

Dep't of Correction v. Mack

OATH Index No. 1958/17 (Apr. 27, 2018), *modified on penalty*, Comm'r Dec. (Aug. 8, 2018), **appended**

Correction officer charged with engaging in aggravated harassment, violating EEO policies, and failing to maintain professional boundaries by engaging in a pattern of behavior that included pushing a female recruit and suppressing her report about his conduct. Judge found petitioner failed to meet its burden by a preponderance of the credible evidence regarding aggravated harassment but found respondent failed to maintain professional boundaries by referring to the complainant as “redbone.” A five-day suspension without pay recommended.

Commissioner reduced the penalty to a two-day suspension.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DEPARTMENT OF CORRECTION
Petitioner
-against-
RONNIE MACK
Respondent

REPORT AND RECOMMENDATION

KARA J. MILLER, *Administrative Law Judge*

This employee disciplinary proceeding was referred by the Department of Correction pursuant to section 75 of the Civil Service Law. Respondent, Ronnie Mack, a correction officer, is charged with engaging in aggravated harassment, violating the Citywide and Departmental Equal Employment Opportunity (“EEO”) policies, engaging in conduct unbecoming an officer, comporting himself in a manner to bring criticism upon the Department, failing to maintain appropriate professional boundaries when he engaged in a pattern of behavior, including but not limited to physically pushing or shoving a female recruit off of a classroom stage in front of other recruits, and suppressing the recruit’s report regarding respondent’s conduct (ALJ Ex. 1).

Following a two-day trial on the charges, I find that petitioner failed to meet its burden by a preponderance of the credible evidence with respect to respondent engaging in a pattern of aggravated harassment, pushing the complainant off of a stage, and suppressing a report about his alleged conduct. Petitioner did establish, however, that respondent failed to maintain professional boundaries by referring to the complainant as redbone. I recommend that respondent be suspended without pay for five days.

ANALYSIS

At the time of the charged misconduct, respondent was working as a training officer in the Department's academy. Respondent is charged with harassing complainant, C.C.,¹ based on several incidents that occurred while she was a recruit in the academy in 2013. Respondent is further charged with suppressing C.C.'s report complaining about respondent's conduct (ALJ Ex. 1).

In January 2013, C.C. was one of 25 recruits in B Company in the training academy (Pet. Ex. 1: Page 1; Tr. 19, 147, 228). Officer Matthew Romano and respondent were the firearms training officers working with B Company in the Firearms and Tactics Unit ("FTU"). Officer Romano was the assigned A Officer and respondent was the B Officer (Pet. Ex. 1: Page 3; Tr. 148-49, 229). Officer Romano and respondent trained both new recruits and veteran officers taking in-service training for annual handgun requalification (Tr. 146-47).

Firearms training for recruits consists of classroom instruction and firing a weapon on a firearms range. During phase one of firearms training, recruits are taught firearm safety, how to shoot a firearm, and marksmanship (Tr. 20, 144, 226, 240-41). Phase one starts with classroom instruction in which recruits are taught the mechanics of the firearm and how to operate it safely. The remainder of phase one is hands-on training on the range on how to shoot the weapon properly and effectively (Tr. 145-46). Recruits must pass the qualification exam for phase one of the training before they can start phase two, which involves tactics (Tr. 145-46).

¹ Due to the nature of the charges, petitioner's request to redact the complainant's name is granted. See 48 RCNY § 1-49 (d) (Lexis 2018) (permitting redaction of a witness name to safeguard privacy rights); *Health & Hospitals Corp. (Elmhurst Hospital Ctr.) v. Polepalle*, OATH Index No. 142/13 at 1 n.2 (Nov. 20, 2012) (in disciplinary proceeding involving charges of sexual harassment, names of complainants were not published in order to protect their privacy); *Dep't of Education v. Brust*, OATH Index No. 2280/07 at 2 n.1 (Sept. 29, 2008), *adopted*, Chancellor's Decision (Oct. 22, 2008) (in disciplinary case involving sexual harassment, name of complainant withheld from decision).

The qualification exam requires a recruit to shoot 50 rounds three times for a total of 150 rounds. The recruit must obtain a score of 75 or better two times to pass and qualify (Tr. 144). Officer Romano estimated that less than two percent of the recruits fail phase one of the firearms training (Pet. Ex. 1: Pages 5-6; Tr. 144). Respondent estimated that less than five percent fail (Tr. 226, 241). Recruits who fail must return for remedial training (Pet. Ex. 1: Pages 7-8; Tr. 145).

While on the range, the recruits stand in a line, side-by-side about arm's length apart, for target practice. There are no partitions separating them and each recruit is assigned to a numbered lane (Tr. 86, 159, 202). While they are on the firing line the recruits face the target and the instructors stand behind them walking back and forth to observe and advise (Pet. Ex. 1: Page 3; Tr. 148-49, 158). All of the recruits shoot at the same time (Tr. 29, 87).

In addition to wearing a hat, the recruits wear safety goggles to protect their eyes and earmuffs to muffle the sound (Tr. 149, 200, 230). The earmuffs protect the recruits' ears against the sound of everyone firing a weapon simultaneously. Officer Romano testified that it is "very, very loud" on the range (Tr. 149, 160). Officer Toussaint Boyd similarly testified that because the recruits are wearing earmuffs to muffle the sound, the instructors need to speak to them in a loud voice (Tr. 201).

According to respondent, about 95 percent of the time training officers communicate commands to the recruits using a microphone and speaker from the tower overlooking the range (Tr. 97). The rest of the instruction comes from the instructors on the line. Respondent maintained that it is necessary to yell in order to be heard. Respondent testified that the range is very loud because in addition to the 25 lanes assigned to the Department, the police department uses three other ranges for shooting and another range for bomb detonation. Although Officer Romano estimated that up to 75 people could be shooting, respondent estimated that at certain times there could be up to 200 people shooting on the combined ranges. Both agreed that it is rarely completely quiet (Tr. 149, 158, 230, 258).

C.C. testified about her interactions with respondent during her firearms training in January 2013. On the January 29, 2013, the first day of firearms training on the range, the recruits were on the range learning how to fire a gun (Tr. 21, 116-17). The recruits were taught how to properly holster their weapons after firing them. C.C. testified that if a firearm was not properly holstered, the instructor would approach from behind, remove the weapon from the

holster, and shoot all of the rounds at the target. If this happened the entire class would have to do 10 pushups upon returning to the classroom. C.C. testified that on the first day on the range, respondent told her that her firearm was not properly secured and gave her an opportunity to reholster it. The same day, a fellow recruit also had not properly holstered his firearm. Respondent emptied the other recruit's firearm into the target and when the class returned to the classroom, they had to do pushups. C.C. testified that she believed respondent had done her a favor because she would have been embarrassed and the class would have had to do more pushups (Tr. 26). Although respondent said nothing about C.C.'s failure to properly holster her firearm, she testified that respondent "probably looked at me or whatever," "implying" that the recruits should have been doing more pushups because of her (Tr. 25). She asserted that respondent "probably felt like oh, I did you a favor, that's what I did" (Tr. 25).

C.C. testified that everyone in the class, including instructors, addressed each other by last name only. She maintained, however, that on the first day of class respondent referred to her by her first name in passing. C.C. did not recall the exact circumstances when respondent called her by her first name because it happened five years earlier, but distinctly recalled that it happened (Tr. 26). She testified that she was "puzzled" by respondent calling her by her first name because they had never met before and were not friends (Tr. 26-27). None of the other instructors addressed her by her first name (Tr. 27). C.C. testified that the entire class was present when respondent called her by her first name, but does not know if anyone heard it because he did not say it loudly (Tr. 81-82). When pressed on whether there were any witnesses, C.C. contended that respondent had "whispered" it to her because he is not supposed to call her by her first name (Tr. 82-83).

In addition, to calling her by her first name, C.C. contended that respondent called her "light-skin" and "redbone," both of which she explained as terms to refer to an African American with a lighter skin tone (Tr. 28). C.C. recalled one instance in the classroom when she was standing next to another female recruit with a dark complexion and respondent referred to them as "like salt and pepper" (Tr. 28). C.C. testified that respondent was probably using redbone as a nickname but she thought it was unprofessional. She explained that respondent had used this term in front of Officer Bryant, the team leader, as well as the rest of the class. It became a joke and other recruits in her class would "chime in" and "play too" (Tr. 28, 84-85). When asked how she reacted when respondent and other recruits called her redbone, C.C. testified, "That

really didn't mean nothing [sic] to me. I don't, I don't really care" (Tr. 29). But, she testified a moment later that "it kind of was a big deal" because she was a recruit and respondent was her instructor (Tr. 29).

C.C. testified that she was very nervous on the first day of firearms training on the range because she had never fired a weapon before (Tr. 29). Another instructor approached her from behind and spoke to her about being scared. He helped her calm down so that she could shoot. When the recruits returned to the classroom, respondent was standing on a raised platform about four inches high in the front of the room (Tr. 30-31, 88-89). C.C. maintained that respondent pulled her to the side and she stepped up onto the platform to speak to him. She could not recall if he touched her and physically pulled her to the side or if he verbally called her over to where he was standing (Tr. 35-36). C.C. testified that respondent said, "don't ever let no man touch you like that or I'll kill you" and then gave her a "little shove" off the platform (Tr. 36). When asked to describe a "little shove," C.C. said that it was not a forceful push. It was "like I'm done with you. Now go sit down" (Tr. 37). C.C. testified that respondent did not whisper this, but was talking in a low voice and directly to her (Tr. 89). She acknowledged that no one else heard respondent make these comments to her (Tr. 75, 80). When she returned to her seat, C.C. told recruits Carter, Bryant, and Camara what respondent had said (Tr. 37-38).

C.C. believed respondent was "crazy" and discussed how unprofessional he was with about three other recruits in the class (Tr. 37-38). She testified that she observed respondent pacing back and forth in front of the classroom while holding his balled up fists in front of his mouth and saying, "I know her, I work with her, she smell good" (Tr. 69-71). C.C. thought it was weird (Tr. 71). She knew that respondent had been in the Marines and postulated that "maybe he was messed up" (Tr. 72).

C.C. testified that on either the third or fourth day of training, while the class was shooting on the firing range, respondent approached her from behind and said, "Keep shooting like that and you can have my baby" (Tr. 40-41). This made her feel uncomfortable (Tr. 40). At the time, C.C. was wearing earmuffs to muffle the loud sounds from the firearms shooting (Tr. 42). No one else heard what respondent said, but as soon as she returned to the classroom, C.C. told her friends in the class what had happened (Tr. 44, 75, 80). C.C. testified that she was upset "because [respondent] was doing too much" (Tr. 44). She did not understand why he was saying these things to her. She was not attracted to him and he was making her uncomfortable (Tr. 44).

C.C. spoke with Company Commander Boyd about the situation on February 8, 2013, a week after she failed phase one. According to C.C., during this conversation Officer Boyd said, "This guy, he keeps doing things like this" (Tr. 45-46). Moreover, Officer Boyd told her that another female recruit had given her telephone number to respondent to arrange for additional shooting instruction and respondent had sent the recruit a photo of his "privates" (Tr. 46). C.C. told Officer Boyd that she did not want to have respondent as an instructor when she returned to the range (Tr. 47).

At Officer Boyd's urging, union delegate Officer Cynthia Green approached C.C. to discuss what had happened. Officer Green instructed C.C. to submit a written statement to initiate a complaint with the EEO office (Pet. Ex. 1: Pages 9-16; Tr. 48-50). In her February 8, 2013, written statement, C.C. described her interactions with respondent and asserted that she had been "sexually assaulted" (Pet. Ex. 1: Pages 13-15).

Although she did not initiate contact with the EEO office, C.C. did participate in its investigation. She was interviewed by the EEO office on three occasions (Tr. 50). During her initial EEO interview on February 12, 2013, C.C. asserted that she was "sexually assaulted" because respondent had said "You keep shooting like that, you could have my baby" (Pet. Ex. 2). She was interviewed a second time on May 13, 2013, to provide additional information about her harassment complaint. C.C. was subsequently ordered to report to the EEO office for a third interview on July 15, 2013, because respondent had filed a complaint against her with the EEO office on July 3, 2013. Respondent complained that C.C. had threatened another officer that if he "kept messing" with her, she could have him moved from his position, as she did with respondent. C.C. denied saying this to anyone and was angry because she believed respondent was trying to make her look bad by spreading rumors. She filed a retaliation complaint against respondent on July 26, 2013 (Pet. Ex. 1: Pages 57, 59, 61-62; Tr. 56, 58). C.C. testified that her EEO complaint was substantiated by the EEO office but her retaliation complaint was not (Pet. Ex. 1: Pages 65-82, 85, 87; Tr. 72).

C.C. also requested a gate pass on July 26, 2013, so that she could drive onto Riker's Island directly to her assigned facility and not have to wait for the bus in the parking lot across the bridge. She made the request because she had seen respondent a few times while they were both waiting for the bus and it made her uncomfortable (Pet. Ex. 1: Page 63; Tr. 60). Her request for a gate pass was denied (Tr. 61).

C.C. admitted that she did not pass her firearms training the first time, but maintained that it was “not a big deal” because she just took it over again and passed the second time (Pet. Ex. 1: Pages 5-8; Tr. 74, 81). During her first interview with the EEO office, C.C. said she had failed to qualify on the range because she shot 70, 71, and 70, which were failing grades. She needed to shoot a 75. Before the test day, she had been shooting in the mid-seventies. C.C. questioned whether her poor performance was caused by respondent harassing her and making her nervous or possibly by respondent giving her failing grades because she was not receptive to his advances (Pet. Ex. 2). During her second interview with the EEO office, C.C. stated that respondent had failed her. However, when pressed about it she acknowledged that she did not know with certainty that respondent had failed her, but suspected that he had (Pet. Ex. 4).

At trial, C.C. acknowledged that there were some minor details about her interactions with respondent that she did not remember because they occurred five years ago, but she maintained that she remembered the important things (Tr. 104). She remembered that someone had agreed that respondent was crazy, but she could not recall who said it. She also recalled that someone else had said that she saw respondent push her, but she could not remember who this was (Tr. 39). She did not say anything to respondent about his “unprofessional behavior” or tell another instructor about it during the firearms training because that is not the type of person she is (Tr. 40). The only reason she complained later was that she did not want to have respondent as an instructor when she had to repeat the firearms training.

C.C. and Officer Denise Carter testified that they became close friends while they were in the same training class at the academy and remain friends today (Pet. Ex. 1: Page 1; Tr. 77, 124-25). While they were at the academy, they would sometimes carpool to training (Tr. 129-30). Although they stayed in touch, they do not usually talk on the telephone, but communicate on Facebook and say hello when they see each other at work (Tr. 78, 124). Officer Carter testified that in 2015, when her car had broken down she called C.C. to see if she could drive her to work (Tr. 127-28).

Officer Carter testified about her observations during her firearms training in 2013. She maintained that one day as she returned to the classroom from the firing range she observed respondent and C.C. talking on the platform in the front of the room. She heard respondent call C.C. redbone as he pushed her (Tr. 117-18). However, during her EEO interview, Officer Carter stated that she did not know what respondent had said to C.C. or why he pushed her (Pet. Ex. 5).

Officer Carter maintained that was not the first time that respondent had referred to C.C. as redbone (Pet. Ex. 5; Tr. 118). Officer Carter testified that she assumed that respondent and C.C. must have known each other before the training. However, when Officer Carter asked about their relationship, C.C. said that she and respondent had never met before (Tr. 118).

Officer Carter testified that on a subsequent day C.C. was visibly upset after the class had finished shooting on the firing range. When Officer Carter asked if she was okay, C.C. told her that respondent had said, "If she keep [sic] shooting like that, he was going to let her have his babies" (Tr. 119). Officer Carter and C.C. discussed the situation and Officer Carter suggested that if C.C. was uncomfortable she should report what happened (Tr. 119, 126, 137).

Officer Carter found respondent to be an unprofessional, aggressive instructor as opposed to Officer Romano, who she thought was knowledgeable and professional (Pet. Ex. 5; Tr. 121, 137). During her EEO interview, she similarly described respondent as harsh and rude (Pet. Ex. 5). Officer Carter recalled asking a question during class. Respondent had an outburst and started cursing at the class because he was upset that other recruits were talking while he was answering her question (Pet. Ex. 5; Tr. 120).

Officer Carter acknowledged that, like C.C., she had failed phase one of the firearm portion of the training and had to take remedial training (Pet. Ex. 1: Pages 5-6; Tr. 123). She passed the second time (Tr. 123).

Officer Leshawn Camara was interviewed during the EEO investigation but no longer works for the Department (Pet. Ex. 8). Petitioner did not present her as a witness, but instead relied upon an audio recording of her EEO Interview, which was conducted by EEO Investigator Deborah Pickett. Officer Camara was also a member of B Company. Like C.C. and Officer Carter, Officer Camara did not pass her firearm training the first time. In her interview, Officer Camara initially described respondent as quiet and reserved. She stated that she did not recall respondent calling anyone by their first name. She did recall C.C. telling her that respondent liked light-skinned women. She maintained that she heard respondent call C.C. redbone, but it did not appear that C.C. minded. However, C.C. later complained to Officer Camara that it bothered her and she went out of her way to avoid him during her remedial training (Pet. Ex. 8).

During the recorded interview with Officer Camara, Investigator Pickett asked if she noticed respondent "shove" C.C. Officer Camara responded, "I don't know if it was a shove" (Pet. Ex. 8). The investigator continued to refer to it as a "push or a shove" even though Officer

Camara repeatedly stated that it was “not really a push or a shove.” Officer Camara described it more as a “go ahead, get out of here” (Pet. Ex. 8). In her opinion, “it did not look like much.” Officer Camara stated that other than respondent calling C.C. redbone, she did not hear anything else that respondent had said to C.C.

Investigator Pickett went off the record three times during Officer Camara’s recorded interview. Each time she went back on the record, Officer Camara provided new information, which was more damning. The first time the investigator went off the record, she said the interview was concluded. However, she went back on the record and immediately asked Officer Camara if she heard respondent address any of the recruits by their first name. Despite saying that she could not recall if respondent had addressed anyone by their first name in the first portion of the interview, Officer Camara then responded that respondent had called two light-skinned women by their first name, C.C. and another recruit. Officer Camara was unable to recall who the second recruit was, so the investigator went off the record to retrieve pictures of the class. When they went on the record for the third time, Officer Camara was unable to identify the woman. However, during this segment of the interview she said that she had heard respondent tell recruits that he liked light-skinned women, which was different from her initial statement that C.C. had told her that respondent liked light-skinned women.

Investigator Pickett stated once again that the interview was concluded and went off the record. However, they went back on the record for a fourth time, during which the investigator asked Officer Camara if she heard respondent tell C.C. that she could be his “next baby mama” (Pet. Ex. 8). Officer Camara recalled that she heard respondent say that to C.C. in the classroom but “we blew it off” because they thought it was a joke (Pet. Ex. 8).

Captain Denise Chavis was interviewed by the EEO office, but did not testify during the trial. As with Officer Camara, petitioner relied upon the audio recording of her interview. Captain Chavis stated that she worked with respondent at the range and found him to be professional. Captain Chavis only learned about C.C.’s EEO complaint when C.C. returned to the range for remedial training. A union representative told Captain Chavis that C.C. had filed an EEO complaint about respondent and was upset to see respondent in the canteen at the range. Investigator Pickett repeatedly asked Captain Chavis if respondent had ever had a problem with a recruit before C.C. filed her complaint. Captain Chavis stated four times during the nine-minute interview that she never heard of any other recruit complaining about respondent (Pet. Ex. 6).

Officer Romano testified that he and respondent started as instructors in the training academy in 2010 and worked together for three to four years. Officer Romano maintained that respondent, who he found to be loyal and always willing to help, was a very good partner to work with (Tr. 146). Officer Romano described their relationship as a work-based relationship. They have not been working together for the past four years and the only time that he sees respondent now is when respondent has to do his annual firearms requalification (Tr. 152, 165). Officer Romano recalled C.C. because she was one of three recruits who did not pass phase one of firearms training and had to return for remedial training (Tr. 150).

When asked about the noise on the range, Officer Romano testified that it is necessary to speak loudly to a recruit on the firing line in order to be heard. The instructor is wearing earmuffs, the recruit is wearing earmuffs, and the recruits are shooting so that you have to move closer and speak louder (Tr. 150, 158). Officer Romano did not hear respondent say anything inappropriate to C.C. while she was on the line or in the classroom (Tr. 150). Officer Romano could not say whether he was always standing next to respondent while the recruits were on the firing line because he could not recall their positions (Tr. 166).

Officer Romano is familiar with Department protocols and testified that the proper practice is to address a recruit or correction officer by their last name. He has, however, addressed a recruit by his or her first name, especially when the recruit is upset or anxious about shooting a firearm. If a recruit is flustered, it is better to speak to them more person-to-person, rather than teacher-to-student (Tr. 162). He believes that using nicknames for recruits is inappropriate, although he has heard recruits referred to by a nickname as a way of remembering the person's name. Officer Romano maintained that it was never malicious (Tr. 162). He also admitted that he has heard profanity being used at the range, but could not recall anything specific (Tr. 164-65).

Officer Romano acknowledged that the instructors have access to the recruit's folders, which contain a data sheet with certain personal information, including the recruit's first name (Tr. 155). However, he had not heard respondent call C.C. by her first name or refer to her as light-skinned or redbone. Nor has he ever heard respondent call recruits "salt and pepper." Officer Romano denied hearing respondent tell C.C. that if she keeps shooting like that, she could have his baby (Tr. 151). Similarly, he never heard respondent say "Don't ever let a man touch you like that or I'm going to kill you" (Tr. 152). Further, Officer Romano never saw

respondent touch C.C. in any manner (Tr. 152). Officer Romano explained that he testified on respondent's behalf so that the "truth could be heard" and that he did not believe any of the allegations (Tr. 152).

Officer Ranya Bryant was a recruit in the same training class as C.C. Officer Bryant had been assigned to be the squad leader of Company B, acting as a liaison between the recruits in her squad and the instructors or company commander (Pet. Ex. 1: Page 1; Tr. 178, 182). Officer Bryant maintained that during her training she never heard any of the instructors refer to someone as light-skinned or redbone, either on the range or in the classroom (Pet. Ex. 7; Tr. 178). Officer Bryant testified that she never saw respondent push a recruit in the classroom or heard respondent address C.C. by her first name (Tr. 180, 190).

Officer Bryant was interviewed by Investigator Pickett during the EEO investigation of C.C.'s harassment complaint against respondent (Tr. 186). During the interview, she recalled that C.C. had been upset by something that was said to her while on the range. However, Officer Bryant could not remember what it was (Pet. Ex. 7). Officer Bryant similarly testified during the trial that she saw that C.C. was upset one day. She saw C.C. punching her right fist into her open left hand, while shrugging her shoulders and moving her head side-to-side (Tr. 184). Officer Bryant asked C.C. what was wrong, but could not recall what C.C. replied. She did remember telling C.C. to talk to the company commander so she conceded that it must have involved an instructor (Tr. 183-85).

Officer Bryant described respondent as a professional instructor who tried to make sure that the recruits understood how to handle a firearm (Pet. Ex. 7; Tr. 177-78). When asked why she agreed to testify, Officer Bryant stated, "To tell the truth." "I'm not friends with [C.C. or respondent]. I do not speak to either one of them outside work" (Tr. 180).

Officer Boyd testified that as the company commander at the Department's academy, his role is to mentor recruits through their transition from civilian life to becoming a uniformed officer (Tr. 199-200, 207). Officer Boyd recalled C.C. approaching him in February 2013 to make a complaint about respondent (Tr. 202). He admitted that his memory about the incident was not sharp because it occurred five years ago (Tr. 217). Officer Boyd was unable to recall exactly what C.C. had said, but remembered that the complaint was sexual in nature so he asked Officer Green, the union delegate, to speak to C.C. (Tr. 202, 209).

When questioned about C.C.'s testimony regarding their conversation, Officer Boyd adamantly denied telling C.C. that respondent "keeps doing things like that" or saying that respondent sent a photograph of his penis to another recruit (Tr. 204, 219). Officer Boyd testified that C.C. was the one who mentioned it and told him that she had seen a photo of respondent's penis (Tr. 211).

Officer Boyd testified that he was "stunned" and "shocked" because respondent was one of the better instructors and he never heard anyone make a complaint like that about him (Tr. 202-03, 218). Indeed, Officer Boyd had only heard accolades about respondent (Tr. 203). He did not believe C.C.'s allegations (Tr. 203). Officer Boyd testified at this trial because he heard about C.C.'s testimony regarding her conversation with him. He was upset because his name was put into a "story" to "add fuel to the fire" and it was a lie. Officer Boyd has been with the Department for 20 years, his integrity has never been called into question, and he did not appreciate C.C. attributing statements to him that he never made (Tr. 205).

Respondent has worked for the Department for approximately 13 years. He previously served with the Marine Corps for 14 years (Tr. 224, 240). In November 2010, he was assigned to FTU as an instructor (Tr. 224-25, 240). Respondent testified that in January 2013, when C.C. was a recruit he was working at the range as the B Officer, assisting Officer Romano, the A officer (Pet. Ex. 1: Page 3; Tr. 227, 242). In total, respondent worked with Officer Romano at the range for approximately three and a half years. They trained thousands of recruits and he never had a problem with a recruit until C.C. made her allegations (Tr. 228, 248, 301-02).

Respondent testified that prior to attending this trial he could not recall what C.C. looked like (Tr. 231). When he was questioned by the EEO office regarding this matter, they never produced a photo of C.C. Respondent told EEO that he did not remember who she was (Pet. Ex. 3; Tr. 231).

Respondent testified that he has had EEO training and is aware of the Department's EEO policy (Tr. 275-78). Respondent is also familiar with the Department's policy on fraternization, which prohibits instructors from addressing recruits by their first name (Tr. 279-80). Respondent denied addressing C.C. by her first name. Respondent acknowledged that he would have access to a recruit's name from the academy attendance list, but testified that to this day he is not even sure of C.C.'s first name and that during the training he did not know her last name. The recruits

have their last names on the back of their uniform. Respondent testified that he would have had to look at C.C.'s back to refer to her by her last name (Tr. 232, 266, 289-90, 299-300).

Respondent denied referring to C.C. as redbone or light-skinned (Tr. 232). He never called C.C. up on to the platform in the classroom and never told her "Don't let a man touch you like that or I'm going to kill you" (Tr. 233, 300). In addition, respondent testified that he never approached C.C. while she was shooting on the line and said, "Keep shooting like that and you can have my baby" (Tr. 233-34, 300). Respondent maintained that it is not his character to say something like that (Tr. 234, 301). Moreover, the range is very loud and the recruits are wearing earmuffs to muffle the sound. It is necessary to yell in order to be heard. When he had spoken to recruits on the firing line it was loud enough for them and other recruits to hear. If he needed to speak with a recruit privately, he would have had the tower officer instruct the recruit to holster his or her weapon and step off of the line (Tr. 259-60).

During his EEO interview respondent questioned C.C.'s credibility based on her written statement because she claimed to be "sexually assaulted" and alleged that he complimented her shooting ability (Pet. Ex. 1: Pages 13-15). Respondent noted that C.C. failed the training so he wondered why he would be commenting on how well she was shooting (Pet. Ex. 3).

Respondent became aware after the training that some of the recruits had failed phase one, but he did not know that C.C. had failed until she made these accusations against him (Pet. Ex. 1: Page 5-6; Tr. 234-35). He postulated that she may have made these allegations up because she was worried about graduating from the academy (Pet. Ex. 3).

Respondent testified that he has had to live with these allegations hanging over his head for five years and feels that some people have treated him as guilty until proven innocent (Tr. 236). He apologized to his fiancé, who was present in the courtroom, for having to endure this for the last five years. Respondent insisted that he was innocent and wanted to prove that C.C.'s accusations are false (Tr. 237). Respondent testified that even though he has been wrongly accused, his accuser has moved forward and has even been promoted to Captain. Meanwhile, he was transferred out of the academy and his career has been stagnant (Pet. Ex. 1: Pages 55, 91, 93; Tr. 238).

Respondent is charged with violating the Department's EEO policy and other Departmental rules by engaging in a pattern of behavior, including, but not limited to, physically pushing or shoving C.C.'s body off of a classroom stage in front of other recruits and

suppressing C.C.'s report alleging that respondent violated Departmental policies (ALJ Ex. 1). Throughout the course of the trial, petitioner alleged that addressing C.C. by her first name, referring to her as light-skinned or redbone, and making inappropriate comments established a pattern of aggravated harassment.

In a disciplinary proceeding, petitioner bears the burden of proof by a preponderance of the credible evidence. *Foran v. Murphy*, 73 Misc. 2d 486, 489 (Sup. Ct. N.Y. Co. 1973); *Antinore v. State*, 79 Misc. 2d 8, 12 (Sup. Ct. Monroe Co. 1974), *rev'd on other grounds*, 49 A.D.2d 6 (4th Dep't 1975), *aff'd*, 40 N.Y.2d 921 (1976); *Osoba v. Bd. of Education*, NYC. Civ. Serv. Comm'n Item No. CD 92-127 at 3 (Nov. 19, 1992), *aff'g*, OATH Index No. 237/92 (Feb. 28, 1992). A preponderance has been defined as the burden of persuading the "trier of fact to believe that the existence of a fact is more probable than its non-existence." *Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust*, 508 U.S. 602, 622 (1993). *See also Dep't of Correction v. Tavaréz*, OATH Index No. 1273/02 at 5 (Nov. 21, 2002). Whether petitioner meets this burden in this case is dependent upon the credibility of its witnesses.

In analyzing credibility, this tribunal may consider such factors as: witness demeanor; consistency of a witness' testimony; supporting or corroborating evidence; witness motivation; bias or prejudice; and the degree to which a witness' testimony comports with common sense and human experience. *Dep't of Sanitation v. Menzies*, OATH Index No. 678/98 at 2-3 (Feb. 5, 1998), *aff'd* NYC Civ. Serv. Comm'n Item No. CD 98-101-A (Sept. 9, 1998); *Dep't of Correction v. Hansley*, OATH Index No. 575/88 at 19 (Aug. 29, 1989), *aff'd*, 169 A.D.2d 545 (1st Dep't 1991). The evidence presented was inconclusive for many of the allegations because both petitioner's and respondent's witnesses had credibility issues, making it difficult for petitioner to sustain its burden.

A single witness' credible testimony is sufficient to prove a charge of sexual harassment. *See Health & Hospitals Corp. (Segundo Belvis Diagnostic & Treatment Ctr.) v. Rivera*, OATH Index No. 414/14 at 4 (Dec. 4, 2013) (complainant's uncorroborated credible testimony was sufficient to establish respondent sexually harassed her on two occasions). C.C.'s credibility, however, suffered from her inconsistency and use of hyperbole. In addition, the Department's witnesses provided conflicting statements that were at times unreliable. Respondent adamantly denied the allegations. Moreover, several of respondent's witnesses completely contradicted

several aspects of C.C.'s testimony, such as Officer Boyd credibly denying that he told C.C. that respondent sent a photo of his penis to another recruit and Officer Bryant credibly contradicting C.C.'s claim that she saw respondent push her off a stage.

Addressing C.C. by her First Name

Petitioner alleged that respondent referred to C.C. by her first name. The testimony regarding respondent's use of C.C.'s first name was conflicting. C.C. testified that respondent addressed her by her first name. She contended that respondent "whispered" it when he said it because he knew he was not supposed to use her first name. The only other person who recalled respondent addressing C.C. by her first name was Officer Camara. However, during the first portion of Officer Camara's EEO interview, she stated that she did not recall respondent addressing any of the recruits by their first name. It was only after going off the record and returning on the record that Officer Camara suddenly recalled respondent had referred to C.C. and another light-skinned female recruit by their first names. It is unclear what Investigator Pickett discussed with Officer Camara while they were off the record and there is no explanation for why she suddenly changed her statement. As a consequence, the value of Officer Camara's statements was diminished by the manner in which her EEO interview was conducted.

Officers Romano and Bryant testified that they never heard respondent address C.C. or any other recruit by their first name. The Department established that respondent had access to the recruits' paperwork, which would have included C.C.'s full name. Respondent, however, denied calling C.C. by her first name, contending that even at trial he was unsure of her first name. Respondent's assertion that he still did not know C.C.'s first name at trial was far from believable and as a result made some of his other assertions less persuasive. Respondent further testified that he never addressed any recruit by his or her first name. In contrast, Officer Romano acknowledged that at times he has referred to someone by their first name because certain circumstances required it, such as calming a nervous recruit before he or she shot a firearm for the first time.

Regardless, I was not persuaded by the evidence presented that it was more likely than not that respondent referred to this particular recruit by her first name. Petitioner had the burden of establishing that respondent referred to C.C. by her first name. Petitioner failed to meet that burden. C.C. testified that respondent whispered her name because he knew that he was not

supposed to use first names. She asserted that she was the only one who heard him say it and she was unable to recall in what context he said it. Granted that the trial was five years after the fact, but C.C. was equivocal about this during her fairly contemporaneous EEO interviews. Officer Camara was the only other witness that said that respondent referred to C.C. by her first name during her EEO interview. Officer Camara's statements regarding respondent addressing C.C. by her first name were not reliable. They appeared to be prompted by something that was said to her while off the record. Officer Camara's sudden and contradictory recall that respondent not only referred to C.C. but another recruit by their first names sounded contrived and failed to corroborate C.C.'s testimony. Indeed, it actually contradicted C.C.'s testimony that she was the only one who heard respondent use her first name. Petitioner chose to rely on Officer Camara's EEO interview rather than attempt to call her as a witness. Accordingly, on this record, I find that petitioner failed to establish by a preponderance of the credible evidence that respondent addressed C.C. by her first name.

Referring to C.C. as Redbone

C.C., Officer Carter, and Officer Camara testified and/or provided EEO statements that respondent referred to C.C. as either redbone or light-skinned. C.C. testified that Officer Bryant and the rest of the recruits in Company B had heard respondent call her redbone and that it had become a "joke" leading other recruits to also call her redbone. Officer Carter testified similarly that respondent had started referring to C.C. as redbone on the first day of training, which led several recruits to think that respondent and C.C. had known each other before the training. C.C. initially maintained that she did not react when respondent referred to her as redbone because she really did not care. It later began to upset her because she thought respondent was being unprofessional. During Officer Camara's interview, she stated that although C.C. did not appear to mind that respondent called her redbone, but she later learned that it bothered C.C.

Respondent, on the other hand, denied referring to C.C. as redbone or light-skinned. Officer Romano testified that he never heard respondent refer to any recruit as redbone or light-skinned. Officer Bryant, who C.C. singled out as one of the recruits who heard what respondent had said, testified that she never heard respondent refer to anyone as redbone or light-skinned. Officer Bryant further testified that she did not hear any other recruits call C.C. redbone (Tr. 181).

C.C.'s credible testimony that respondent referred to her as redbone was corroborated by both Officers Carter and Camara. While I have found Officer Camara's statements to the EEO investigator to be generally unreliable, in this instance Officer Camara volunteered that respondent had called C.C. redbone, without prompting from the investigator during the first portion of her interview before they went off the record. Further, both she and Officer Carter were very specific as to at least one instance when they heard respondent refer to C.C. as redbone. Both officers maintained that after having a conversation with C.C. on the platform in the front of the room, respondent called C.C. redbone. They also testified to other incidents in which respondent used redbone to refer to C.C. but were less specific about when they occurred.

Respondent's adamant denial that he referred to C.C. as redbone was unpersuasive because of his generalized assertion that he had never referred to any recruit by a nickname. Regardless of the Department's fraternization policy, it is likely that respondent as well as the other instructors referred to a recruit from time to time by a nickname. Indeed, Officer Romano admitted that he has heard recruits referred to by nickname as a way of remembering them.

Although I find that respondent did refer to C.C. as redbone, petitioner failed to establish that the use of the term "redbone" constituted harassment. None of the witnesses, including C.C., indicated that the term had a sexual connotation. Indeed, C.C. testified that she did not mind that the class was jokingly calling her that, even though she thought respondent was being unprofessional. Notwithstanding, referring to a recruit as redbone is inappropriate and unprofessional. *See Human Resources Admin. v. Reaves-Cain*, OATH Index No. 1718/07 at 7 (Nov. 14, 2007) (addressing other employees by inappropriate nicknames was discourteous and unprofessional). Accordingly, I find that petitioner established that respondent failed to maintain professional boundaries by referring to C.C. as redbone.

Inappropriate Comments

To further establish respondent's pattern of behavior to harass C.C., petitioner alleged that respondent made two inappropriate comments. C.C. testified that while she was on the stage talking to respondent, he said, "Don't ever let another man touch you like that or I'll kill you" (Tr. 36). C.C. described respondent as whispering when he said this to her so no one else heard the comment. She maintained that she later told Officers Carter, Camara, and Bryant what respondent had said. Officers Carter and Camara stated, however, that they did not know the

content of respondent's and C.C.'s conversation while they were talking in front of the classroom. Consequently, neither Officer Carter nor Officer Camara corroborated C.C.'s testimony that she had told them that respondent had threatened to kill her if she let another man touch her. Similarly, Officer Bryant testified that she never heard respondent make this comment.

C.C. testified that she confided in the two or three recruits with whom she was friendly during the training. The evidence established that C.C. and Officers Carter and Camara had several discussions about respondent's professionalism. Considering the nature of their discussions, if respondent had made such a threatening and inappropriate comment, it is likely that C.C. would have repeated it to them and they would have remembered it. Yet, neither Officer Carter nor Officer Camara even mentioned it. Accordingly, petitioner failed to meet its burden by establishing by a preponderance of the credible evidence that respondent told C.C., "Don't let another man touch you or I'll kill you."

C.C. testified that respondent had made a second inappropriate comment to her while she was shooting on the firing range. According to C.C., respondent approached her from behind and said, "keep shooting like that and you can have my baby" (Tr. 40). Officers Romano, Bryant, and Carter testified that they did not see respondent approach C.C. on the firing line nor did they hear respondent make this comment. Officer Camara did tell EEO that she heard respondent tell C.C. that could be his "baby mama," but this was after the EEO investigator went off and on the record for the fourth time, and was also in response to a specific query from the investigator. Moreover, Officer Camara said she was in the classroom when respondent made that comment, not on the range (Pet. Ex. 8). This was contrary to C.C.'s testimony that no one else heard this comment, which was made on the range. Officer Camara's statement was not reliable, given the circumstances.

Moreover, in C.C.'s written statement and during her second EEO interview, she stated that respondent "whispered" this comment in her ear on the firing range (Pet. Ex. 1: Page 13-15; Pet. Ex. 4). C.C. acknowledged that she was wearing protective earmuffs at the time. According to C.C., the earmuffs muffle the loud sound of a gun but it is still possible to hear the instructors talking to you so she was able to hear respondent make a comment about having his baby (Tr. 42).

C.C. asserted that if someone was standing behind her on the range and talking to her she was able to hear what the person was saying (Tr. 43). C.C. was unsure whether the class was shooting at the time respondent had made his comment (Tr. 95). When asked to describe how loudly respondent was speaking to her, C.C. became defensive and said he was not screaming. It was “like a regular conversation” (Tr. 92). In her opinion, a whisper and a “normal tone of voice” are the same thing (Tr. 95-96). C.C. explained that she had described the volume of his comments as a whisper because he was speaking to her and it was “for [her] ears only” (Tr. 108-09, 111).

Every witness, including C.C., testified that it is very loud on the range. It is difficult to imagine that C.C. would have been able to hear anything respondent said to her in a “whisper” while wearing earmuffs on the range. C.C. became defensive when asked to discuss the volume of the comment. She attempted to back away from the use of the word “whisper” by characterizing a whisper as the same as a “normal tone of voice.” Moreover, even giving C.C. the benefit of the doubt that no one was shooting at the time this comment was made, it does not comport with common sense that respondent would have been able to speak in such a low voice that only C.C. would hear it with the earmuffs on.

It is undisputed that both respondent and C.C., along with everyone else on the range, were wearing earmuffs. Most people when they have earmuffs or headphones on that are designed to muffle sound tend to speak louder because they have trouble gauging how loudly they are speaking. Moreover, C.C.’s contention that the earmuffs are only designed to muffle the sound of a loud gun does not comport with common sense. A gunshot or multiple gunshots in this case are much louder than someone speaking in a normal tone of voice, let alone a whisper. If they muffle the sound of a gunshot, it would also muffle a person’s voice. Everyone, other than C.C., testified that it would be necessary to shout, yell or speak loudly in order to be heard with the earmuffs on. The recruits are standing on a line without partitions about an arm’s length away from each other. It follows that if respondent spoke loudly enough for C.C. to hear through her earmuffs, the recruits standing on either side of her likely heard it as well.

Respondent denied making this comment and no other witness saw respondent approach C.C. on the range or heard him make this comment. There is no dispute that C.C.’s shooting was borderline during the entire training, making it odd that respondent, a firearms instructor, would be commenting on how well she was doing.

C.C. met with Officer Boyd, the company commander, about a week later to complain about respondent and ask that he not be assigned as her instructor when she returned to the range to redo the firearms training. C.C. asserted that Officer Boyd told her that this was typical behavior for respondent and that on a prior occasion respondent had sent a photo of his penis to a female recruit.

During the trial, however, Officer Boyd spoke highly of respondent and testified that he had a very good reputation as a professional and capable instructor. He was shocked by C.C.'s allegations. Although Officer Boyd acknowledged that his memory of the incident was not sharp, I attributed this to the lapse of time and found Officer Boyd's testimony, for the most part, to be credible. I found Officer Boyd's denial that he would say such things about an instructor to a recruit to be far more credible than C.C.'s version of their conversation.

C.C.'s testimony that respondent whispered or said in a normal tone of voice that she could have his babies while they were on the range was not persuasive. Moreover, her testimony regarding her conversation with Officer Boyd was directly contradicted by his credible testimony. Accordingly, petitioner failed to meet its burden of establishing by a preponderance of the credible evidence that respondent told C.C. "Keep shooting like that and you can have my baby."

Shoving Complainant Off of a Stage

Respondent is charged with "physically pushing or shoving" C.C. off of a stage in front of other recruits. C.C. was not credible as to being shoved off a stage. The testimony of multiple witnesses established that the "stage" was in reality a four-inch platform in the front of the classroom. Respondent denied touching C.C. and Officers Romano and Bryant testified that he never saw respondent push or shove any of the recruits.

In her written statement, C.C. stated that respondent "pulled" her onto the stage but never mentioned that respondent pushed or shoved her off the stage (Pet. Ex. 1: Pages 13-15). It was only during her first EEO interview that C.C. stated that respondent called her onto the stage, said something inappropriate and "pushed" her like "he was playing" (Pet. Ex. 2). When asked to clarify whether respondent physically touched her, C.C. said that respondent "pushed me off the stage" but clarified "not hard, like playing" (Pet. Ex. 2).

During her second EEO interview, C.C. said that respondent “pulled” her onto the stage, made the inappropriate comment, and then “shoved” her off of the stage (Pet. Ex. 4). As before, C.C. stated that Officers Carter and Bryant saw respondent push her off the stage (Pet. Ex. 4). At trial, C.C. testified that while the class was filing into the classroom, respondent called her over to speak with him but she could not recall if he touched her or “pulled” her onto the stage (Tr. 35). C.C. further testified that after he made an inappropriate comment, respondent “pushed” or gave her “a little shove” for her to return to her seat (Tr. 36). She testified that respondent did not “forcefully push her” and that it was more like “I’m done with you. Now go sit down” (Tr. 37).

C.C. also said that Officers Carter, Camara, and Bryant saw respondent push her off the stage during her first and second EEO interviews. However, that evidence was contradictory. During Officer Carter’s EEO interview, Officer Carter told the investigator that she observed respondent push C.C. off of the stage and say, “get out of here, redbone” (Pet. Ex. 5). Officer Carter similarly testified at trial that she saw respondent push C.C. “like get out of here” (Tr. 117). Officer Camara indicated during her EEO interview, that she had observed respondent and C.C. on the stage. Officer Camara stated “I don’t know if it was a shove, but it was just like a, like go ahead, kinda” (Pet. Ex. 8). Both Officers Carter and Camara tried to downplay what was initially described as a shove and provided varying descriptions for what they saw.

In contrast, respondent adamantly denied pushing or shoving C.C. Officer Romano testified that they did not see respondent push C.C. Officer Bryant, who the others referred to as being present when all of this took place, credibly testified that she did not see respondent touch C.C. (Tr. 181).

Petitioner failed to meet its burden in establishing the charge that respondent pushed or shoved C.C. off of a stage. It is undisputed that the stage was a little platform. Moreover, it is unclear whether respondent touched C.C. and if he did it was nothing more than incidental contact. However petitioner’s witnesses chose to describe what happened, there was no evidence that C.C. was pushed or shoved “off” of a stage or platform. Accordingly, this charge should be dismissed.

Suppressing Complainant's Report

Respondent was charged with suppressing C.C.'s report regarding him violating Departmental policies (ALJ Ex. 1). The report that the charges refer to is a critique of the firearms training, which the recruits fill out anonymously to provide feedback on the training.

C.C. stated in her written statement that she filled out the anonymous questionnaire at the end of the firearms training and mentioned that one of the instructors made inappropriate comments towards her. She never mentioned respondent's name (Pet. Ex. 1: Page 13). Patricia LeGoff, Assistant Commissioner for EEO at the time, subsequently requested the anonymous questionnaires completed by the recruits on February 1, 2013, from the Academy (Pet. Ex. 1: Page 17). Eighteen critiques were forwarded to Assistant Commissioner LeGoff, none of which was the one described by C.C. (Pet. Ex. 1: Pages 19-54).

The Department concluded that respondent must have destroyed the report. C.C. did not testify during the trial about the critique that she had filled out. Respondent, however, was asked a number of questions by the Department during trial regarding who collected the critiques from the recruits. Respondent denied collecting the critiques after they were filled out. Respondent consistently testified that the A Officer generally hands them out and collects them from the recruits (Tr. 235, 268). The recruits are not required to fill them out and respondent testified that he does not count them when they are submitted so he would not know if everyone filled one out (Tr. 236).

Respondent's statements during his EEO interview regarding the critique was similar, with the exception of acknowledging that either the "A" or "B" Officer would hand out and collect the questionnaires. Respondent stated that he could not recall if he or Officer Romano had collected the questionnaires. He further stated that he did not know if C.C. filled one out because he was instructed not to read, review or copy them (Pet. Ex. 3).

The Department charged respondent with suppressing C.C.'s critique, but failed to establish that she filled one out, that respondent collected them or had access to them, and that respondent having read all of the critiques, determined that C.C.'s comment about an unnamed training officer pertained to him, and then destroyed C.C.'s critique. There is no evidence that respondent actually touched the critiques, let alone that he suppressed C.C.'s critique.

FINDINGS AND CONCLUSIONS

1. Petitioner failed to meet its burden by establishing by a preponderance of the credible evidence that respondent addressed the complainant by her first name.
2. Petitioner established that respondent failed to maintain professional boundaries by referring to the complainant as redbone.
3. Petitioner failed to meet its burden by establishing by a preponderance of the credible evidence that respondent made two inappropriate sexual comments to the complainant.
4. Petitioner failed to meet its burden by establishing by a preponderance of the credible evidence that respondent pushed or shoved the complainant off of a stage.
5. Petitioner failed to meet its burden by establishing by a preponderance of the credible evidence that respondent suppressed the complainant's report alleging that respondent violated Departmental policies.

RECOMMENDATION

Upon making the above findings and conclusions, I obtained and reviewed an abstract of respondent's personnel record provided to me by petitioner. Respondent was appointed as a correction officer January 2005. During that time he received four awards. On August 27, 2007, respondent was awarded a certificate of achievement. In 2007, respondent was given the Top Gun Award/Pistol Team. Respondent received a letter of appreciation on July 19, 2013, and was named employee of the month in September 2013.

During his tenure with the Department, respondent has been disciplined twice. In 2006, respondent forfeited 30 vacation days for a use of force that occurred on November 13, 2006. In 2008, respondent forfeited 45 vacation days for a use of force on April 9, 2008 and a failure to anticipate a use of force on October 19, 2008.

The Department asserted that if all of the charges were sustained, respondent should be terminated from his position as a correction officer. The Department, however, failed to meet its burden on most of the charges, including that respondent engaged in a pattern of harassment.

Instead, respondent was found to have failed to maintain professional boundaries by referring to C.C. as redbone.

Respondent has two significant disciplinary penalties on his record. He lost 30 days of vacation in 2006 and 45 days of vacation in 2008. Both of these penalties were imposed for charges relating to excessive use of force. Although respondent's prior penalties were substantial, it would be inappropriate to impose progressive discipline in this instance. The theory behind progressive discipline is to modify poor employee conduct by increasing penalties for repeated instances of the same or similar misconduct. *Health & Hospitals Corp. (Kings County Hospital Center) v. Myers*, OATH Index No. 1487/09 at 8 (Jan. 26, 2009) citing *Police Dep't v. Schaefer & McGrath*, OATH Index Nos. 1114 and 1169/99 (July 2, 1999), *aff'd*, 281 A.D.2d 163 (1st Dep't 2001). The sustained charge in the present case, however, is for a failure to maintain professional boundaries by referring to a recruit redbone and is dissimilar to excessive use of force. Respondent has no prior history involving a failure to maintain such boundaries and is a 13-year employee.

The proven charge is relatively minor. Respondent, however, repeatedly referred to C.C. as redbone, which led other recruits in her class to refer to her similarly. Moreover, his repeated use of the term possibly undermined her standing amongst her colleagues because it led them to believe that she had a prior relationship with respondent. Accordingly, I recommend that respondent be suspended without pay for 5 days.

Kara J. Miller
Administrative Law Judge

April 27, 2018

SUBMITTED TO:

CYNTHIA BRANN
Commissioner

APPEARANCES:

PRECIOUS BONAPARTE, ESQ.

JENNIFER OPPONG, ESQ.

Attorneys for Petitioner

KOEHLER & ISAACS, LLP

Attorneys for Respondent

BY: DAVID KIRSCH, ESQ.

_____ x
In the Matter of :
Department of Correction, :
 :
Petitioner :
 :
-against- :
 :
Correction Officer Ronnie Mack :
#8093 :
Respondent. :
_____ x

OATH Index No.1958/17
DR# 558/2013

ACTION OF THE COMMISSIONER

The instant matter was forwarded for my review after the Report and Recommendation issued by Administrative Law Judge Kara Miller (hereinafter "ALJ Miller) of the Office of Administrative Trials and Hearings (hereinafter OATH).

ALJ Miller presided over the fact finding hearing in the instant matter for two dates, on July 28, 2017, and September 6, 2017. ALJ Miller issued a report and recommendation finding Respondent guilty of failing to maintain appropriate professional boundaries, on or about January 29, 2013, by referring to a Recruit Officer as "redbone."

Based on the record in this matter, information provided by the Department's Trials and Litigation Division and the Fogel letter, dated May 29, 2018, submitted on behalf of Respondent by his Counsel, I adopt ALJ Miller's factual findings and conclusions and reduce the recommended penalty as to Correction Officer Ronnie Mack from five (5) suspension days, to two (2) suspension days.

Date: 8/8/18

Signature: 
Cynthia Brann, Commissioner