondent has admitted that in 2009, he altered an excusal from shaving memorandum issued to him by the Medical Division by changing the expiration date of this excusal and awarding himself three additional months of not being required to shave. Although the Respondent characterized his action as a “silly mistake,” he intentionally altered this memorandum. Intentionally altering an official Department document (even where, as here, the alteration consists only of changing the number “one” to the number “four”) for the purpose of obtaining a personal benefit constitutes serious misconduct.

With regard to the Advocate’s recommendation that the Respondent be required to serve one year on dismissal probation, Respondent’s counsel argued that the Respondent has already been punished for his misconduct by being demoted from probationary sergeant to police officer and that he should not be punished further by being required to serve a period on dismissal probation. However, the Respondent’s demotion from probationary sergeant to police officer in September, 2008, constituted a determination that the Respondent had demonstrated that he was not fit to serve as a Department supervisor. I find it significant that instead of resolving to never again engage in misconduct, the Respondent, in January, 2009, only four months after this demotion, purposely altered a Department document solely to obtain a personal benefit. Since the Respondent has been found guilty of having engaged in multiple acts of misconduct during 2007 and 2008, and since the Respondent’s commission of intentional misconduct in 2009 indicates that his demotion did not deter him from committing further misconduct, a period on dismissal probation appears to be warranted.

Therefore, it is recommended that the Respondent be DISMISSED from the New York City Police Department but that his dismissal be held in abeyance for a period of one year pursuant to Section 14-115(d) of the Administrative Code, during which time he remains on the Force at the Police Commissioner's discretion and may be terminated at any time without further hearing. It is further recommended that the Respondent forfeit 30 vacation days.

Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner - Trials

APPROVED
DEC 20 2010

RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER RANCE CAMARENA
TAX REGISTRY NO. 925017
DISCIPLINARY CASE NOS. 84279/08 & 85488/09

The Respondent received an overall rating of 4.5 on his 2010 performance evaluation, 4.0 on his 2008 evaluation, and 4.0 on his 2006 evaluation. He has no medals. [REDACTED]

He has a prior formal disciplinary record. In 2002, while he was a Probationary Police Officer, he forfeited 15 vacation days and had his probationary period extended for six months after he pleaded guilty to destroying the property of another during an off duty incident on April 15, 2001, and failing to remain at the scene of the occurrence or request the response of the patrol supervisor.

On September 15, 2009, he was placed in Level-II Discipline Monitoring based on his overall record.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner Trials