The City of New York

POLICE DEPARTMENT

October 3, 2019

---x

In the Matter of the Charges and Specifications	:	Case Nos.
- against -	:	
Police Officer Edwin Peguero	:	2015-14033,
Tax Registry No. 953225	:	2017-17118,
Queens Court Section	:	2017-18103

---x

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

Before: Honorable Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPEARANCES:

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

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

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2015-14033

1. Said Police Officer Edwin Peguero, on March 1, 2014, while on duty and assigned to Patrol Borough Bronx, at approximately 2145 hours, inside the 42nd Precinct stationhouse, wrongfully used force, in that without police necessity, said officer punched Person A several times.

P.G. 203 11, Pages 1 & 2 — USE OF FORCE

Disciplinary Case No. 2017-17118

1. Said Police Officer Edwin Peguero, while assigned to the 9th Precinct, while off-duty, in [redacted], on or about February 28, 2017, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer Peguero threatened Indvidual 1 while engaging in a verbal dispute.

P.G. 203-10, Page 1, Paragraph 5 — PUBLIC CONTACT PROHIBITED CONDUCT

2. Said Police Officer Edwin Peguero, while assigned to the 9th Precinct, while off-duty, in [redacted], on or about February 28, 2017, did fail and neglect to properly safeguard his off-duty firearm.

P.G. 203-10 Page 1, Paragraph 5 — GENERAL REGULATIONS

Disciplinary Case No. 2017 18103

1. Said Police Officer Edwin Peguero, while assigned to Queens Court Section, on about January 10, 2016 through December 31, 2016, did fail and neglect to reside within the City of New York or the counties of Westchester, Rockland, Orange, Putnam, Nassau or Suffolk, as required, to wit: said Police Officer was residing in [redacted]

P.G. 203-18 — RESIDENCE REQUIREMENTS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on September 6, 2019. Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. 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, as Respondent has pled Guilty, the Court finds Respondent Guilty and recommends a

penalty of the forfeiture of 33 days served on pretrial suspension, the loss of 40 vacation days and the imposition of one-year dismissal probation.

SUMMARY OF EVIDENCE IN MITIGATION

In this matter, Respondent has pled guilty to the charges in all three cases. As such, the issue to be decided by the court concerns the penalty recommendation. To address the misconduct in the three cases, the Department seeks a penalty consisting of the forfeiture of 33 pretrial suspension days already served, the loss of 40 vacation days, and one-year dismissal probation. Through his counsel, Respondent acknowledged that the penalty will likely include the forfeiture of the 33 pretrial suspension days and one-year dismissal probation. Respondent testified at trial primarily to mitigate the proposed 40 vacation day portion of the penalty sought by the Department.

With regard to Case No. 14033/15, Respondent testified that he had assisted in a cocaine possession arrest in which numerous officers had difficulty restraining the arrestee. Once the arrestee, who was approximately 6 feet 4 inches tall and weighed 300 pounds, was at the 42nd precinct, Respondent was assigned to assist in searching him. The arrestee did not comply and Respondent used physical force, punching the individual several times. At trial, Respondent acknowledged that he punched the arrestee more times than were necessary. (Tr. 9-11)

With regard to Case No. 18103/17, Respondent admitted that from about January 10, 2016, through December 31, 2016, he resided in [redacted] with [redacted]. He testified that his reason for residing there was based on the needs of his children, who lived with Individuat 1 in [redacted] and were not legally allowed to reside with him in [redacted] at that time. Respondent was worried that Individuat 1 wasn't caring for the children properly and was leaving them by themselves too frequently. [redacted]

[redacted]. During this time that he resided in [redacted], he testified that he took care of the children five days a week and they stayed with him the majority of the time. [redacted].[1] (Tr. 16-19, 25-26)

Respondent testified that as much as he loves the job, he loved being a parent more. During that time in 2016, he thought it was more important for him to be closer to, and spend time with, his children despite knowing that he was violating the Department's residency requirements. On cross examination, Respondent testified that he explained the situation with his children to a supervisor, Lieutenant Brown, but did not ask for any written approval to live in [redacted]. He emphasized that during that time, he still was never late for work, did not call in sick often, and was able to perform his job duties. He stated that his children are currently doing much better. (Tr. 19-20, 24-25)

Finally, with regard to Case No. 17118/17, Respondent testified that on the date of the incident, February 28, 2017, [redacted]. They were still residing in [redacted] with Individual 1 and Respondent was bringing his son back to Individual 1's house after baseball practice. With both children and Individual 1's [redacted] present, Respondent got into a verbal altercation with Individual 1. The argument concerned the amount of time Individual 1 left the children alone and how far the son had to walk to school. During the altercation, Respondent used words that he agreed could reasonably be considered as threats against Individual 1. [redacted]

[1] Counsel for the Department made a record that the Department reviewed [redacted] documentation that supported Respondent's testimony [redacted] (Tr. 26)

[redacted] (Tr. 12-16)

On the day of this altercation, Respondent had his firearm in the glove compartment of his car, where he conceded it was not safeguarded. He stated that when he picked up his son for baseball practice, he had his firearm on his person, but at some point prior to returning to his Individual 1's home, he placed it in the glove compartment. (Tr. 16, 24)

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 11, 2012. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent seeks to reduce the recommended forfeiture of his vacation days based mainly on his testimony that his residency violation was necessitated by his concern for the welfare of his children. The court appreciates Respondent's concern for his children and desire to be present with them more regularly during a difficult period. At the same time, it is troubling that just a few months later, Respondent made threats against [redacted] in their home while they were present, in a situation that led to a police response and Respondent's arrest for domestic terrorist threats.

If this were a pure residency violation case, the court might be inclined to mitigate, even given that Respondent resided [redacted] for a full year, based on the circumstances involving the children. However, the court has been presented with three separate disciplinary cases for misconduct that occurred in three of the seven years that Respondent has been a New York City police officer. Respondent has pled guilty to excessive force; a domestic

incident that involved threats; failure to secure his firearm when his children were nearby and a violation of the residency requirement for an entire year. All of these incidents can be considered serious misconduct on their own and based on the totality of the circumstances, the tribunal is not inclined to deviate from the Department's penalty recommendation.

In residency violation cases with extenuating family circumstances that warranted mitigation, penalties of 20 to 25 vacation days have been imposed. *See Disciplinary Case No. 2016-15800* (Dec. 16, 2016) (ten-year police officer with no disciplinary record negotiated a penalty of 25 vacation days for (i) failing to reside in the City or the surrounding counties, as required and (ii) being out of state without approval while on maternity leave. Respondent resided in Pennsylvania with her boyfriend and two children because she received assistance with childcare from family and the school system was better equipped to address her daughter's special needs. DAO cited Respondent's pregnancy and having a special needs child as mitigating factors because they increased Respondent's need for assistance with childcare); *Disciplinary Case No.* [redacted]) (one-year probationary police officer with no disciplinary history negotiated a penalty of 20 vacation days for failing to reside within the City or surrounding counties, as required. Respondent resided in New Jersey, explaining that his infant son was born prematurely and had an aggravated medical condition requiring frequent visits to physicians in New Jersey. Though Respondent planned on moving to Staten Island, remaining in New Jersey enabled his wife, who worked there, to respond more expeditiously to their son's medical condition). As in these cases, Respondent has cited the needs of his children as the sole motivator for his out of-state-residency, but still must be held accountable for violating Department policy over an extended period of time with a significant penalty day forfeiture.

The domestic incident where Respondent threatened Individual 1 also warrants a heavy penalty. *See Disciplinary Case No. 2017-17299* (Nov. 9, 2018) (fourteen-year police officer with no disciplinary history negotiated a penalty of 30 suspension days already served and counseling for calling his estranged wife and threatening her with bodily harm. Respondent was arrested and an Order of Protection was issued); *Disciplinary Case No. 2015-13595* (May 23, 2016 (eleven-year lieutenant with no disciplinary record negotiated a penalty of 20 pretrial suspension days without pay and agreed to complete counseling programs for threatening his wife and another individual with physical harm via telephone. After his wife called 911, Respondent was arrested and charged with aggravated harassment, which was adjourned in contemplation of dismissal). Here, the facts that Respondent's children, including a [redacted]-year old who by his testimony had [redacted] the prior year, were both present and that his firearm was unsecured in his vehicle during this incident, are significant aggravating factors. *See generally Disciplinary Case No. 2012-6646* (Feb. 25, 2013) (ten-year detective with no disciplinary record forfeited 25 pretrial suspension days without pay for failing to properly safeguard his firearm. By leaving the firearm unsecured during an argument with his wife, Respondent's two young children or his combative wife could have gained access to it).

Finally, recent cases where an officer has punched an arrestee or prisoner without police necessity have generally resulted in losses ranging from 10 to 15 vacation days where there are no additional aggravating circumstances. *See e.g., Disciplinary Case No. 2016-15603,* (Oct. 6, 2017) (four-year police officer with no disciplinary history forfeited 15 vacation days for wrongfully punching an arrestee about the face without police necessity); *Disciplinary Case No 2013-10429* (June 27, 2016) (six-year police officer with no disciplinary history forfeited ten (10) vacation days for punching an arrestee in the face. Though the arrestee was resisting, he was

partially handcuffed and under at least partial control of another officer. As such, while a shove might have been justified to prevent him from moving, a punch was not).

Having carefully considered the three separate, serious instances of misconduct in which Respondent was involved and taking into account the situation with Respondent's children that he detailed at the hearing, the court does not find the Department's penalty recommendation to be excessive under the totality of circumstances. Rather, I find that it fairly and comprehensively addresses multiple violations of different Department policies at different times in Respondent's career. This calls for a significant number of penalty days and a period of monitoring.

Accordingly, I recommend that Respondent forfeit the 33 days served on pretrial suspension and that he forfeit an additional 40 vacation days. I further recommend that 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 Administrative Code § 14-115 (d), during which time he is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.

Respectfully submitted,

Nancy Ryan RMM

Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPROVED

FEB 27 2020

EDWARD D. SHELY
POLICE COMMISSIONER

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER EDWIN PEGUERO
TAX REGISTRY NO. 953225
DISCIPLINARY CASE NOS. 2015-14033, 2017-17118, 2017-18103

Respondent was appointed to the Department on July 11, 2012. On his three most recent performance evaluations, he received a 4.5 overall rating of "Extremely Competent/Highly Competent" in 2016, a 4.0 overall rating of "Highly Competent" in 2015, and a 3.5 overall rating of "Highly Competent/Competent" in 2014. [redacted]

Respondent has no disciplinary history. In connection with the instant Charges and Specifications, he was placed on Level 2 Discipline Monitoring on May 25, 2017. Monitoring remains ongoing.

For your consideration.

Nancy Ryan RM

Nancy R. Ryan
Assistant Deputy Commissioner Trials