



POLICE DEPARTMENT

December 15, 2022

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2022-24551
Police Officer Madellyn Cuevas	:	
Tax Registry No. 938304	:	
122 Precinct	:	

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

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Javier Seymore, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For the Respondent: John Tynan, Esq.
Worth, Longworth and 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

1. Police Officer Madellyn Cuevas, while assigned to the 122nd Precinct, while on-duty, in Richmond County, on or about May 14, 2021, did fail to remain on post, to wit: said Police Officer left her post and Stationhouse without permission or police necessity for approximately thirty-three (33) minutes.

P.G. 203-05, Page 1, Paragraph 2

PERFORMANCE ON
DUTY - GENERAL

2. Police Officer Madellyn Cuevas, while assigned to the 122nd Precinct, while on duty, in Richmond County, on or about May 14, 2021, did fail to comply with an order given by New York City Police Department Sergeant Matthew Shaw, to wit: said Police Officer was directed to complete a clerical assignment and did fail to complete the assignment.

P.G. 203-05, Page 1, Paragraph 1

PERFORMANCE ON
DUTY - GENERAL

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on October 24, 2022. Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. The Department called Sergeant Matthew Shaw. Respondent called Police Officer Claudia Torres-Hernandez and 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 evaluated all of the evidence in this matter, the Tribunal finds Respondent Guilty of Specification 1 and Not Guilty of Specification 2. I further recommend that Respondent forfeit (3) vacation days.

ANALYSIS

The following is a summary of the facts which are not in dispute.

At the time of the alleged misconduct, Respondent was a 16-year Member of Service. Respondent suffered a line of duty injury on March 30, 2017, resulting in injuries to her neck and lower back. She received physical therapy and returned to work but eventually went back on extended sick leave in August 2018. On September 8, 2020, Respondent underwent neck fusion

surgery related to her 2017 injury. She subsequently applied for and was denied a disability pension; she has since submitted a second application. Respondent returned to restricted duty and was assigned to the 120th Precinct, then to the 122nd Precinct (T. 82-84).

As of May 14, 2021, Sergeant Matthew Shaw had been working at the 122nd Precinct for one and one-half years; he had been a Member of Service for 14 years. That evening, he was assigned to First Platoon as the Desk Officer; as such, he was the highest-ranking officer in the command. He was aware Respondent was on restricted duty from the time he arrived at the command but testified that he felt it was not his business to know why she was restricted¹ (T. 36, 49).

On May 2, 2021, Sergeant Shaw assigned an administrative task to Respondent: taking police officer PERF reports, placing them into their respective files, and then putting them inside a box. He testified that there were approximately 200 officers assigned to the precinct, with a report for each officer. Shaw testified that he wanted the task to be completed in a timely manner but did not give Respondent a deadline² (T. 12).

The following is a summary of the relevant evidence presented at the trial.

Respondent testified that Sergeant Shaw did not initially speak to her about the assignment; she learned of it from another police officer, who told her the assignment came from Sergeant Shaw. She testified that she discussed the task with Sergeant Shaw on May 5th or 6th when he asked her for a progress report. Respondent questioned why Sergeant Shaw had not spoken to her directly rather than pass instructions through a junior police officer; she also

¹ Sergeant Shaw testified that he did not become aware of Respondent's shoulder injury until that evening and did not know about the history of her injury. Therefore, he did not believe that her shoulder hurting was a valid excuse to prevent her from completing administrative work. He noted she was seen earlier carrying a bookbag and a large drink; therefore, he did not see why she could not file paperwork (T. 18, 53-54).

² He believed that two weeks seemed a reasonable time to complete the project. He conceded, however, that he never told Respondent that he expected the assignment to be completed by that time (T. 12-14, 30-33).

informed him that she and Police Officer Claudia Torres-Hernandez were on restricted duty (T. 85-86). Respondent testified that she did not recall Shaw's response, if any (T. 86).

On May 14, 2021, Sergeant Shaw again asked Respondent about the PERF reports. Police Officer Torres-Hernandez observed a verbal exchange between Sergeant Shaw and Respondent after Shaw learned Respondent had not completed the filing assignment. Torres-Hernandez testified that she heard Respondent tell Sergeant Shaw she was experiencing shoulder pain, to which he replied, "Fuck your shoulder" (T. 63, 67-68). Torres-Hernandez left the desk area and went to the property room, partly to remove herself from the situation, because she believed Sergeant Shaw's response was "excessive" (T. 78-79).

According to Respondent, when Shaw asked, "Why didn't you finish the files?" she responded, "Sarge, my shoulder is killing me; I couldn't finish" (T. 87). He replied, "I don't give a fuck; what does your shoulder have to do with filing?" (*Id.*). Respondent told Sergeant Shaw that she would do property and headed towards the property room. Sergeant Shaw asked her, "Where are you going? I told you to do the files." When she said she would do the property first, then do the files, Shaw replied, "No, do them fucking now" (T. 88). In response, Respondent said, "All right." Sergeant Shaw then asked, "Are you disobeying a direct order?" (*Id.*). At that point, Respondent acquiesced to his request, asked someone to pull the files out from beneath the telephone switchboard desk, and then pushed them down the stairs, across the hall, and into the complaint room using her foot³ (*Id.*).

Respondent testified that a short time after she began working on the files, she noticed Sergeant Shaw appearing to stare at her from behind the desk. She stated that she felt as though

³ During his testimony, Sergeant Shaw claimed to have heard a "loud bang" when Respondent kicked the box into the room (T. 20).

he was trying to intimidate her.⁴ To alleviate the tension she perceived, Respondent went outside, eventually stopping to the right of the exit by the “highway garage.”⁵ She stayed there for what she believed was about 20 minutes (T. 39, 89).

Once Sergeant Shaw realized Respondent had left the building, he attempted but failed to catch up with her. He then conducted a perimeter search of the building, including the parking lot. He asked a female officer to check the female locker room. After being unsuccessful in locating Respondent, he returned to the building and called her personal cellphone, leaving a voicemail. Sergeant Shaw testified that his next steps were to call his union delegate, followed by his Integrity Control Officer (ICO), for advice about Respondent. He believed his two phone conversations lasted approximately 20 minutes combined. While on the phone with his ICO, Respondent reentered the command. Sergeant Shaw estimated that Respondent had been missing for a total of 33 minutes (T. 23-25, 41-42).

Respondent returned to the 124 room and filed the reports without speaking to the Sergeant. According to Respondent, Sergeant Shaw yelled from the desk for her to come to him. When she did not respond, Shaw came from behind the desk, stood in the vestibule and directed her to “Come to the muster room now.” Respondent testified that she replied, “Sarge, don’t talk to me like that,” because he was disrespectful, loud, and irate. Sergeant Shaw repeated his demand twice, and each time, Respondent reiterated her previous demand that he not speak to her in that manner. Sergeant Shaw then turned around and punched a wall in the vestibule, before turning back to her, stating, “You’re getting suspended; call your delegate.” Respondent continued the filing assignment until the Duty Captain entered the 124 room and spoke to her.

⁴ Sergeant Shaw testified that he did observe Respondent once she went into the complaint room and that she was not putting together the files as he had directed but was on her phone for approximately 25 minutes (T. 22, 89).

⁵ Sergeant Shaw testified that he watched Respondent leave the stationhouse on video, exiting from the back door.

Respondent later stepped out of the 124 room to retrieve a water bottle and coffee she had left behind the desk, leading Sergeant Shaw to ask, “Why are you out here? Who told you to come out of the 124 room?” When Respondent explained that she was retrieving her water and her personal property, Shaw replied, “Go back in the 124 room; nobody told you to come out.” Respondent replied, “This is so unnecessary” and returned to the 124 room to continue filing (T. 90-92).

Respondent completed the filing project on May 15, 2021; she remained at the precinct past her tour waiting for a decision on whether or not she was going to be suspended. She called two of her delegates, who advised her that they were busy and that she should go home. Respondent took vacation at the end of her tour that morning; she was informed two days later that she had been transferred from the precinct (T. 92-93).

Credibility

Sergeant Shaw’s testimony was, at times, difficult to reconcile with his length of service and the responsibilities of his position. First, he claimed that despite being the assistant to the operations coordinator and being assigned to the 122nd Precinct for approximately 18 months, he had no idea that Respondent had been on restricted duty for almost three years and that she suffered from shoulder problems.

As the Desk Officer, it would be expected that he would know how many Members of Service were assigned to the tour, how many had reported for duty, and how many were available for enforcement duties. This knowledge would have been part of a normal turnover from one Desk Officer to another; it strains credulity that he professed to be unaware of the status of his personnel when the Patrol Guide explicitly charges the Desk Officer with responsibility “for all police operations within command during tour” (*see* P.G. 202-18).

Second, he professed to have no ability to examine her medical record, which appeared to be an attempt to support his assertion that he was ignorant of Respondent's duty status. In this case, however, the credible evidence supports a finding that Respondent told him that her shoulder hurt and that the pain prevented her from completing the task she had been assigned; the evidence further supports a finding that he discounted Respondent's assertion based upon his subjective criteria.

Third, I found it significant that when Shaw realized Respondent had been outside the building for a significant period and conducted a fruitless search for her, he called his delegate before he called the Duty Captain. In the view of the Tribunal, this action revealed Sergeant Shaw's prioritization of his own status before the well-being of a Member of Service, subject to his authority, who was then unaccounted for.

I also had the opportunity to observe Sergeant Shaw's demeanor during his testimony. The tone of his voice and his responses to questioning suggested that he was invested in the outcome of the litigation rather than just testifying to the performance of his duties. Accordingly, I find that Sergeant Shaw exhibited some bias; I do not find him incredible, but I view his testimony with caution.

In contrast, I found Respondent credible because she conceded material facts of the Department's case in her testimony. While I am mindful that she is an interested witness in this proceeding, she admitted that she left the precinct, albeit remaining on Department property, to disengage from Sergeant Shaw. She further admitted that she still needed to complete the filing project she had been given. Respondent's testimony was also supported by other evidence in this case, specifically, the testimony of Police Officer Torres-Hernandez.

Similarly, Police Officer Torres-Hernandez, a disinterested witness, corroborated a critical verbal exchange between Respondent and Sergeant Shaw, bolstering Respondent's version of events and further undermining Sergeant Shaw's. In particular, she testified that when she heard Respondent advise him that her shoulder hurt and he responded to her assertion by saying, "I don't give a fuck," she left the area because she believed the interaction was unprofessional as between a supervisor and someone he supervised.

Specification 1: Off-Post

I find that the Department Advocate has met his burden of proof that Respondent, on May 14, 2021, left her post without permission or police necessity for approximately 33 minutes.

Respondent admitted that she walked out of the stationhouse to place some distance between herself and Sergeant Shaw; she further revealed that she walked to an area of the precinct parking lot near where a Highway unit was located. Although she was off-post, no reasonable construction of this geography would support an allegation that she left the command entirely. Finally, Respondent admitted that she did not seek permission from Sergeant Shaw, or anyone else, before leaving the building (T. 98-99).

Accordingly, I find Respondent Guilty of Specification 1.

Specification 2: Failing to comply with a lawful order

I find that the Department Advocate has failed to meet his burden of proof by a preponderance of the relevant, credible evidence that Respondent, on May 14, 2021, failed to comply with an order.

To succeed on a claim that a Member of Service failed to obey an order, the Department must establish by the preponderance of the credible evidence that: (i) Sergeant Shaw communicated an order to Respondent which she heard; (ii) the content of the order was clear

and unambiguous, and (iii) Respondent willfully refused to obey the order (*Disciplinary Case No. 2016-16421* [Oct. 23, 2017] *citing Dep't of Correction v. Hipp*, OATH Index No. 337/00 [Dec. 3, 1999][insubordination charge dismissed where insufficient proof that captain clearly communicated order and thus no proof of willful disobedience]).

According to Sergeant Shaw, he gave Respondent a lawful order to complete the filing of PERF reports. During Sergeant Shaw's testimony, he asserted that he never actually informed Respondent of a hard deadline for when he expected the reports to be completed, instead on the witness stand, he indicated he believed two weeks was a reasonable within which to complete a task which he felt could have been completed in approximately five or six hours (T. 55). He conceded that despite speaking to Respondent about the project several times, on May 2, May 7, and again on May 12, he never told Respondent when he expected her to complete the task (T. 11-13, 30-32, 55).

Under the circumstances presented in this case, the directions Sergeant Shaw gave Respondent were ambiguous and imprecise. It did not constitute an order, as it was not communicated directly to her and was unclear. The evidence supports a finding that the first time Sergeant Shaw gave Respondent a deadline for completion of the task was May 14, during her tour of duty; the evidence further supports a finding that she completed the task by the end of her tour. I do not opine whether Sergeant Shaw's belief that two weeks was sufficient time to complete the task was reasonable; his belief is irrelevant, as he never communicated such a deadline to her.

Based on the preceding reasons, I find Respondent Not Guilty of Specification 2.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty 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, who was appointed to the Department on July 11, 2005, has been found Guilty of being off-post. The Department Advocate has recommended the forfeiture of 25 vacation days; since I have acquitted Respondent of Specification 2, the recommendation is excessive.

The presumptive penalty for being off post is five penalty days; the mitigated penalty is three penalty days.


The importance of Members of Service being at their appointed place of duty is paramount. In a quasi-military organization, an order may be issued on short notice that calls upon members to mobilize; if they are not where they are supposed to be, their absence may have a direct impact upon mission effectiveness.

In this case, however, Respondent candidly admitted that she stepped outside the precinct to withdraw from a contentious interaction with Sergeant Shaw. Based upon Respondent's description of their exchange and Police Officer Torres-Hernandez's reaction to witnessing it, I find that it was sufficiently upsetting to explain Respondent's unilateral, but unauthorized, action to avoid further escalation. I further recognize that due to the nature of police responsibilities,

Members of Service are often subjected to emotional stressors, which can be exacerbated by difficult interactions with co-workers or supervisors.

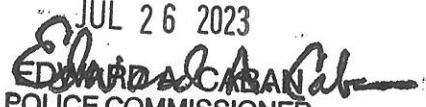
Based on the facts in this record, I find the circumstances surrounding Respondent's interactions with Sergeant Shaw evidence of mitigation. I therefore recommend the imposition of the mitigated penalty of three vacation days.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'Paul M. Gamble', written over a horizontal line.

Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

JUL 26 2023

EDWARD CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER MADELLYN CUEVAS
TAX REGISTRY NO. 938304
DISCIPLINARY CASE NO. 2022-24551

Respondent was appointed to the Department on July 11, 2005. On her three most recent annual performance evaluations, she was rated “Exceptional” for 2021 and “Exceeds Expectations” for 2019 and 2020. She has been awarded one medal for Meritorious Police Duty.

Respondent has no disciplinary history.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials