



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

October 2, 2023

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Edward Nunez-Nunez**
Tax Registry No. 961015
49 Precinct
Disciplinary Case No. 2022-27280

The above named member of the service appeared before Assistant Deputy Commissioner, Trials Vanessa Facio-Lince on April 10, 2023, and was charged with the following:

DISCIPLINARY CASE NO. 2022-27280

1. Police Officer Edward Nunez-Nunez, on or about September 12, 2022, engaged in conduct prejudicial to the good order, efficiency, and discipline of the Department when he submitted a falsified COVID-19 test to the Department.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

NYS Penal Law 170.20

CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE THIRD DEGREE

NYS Penal Law 175.30

OFFERING A FALSE INSTRUMENT FOR FILING IN THE SECOND DEGREE

2. Police Officer Edward Nunez-Nunez, on or about October 19, 2022, intentionally made a false official statement during an official Department interview.

A.G. 304-10, Page 1, Paragraph 1

FALSE AND MISLEADING STATEMENTS

In a Memorandum dated May 4, 2023, Assistant Deputy Commissioner Vanessa Facio-Lince found Police Officer Edward Nunez-Nunez Guilty of both Specifications, after Police Officer Nunez-Nunez entered a plea of guilty to both Specifications in Disciplinary Case No. 2022-27280. Having read the Memorandum and analyzed the facts of this matter, I approve of the findings but disapprove of the penalty.

After reviewing the Report and Recommendation of Assistant Deputy Commissioner, Trials Vanessa Facio-Lince, including the evidence presented at trial, and having considered the totality of the circumstances and issues surrounding the charges against Police Officer Nunez-Nunez, and also in consideration of the Department's Disciplinary System Penalty Guidelines, I have determined that a penalty of Dismissal from the Department is warranted in this matter.

Therefore, based on the foregoing, I have determined that Police Officer Edward Nunez-Nunez shall be immediately dismissed from the Department.



Edward A. Caban
Police Commissioner



POLICE DEPARTMENT

-----X
In the Matter of the Disciplinary Proceedings :

- against - : FINAL

Police Officer Edward Nunez-Nunez : ORDER

Tax Registry No. 961015 : OF

RESIGNED : DISMISSAL

-----X

Police Officer Edward Nunez-Nunez, Tax Registry No. 961015, having been served with written notice, has been tried on written Charges and Specifications numbered 2022-27280, as set forth on form P.D. 468-121, dated November 8, 2022, and after a review of the entire record, Respondent is found Guilty.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Edward Nunez-Nunez from the Police Service of the City of New York.

EDWARD A. CABAN
POLICE COMMISSIONER

EFFECTIVE: 10/2/23

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POLICE DEPARTMENT

May 4, 2023

-----X

In the Matter of the Charges and Specifications : Case No.
- against - : 2022-27280
Police Officer Edward Nunez-Nunez :
Tax Registry No. 961015 :
49th Precinct :

-----X

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

Before: Honorable Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPEARANCES:

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

For the Respondent: Michael Martinez, 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

CHARGES AND SPECIFICATIONS

1. Police Officer Edward Nunez-Nunez, on or about September 12, 2022, engaged in conduct prejudicial to the good order, efficiency, and discipline of the Department when he submitted a falsified COVID-19 test to the Department.

A.G. 304-06, Page 1, Paragraph 1
NYS Penal Law 170.20

PROHIBITED CONDUCT
CRIMINAL POSSESSION
OF A FORGED
INSTRUMENT IN THE
THIRD DEGREE
OFFERING A FALSE
INSTRUMENT FOR
FILING IN THE SECOND
DEGREE

NYS Penal Law 175.30

2. Police Officer Edward Nunez-Nunez, on or about October 19, 2022, intentionally made a false official statement during an official Department interview.

A.G. 304-10, Page 1, Paragraph 1

FALSE AND MISLEADING
STATEMENTS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on April 10, 2023.

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 evaluated all of the evidence in this matter, the Tribunal recommends that Respondent forfeit 60 penalty days and be placed on one-year dismissal probation.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent, a seven-year member of the service, assigned to the 49th Precinct, testified that he was scheduled to be on vacation with his family in the Dominican Republic from September 3 to September 12, 2022. Upon arrival in the Dominican Republic, his wife, who was

feeling ill prior to departing for their vacation, received an email notification that she had tested positive for COVID-19. Respondent testified that he began to exhibit COVID-19 symptoms shortly after their arrival in the Dominican Republic. (T. 16-17) As a result, he and his wife decided to isolate from their children and Respondent's parents while their symptoms resolved. Respondent further testified that on or about September 8, 2022, he went to a clinic in the Dominican Republic to be tested for COVID-19, but was told at the clinic that he did not need to test if in fact he was exhibiting symptoms. (T. 18)

Respondent explained that on or about his scheduled departure date he was still not feeling well and contacted the sick desk to request sick leave. He was informed that he had to submit a UF-49. Respondent submitted the required UF-49, dated September 12, 2022, in which he indicated that he tested positive for COVID-19 on September 8, 2022. (Dept. Ex. 1) Additionally, Respondent asserted in the same UF-49 that the Dominican Republic requires a negative test result to be on hand at the time of boarding the airplane so he had to change his flight to September 18, 2022. (T. 19-21)

Respondent testified that after submitting the UF-49, he was informed by the sick desk that he could not "go sick from a different country" and that he was required to submit a positive COVID-19 test result to the Medical Division. (T. 30-31) Respondent stated that he went back to the same clinic and asked them to provide him with documentation indicating that he had been seen at the clinic. (T. 30) Respondent admitted he never actually got a COVID-19 test, nor did he specifically ask for a "fake COVID test" when he went to the clinic, but that he requested a "doctor's note" saying that he was there. (T. 31-32) Respondent did receive a falsified COVID-19 test indicating a positive result and submitted it to the Medical Division. He also indicated that he while he did not thoroughly inspect the document he received from the clinic, he

acknowledged knowing that it was COVID-19 test result which said COVID-19 was detected. (T. 35-36)

The Department interviewed Respondent approximately one month after his return from the Dominican Republic. Respondent provided a similar account of what transpired while he was on vacation in the Dominican Republic to the investigator as he provided in the UF-49. (T. 22-24) Specifically, he testified that at his official interview he reiterated that he tested positive while on vacation and he submitted a positive COVID-19 test result to the Department. Respondent admitted at the mitigation hearing that he provided false statements to the investigator's inquiry at his Department interview. (T. 24) Respondent expressed remorse for his actions, and he added: "I should have said the truth. I just wanted to spend more time with the family. You know, I never had a family vacation – it was no malicious intent. I just wanted to spend more time. I should have said the right thing." (T. 24)

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 his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on January 6, 2016, has pleaded guilty to the charges and specifications including submitting a falsified COVID-19 test to the Department and intentionally making a false official statement during an official Department interview. The Department has requested the presumptive penalty of termination in accordance

with the Disciplinary System Penalty Guidelines. Respondent's counsel, while not minimizing the severity of Respondent's misconduct, advocated for a mitigated penalty.

While I credit Respondent's assertion that he felt sick while on a family vacation and that he did not carefully read the letter provided to him by the clinic in the Dominican Republic, this cannot excuse making a false statement at the time of his official Department interview when specifically questioned about the validity of the letter he submitted, especially not in a circumstance where police officers are mandated and expected to be candid. Members of Service have a duty of absolute candor in responding to official Department inquiries, particularly in view of the Department's sick leave policy. Rather than admitting wrongdoing or his lack of diligence in reviewing the document he received from the clinic in the Dominican Republic, Respondent continued to deny knowledge of the falsified document.

However, Respondent fully acknowledged that his misconduct was serious and expressed remorse for his actions. Moreover, it appears from his record that this was uncharacteristic behavior for Respondent based upon his seven years of service with no formal disciplinary history. Respondent's sorrowful demeanor during his in-court testimony and his willingness to accept responsibility for his action warrants some mitigation of penalty. He testified that he acted with no malicious intent to defraud, but rather he was nervous and did not know what to say. It also appears from the testimony adduced at trial that Respondent's judgment at the time of the commission of the misconduct was clouded by his desire to recoup the time he did not get to spend with his family while he was sick in the Dominican Republic.

Under these circumstances, a substantial loss of penalty days as well as a period of monitoring would appropriately penalize Respondent for his misconduct while recognizing the compelling mitigating evidence presented at the hearing. This is a significant penalty which

strikes the proper balance between penalizing serious misconduct and recognizing the family predicament that Respondent faced. This penalty should also act to deter Respondent from similar misconduct.

I, therefore, recommend that Respondent be suspended for thirty (30) days without pay, forfeit an additional thirty (30) vacation days, and that he be DISMISSED from the New York City Police Department, but that his 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 he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.

Respectfully submitted,



Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

DISAPPROVED



OCT 02 2023
EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER EDWARD NUNEZ-NUNEZ
TAX REGISTRY NO. 961015
DISCIPLINARY CASE NO. 2022-27280

Respondent was appointed to the Department on January 6, 2016. On his three most recent annual performance evaluations, he received “Meets Standards” in 2020 and “Exceeds Expectations” in 2021 and 2022. He has been awarded two medals for Excellent Police Duty.

Respondent has no formal disciplinary history.

For your consideration.

A handwritten signature in black ink.

Vanessa Facio-Lince
Assistant Deputy Commissioner Trials