Dep't of Sanitation v. Guarneri

OATH Index No. 1159/12 (May 22, 2012), *modified on penalty*, Comm'r Dec. (Aug.15, 2012), *appended*

ALJ found that respondent's conviction in Federal Court of the misdemeanor crime of cocaine possession violated Mayoral Executive Order 16 because it was related to his employment as a law enforcement officer for the Department and bore on his fitness to perform the duties of his position. Respondent also violated section 3.2 of the Department's Code of Conduct by bringing negative attention upon the Department and the City. ALJ found mitigation for his misconduct not sufficiently compelling and recommended that respondent be terminated from his employment.

Commissioner initially adopted the recommendation on July 30, 2012, then modified it by stipulation on August 2, 2012. The Commissioner then issued another decision on August 15, 2012, which adopted the terms of the stipulation. In the August 15th decision, the Commissioner explained that he considered mitigating factors including respondent's limited prior disciplinary record when he and respondent agreed to the penalty of a 30 day suspension and a demotion to Sanitation Worker.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DEPARTMENT OF SANITATION
Petitioner
- against -
JOHN GUARNERI
Respondent

REPORT AND RECOMMENDATION

INGRID M. ADDISON, *Administrative Law Judge*

The Department of Sanitation brought this disciplinary proceeding pursuant to section 16-106 of the New York City Administrative Code. Following his guilty plea and conviction in Federal Court for cocaine possession, the Department charged respondent John Guarneri, a sanitation supervisor, with violating Mayoral Executive Order No. 16 of 1978 ("MEO 16"), as

amended by Mayoral Executive Order No. 105 of 1986 ("MEO 105"), and section 3.2 of the Department's Code of Conduct, General Order No. 2002-06 (ALJ Ex. 1).

At a hearing on April 20, 2012, petitioner relied on the testimony of Richard DiStefano, an investigator in the Department's Office of Employment and Disciplinary Matters ("OEDM"), and documentary evidence. Respondent did not challenge the factual allegations in petitioner's charge. He testified in his own behalf, presented the testimony of three co-workers and one former co-worker as character witnesses. Respondent also submitted documentary evidence which included his federal plea allocution.

For the following reasons, I find that respondent violated MEO 16, because his crime was related to his employment as a sanitation police officer and bore on his fitness to perform the functions of that job. His conduct also violated section 3.2 of the Department's Code of Conduct, in that it brought discredit upon the Department and the City when it was published in the Daily News.

I therefore recommend that respondent be terminated from his employment.

ANALYSIS

The following facts are undisputed. Respondent is a 12-year veteran with the Department. Initially a sanitation worker, he received six to eight weeks training at the Department's academy and became a sanitation police officer in 2000. In 2007, he was promoted to supervisor and became the night district superintendent in the Sheepshead Bay garage (Tr. 35-37).

Richard DiStefano, who started working with the Department in 2006 as a sanitation worker, became a supervising investigator with OEDM in October 2011. Mr. DiStefano's job involves processing employee arrests (Tr. 14-16, 20). His predecessor, Robert Durante, was the OEDM investigator in 2008 (Tr. 23). Mr. DiStefano identified an unusual incident report created by Mr. Durante on October 10, 2008. The report revealed that before respondent was scheduled to report for work, his father notified[1] the Department that respondent had been arrested and

[1] Mr. DiStefano noted that respondent complied with the Department's procedure, which requires an employee to notify the Department within two calendar days of his arrest, advise the Department of any court dates regarding the arrest, as well as the disposition of the matter, provide related paperwork, and personally meet with the investigator if drugs or alcohol are implicated (Tr. 16-18, 27).

charged with drug conspiracy. An NYPD officer also notified the Department that respondent's firearm had been confiscated (Tr. 22-24; Pet. Ex. 1 at A).

On October 23, 2009, respondent pleaded guilty to possession of cocaine, in violation of section 844(a) of title 21 of the United States Code, and was sentenced to two years probation, a $1000 fine, and a $25 special assessment (Pet. Ex. 1 at B, C). Respondent was also required to participate in "outpatient and/or inpatient drug treatment, drug testing and detoxification programs and mental health counseling" at his own expense, and submit to drug testing during and after treatment. In addition, respondent agreed not to seek a position as a law enforcement officer (Resp. Ex. I at 13-14).

Respondent acknowledged his arrest and conviction and submitted a transcript of his plea allocution in Federal Court. By way of explanation, he testified that he was a first responder at ground zero after the 9/11 terrorist attack in 2001 (Tr. 48-49; Resp. Ex. E at 3-4). Responsible for moving metal to the Fresh Meadows land fill, respondent recalled some of the horrors of that experience such as the stench, and witnessing melted human flesh on metal when the trucks unloaded at the landfill. Respondent worked shifts of 12 to 14 hours per day for several days after which he continued on a voluntary basis (Tr. 49-51). He claimed that it took a toll on his health such that he began to experience shortness of breath, coughing and spitting, and was told by his doctor that this was his body's attempt to expel toxins (Tr. 53). When asked whether his medical condition grew progressively worse with each passing year, respondent replied that it was more of a strain on him until he got promoted in 2007, when he was no longer required to exert himself physically (Tr. 54).

Following his arrest, respondent was detained for six days. He stated that upon his release, he went to the Department's Employee Assistance Unit and was referred to the Staten Island University Hospital ("SIU Hospital") where he enrolled in a nine-month treatment plan. At SIU Hospital, he informed the counselor that after 9/11, he experienced nightmares and feelings of fear, drank and "on some occasions" used drugs. He also told them about his medical problems and his relationship with his family. The counselor recommended that he seek psychiatric care for post-traumatic stress disorder ("PTSD"). At some point, he was prescribed Zoloft for depression. For the duration of his treatment at SIU Hospital he was tested for drugs twice per month. Respondent followed that treatment with three months in a program called "Bridge Back to Life," which he attended three days per week, and was tested for drugs on each

visit. In addition, prior to his trial, he was mandated to call in to a system run by the Federal Government which randomly selected days on which he was required to show up for drug testing. Through that system, he was tested about 16 times (Tr. 55-59). Respondent testified that he has not ingested alcohol or used drugs in more than three and a half years.

Respondent submitted a psychiatric consultation form dated December 8, 2008 (two months after his arrest). Psychiatric consultant Roberto Paranaz wrote that respondent revealed that he "was caught on wiretap purchasing cocaine on 10/10/08 and arrested by [the] FBI" (Resp. Ex. G). Also respondent spoke about his experience at Ground Zero, and indicated that he had flashbacks. The consultant noted that respondent suffered from sleep apnea and used cocaine to sleep, make time pass, and to be happy. The report contradicted respondent's testimony that he used cocaine "on some occasions." It revealed that respondent used cocaine regularly on a weekly basis after 9/11, until his arrest in October 2008, purchasing between $50 and $100 worth each week. It further revealed that respondent used marijuana and drank alcohol weekly. The consultant described respondent as "a little bit depressed" and "preoccupied with legal problems." Otherwise, he was deemed to be "normal." Respondent's Treatment Plan from the SIU Hospital dated May 27, 2009, listed respondent's problems as: cocaine and cannabis; PTSD symptoms; pending legal issues; and, sleep apnea (Resp. Ex. F). No post-treatment documentation was offered into evidence.

During cross-examination, respondent denied that he used more than one drug at the time of his treatment (Tr. 65). He stated that the consultant's report contained a reference to cannabis based on his reply to the consultant's inquiry into what other drugs he had used during his lifetime (Tr. 68). He claimed that his drug use began "many, several years after" the events of September 11, 2001, and insisted that he was not addicted to cocaine or have a substance abuse problem (Tr. 67). When pressed, respondent altered his response with, "I did not – I didn't mean that I wasn't addicted. I meant what was causing my addiction. It wasn't the substance that I was addicted to" (Tr. 71). Respondent further testified that he first started to drink alcohol, but "then it escalated to cocaine use on a limited basis, not a daily or weekly basis," once again contradicting the SIU Hospital consultant's report (Tr. 67).

Respondent hails from a family of law enforcement officers. He testified that his father is a retired New York City police officer and his two brothers are officers for the Port Authority and the NYPD. As part of his plea agreement in Federal Court, respondent can no longer be

involved in law enforcement. When asked how that impacted on him, respondent expressed that it was "very, very embarrassing" and something that he would regret forever (Tr. 61).

MEO 16 Violation

Following his guilty plea, the Department charged respondent with violating MEO 16, which calls for the dismissal of any City employees who are:

> convicted of a crime relating to their office or employment, involving moral turpitude or which bears upon their fitness or ability to perform their duties or responsibilities . . . absent compelling mitigating circumstances set forth in writing by the head of the employing agency.

Mayoral Exec. Order No. 16 §5(b) (July 26, 1978), *as renumbered by* Mayoral Exec. Order No. 105 (Dec. 26, 1986).

Here, I do not find respondent's possession of cocaine for personal use to be a crime of moral turpitude, but I do find that he violated MEO 16, in that his conviction for cocaine possession was related to his position as a law enforcement officer and bore upon his fitness to perform the duties of that job.

Moral Turpitude

This tribunal has articulated that possession of small quantities of a controlled substance is not in and of itself an act of moral turpitude. *See Human Resources Admin. v. Beauford*, OATH Index No. 1517/03 at 5 (Dec. 5, 2003), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 06-15-SA (Jan. 9, 2006). The respondent in *Beauford* had pled guilty to the charge of criminal possession of a controlled substance in the seventh degree, a misdemeanor, but testified before this tribunal that at the time of his arrest, drug paraphernalia, including straws and pipes, and not drugs, were discovered at the location of his arrest.

Nothing in the documents submitted by petitioner or respondent shed any light on the amount of cocaine in his possession when he was arrested. However, the Federal Court judge's leniency, as demonstrated by the light sentence imposed on respondent, suggests that it was small. Thus, even though respondent's conduct in violating the law while operating as a law enforcement officer was undeniably deceptive and dishonest, I find no reason to depart from our

holding in *Beauford*, that possession of small quantities of a controlled substance for his personal use and not for distribution is not an act of moral turpitude.

Respondent's Crime Related to His Office or Employment and Fitness or Ability to Perform Job

At the time of his arrest, respondent was not only a supervisor, but was a law enforcement officer for the Department. As such, he was issued a Department firearm and charged with upholding the law. His admission that he started using drugs after 9/11 meant that for seven years until his arrest, respondent engaged in conduct that was antithetical to his responsibilities as a law enforcement officer. *See Dep't of Correction v. Griffith*, OATH Index No. 669/01 at 3 (Apr. 3, 2001), *modified on penalty*, Comm'r Dec. (June 28, 2001) ("the mere fact that he committed a crime would be sufficient to establish the required nexus between his off-duty actions and his position, since criminal conduct is inherently inimical to the law enforcement responsibilities of that position"). Hence, even though it was committed off-duty, I find that there existed a nexus between respondent's crime and his duties as a sanitation officer sufficient to trigger sanctions under 16-106 of the Administrative Code. *See Dep't of Correction v. Jones*, OATH Index No. 393/04 at 12-13 (May 3, 2004) ("the commission of criminal acts cannot be tolerated by peace officers… such conduct has a direct nexus to the duties that correction officers are sworn to uphold"). Further, his crime bore directly upon his fitness to perform his duties as a law enforcement officer such that his firearm had to be confiscated upon his arrest. In addition, his plea agreement incorporated a commitment by him not to apply in the future for a law enforcement position.

The First Department has identified some murkiness within MEO 16, noting that it is unclear whether each or a combination of these elements triggers dismissal. *See Maldarelli v. Doherty*, 40 A.D.3d 470, 471 (1st Dep't 2007).[2] However, that need not be addressed here because a combination of the elements was met. Not only was respondent's conduct related to his job as a law enforcement officer, it also bore upon his fitness to perform the associated duties of that job.

[2] Specifically, the Court noted that:

> It is not clear whether this Executive Order allows dismissal to be based on any of three categories of conduct (namely, a crime relating to one's employment, a crime involving moral turpitude, or a crime bearing upon fitness to perform), or whether the crime must be related to the employment and involve either moral turpitude or fitness to perform.

Conduct that Discredited the City or Department

The Department also charged respondent with a violation of section 3.2 of the Department's Code of Conduct, which prohibits conduct that tends to discredit the City or Department.

That an officer for the Department would associate with and engage in business dealings with drug dealers not only discredits the Department and the City but tends to bring negative publicity upon them. Indeed, as the Department pointed out in support of its charge, the Daily News identified respondent by name and published his City title when it reported on his arrest after a year-long probe by the United States Attorney's office into "dope-dealing" by a Greenpoint butcher shop that resulted in the arrest of 26 persons (Pet. Ex. 1 at D). The Department also presented an article published on a blog site on October 11, 2008, identifying respondent by name and stating his position and period of commencement with the Department (Pet. Ex. 1 at E).

I find that respondent engaged in off-duty misconduct that discredited and brought negative attention upon the Department and the City, and sustain the charge that respondent violated section 3.2 of petitioner's Code of Conduct.

FINDINGS AND CONCLUSIONS

1. The Department established that respondent violated MEO 16 when he was convicted of cocaine possession, a crime that implicated his position as a Sanitation officer and affected his ability to perform associated duties.

2. Respondent violated section 3.2 of the Department's Code of Conduct in that his crime brought discredit upon the City and the Department when it was publicized in the Daily News and a blog site on the internet.

RECOMMENDATION

Upon making these findings, I requested respondent's personnel abstract from the Department. Petitioner hired respondent in April 2000. He has one prior instance of discipline. In 2004, after a hearing before this tribunal, respondent was suspended for five days for failing to submit documentation to substantiate his claimed inability to travel to the Department clinic on

multiple dates while on sick leave. *See Dep't of Sanitation v. Guarneri,* OATH Index No. 382/04 (Apr. 28, 2004), *aff'd,* NYC Civ. Serv. Comm'n Item No. CD 04-84-SA (Nov. 23, 2004).

On November 15, 2005, respondent was awarded a Bronze Medal of Honor at the Department's graduation, promotion and awards ceremony for coming to the aid of a 68-year old man whom he observed being spat on and assaulted with a baseball bat (Tr. 39-41; Resp. Ex. A).[3] In 2006, he received a Safe Driver Citation Pin (Resp. Ex. B).

In 2007, respondent was promoted to "Lieutenant" in the Enforcement Unit. On June 9, 2008, his supervisor, Robert D'Angelo, who also testified as a character witness, nominated respondent for an award, noting that respondent "is an exemplary officer" whose "work ethic and professionalism is inspirational to his peers, and his subordinates" (Resp. Ex. C).

Respondent submitted copies of his evaluations for 2006, 2008, 2009, 2010, and for the first half of 2011 (Resp. Ex. D). On his evaluation for the year ending December 31, 2006, respondent received superior ratings for five out of the seven task areas on which he was rated as a sanitation police officer. His supervisor described respondent as an exemplary officer who follows orders with utmost professionalism and is always responsive to fellow officers in need of assistance (Tr. 44-45; Resp. Ex. D at 1). Two evaluations were submitted for 2008, at which time respondent was already a supervisor in the Enforcement Bureau. The first one, for the period January 1 through October 16, 2008, was completed on October 17, one week after respondent's arrest. Respondent received superior ratings for seven out of eleven task areas, and his supervisor described him as a very motivated supervisor who was an asset to the unit (Resp. Ex. D at 2). By the time the second evaluation for 2008 was completed in January, 2009, respondent had been transferred out of the Enforcement Bureau due to his arrest. This time, he received satisfactory rankings in each task evaluated (Resp. Ex. D at 3). Respondent explained that this was due to the pending charges against him (Tr. 48). For the year ending December 31, 2009, respondent received satisfactory rankings for all areas of assessment (Resp. Ex. D at 4). For the year ending December 31, 2010, respondent was rated satisfactory in four out of six areas of assessment, and for the six-month period ending June 30, 2011, he was rated "superior" in five out of six areas of assessment. His supervisor noted that respondent leaves accurate and detailed reports and is very knowledgeable about the job (Resp. Ex. D at 5, 6).

[3] Petitioner was unable to locate in his personnel file, the citations that respondent presented at trial. Nevertheless, it articulated that it did not dispute the authenticity of the news reports that respondent was indeed awarded the Bronze Medal.

Respondent's conviction for drug possession violated the MEO 16, as well as section 3.2 of the Department's Code of Conduct by bringing negative attention to the City and the Department. At the conclusion of the hearing, petitioner sought respondent's termination from employment.

As previously mentioned, a violation of MEO 16 for conviction of a crime related to one's City position that bore on one's ability to perform his duties or responsibilities requires dismissal, absent compelling mitigating circumstances. Respondent contended that compelling mitigating circumstances exist here and suggested that our recommendation in *Department of Sanitation v. Iocovello,* OATH Index No. 195/09 (Dec. 10, 2008), should be followed. I decline to do so because I find the circumstances to be incomparable.

In *Iocovello,* the Department sought the termination of a sanitation worker who was convicted of conspiracy to defraud the United States by engaging in an illegal gambling business. At the time of the disciplinary trial before this tribunal, Mr. Iocovello had been with the Department for 15 years. Finding him guilty of violating MEO 16 and rule 3.2 of the Department's Code of Conduct, Judge Miller nevertheless recommended a penalty less than termination because she found "respondent's contrition, the nature of the offense, his length of service, his unblemished disciplinary history, the high esteem by which his colleagues [held] him, the Commissioner's commendation after respondent pled guilty, and the Federal Court Judge's opinion" supported a finding of compelling mitigating circumstances. *Iocovello,* OATH 195/09 at 11. At trial, two Department superintendents praised Mr. Iocovello's accomplishments as a worker and the guidance that he provided subordinates. These were reflected in evaluations where he was rated as "superior" and an "asset." Mr. Iocovello was appointed as a District Snow Inspector in the Bronx and even after his arrest and guilty plea, the Department's Commissioner issued a commendation to him in recognition of his exceptional performance and contribution to the Department. OATH 195/09 at 9-10.

Respondent submitted numerous letters of support written primarily by family members in preparation for his 2009 sentencing in Federal Court (Resp. Ex. H). Most extolled his virtues as a loving husband and father, and his readiness to render assistance to persons in need. Respondent also submitted more recent letters of support, written in 2012. They included one to Commissioner Doherty from Bronx District Superintendent Nando Sala, who had been trained by respondent. Mr. Sala praised respondent for being hardworking, knowledgeable and reliable,

and described him as a valuable asset to the Department (Resp. Ex. J). An undated letter from Sal Marchese, a district superintendent, reflected similar praise. In addition, three current Department workers and one retiree appeared as character witnesses for respondent. Most of their testimony was heavily based on respondent's work ethic and proficiency.

Retired Superintendent Robert D'Angelo, one of respondent's former supervisors, testified that respondent was an exemplary police officer and supervisor, and a caring person. He described a fundraising venture that respondent initiated to prevent Mr. D'Angelo's relatives from losing their home after their child was diagnosed with leukemia. He dubbed respondent a friend but was unaware that respondent was a heavy drinker or used drugs. Superintendent Anthony Cardieri testified that he has been respondent's direct supervisor since October 2011. He stated that respondent was hand-picked for the night district superintendent's position because the Department wanted someone competent. Mr. Cardieri admitted that he has not known respondent for very long and had only worked with him sporadically before October 2011. Robert Callahan, the night borough superintendent for Brooklyn South borough, testified that he was also respondent's supervisor for the past six months and that respondent is an excellent worker. He, too, stated that respondent was selected for his job because he is held in high esteem by senior management, but admitted during cross examination that seniority trumps caliber for that particular position. Rosario Morrone was a district superintendent from March through October 2011. He testified that respondent worked for him during that time and was one of his best workers, always leaving detailed instructions for the day shift. He gave respondent a superior rating on a six-month evaluation ending June 30, 2011, and stated that he has only given five of his fifteen supervisors such a rating.

While there exists some mitigation, I do not find it sufficiently compelling, as required by the MEO 16, to warrant a recommendation other than termination from employment for respondent's violation of MEO 16 and section 3.2 of the Department's Code of Conduct.

In contrast to Mr. Iocovello, respondent expressed no real remorse for his conduct. Rather, he expressed regret at the embarrassment it had caused, and the fact that he would no longer be involved in law enforcement. Also, as opposed to Mr. Iocovello, respondent received no commendations for outstanding work or written support from the Commissioner after his conviction. Further, at the time of his arrest, respondent had a relatively short history (eight years) with the Department. Moreover, the circumstances of his arrest differed significantly

from Mr. Iocovello's. Even though both engaged in criminal activity, respondent was a law enforcement officer who was responsible for enforcing the law. Yet, the record shows that his criminal conduct was executed with regularity. Addressing respondent's deception, the Federal Court judge noted:

> I know you must understand the hypocrisy of going to work in the morning to hold others to account for violating the law when you're not following it yourself.
> I'm sure you understand the cynicism it can breed in the public when they see a law enforcement officer who does not conduct himself with enough self-respect and sense of duty to follow the law, and these reasons give me great distress about what happened in your case and they arguably call for a sentence that is more harsh than this court would ordinarily impose in a misdemeanor.

(Resp. Ex. I at 12-13). Even though the judge applauded respondent for managing to maintain his employment and remain the primary source of financial support for his family, I note that his employment continued pending the disposition of his criminal case (Resp. Ex. I at 13).

Respondent did not raise it, but I note that my recommendation of termination does not violate respondent's human rights protections under *McEniry v. Landi*, 84 N.Y.2d 554, 560 (1994) (finding that an employee should not be terminated where he had proven that his excessive absences were caused by alcohol addiction, that he had completed rehabilitation, and that he had successfully returned to work). The goal of the Human Rights Law is to preclude an employer from unjustly terminating an employee based on past substance abuse problems that the employee has overcome. *Id.* at 560. The *McEniry* court cautioned that its holding was not intended to suggest that rehabilitation precluded disciplinary action in every case. Rather, it instructed that the review must be individualized. *Id.* When that review reveals no clear causal connection between the disability and the criminal acts that constituted misconduct, *McEniry* offers no defense to termination. *Murolo v. Safir*, 246 A.D.2d 653, 655 (2d Dep't 1998), *aff'g Fire Dep't v. Murolo*, OATH Index No. 560/95 (Feb. 24, 1995).

Here, while respondent showed some evidence that he suffered from PTSD which resulted from being a first responder at Ground Zero, there was no convincing evidence that the PTSD caused his cocaine use. In fact, there is nothing other than his self-serving testimony to support that his cocaine use only began after 9/11. Nor am I convinced that respondent's voluntary use of cocaine, as evidenced by his weekly purchases, translated into a disability. As a

result, I find the protections of *McEniry* to be inapplicable. *See Peltonen v. Scoppetta,* 25 Misc. 3d 1208A (Sup. Ct. Kings Co. 2009).

Moreover, nothing in the Human Rights Law was intended to prohibit an employer from imposing "appropriate disciplinary measures" against an employee who committed "serious and intentional acts of misconduct." *Murolo v. Safir*, 246 A.D.2d 653, 655 (2d Dep't 1998). This tribunal has consistently held that drug use is a voluntary act of misconduct unless the respondent meets his burden of proving otherwise. *Fire Dep't v. Sicignano,* OATH Index No. 801/11 at 15 (June 30, 2011). Respondent did not prove otherwise.

I therefore recommend that respondent be terminated from his employment.

Ingrid M. Addison
Administrative Law Judge

May 22, 2012

SUBMITTED TO:

JOHN J. DOHERTY
Commissioner

APPEARANCES:

CARLTON LAING, ESQ.
Attorney for Petitioner

BIAGGI & BIAGGI
Attorneys for Respondents
BY: RICHARD M. BIAGGI, ESQ.

Commissioner's Dec. (July 30, 2012)

Guarneri

I therefore recommend that respondent be terminated from his employment.

Ingrid M. Addison
Administrative Law Judge

May 22, 2012

SUBMITTED TO:

JOHN J. DOHERTY
Commissioner

APPEARANCES:

CARLTON LAING, ESQ.
Attorney for Petitioner

BIAGGI & BIAGGI
Attorneys for Respondents
BY: RICHARD M. BIAGGI, ESQ.

Approved.

7/30/12

Commissioner's Decision (Aug. 15, 2012)

A copy of the May 23, 2012 Report and Recommendation submitted by OATH Administrative Law Judge (ALJ) Ingrid Addison was forwarded to this office following a disciplinary proceeding pursuant to Section 16-106 of the Administrative Code of the City of New York ("Section 16-106"), which governs the discipline of uniformed employees of the Department of Sanitation.

After reviewing the evidence, hearing transcript and report and recommendation, I agree with the specific findings that the Department has met its burden of demonstrating that Supervisor ***John Guarneri*** violated Mayoral Executive Order 16 of 1978 and DSNY Code of Conduct, Rule 3.2. However, I find the proposed penalty of Termination to be inappropriate.

My decision not to terminate is not an easy one. This decision is the result of considering Supervisor Guarneri's exemplary record with the Department, as well as, the letters sent on his behalf by his past superiors who praised his work performance and dedication. In addition, I considered letters from family members and friends attesting to Supervisor Guarneri's character. Further, a review of his disciplinary, sick and his attendance record show only minor infractions in the past. I believe he now understands that his actions not only jeopardized his employment but tarnished the reputation of all civil servants and more importantly brought harm to the reputation of uniformed members of this Department who go out each day and earn the respect of the public for the great work they do.

Therefore, after discussion between the parties, the recommendation of ALJ Addison is modified and agreed to by the parties that based on the severity of the misconduct and a review of Supervisor Guarneri's prior disciplinary record the appropriate penalty is: a **30 calendar day** suspension and a **demotion** to the title of Sanitation Worker.

John J. Doherty, *Commissioner*
NEW YORK CITY DEPARTMENT OF SANITATION