

In the Matter of	:	
	:	
CITY OF ABSECON	:	
	:	
(City)	:	
v.	:	HEARING OFFICER'S DECISION
SERGEANT JOYCE LEE,	:	
	:	
(Respondent)	:	
	:	

William Blaney, Esq., for the City

Sebastian Ionno, Esq., for the Employee

PRILIMINARY STATEMENT

Joyce Lee began her career with the Absecon Police Department in July of 2005. She was promoted to Sergeant after doing some duty in the Detective Bureau. She was reassigned to patrol in February of 2020. On June 16, 2021, she was a Patrol Sergeant on duty with Officers [REDACTED] and [REDACTED] when a dispatcher named [REDACTED] called to report an incident of a [REDACTED] man with a weapon at a firing range known as Range 129. Firing Range 129 is on Mill Road in the City of Absecon.

At the time of the call, all three (3) officers were at headquarters. While on route to the aforementioned call, another call came in regarding some suspicious persons in a vehicle at Webb Road within the City.

Sgt. Lee apparently diverted from the weapons call to the suspicious persons call. For that conduct, she was served with disciplinary charges alleging, among other things, neglect of duty, performance of duty and violations of the commanders and supervisor's rules and regulations. While being interviewed by [REDACTED], the internal affairs officer, on July 16, 2021, she allegedly was untruthful in her responses to questioning by [REDACTED]. For those allegations, she was charged with untruthfulness, a violation of rules and regulations 3:13.5. She has been suspended without pay since August 12, 2021 having been served with a preliminary notice of disciplinary action on or about that date (City 1).

It was agreed that the Hearing Officer was to render a decision and make a recommendation on the untruthfulness charge only at this time. Sgt. Lee acknowledged her agreement to this arrangement.

POSITION OF THE CITY

The City argues that Sgt. Lee was less than truthful several times in her I.A. interview with [REDACTED]. These allegations are set forth to [REDACTED]'s internal affair's report as well as the Preliminary Notice of Disciplinary Action. In sum, they are that Lee stated she did not divert to the Webb Road suspicious persons call until after the dispatch transmission cleared the incident of the [REDACTED] male. Lee further claimed she was in proximity or following the other officers when she initially responded to the Range 129 call and only diverted when she felt the more serious incident was under control. According to the testimony of [REDACTED], Officer [REDACTED] was in car number 6 and Officer [REDACTED] was in car number 9, while Sgt. Lee was the middle vehicle, car number 12. [REDACTED] also found that Lee said "just because I said diverted, it does not mean I did it right away." [REDACTED] found this to be not accurate. He says that it is unreasonable to believe that Lee could claim she was responding when both [REDACTED] and [REDACTED] stated she made a U-turn as the middle vehicle in a line of three (3) consecutive vehicles going to the more serious call. [REDACTED] testified that Range 129 is about three (3) miles or three (3) minutes away from police headquarters on a direct run south on Mill Road. Webb road is in the opposite direction.

The Hearing Officer listened to the interviews of [REDACTED]
[REDACTED]
[REDACTED] which included the audio of the dispatch calls. Sergeant Lee's interview was also reviewed. The Hearing Officer finds that [REDACTED] did a commendable job in reviewing

the videos, interviewing witnesses and coming to certain conclusions.

POSITION OF THE RESPONDENT

Joyce Lee testified that she has been a police officer for the City of Absecon since July of 2005 and that she loves her job. She talked about spending some time in the Detective Bureau and then being reassigned to patrol. She testified about the importance of reports for police officers to refresh their recollections if needed. She said that this incident would not have necessarily generated a report from her however.

Sgt. Lee said that she was interviewed on July 16th about the incident at 9:00 in the morning after completing a twelve (12) hour shift the night before. She said she was fatigued from her work the night before as well as the demands that a young family places on her. She said that she confused the range call and suspicious car call and had in between the incident and the interview over one hundred (100) calls for service. She knew that everything was on a video and that it would have been “dumb” to make misstatements about what happened. She said that she had no opportunity to review the discovery or the videos or see the witness statements of others that would have helped her refresh her recollection.

She candidly admitted that she should have responded with more answers that said she did not recollect or recall rather than give direct responses that were not particularly accurate.

DECISION AND RECOMMENDATION

The Hearing Officer finds that Sgt. Lee is a very credible witness. The Hearing officer finds her demeanor on the stand to be forthright and candid. The Merriam Webster definition of demeanor is “a person’s appearance and behavior.” She was remorseful and sincere in her attitude and testimony. She acknowledged making mistakes. On cross-examination, she was asked whether the assertions made in [REDACTED]’s report regarding her activities and inaccuracies were correct and she said yes, that everything in [REDACTED]’s report was accurate.

Police officers are held to a high standard of responsibility and conduct, *Twp. Of Moorestown v. Armstrong* 89 N.J. Super. 560 (App.Div. 1965). “A police officer cannot complain that he or she is being held to an unfairly high standard of conduct. Rather, it is one of the obligations he or she undertakes upon voluntary entry into public service. *In Re Phillips* 117 N.J. 567 (1990). See also *In Re Emmons* 63 N.J. Super. 136 (App.Div. 1960).

Untruthfulness is usually seen in concert with misconduct or neglect of duty and has been held to be sufficiently egregious to warrant termination even without consideration of prior disciplinary history. “Citizens have a right to expect that when dealing with the public, police officers will be truthful and that reports that are filed by the police would be accurate and honest. One who has been determined to be untruthful loses credibility and the ability to be an effective witness. See *Miller v. Borough of Berlin Police*, not reported 2021 WL 2525587.

However, the burden of proof in an administrative hearing of this nature is on the City. The party bearing the burden of proof in an administrative hearing must prove the case by a preponderance of the legally competent credible evidence. The Hearing Officer must “decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth.” *Jackson v. D.L. and W.R.R.*, 111 N.J.L. 487, 490 (E.& A. 1933). The evidence is found to preponderate if it “established ‘the reasonable probability of the fact.’” *Jaeger v. Elizabethtown Consolidated Gas Co.*, 124 N.J.L. 420, 423 (Sup. Ct. 1940). Where the standard is reasonable probability, that is, preponderance of the evidence, the evidence must be such as to “generate belief that the tendered hypothesis is in all human likelihood the fact.” *Loew v. Union Beach*, 56 N.J. Super. 93, 104 (App. Div. 1959).

The standard for discipline was set by the Supreme Court in *West New York v. Bock* 38 N.J. 500 (1962). When determining the propriety of the penalty, several factors must be considered, including the nature of the offense, the concept of progressive discipline, and the employee’s prior record. The case says that it is well established that where the underlying conduct is of an egregious nature (emphasis mine), the imposition of a penalty up to and including removal is appropriate, regardless of an individual’s disciplinary history. See *Henry v. Rahway State Prison* 81 N.J. 571 (1980).

Such misconduct need not necessarily be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an

upholder of that which is morally and legally correct. *In the Matter of Edmund Ansara, City of Millville, Police Dept.* 2016 WL 7048477 (N.J.Adm.).

While not commenting on the underlying allegations of neglect of duty, the Hearing Officer finds that Sgt. Lee was open and respectful with her testimony. She was obviously fatigued and confused during her interview with [REDACTED] and, by her own admission, should have been less forceful in her responses. The Hearing Officer agrees that it would have been silly for her to make statements that were inconsistent with surveillance videos that she knew were in operation at the time. The one-month period between the incident and the interview furthered her confusion. Perhaps the better policy would have been to provide her with the statements and discovery in the case prior to her interview.

The Hearing Officer finds that this case is one of confused recollection and not intentional deception. The public trust and confidence in her and the Absecon Police Department is not diminished by the mistakes she made in the interview. Those mistakes were not intentional and did not impact the quality of not being open or truthful. The Hearing Officer finds that the City has not met its burden of proof by a preponderance of the evidence and finds that the charge of untruthfulness is **not sustained** and recommends that it should be **dismissed**.

Date:

17 Sept 21



STEVEN SECARE, ESQ