



POLICE DEPARTMENT

April 20, 2022

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In the Matter of the Charges and Specifications	:	Case Nos.
- against -	:	2020-21828
Police Officer Lela Banks	:	2020-22652
Tax Registry No. 953658	:	
79 Precinct	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Josh Kleiman
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Kachina Brock, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Craig Hayes, Esq.
Worth, Longworth, & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2020-21828

1. Said Police Officer Lela Banks, while off-duty and assigned to the 79th Precinct, on or about and between February 18, 2015 and October 31, 2019, in Queens County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer Banks did wrongfully and without just cause engage in off-duty employment without authority or permission to do so.

P.G. 205-40, Page 1, Paragraph 1

OFF-DUTY EMPLOYMENT

2. Said Police Officer Lela Banks, while off-duty and assigned to the 79th Precinct, on or about October 31, 2019, in Queens County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer Banks failed to take police action after witnessing an assault.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

3. Said Police Officer Lela Banks, while off-duty and assigned to the 79th Precinct, on or about and between October 10, 2018 and October 10, 2019, in Queens County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer Banks wrongfully utilized Department computer systems to conduct seventeen (17) queries unrelated to the official business of the Department.

P.G. 219-14, Page 1, Paragraphs 1-2 &
Additional Data

DEPARTMENT
COMPUTER SYSTEMS –
DEPARTMENT PROPERTY

4. Said Police Officer Lela Banks, while off-duty and assigned to the 79th Precinct, on or about January 23, 2020, in Queens County, did wrongfully make misleading statements during an official department interview, to wit: Police Officer Banks stated FJ was a friend, in fact he was her boyfriend.

P.G. 203-08, Page 1, Paragraph 1

MISLEADING STATEMENTS

5. Said Police Officer Lela Banks, while off-duty and assigned to the 79th Precinct, on or about and between October 10, 2018 and October 31, 2019, in Queens County, did knowingly associate with a person reasonably believed to be engaged in, likely to engage in, or to have engaged in criminal activities.

P.G. 203-10, Page 1, Paragraph 2(c)

PUBLIC CONTACT –
PROHIBITED CONDUCT

Disciplinary Case No. 2020-22652

1. Said Police Officer Lela Banks, while on-duty and assigned to the 79th Precinct, on or about August 29, 2020, in Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer Banks received vital information from the victim of a crime of Domestic Violence and failed to take police action by conducting a thorough investigation.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on March 1 and 7, 2022. Respondent, through her counsel, entered a plea of Guilty to Specifications 1, 3, and 5 in Case No. 2020-21828 and the sole specification in Case No. 2020-22652. She pleaded Not Guilty to Specifications 2 and 4 in Case No. 2020-21828. The Department called Sergeant Melissa Charles and a civilian, “JD,”¹ as witnesses. Respondent testified on her own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner’s review. Having reviewed all of the evidence in this matter, I find Respondent Guilty of the charged misconduct and recommend a penalty of fifty-eight (58) vacation days, the forfeiture of twelve (12) pretrial suspension days, and dismissal probation.

ANALYSIS

Disciplinary Case No. 2020-21828 – The Supermarket Incident

On October 31, 2019, while working unauthorized off-duty employment as a security guard for a supermarket in Queens County, Respondent received a phone call from someone she lived with, “FJ,”² stating that he was calling to see if she was okay because it was Halloween and

¹ JD is an anonymized name; the witness’s true identity is known to the Department.

² FJ is an anonymized name; the witness’s true identity is known to the Department.

“people act crazy” (Tr. 145). He further told her that he was in the neighborhood and saw someone entering her supermarket after closing hours. Observing the supermarket’s security cameras during the call, Respondent observed a male, JD, who was present in the store afterhours. (Tr. 144-47)

Respondent confronted JD, who refused to leave. She attempted to physically remove him from the store, but he resisted. During the altercation, FJ entered the store, picked up JD, and physically carried him outside to the parking lot. Respondent testified that she observed JD and FJ arguing in the parking lot and she asked them to leave. While FJ walked away from the supermarket, JD remained in the parking lot and began to record a video. FJ walked back toward JD and punched him in the face, causing JD to hit the ground. Respondent physically separated JD and FJ and told everyone “to just leave, to go home.” She did not contact police or ask JD if he required medical assistance. (Tr. 112, 151; Dept. Exs. 2, 3)

At trial, JD testified that he called 911 after the incident, but, after waiting some time with no response from police, he went home. While he did not go to a precinct to file a complaint report after this incident, six days later he went to Elmhurst Hospital to seek medical attention for the injuries he sustained from the incident. An aided report was prepared at the hospital, initiating a Department investigation. JD testified that the injuries he suffered caused him “stiffness about the cervical spine” and “contusions from being hit in the face.” (Tr. 115, 117-18; Dept. Ex. 1)

Respondent testified at trial that during the incident she was wearing her reading glasses and it was nighttime. She testified that, at the time, she thought JD was only pushed, not punched, so she did not believe she needed to take police action. She did not review the security video of the incident until weeks later. Respondent testified that her mindset that night was in a

“security guard capacity,” rather than that of a police officer. She testified that if she had seen the punch, she would have taken police action. (Tr. 149, 151, 167)

Specification 1: Unauthorized Off-Duty Employment

Respondent pled guilty to this charge. During her testimony at trial, however, she claimed that prior to the start of her employment, in 2015, she had filed for off-duty employment and her request was granted, but admitted that she failed to renew her applications on an annual basis, as required. Sergeant Melissa Charles, Patrol Borough Brooklyn North Investigations Unit, testified that she could not find a record of any off-duty employment application in connection with Respondent’s work at the supermarket. Respondent was unable to produce any record as well. Having pled guilty, the Tribunal finds Respondent Guilty of the misconduct described in Specification 1.

Specification 2: Failure to Take Police Action

The Department has met its burden of proof that Respondent failed to take police action after witnessing an assault. The Tribunal does not credit Respondent’s testimony that she did not observe the punch and was facing the supermarket (Tr. 166-67). JD testified that Respondent had “front row seating” to the altercation between FJ and JD. This testimony is corroborated by the supermarket’s surveillance video (Dept. Ex. 2), in which Respondent’s body is seen positioned towards FJ and JD during the punch (*Id.* at 02:15). After the punch, she immediately intervenes, directing FJ away from JD. Respondent further claimed limited visibility because she was wearing reading glasses and it was nighttime; however, the surveillance video reveals that the area where the incident occurred was well-lit. Furthermore, regardless of whether JD was punched or pushed to the ground, Respondent failed to take police action.

Accordingly, the Tribunal finds Respondent Guilty of Specification 2.

Disciplinary Case No. 2020-21828 – Criminal Association, Computer Misuse, False/Misleading Statements

On January 23, 2020, Respondent was interviewed by Sergeant Melissa Charles as part of an investigation into whether Respondent was authorized to work at the supermarket.

Respondent was asked about the other people present in the supermarket during the incident and was asked about a “male – large build with a baseball cap ... seen on video outside of the store having an altercation with the male,” later identified as FJ. Respondent answered, “There was a male there, yes, with a baseball cap.” Respondent was asked if the male with the baseball cap worked at the supermarket and she responded, “I don’t know. No. He doesn’t – to my knowledge. I don’t know.” Respondent later admitted that FJ did not work at the supermarket. When asked again, “So how do you know him?,” Respondent replied, “I know him as hi and bye. He’s a friend.” Respondent provided the male’s name to Department investigators. (Dept. Exs. 10 at 6-7)

Following the January 23, 2020 interview, Sergeant Charles identified FJ, ascertaining that he had a criminal record³ and that Respondent had made seventeen (17) unauthorized inquiries in Department databases, revealing his criminal history to her, prior to the altercation in the supermarket. (Tr. 42, 48, 51-52)

Respondent was interviewed again on February 7, 2020, and further questioned about how she knew FJ. Respondent again claimed that Respondent was a “just a friend” and stated she had known him “give or take a couple of years, maybe.” After a break in the interview, Respondent admitted, “He’s my boyfriend.” (Tr. 54; Dept. Ex. 11A at 8; Dept. Ex. 11C at 2).

³ FJ’s criminal record depicts over two dozen arrests and criminal convictions for criminal sale of a controlled substance and robbery in the first degree (Dept. Ex. 13).

At trial, Respondent testified that she met FJ through a website in 2018, and that their relationship progressed from a friendship to dating. She testified that, in 2018, FJ moved into her apartment where she lived with her two children. After he admitted to her that he had a criminal record, she used a Department database to conduct inquiries on him. She then asked him to move out. He refused to do so. She testified that she did not call the police to have him physically removed because she did not want it to “become something that was out of control” and she was “scared” of him. (Tr. 134-35, 137-38)

Respondent claimed that by the time of the October 31, 2019 supermarket incident and her Department interviews, she was no longer involved in a romantic relationship with FJ, although he still lived with her. Accordingly, Respondent claimed that when she told Department investigators that FJ was her “friend,” she had in fact provided a truthful response. She explained that the reason she told Department investigators at her February 2020 interview that FJ was her “boyfriend” was that she was told “by the[union] representative ... to just say it in order to get it over with.” (Tr. 139, 152-53)

Respondent testified that, in November 2020, she decided to move out of the apartment, ending her contact with FJ. Respondent testified that she had to “move out like a battered woman” and that FJ was “very irate” when he showed up at the apartment while she was moving out. Respondent testified that she was “very scared.” (Tr. 182-83)

Specification 3: Computer Misuse

Respondent pled guilty to this specification. Respondent testified that she conducted computer inquiries concerning FJ to verify he had a criminal record and because “he needed to know what was on the record” in connection with jobs he was applying to (Tr. 140). Having pled guilty, the Tribunal finds Respondent Guilty of the misconduct described in Specification 3.

Specification 4: Misleading Statements

The Department has met its burden of proof that Respondent did wrongfully make misleading statements during an official Department interview on January 23, 2020. In response to direct questions concerning her relationship with FJ, Respondent was not forthcoming and sought to obfuscate, using overly generalized responses. FJ was a person Respondent knew intimately and lived with. Respondent did not make these facts known to Department investigators at her January 23, 2020, interview.

At trial, Respondent's attorney made a creative and impassioned argument that because the purpose of the January 23, 2020, interview was to investigate an allegation of unauthorized off-duty employment and failure to take police action, Respondent's relationship to FJ was not material to the interview, since whether he was a "friend" or a "boyfriend" had no bearing on whether Respondent had engaged in unauthorized off-duty employment or had failed to take police action. The Tribunal disagrees.

Patrol Guide Procedure 304-10 defines a misleading statement as "A statement that is intended to misdirect the fact finder, and materially alter the narrative by[] [i]ntentionally omitting a material fact or facts." The procedure further defines a material fact as: "A significant fact that a reasonable person would recognize as relevant to, or affecting, the subject matter of the issue at hand, including any foreseeable consequences, or establishment of the elements of some proscribed conduct. It is a fact that is essential to the determination of the issue and the suppression, omission, or alteration of such fact would reasonably result in a different decision or outcome. A material fact may be distinguished from an insignificant, trivial, or unimportant detail." The Disciplinary Guidelines further advise that "Materiality is fact-specific and must be evaluated on a case-by-case basis" (Disciplinary Guidelines at 32).

Whether Respondent was involved in a relationship with FJ, or was living with FJ, had a direct and material relevance to the decision she made on October 31, 2019, not to take police action in connection with an assault perpetrated by FJ. The questions directed to Respondent asked her if she knew FJ and to describe their relationship. These questions were germane to the investigation and wholly appropriate, potentially identifying a motive or bias for Respondent's decisions that evening. Respondent's answers, including that she knew him only on a "hi and bye" basis and that she was unsure whether he worked at the supermarket were plainly misleading.

Accordingly, Respondent is found Guilty of Specification 4.

Specification 5: Criminal Association

Respondent pled guilty to this specification. Respondent testified that she continued to associate with FJ for over two years after learning about his criminal record because she was too fearful to force him to move out and wanted to help him get a job so he could move out of her home of his own volition. Rather than seeking assistance from the Department or making the Department aware of her predicament, Respondent chose to take matters into her own hands and to violate Department guidelines. Having pled guilty, the Tribunal finds Respondent Guilty of the misconduct described in Specification 5.

Disciplinary Case No. 2020-22652

On August 29, 2020, Respondent and her partner responded to a family dispute in Brooklyn. The complainant told Respondent that her estranged husband had threatened to kill her in text messages, damaged her door in attempting a forced entry, and refused to leave. Respondent did not arrest the husband, who was present on scene, or conduct a records check, which would have revealed an open I-card for Criminal Obstruction of Breathing perpetrated by

the husband upon complainant at the same location four months earlier. (Tr. 129-30, 177-79, 185)

At trial, Respondent testified that, upon reviewing text messages shown to her by complainant, she did not observe any threatening messages. Furthermore, upon inspecting the door she did not see any damage beyond basic wear and tear. Respondent explained that due to these findings and because complainant did not tell her that she wanted her husband arrested, she chose not to arrest him. Respondent admitted that with “20/20 hindsight,” she should have conducted a warrants check. (Tr. 131-32)

Respondent’s body-worn camera captured the entirety of Respondent’s interactions with the complainant. Upon arrival, Respondent spoke with the complainant for approximately four minutes. The complainant tells Respondent that her husband threatened to kill her in a text message. Respondent looks at the complainant’s phone to review the text messages. Respondent does not tell the complainant that she does not believe the text messages to support her allegations. The complainant shows Respondent the damage to her door. Respondent does not tell the complainant that she observes no damage to the door. The complainant can be heard saying, “I already made a police report on him” and “I’ve been dealing with him for 10 years. We have repeated domestic violence cases.”

The body-worn camera footage reveals that after four minutes of interacting with complainant, Respondent proceeds downstairs to speak with her partner. Respondent provides her partner with a Domestic Incident Report form. Her partner leaves to speak with complainant and complete the domestic incident report (Dept. Ex. 12B). Respondent admitted that she did not relay the information she was told by the complainant to her partner since he was going to speak with her. Her partner’s body-worn camera footage depicts the complainant telling him, “[H]e

already got a warrant . . . lock him the fuck up.” (Dept. Ex. 7; Dept. Ex. 12B at 08:15) While awaiting her partner, Respondent held an in-depth conversation with the husband in which she urged him to “fight” to have a relationship with his son, to go to family court to obtain visitation rights, and told him “I wish I could turn this off and really talk to you.” (Dept. Ex. 12A; Tr. 172)

The Department produced a copy of text messages from complainant’s husband to complainant that it alleged Respondent had reviewed (Dept. Ex. 6). When shown to Respondent at trial, however, Respondent testified that she did not recognize those text messages as the ones shown to her by complainant. Nevertheless, she stated that even if she had read these text messages, she would not have made an arrest because she did not see anything threatening. In the text messages produced by the Department, the complainant’s husband stated, “tell them come get me cause im damn sure coming for u deadass.” (Tr. 129-30, 185, 177-79; Dept. Ex. 6)

Having pled guilty, the Tribunal finds Respondent Guilty of the sole specification in Disciplinary Case No. 2020-22652.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department’s Disciplinary System Penalty Guidelines (“Disciplinary Guidelines”), considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent’s employment history also was examined. *See* 38 RCNY § 15-07. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent has been found guilty of failing to take police action after witnessing an assault and making a misleading statement at a Department interview. She has also pled guilty to engaging in unauthorized off-duty employment, repeated computer misuse, criminal association,

and failing to take police action by failing to conduct a thorough investigation at the scene of a domestic violence matter.

The Disciplinary Guidelines recommend the following presumptive penalties for misconduct with which Respondent is charged: ten (10) penalty days for unauthorized off-duty employment, ten (10) penalty days for computer misuse, twenty (20) penalty days for criminal association, twenty (20) penalty days for failure to take police action, thirty (30) penalty days and dismissal probation for misleading statements, and twenty (20) penalty days for failing to take police action by failing to conduct a thorough investigation. These penalties total 110 penalty days. Where the number of penalty days exceeds 90 days, the Disciplinary Guidelines recommend that the presumed penalty be termination or forced separation. On this basis, the Department Advocate recommended termination. The Tribunal finds a penalty recommendation of termination to be excessive under the totality of the circumstances.

Respondent has no prior formal disciplinary action and high evaluations. The charge bearing the highest penalty with which Respondent is charged is misleading statements. A mitigating factor established by the Disciplinary Guidelines in the context of misleading statements is where “the statement is such that it was made with the intent to avoid embarrassment (particularly in the context of interpersonal relationships or health conditions).” Respondent’s misleading statements concerned the extent of her relationship with FJ, a live-in boyfriend, not misstatements that would have impeded the Department from discovering the identity of the perpetrator of a crime. Indeed, the Tribunal credits Respondent with providing the Department with FJ’s full name at her first official Department interview. The Tribunal further credits Respondent’s testimony that she was “threatened and scared” of FJ, especially since she lived with her children (Tr. 138, 181). Accordingly, it is likely that this credible fear clouded her

decision-making. As such, the Tribunal finds that Respondent qualifies for a mitigated penalty in connection with her misleading statements charge that would countenance against a penalty of Termination.

Nevertheless, a period of Dismissal probation is warranted. Respondent's conduct of using Department databases on multiple occasions to assist a known felon "to know what was on [his] record" is a gross misuse of confidential Department resources and a violation of the trust placed in Respondent to use such resources appropriately. Respondent is on notice that this Tribunal is unlikely to recommend a penalty less than termination should she engage in similar misconduct in the future.

The Tribunal further finds that the application of consecutive penalties in these disciplinary matters, which could result in the forfeiture of 110 penalty days, would undermine the proper "balance between punishment, deterrence and remediation" (Disciplinary Guidelines at 13). The calculation of an appropriate penalty under the Disciplinary Guidelines is not a numbers game. A stated goal of the Disciplinary Guidelines is to "[i]mpose appropriate penalties that are fair, proportional and rational" (Disciplinary Guidelines at 3). A penalty in excess of fifty penalty days, equating to the loss of two years' worth of vacation time and tens of thousands dollars in pay for an officer with Respondent's tenure, constitutes a serious penalty and one that is typically reserved for misconduct of the most serious nature short of termination. The Tribunal must strive to strike a balance between penalties that promote the goals of the disciplinary system, mainly accountability and deterrence, and those that are excessive and may adversely affect the Department's goals of maintaining a robust and effective police force.

Taking into account the totality of the circumstances attendant to the instant disciplinary matters and the objectives of the Disciplinary Guidelines, I recommend that Respondent forfeit

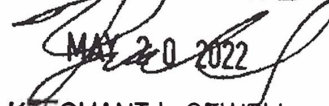
twelve (12) days already served on pre-trial suspension, forfeit an additional 58 vacation days (for a total of 70 penalty days), and that Respondent be DISMISSED from the New York City Police Department, but that her dismissal be held in abeyance for a period of one (1) year pursuant to Section 14-115 (d) of the Administrative Code, during which time she may remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.

Respectfully submitted,



Josh Kleiman
Assistant Deputy Commissioner Trials

APPROVED



KEECHANT L. SEWELL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER LELA BANKS
TAX REGISTRY NO. 953658
DISCIPLINARY CASE NOS. 2020-21828 & 2020-22652

Respondent was appointed to the Department on January 9, 2013. On her most recent annual performance evaluations, she received ratings of “Exceeds Expectations” for 2019, 2020 and 2021. She has been awarded one medal for Meritorious Police Duty.

Respondent has no formal disciplinary record. In connection with Case No. 2020-22652, she was suspended from September 4, 2020 to September 15, 2020.

For your consideration.

Josh Kleiman
Assistant Deputy Commissioner Trials