Dep't of Sanitation v. Perez

OATH Index No. 370/17 (Jan. 20, 2017), *modified on penalty*, Comm'r Dec. (Feb. 7, 2017), **appended,** *aff'd*, NYC Civ. Serv. Comm'n Case No. 2017-0215 (May 24, 2017), **appended**

Sanitation worker failed to comply with emergency leave regulations on seven occasions. Cumulative penalty of 63-days' suspension without pay recommended.

Commissioner adopted the ALJ's findings but not the recommended penalty. Instead, she imposed the penalty of termination of employment. CSC affirms penalty of termination on appeal.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DEPARTMENT OF SANITATION
Petitioner
- against -
NOEL PEREZ
Respondent

REPORT AND RECOMMENDATION

ASTRID B. GLOADE, *Administrative Law Judge*

This disciplinary proceeding was referred by petitioner, the Department of Sanitation ("Department"), pursuant to section 16-106 of the New York City Administrative Code. Petitioner brought seven disciplinary complaints against respondent, sanitation worker Noel Perez, alleging rule violations under the Department's Code of Conduct (ALJ Ex. 1).

At the trial on the charges, the Department presented documentary evidence and the testimony of one witness. Respondent testified on his own behalf, presented the testimony of one witness, and submitted documentary evidence. The record was held open until November 25, 2016, at respondent's unopposed request, for the submission of documentary evidence.

For the reasons set forth below, I find that the charges are sustained and recommend that respondent be suspended without pay for 63 days.

ANALYSIS

The Department's rules provide that sanitation workers who request emergency leave "must give a valid reason for the emergency leave and must submit verifiable proof of the emergency within 48 hours of the request." Dep't of Sanitation General Order 2015-03 § 1.5 (eff. Jan. 12, 2015) ("Code of Conduct"). Petitioner charged that respondent failed to timely submit verifiable proof of the emergency giving rise to his request for emergency leave on multiple occasions. At trial, respondent did not dispute the charges, but sought to explain his failure to submit proof and provided written documentation for most of the emergency leave requests.

Emergency leave due to car trouble (complaints 129329, 130924, and 135258)

Respondent was appointed as a sanitation worker at the Department's Manhattan Three Garage in April 2000 and has worked there his entire career (Tr. 94). On June 5, 2015, August 7, 2015, and February 12, 2016, before his shift commenced, respondent requested emergency leave because of car trouble, but failed to timely submit required verification of the emergencies (ALJ Ex. 1).

Mr. Ciaramella, who has been a supervisor in the Department's Manhattan Three Garage since 2014, oversees time and leave matters for employees at the garage, including respondent (Tr. 12-13). He testified that on June 5, 2015, respondent was scheduled to work collection duty on the 6:00 a.m. to 2:00 p.m. shift, but called the garage to request emergency leave because his car broke down and he was unable to report to work. Because respondent requested emergency leave due to car trouble, he was required to submit documentation to the Department within two days to establish that there had been an emergency involving his vehicle that prevented him from reporting to work. Respondent failed to submit the required proof and was issued a complaint (Tr. 13-16; Pet. Ex. 1).

Similarly, on August 7, 2015, respondent was scheduled to work the 6:00 a.m. to 2:00 p.m. shift when he requested emergency leave because of car trouble. Respondent was given two days within which to submit proof of the emergency, but failed to do so. His absence was designated as leave without pay in the Department's timekeeping records (Tr. 20-22; Pet. Ex. 4).

Respondent also requested emergency leave because of car trouble on February 12, 2016, but failed to provide requisite documentation (Tr. 23; Pet. Ex. 6).

Respondent acknowledged that he failed to submit proof in support of his emergency leave requests to the Department. He maintained that he gathered the necessary documents and stored them in his locker, but failed to submit them to the Department because he was preoccupied with his responsibilities as a union shop steward (Tr. 96-97). Respondent claimed that his belated efforts to submit the documents were rebuffed and he was told to retain them for use in disciplinary proceedings that would be brought against him (Tr. 98). However, respondent did not identify the person he claims gave him this advice.

As proof of his June 5, 2015 emergency leave, respondent produced a Department form that workers must submit when requesting leave, known as a DS-1005, bearing a preparation date of June 8, 2015; a receipt from Designer Auto World, Inc., dated June 5, 2015; and an invoice from USA Towing, Inc., dated June 5, 2015 (Resp. Exs. A1-A3). Submitted as proof of respondent's August 7, 2015 emergency are a DS-1005 form bearing a preparation date of August 10, 2015; a receipt from Designer Auto World, Inc., dated August 7, 2015; and an invoice from USA Towing, Inc., dated August 7, 2015 (Resp. Exs. D1-D3). Respondent also submitted a DS-1005 dated February 15, 2016; a receipt from Designer Auto World, Inc., dated February 13, 2016; and an invoice from USA Towing, Inc., dated February 12, 2016 (Resp. Exs. F1-F3).

In reviewing respondent's submissions, it became evident that the USA Towing, Inc. invoice dated June 5, 2015 is numbered "0059" and the invoice from the same company dated August 7, 2015, is numbered "0060" (Resp. Exs. A3, D3). Respondent testified that he obtained the first invoice when his vehicle was towed on June 5 and the second when it was again towed on August 7 (Tr. 113-14). It is therefore puzzling that although respondent claims two months elapsed between the dates on which he received the invoices, they are sequentially numbered. Respondent provided no clear explanation for the consecutive numbers on documents that were purportedly obtained two months apart, and none is apparent from this record. The third invoice from the same towing company, dated February 12, 2016 and numbered "0354," does not reflect the sequential numbering seen with the other invoices. In addition, the receipts from Designer

Auto World, Inc. are consistent with respondent's claim that he obtained those receipts on the dates he requested emergency leave due to car trouble.

Car trouble can be considered an emergency and may be excused by the Department under certain circumstances and with proper proof. *See, e.g.*, *Dep't of Sanitation v. Silberzweig*, OATH Index No. 1805/06 at 2-4 (Dec. 11, 2006), *adopted*, Comm'r Dec. (Dec. 19, 2006) (timely submission of Department form requesting emergency leave and receipts showing vehicle was repaired sufficient proof). Mr. Ciaramella testified that the DS-1005 forms and the car repair and towing receipts that respondent produced at trial represents the type of proof that would likely have been acceptable to establish that respondent experienced car trouble that constituted emergencies on the dates in question (Tr. 53-54, 61-63, 64; Resp. Exs. A1-A3, D1-D3, F1-F3).

Respondent's claim that his failure to submit documentation was an oversight is no excuse. He acknowledged that he has been previously disciplined for violations of time and leave rules and is therefore familiar with the Department's requirements for submission of time and leave documentation (Tr. 106). Indeed, respondent admitted that the Department had placed him on disciplinary probation for two years prior to the instant incidents (Tr. 98-99). Given his disciplinary history, respondent should have been particularly diligent about timely submission of the required documents.

In sum, the undisputed evidence establishes that respondent failed to timely submit proof of emergency car trouble as alleged in complaints 129329, 130924, and 135258.

Emergency child care leave (complaints 130113 and 130481)

Respondent is charged with failing to provide documentary proof to support his request for emergency leave because he lacked child care on July 17 and 25, 2015.

Respondent, who has two children ages eight and eleven (Tr. 95), was scheduled to work from 6:00 a.m. to 2:00 p.m. on July 17, 2015. However, about an hour before his shift commenced, he notified the Department that he was unable to report to work because he did not have child care. Respondent was required to submit written proof in support of his request, but failed to do so. On July 25, 2015, before the start of his shift, respondent notified the Department that he was unable to report to work because he lacked child care. Respondent again

failed to submit documentation to prove that he had a child care emergency relating to lack of child care. In both instances, respondent's absence was designated as leave without pay in the Department's timekeeping records (Tr. 17-19).

Respondent submitted into evidence documents that reflect his requests for child care leave on July 17 and 25, 2015. These documents include DS-1005 forms, DS-274 "request for Non-FMLA Child Care Leave," and a hand-written note signed by respondent. As with the documentation for his emergency leave related to car trouble, respondent maintained that he completed the forms but left them in his locker instead of submitting them to the Department (Tr. 96-97).

Mr. Ciaramella testified that sanitation workers must submit form DS-274 to request child care leave. In addition, they must submit a DS-1005 when requesting emergency leave for child care, together with written information about the basis for the request, such as a handwritten note (Tr. 48-49). According to Mr. Ciaramella, the forms that respondent submitted in this proceeding reflect the types of documents that the Department would likely have deemed acceptable proof of a child care emergency (Tr. 57-60; Resp. Exs. B1-B3, C1-C3).

Nonetheless, even if respondent's proof would have been accepted had they been timely submitted to the Department, it is undisputed that respondent did not submit these documents to support his request for emergency leave for child care on July 17 and 25, 2015. Therefore, the charges should be sustained.

Emergency leave due to plumbing issues (complaints 132817 and 138085)

On October 27, 2015, respondent, who was assigned to the 6:00 a.m. to 2:00 p.m. shift, requested emergency leave because of a broken pipe and water leak in his home. His request was granted pending submission of proof of the emergency within two business days of his request. However, after respondent failed to submit proof, his absence was denoted as leave without pay in the Department's records (Tr. 21-22; Pet. Ex. 5).

Similarly, on April 21, 2016, respondent requested emergency leave because of a leak in his home, which was granted pending submission of proof. The next day, respondent submitted a request for authorized leave form, DS-1005, with a receipt showing that on April 21, 2016, at 7:27 p.m., someone purchased a piece of pipe at a Lowe's Home Center store. Mr. Ciaramella

submitted respondent's emergency leave request and the receipt to the district superintendent, who recommended approval of the request. However, the borough chief, who is responsible for making the final decision as to whether the submitted proof is acceptable, deemed respondent's proof unsatisfactory and disapproved the request in June 2016 (Tr. 45-46; Pet Ex. 7).[1] Respondent was advised that he needed to submit additional information to show that the incident constituted an emergency and that he had five additional days in which to submit his proof, which he failed to do (Tr. 26-28; Pet. Ex. 7).

Respondent provided no documentation regarding his emergency leave request for October 27, 2015. He testified that after a leak developed underneath his bathroom sink, his landlord's son, who is a plumber, told him to purchase a part to repair the leak. Respondent purchased the part and the landlord's son repaired the leak. However, respondent's receipt got wet and could not be salvaged (Tr. 102-04). While he provided documentation for the leak on April 21, 2016, when that proof was rejected, he failed to submit additional proof.

In sum, petitioner established that respondent failed to timely submit required documentation of his need for emergency leave on October 27, 2015, and April 21, 2016.

FINDINGS AND CONCLUSIONS

1. Complaints 129329, 130924, and 135258 should be sustained because petitioner established that respondent failed to submit required documentation after requesting emergency leave due to car trouble on June 5 and August 7, 2015, and on February 12, 2016, in violation of section 1.5 of the Department's Code of Conduct.

2. Complaints 130113 and 130481 should be sustained because petitioner established that respondent failed to submit required documentation after requesting emergency leave for child care on July 17 and 25, 2015, in violation of section 1.5 of the Department's Code of Conduct.

3. Complaints 132817 and 138085 should be sustained because petitioner established that respondent failed to provide required documentation after requesting emergency

[1] It would appear that because the receipt showed that the pipe was purchased at 7:27 p.m., over 12 hours after respondent's shift started, the borough chief determined that it did not support respondent's contention that the leak was an emergency that necessitated his absence from work (Tr. 27, 74-75).

leave due to water leaks in his home on October 27, 2015, and April 21, 2016, in violation of section 1.5 of the Department's Code of Conduct.

RECOMMENDATION

Upon making the above findings, I requested and reviewed a summary of respondent's personnel record in order to make an appropriate penalty recommendation. Respondent was appointed to his position as a sanitation worker on April 3, 2000. His record indicates that during his tenure he amassed a considerable disciplinary history, as follows: (1) reprimands in 2002 and 2003; (2) a three-day pay fine in 2004; (3) a two-day suspension in 2005; (4) a one-day pay fine in 2005; (5) a three-day suspension in 2007; (6) a 10-day pay fine in 2007; (7) a 19-day pay fine in 2008; (8) 20-day and 25-day pay fines in 2009; and (9) a 30-day suspension, following a trial, in 2011 for being absent without leave and out of residence while on supervised sick leave (*see Dep't of Sanitation v. Perez*, OATH Index No. 1994/11 (June 6, 2011)). Most of respondent's disciplinary history involves failure to adhere to time and leave rules, including those for emergency leave. In addition, in August 2012, respondent was placed on a two-year Commissioner's probation after he pleaded guilty to violations of the Department's rules, including those governing emergency leave. This probation was extended by six months and expired in February 2015. Respondent's overall performance evaluations for the periods provided are mostly unsatisfactory due to his failure to comply with time and leave procedures.

Respondent is guilty of multiple instances of failure to submit proof of emergency leave for which the Department seeks a recommendation that his employment be terminated (Tr. 128).

Respondent did not dispute the charges, and acknowledged that his disciplinary history is poor, but seeks a recommendation short of termination. He maintained that in most instances he possessed documentation that would have been acceptable to the Department had he timely submitted it (Tr. 117-23).

In mitigation of respondent's misconduct is that he is well-regarded by his supervisors. *See Dep't of Sanitation v. Ferguson*, OATH Index No. 1571/13 at 13 (Oct. 17, 2013) *modified on penalty,* Comm'r Dec. (Nov. 14, 2013) (sanitation worker's stellar reputation a factor in recommending a penalty short of termination). Indeed, Mr. Pisano, who has supervised respondent for twelve years and is aware of respondent's disciplinary background, described

respondent as an excellent worker who goes above and beyond the call of duty (Tr. 89-91). Similarly, respondent submitted into evidence four undated letters from supervisors who described him as a reliable and diligent worker who regularly goes above and beyond his required duties. A fifth letter, dated November 9, 2016, describes respondent as willing to assume additional assignments and assist other employees (Resp. Ex. G). Furthermore, Mr. Ciaramella, who has supervised respondent since 2014, described him as a very good employee and a hard worker who does not give his supervisors a hard time. Although cognizant of respondent's employment history, Mr. Ciaramella described him as an asset to the Department who is worthy of another chance (Tr. 66-67).

Under all of the circumstances, a substantial penalty short of termination is appropriate and consistent with penalties imposed under similar circumstances. Such penalties have generally ranged between four and nine days for each violation, depending upon the length of the employee's tenure, extent of his or her disciplinary history, and mitigation presented. *See Dep't of Sanitation v. James,* OATH Index No. 1789/14 at 10-11 (Oct. 24, 2014) (four-day suspension recommended for each emergency leave violation, as well as for other violations, for a cumulative 52-day suspension, where employee had an extensive disciplinary history, but none of the proven misconduct required termination of employment); *Dep't of Sanitation v. Straker*, OATH Index No. 400/12 at 8-9 (Dec. 6, 2011) (seven-day suspension recommended for each emergency leave and absence without leave violation where employee had a lengthy disciplinary history, for a total cumulative penalty recommendation of 77-days' suspension); *Dep't of Sanitation v. Cunningham*, OATH Index No. 2507/11 at 21-22 (Nov. 10, 2011), *modified on penalty*, Comm'r Dec. (Jan. 19, 2012) (eight-day suspension per violation recommended for each violation of emergency leave for car trouble and five days for failing to report to the clinic and provide documentation of medical leave where employee had relevant disciplinary history); *Dep't of Sanitation v. Sosa*, OATH Index No. 1527/05 at 9 (Aug. 12, 2005) (four-day suspension recommended for each emergency leave violation, for a cumulative penalty of 36-day suspension, where respondent, who had prior disciplinary penalties for similar violations, offered mitigation); *Dep't of Sanitation v. Sheville,* OATH Index No. 1751/05 at 7 (July 15, 2005) (45-

day penalty recommended for five time and leave violations where respondent, who offered mitigation, had eight prior disciplinary penalties).[2]

Of particular concern is respondent's failure to respond to progressive discipline over the course of his almost 17-year tenure, which suggests that the prior penalties have not sufficiently motivated respondent to strictly adhere to the Department's time and leave rules. Therefore, a penalty at the highest end of the range is appropriate. Accordingly, I recommend that respondent be suspended for nine days without pay for each of the proven charges, for a cumulative penalty of 63-days' suspension without pay. Respondent should understand that any further failure to comply with regulations pertaining to time and leave is likely to result in termination of his employment.

Astrid B. Gloade
Administrative Law Judge

January 20, 2017

SUBMITTED TO:

KATHRYN GARCIA
Commissioner

CARLTON LAING, ESQ.
Attorney for Petitioner

KIRSCHNER & COHEN, PC
Attorney for Respondent
BY: ALLEN COHEN, ESQ.

[2] Pursuant to section 16-106 of the Administrative Code, the maximum penalty for misconduct is 30 days suspension. However, it is well-settled that this 30-day maximum applies to each violation, permitting total penalties of greater than 30 days where multiple violations have been proven. *See Straker*, OATH 400/12 at 8; *Dep't of Sanitation v. James*, OATH Index No. 1868/02 (Dec. 11, 2002); *Dep't of Sanitation v. Corley*, OATH Index No. 1578/01 (May 31, 2002), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD03-02-SA (Feb. 5, 2003).

ACTION OF THE COMMISSIONER

February 7, 2017

In the Matter of
NEW YORK CITY DEPARTMENT OF SANITATION
Petitioner

-against - OATH Index No. 0370/17

Noel Perez
Respondent.

Kathryn Garcia, Commissioner

DECISION

A copy of the January 20, 2017 Report and Recommendation (the Report) submitted by OATH Administrative Law Judge (ALJ) Astrid B. Gloade was forwarded to this office following a disciplinary proceeding pursuant to Section 16-106 of the Administrative Code of the City of New York, 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 Noel Perez violated Rule 1.5 of DSNY Code of Conduct on seven (7) occasions. However, I find the proposed penalty of a 63 day suspension without pay to be inappropriate.

RECOMMENDATION

This agency has generally followed the time tested principle of progressive discipline which recognizes that employees should have the benefit of progressive discipline wherever appropriate, to ensure that they have the opportunity to be apprised of the seriousness with which their employer views their misconduct and to give them a chance to correct it. The goal is not to build a case to eventually fire an employee, but rather to help employees who have gotten off track improve their performance and renew their dedication to the job. The principle is particularly useful in reforming employees who have had difficulty adhering to time and leave rules. The record is replete with cases, as cited by ALJ Gloade in her Report and Recommendation (attached), where the Department has employed progressive discipline for time and leave abusers in an attempt to encourage them to modify their attendance and increase the prospect of having a successful career with the Department. *See Dep't of Sanitation v. Straker*, OATH Index No. 400/12 at 8-9 (Dec. 6, 2011) (seven-day suspension recommended for each emergency leave and absence without leave violation where employee had a lengthy disciplinary

history, for a total cumulative penalty recommendation of 77-days' suspension); *Dep't of Sanitation v. Cunningham*, OATH Index No. 2507/11 at 21-22 (Nov. 10, 2011), *modified on penalty*, Comm'r Dec. (Jan. 19, 2012) (eight-day suspension per violation recommended for each violation of emergency leave for car trouble and five days for failing to report to the clinic and provide documentation of medical leave where employee had relevant disciplinary history); *Dep't of Sanitation v. Sosa*, OATH Index No. 1527/05 at 9 (Aug. 12, 2005) (four-day suspension recommended for each emergency leave violation, for a cumulative penalty of 36-day suspension, where respondent, who had prior disciplinary penalties for similar violations, offered mitigation); *Dep't of Sanitation v. Sheville*, OATH Index No. 1751/05 at 7 (July 15, 2005) (45-day penalty recommended for five time and leave violations where respondent, who offered mitigation, had eight prior disciplinary penalties).

Yet unfortunately, the record also shows that many employees who fail to improve under the regime of progressive discipline employed in house at the Advocate's Office, do not improve when still afforded the benefit of progressive discipline after OATH trials. Instead, it appears that by the time they have accumulated so many violations that they need to be referred to OATH, these employees have become immune to higher doses of progressive discipline. Eventually, the department is still forced to end its relationship with them or they are forced to end their careers prematurely.

This seems to be the case with all the employees cited by the ALJ Gloade in her Report and Recommendation. All were liberally given the benefit of progressive discipline even after OATH trials, but failed to improve and complete their careers with the Department. *See* Aringdale Straker - resigned with time and leave charges pending (Sept. 11, 2013); Leon Cunningham - terminated on Commissioner's Probation for continued time and leave violations (July 2, 2014); Angel Sosa - resigned with time and leave charges pending (July 28, 2015); Mark Sheville - terminated while AWOL (Dec. 29, 2005).

This respondent has amassed an even worse record than all of the above employees, some of whom also presented evidence of mitigation at their OATH trials. Since the beginning of his career in 2003 and through 2009, he has continually violated time and leave rules and was given the benefit of extensive progressive discipline in house at the Advocate's Office where he was penalized with increasingly more severe penalties - from reprimand up to 25 days suspension. None of this helped him to modify his attendance or adhere to time and leave rules.

Then in 2011 after continued time and leave violations he was referred to OATH where he was found guilty and penalized 30 days suspension. In not recommending termination sought by the Department Advocate, ALJ Richard cited a period of improvement between 2009 and 2011 while his OATH trial was pending. Yet the 30 day penalty he received after the OATH trial did not lead to any improvement as he continued to accumulate time and leave complaints after he completed his suspension. As a final attempt to help him salvage his career and become a productive employee with the Department, in 2012 the he was put on two years Commissioner's Probation for continued time and leave violations, which was extended for six months. To his credit, his attendance and adherence to the rules improved markedly while he was on probation and subject to summary termination.

However, as soon as he completed his Commissioner's Probation he relapsed back into his old ways and was charged with more time and leave violations which were referred to OATH for adjudication. He was once again found guilty of all the charges which are the subject of the present Report and Recommendation. Instead of recommending termination as advocated by the Department Advocate, the ALJ is recommending an increased period of suspension.

But there comes a point when the public employer is entitled to end the employment relationship with an employee who has a record that evinces that he or she is incorrigible. Respondent has placed himself at that point and should be separated from City service. His record evokes ALJ Salzman's observation and comment that "On this record, this result (termination) would do no violence to principles of progressive discipline." *Dep't of Correction v. Belgrave*, OATH Index No. 1662/05 (Jan. 18, 2006), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD06-115-SA (Nov. 8, 2006). (See also summary of respondent's conduct record and evaluations attached).

There are just some employees for who continued application of progressive discipline fails to modify their behavior (*See Straker*, *Cunningham*, *Sosa* and *Sheville*). These employees show that they cannot or will not take the necessary steps to resolve their attendance, and progressive discipline becomes the foundation for a fair separation of the offending employee. This is such a case. Further, there comes a point when progressive discipline loses its deterrent effect on an employee when the offending employee sees a pattern where the penalties get progressively worse but never ever get to termination. This and other employees seeing this pattern then come to believe that time and leave abuse is looked at as merely a nuisance transgression for which no one gets fired, except perhaps when they are on probation.

In not recommending termination ALJ Gloade cited mitigating evidence where the respondent's supervisors testified that he is a good worker and an asset to the Department. But even if this employee is an asset when he shows up at work this is of little moment if his supervisors never know when he is going to show up. And any benefit the department may accrue in keeping him is far outweighed by the liability he presents for the department, in fostering a perception among rank and file that no one gets fired for not showing up as long as you are a good worker when you do. This perception can become a cancer among rank and file if allowed to persist: Sanitation workers become complacent in showing up as they have little fear that they will lose their job; officers become lax in enforcing rules they perceive as having no teeth; union attorneys (and OATH judges) cite prior precedents when OEDM attorneys advocate for termination for repeat time and leave offenders.

In sum, it can become a disruptive cycle that could eventually begin to undermine the department in executing its vision and fulfilling its duty to the public. Moreover, it could put the public at risk if during events such as severe snow storms, because of unreliable employees such as this respondent, the department has difficulty marshaling a full force or adequate staffing that may be required to keep the streets safe and clear of snow.

Accordingly, I recommend that respondent be terminated from his employment.

Kathryn Garcia, Commissioner
NEW YORK CITY DEPARTMENT OF SANITATION

THE CITY OF NEW YORK
CITY CIVIL SERVICE COMMISSION

In the Matter of the Appeal of
NOEL PEREZ
Appellant
-against-
DEPARTMENT OF SANITATION
Respondent

Pursuant to Section 76 of the New York State Civil Service Law

CSC Index No: 2017-0215

DECISION

NOEL PEREZ ("Appellant") appealed from a determination of the Department of Sanitation ("DSNY") finding Appellant guilty of incompetency and/or misconduct and imposing a penalty of termination following disciplinary proceedings conducted pursuant to Civil Service Law Section 75.

The Civil Service Commission ("Commission") heard arguments from the parties on May 4, 2017.

The Commission has considered the arguments presented on this appeal, and reviewed the record of the disciplinary proceeding. Based on this review, the Commission concludes that there is sufficient evidence in the record to support the findings of fact and the conclusions of law, and that the penalty is appropriate.

Therefore, the final decision and penalty imposed are hereby affirmed.

SO ORDERED

Dated: 05/24/2017