

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
TIMOTHY HASELDEN,)	
Employee)	OEA Matter No. 1601-0001-06
)	
v.)	Date of Issuance: March 17, 2008
)	
D.C. METROPOLITAN POLICE)	
DEPARTMENT,)	
Agency)	ERIC T. ROBINSON, Esq.
)	Administrative Judge
_____)	

James Pressler, Esq., Employee Representative
Andrea Comentale, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On 10/6/2005, Lieutenant Timothy Haselden (“the Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the Metropolitan Police Department’s (“MPD” or “the Agency”) adverse action of removing him from service. This matter was originally assigned to Administrative Judge Lois Hochhauser. On or about 4/13/2006, this matter was reassigned to the undersigned Administrative Judge. Thereafter, multiple status conferences were held in this matter. Ultimately, the undersigned determined that an evidentiary hearing was necessary. Consequently, the undersigned convened an evidentiary hearing in the instant matter on 2/21/2007, and 2/22/2007. The record is now closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. “Preponderance of the evidence” shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 629.3 *id.* states:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

ISSUE

Whether Agency’s action of removing the Employee from service was done in accordance with applicable law, rule, or regulation.

STATEMENT OF THE CHARGES

Relative to instant adverse action of removal, the Employee was notified, via memorandum dated 12/29/2004, of the charges and attending specifications as reprinted below, in relevant part:

Charge No. 1: Violation of General Order Series 1202..., which provides: “Drinking ‘alcoholic beverages’ as described in Section 3, paragraph (e), while in uniform off duty; or being under the influence of ‘alcoholic beverage’ when off duty.” This misconduct is defined as cause in Section 1603 D.C. Personnel Manual.

Specification No. 1: In that on December 24, 2003, while off duty, you were involved in a domestic incident with your wife and when questioned by OIA Agents, you acknowledge you had consumed alcoholic beverage(s) that day.

Specification No. 2: In that on February 2, 2004, Private First Class Robert Wimbush of the Prince Georges County Police Department, acknowledged that you appeared to be “drunk” on the night of December 24, 2003, when he responded to your home for a domestic violence call.

Charge No. 2: Violation of General Order Series 1202..., which provides: “Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would affect adversely

the employee's or the agency's ability to perform effectively, or violations of any law, municipal ordinance, or regulation of the District of Columbia." This misconduct is further defined in General Order Series 201, Number 26, Part I-B-22 which provides: "Members shall conduct their private and professional lives in such a manner as to avoid bringing discredit upon themselves or the department." This misconduct is defined as cause in Section 1603 D.C. Personnel Manual.

Specification No. 1: In that on February 2, 2004 and again on August 13, 2004, Sergeant Charles Burgess of the Prince Georges County Police Department was interviewed regarding an incident involving you and Officer Desariee Haselden on December 24, 2003. Sergeant Burgess reported that when he responded to 6515 Rosemont Street, Upper Marlboro, Maryland, once inside of the home, he saw you sitting on Officer Desariee Haselden, with her hands pinned behind her in the basement floor. Your conduct was unbecoming that of a Lieutenant with the Metropolitan Police Department.

Further investigation into domestic violence with you and your wife revealed that on November 28, 2002, you struck her on the left side of her face, held her down and choked her, and that you both were intoxicated.

Further, it is to be noted that Agent Kimberly Robinson of the Office of Internal Affairs Division conducted [an] investigation regarding [an] Ex-Parte Order served on you by the Prince Georges County Police Department. The investigation revealed that the Ex-Parte Order against you was initiated as a result of a series of physical altercations that had occurred between you and your wife, Officer Desariee Haselden. The dates were May 2000, December 2000, December 20, 2003, and December 24, 2003. This shows a pattern of domestic abuse. In violation of the Rules and Regulations set forth in the General orders of the Metropolitan Police Department.

Case No. 244-04

Charge No. 1: Violation of General Order Series 1202..., which provides: "Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would affect adversely the employee's or the agency's ability to perform effectively, or violations of any law, municipal ordinance, or regulation of the District of Columbia." This misconduct is further defined in General Order Series 201, Number 26, Part I-B-22 which provides:

“Members shall conduct their private and professional lives in such a manner as to avoid bringing discredit upon themselves or the department.” This misconduct is defined as cause in Section 1603 D.C. Personnel Manual.

Specification No. 1: In that on February 21, 2004, you went to the home of your father-in-law which is also the home of Officer Desariee Haselden, your wife, located in Montgomery County, Maryland. During your visit, you became involved in an argument with your wife over the use of your cell phone. She was talking on your cell phone while sitting in the van. In an attempt to gain possession of your phone, by your own admission, you grabbed the cell phone from your wife’s left hand. This caused her to fall to the ground from the truck, sustaining injuries to her face, shoulder, knee and shin. As a result of this incident, Officer S. Wofsey, of the Montgomery County Police Department went to the home of Officer Haselden and on February 22, 2004, prepared an Event Report for “Assault by Spouse.” Additionally, Officer Wofsey took photos of the injuries sustained by her. In the Domestic Violence Supplemental Report prepared by Officer Wofsey, under “Number of Prior Incidents” he reported 8 and under “Number Reported” he reported 4. Therefore, you have brought discredit on yourself as well as the Metropolitan Police Department. This is the second domestic incident involving you and your wife in which the department has recommended termination.

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

Summary of Relevant Testimony

Deputy Robert Wimbush

Deputy Robert Wimbush (“Wimbush”) testified in relevant part that: he is a two year employee of the Prince Georges County Sheriff’s Department (“PGSD”). He currently holds the rank of Deputy Sheriff with the PGSD. Prior to his stint with the PGSD, Wimbush worked for the Prince Georges County Police Department (“PGPD”) for approximately seven years. He related that he received a call for a domestic at the Employee’s residence on or about 12/24/2003. When he responded to this call he was present with several of his colleagues including his sergeant. During this incident, Wimbush did not speak to either the Employee or Desariee Haselden (“Desariee”). According to the arrest report, Wimbush related that both the Employee and Desariee had the odor of alcoholic beverages on their breath. *See*, Tr. at 46. Agency’s Exhibit No. 1 Attachment 2 is a PGPD Incident report of the aforementioned 12/24/ 2003, domestic call. According to this exhibit, Desariee had a black eye that she allegedly sustained at some point prior to the 12/24/2003, incident. As a result of this incident, the Employee was not placed under arrest. Ultimately, Wimbush’s was ordered by his sergeant to place

Desariee under arrest.

Sergeant Charles Burgess

Sergeant Charles Burgess ("Burgess") testified in relevant part that: he is an eighteen year employee of the PGPD. He is currently assigned as a patrol supervisor with the PGPD. He testified that he has had two encounters with the Employee. The first encounter was at an undisclosed time when Burgess contacted the Employee to pick up his wife Desariee after an automobile accident. During said incident, it was determined that Desariee was intoxicated.

The second encounter was several years later on 12/24/2003. When Burgess first responded to the Employee's home, the Employee was sitting on top of Desariee. When Burgess told the Employee to get off of her, Burgess noted that he complied immediately. Thereafter, Burgess separated the Employee and his wife. Burgess then attempted to question both the Employee and his wife in order to get a sense of what had happened. While being questioned, Burgess noted that the Employee was calm. He further noted that the Employee's demeanor was in stark contrast to Desariee who "kept continually cursing and yelling at us and she kept calling me all kinds of names..." Tr. at 50. Burgess also noted that the Employee had red marks on his face allegedly from Desariee hitting him with the telephone and otherwise assaulting the Employee. *See generally*, Tr. at 50. According to Burgess, Desariee alleged that the Employee had hit her as well. Desariee then showed Burgess evidence of bruising on her body. Burgess determined that the bruising on Desariee's body was not consistent with anything that had occurred within the previous 48 hours, and that consequently she would have to obtain a commissioner's warrant in order to pursue an assault charge against the Employee. *See generally*, Tr. at 51. At some point prior to making a decision on whom to arrest, Joan Haselden ("Joan"), the Employee's mother, approached Burgess and asked to speak with him. Joan related to Burgess that she heard the incident from upstairs because of the way the house is constructed. Joan further related to Burgess that she heard "banging on the wall and [the Employee] screaming, 'Get off of me, stop hitting me.'" Tr. at 53. Given the circumstances of this incident, Burgess determined that pursuant to Maryland law, he was required to place Desariee under arrest.

Of note, Burgess had a prior stint with the PGPD DWI task force during which he received specialized training in the observation of intoxication in an individual. It was Burgess's opinion that, at the time of her arrest, Desariee's was highly intoxicated. *See generally*, Tr. at 56. Burgess based this opinion on Desariee's belligerent behavior both towards the Employee as well as the officers present. This included instances of her screaming at the officers present as well as the frequent use of various curse words to both the Employee and the officers.

Burgess further opined that while the Employee had the odor of alcohol, he did not seem intoxicated. Burgess based this opinion on the actions and demeanor of the Employee whom he described as clear, articulate, and generally cooperative during questioning.

Kimberly Robinson

Kimberly Robinson ("K.Robinson") testified in relevant part that: she is currently employed as an agent with the Internal Affairs Department ("IAD") of the MPD. She has served in said position for approximately five years and has been employed by the Agency for 17 years. K.Robinson investigated the 12/24/2003, incident involving the Employee and Desariee. The method of her investigation into this matter included, but was not limited to, first hand witness interviews and the retrieval of police reports from prior domestic violence incidents involving the Employee. K.Robinson prepared Agency's Exhibit No. 1, which is her final investigative report, with attachments, codifying her research and recommendation about the instant matter. According to her research, the charges against Desariee and the Employee arising out of the 12/24/2003, incident were dismissed because they both invoked their marital privileges.

Sergeant Anthony Q. Langley

Sergeant Anthony Q. Langley ("Langley") testified in relevant part that: he is a Sergeant currently working for the IAD of the MPD. He has worked for the MPD since April 1983 and has been assigned to the IAD since June 1991. Langley investigated an incident involving the Employee and Desariee that occurred in Montgomery County, Maryland, on or about February 2004. His method of investigation into this matter included, but was not limited to, first hand witness interviews and the retrieval of police reports. Agency's Exhibit No. 2, is Langley's investigative report into this incident. Based on his investigation, Langley "determined that [the Employee] and his wife were involved in a domestic incident involving a fight over a cell phone, in which Desariee... sustained injuries during the course of the incident." Tr. at 84. This event occurred at Desariee's father's residence. According to Langley, Desariee resided at her father's home at the time of the incident. Also of note, at the time of this incident, the Employee was still residing at the Upper Marlboro, Maryland residence mentioned *supra*. According to Langley, neither the Employee nor Desariee were arrested as a result of the February 2004 incident. Further, it was alleged that Desariee was the only one who was intoxicated during this incident.

Of note, Desariee filed her complaint to the Montgomery County Police Department ("MCPD") more than 24 hours after it allegedly occurred. Langley recalls that the responding MCPD officer questioned why Desariee waited more than a day to register her complaint. Also, Langley noted that the responding MCPD officer was unable to interview the Employee about this matter. The following excerpt from the transcript aptly describes the situation from Langley's perspective:

Q: ... were there any witnesses to that alleged incident other than [the Employee] and Desariee Haselden?

A: There were no other witnesses.

Q: So what we have is a report that [Desariee] made more than 24 hours later alleging that [the Employee] had done certain things to her, correct?

A: That's correct.

Q: And there was nothing more done about it, correct?

A: That's correct....

Q: And does anybody know, other than [the Employee] or [Desariee], if Desariee had any marks on her body at all, where they really came from?

A: That's correct, based on what Desariee said to have occurred, yes.

Q: Is it possible that she could have injured herself and reported those injuries as having been inflicted by [the Employee]?

A: That's possible, yes.

Tr. at 89-90.

Referring to Agency's Exhibit No. 1 Attachment No. 5, which is a transcript of Langley's recorded interview of Desariee regarding the February 2004 incident, the following excerpt is a portion of said interview that was read into the record:

Q: Let me direct you to page 8, the last page. I'm going to read this last answer and ask you to verify if my reading is accurate.

Question, "Is there anything further you'd like to add to your statement, [Desariee]?"

Answer, "This entire incident is one that really should not have come to the light of the [MPD]. I wish to have handled it on my own at the time of the situation. **I'll take total responsibility because of the fact that at the time of [the Employee's] arrival, I was drinking.**

[The Employee] had - - at one point when he - - wanted to leave the situation because, of course, the discussion and things that we were having, because that's what he learned to do from all the other incidents, and I feel that if I wasn't drinking and did not get into his van, that the situation would not have occurred. ... [H]e had no intention of hurting me. He had no intention of assaulting

me. And I feel a little foolish by making this police report based on those things, and because I feel that was partly my fault or a majority of my fault...”

Is that your - - can you verify that that is what [Desariee] told you in that question and answer statement?

A: That’s what she told me during the recorded statement.

Tr. at 92-93. (Emphasis Added).

Officer Timothy Toland

Officer Timothy Toland (“Toland”) testified in relevant part that: he is an 18 year member of the MPD and is currently assigned to the First District. Toland related that he has both a working relationship as well as a personal friendship with the Employee. Toland further related that he went on an afternoon outing on 12/24/2003, with the Employee in order to complete some last minute Christmas shopping. Specifically, Toland and the Employee went to Hot Licks Guitar Center (“Hot Licks”) in Waldorf, Maryland in order to pick up a guitar that the Employee had on layaway. Toland testified that when he and the Employee arrived, they discovered that Hot Licks was hosting a Christmas party. Toland further testified that he did not know that this Christmas Party was scheduled prior to his arrival at Hot Licks. Toland and the Employee stayed at Hot Licks for approximately one and half hours. Toland noted that during this entire time with the Employee he only observed the Employee draw “a ten or 12 – ounce draft beer from the keg.” Tr. at 103. Toland further relates that:

During the hour and a half that we were at [Hot Licks], I only observed him pour one beer. I saw him begin to drink, I probably saw him drinking it 15 minutes later. I didn’t even see him finish drinking it. That was the only alcohol that I saw him take in during the hour and a half we were there or for the entire day I should say.”

Tr. at 104.

Toland noted that after he and the Employee left Hot Licks that the Employee drove him to where his car was parked and dropped him off at approximately 6:00 – 6:30 p.m. Toland further noted that the Employee was not intoxicated when he dropped him off at his car. He further notes that he knows the Employee on a personal level and that given that interaction, the Employee “was not behaving in any manner that gave me any indication that he was under the influence of alcohol.” Tr. at 104-105. After the Employee dropped Toland off at his car, he did not see the Employee for the rest of the evening. Before parting company, the Employee indicated to Toland that he was heading directly home.

Inspector James Crane

Inspector James Crane ("Crane") testified in relevant part that: he is an Inspector with the MPD and is currently assigned as the Director of the Office of Police Communications. On the night of 12/24/2003, he was working the midnight tour as the Field Commander and was assigned to the Joint Operations Command Center. It was during this tour of duty that he received a telephone call from the Employee informing him that Desariee had been arrested. This was done so that the proper authorities within the Agency could be alerted to Desariee's situation and could react accordingly. On this night, he had at least three telephone conversations with the Employee continually updating him on the progress of events relative to his wife's arrests. Crane also testified that during these multiple telephone conversations, the Employee seemed lucid and that at no time that evening did he suspect that the Employee was intoxicated. *See generally*, Tr. at 110.

Joan Haselden

Joan Haselden testified in relevant part that: she resides at the Upper Marlboro address mentioned *supra* and has resided there since 1966. She is currently married to Stephen Haselden ("Stephen") and is the Employee's mother. On the night of 12/24/2003, she resided at the Upper Marlboro residence with Stephen, the Employee, Desariee, Micaela (the Employee's daughter), and James Addison (Desariee's son). As for the living arrangements within the home - Joan, Stephen, and Micaela lived upstairs while the Employee, Desariee, and James Addison ("James") lived in the basement. On 12/24/2003, at approximately 7:00 pm, she saw the Employee at home. The Employee showed her and Stephen a guitar that he had bought as a Christmas gift for his son. This meeting lasted for about 15 minutes. The Employee then hid the guitar and went downstairs to take a nap. Joan asserts that the Employee was not drunk. *See*, Tr. at 116.

After the Employee went downstairs to take a nap, Joan went to the top floor of her residence in order to read, while Stephen stayed in the living room to watch television. Later on in the evening, Joan related that she heard a commotion coming from the basement and heard Desariee screaming at her son, James. Joan then heard Desariee kicking James out of the home and then heard the basement door slam. Joan assumed that this commotion awoke the Employee. After she heard James being ejected from the residence, she then heard the Employee trying to ascertain what is going on from Desariee. At this point, Joan asserted that she heard Desariee yelling and cursing at the Employee. Joan then heard the Employee exclaim "Ow, stop that Desariee. Stop. Stop hitting me, stop throwing things at me. Get a hold of yourself." Tr. at 117. The commotion did not stop until the police arrived. Joan explained that she heard the whole incident through the heat registers in the home. She further explained that she only heard the commotion and that she did not see any part of this incident. She was able to clearly distinguish between who said what because of the unique construction of her home which allows for the clear transmission of sound through the aforementioned heat registers. Joan testified that the Employee was the one who requested police assistance. After the police arrived, she spoke with them and told the police everything that she had heard.

Lastly, Joan had an opportunity to observe the Employee after the police arrived, and she noted that the Employee was sober. *See*, Tr. at 120.

Stephen Osgood Haselden

Stephen Osgood Haselden (“Stephen”) testified in relevant part that: he is the Employee’s father and Joan’s husband. He lives at the aforementioned Upper Marlboro residence with his family. On 12/24/2003, he saw the Employee around 7 p.m. when the Employee came home with a guitar as a Christmas gift for his son. After admiring the gift with the Employee and Joan, Stephen helped the Employee find a hiding spot for it. After hiding said guitar, Stephen recalled that the Employee related that he was tired and then went downstairs to take a nap. Stephen further related that the Employee was sober throughout this entire interaction. Later on that evening, Stephen recalled that while he was watching television in the living room he heard a commotion emanating from downstairs. Stephen could clearly tell that it was Desariee who was shouting. Desariee sounded angry. Stephen related that he could not discern exactly what it was that she was saying. At one point, Stephen recalled that he yelled for everyone to calm down. Stephen further recalled that the Employee replied “the police will be here in a few minutes. Let them in when they get here.” Tr. at 134.

Jamar Addison

Jamar Addison (“Jamar”) testified in relevant part that: he is Desariee’s son, James’ brother, and the Employee’s stepson. Jamar recalled that he was not present for the aforementioned commotion. He arrived at the Upper Marlboro residence at approximately midnight the evening of 12/24/2003. When Jamar encountered the Employee at that time, he recalled that he was in close proximity to the Employee for approximately 15 minutes. At that time, in Jamar’s opinion, the Employee was sober.

Captain Ralph W. McLean

Captain Ralph W. McLean (“McLean”) testified in relevant part that: he is the Deputy Director of the MPD Institute of Police Science. McLean was called as a character witness on behalf of the Employee. McLean has known the Employee since the Employee was a rookie. He worked with the Employee early on in the Employee’s career at the Third District. Throughout his workplace interactions with the Employee, McLean asserted that the Employee was very reliable. McLean also found the Employee to be an effective supervisor. Further, whatever personal problems the Employee may have experienced, McLean never noticed those problems interfering with the Employee’s work place performance or demeanor.

Officer Stephen Wofsey

Officer Stephen Wofsey (“Wofsey”) testified in relevant part that: he has been employed by Montgomery County Police Department (“MCPD”) as a Police Officer for approximately five years. On or about 2/21/2004, Wofsey responded to an alleged

domestic violence call at the aforementioned Montgomery County residence of Desariee's father. When Wofsey responded, he spoke to Desariee who claimed that the Employee had assaulted her the day before. According to Wofsey's report, the incident stemmed from "an argument over a cell phone and the assault occurred when [the Employee] threw her to the ground on a gravel driveway." Tr. at 178. According to this report, Desariee sustained "lacerations on her face, shoulder, knees, and chin." Tr. at 180. Wofsey remembered that he had asked Desariee why she waited over a day to report this incident to the police. Wofsey was unable to recall Desariee's exact response. Wofsey informed Desariee that since he did not witness the assault that Desariee would have to go to the Commissioner in order to press charges. At that time, Desariee opted not to pursue the matter any further.

Wofsey indicated that he created Agency's Exhibit No. 2 Attachment No. 3, which is an MCPD police report of this incident. Desariee was the only person Wofsey interviewed relative to this incident. During cross examination Wofsey indicated that it is possible that Desariee's injuries could have been self inflicted as the result of her falling on her own. *See generally*, Tr. at 184.

Captain Angel Medina

Captain Angel Medina ("Medina") testified in relevant part that: he has been employed by the Agency for approximately 21 and ½ years. He currently holds the rank of Captain and has been assigned to the First District for six years. Medina was called as a character witness on behalf of the Employee. He recalls first meeting the Employee when both of them were assigned to the Third District. At that time, Medina was a Sergeant while the Employee was an officer. More recently, Medina also had a working relationship with the Employee when the Employee was transferred to the First District, after being promoted to the rank of Lieutenant. Medina describes the working relationship that he had with the Employee as very good. At one point he served as the Employee's immediate supervisor. Medina had nothing but praise for the Employee's work ethic. Relative to the Employee's skill and performance during fiscal year 2005, Medina recalled rating the Employee as a five. This is the highest attainable rating on the Agency's annual performance evaluation.

Timothy Haselden

The Employee testified in relevant part that: he is a former employee of the Agency. The Employee began his career with the Agency on 12/3/1990, and at the time of his removal, had served with the MPD for 14 years.

Regarding the salient events in dispute in this matter, the Employee testified that on 12/24/2003, he lived at his parents Upper Marlboro residence along with his wife Desariee and other members of their family. Recalling the events of that day that led to the incident with his wife, the Employee indicated that on 12/24/2003, he had worked at the MPD from 7:00 a.m. to 3:00 p.m. After the Employee's shift was over, he first went home and changed his clothes. He then met and traveled with Toland to Hot Licks in

Waldorf, Maryland. The Employee's intended purpose of this trip was to obtain a guitar that he had placed on layaway. Upon arriving at Hot Licks, they both discovered that Hot Licks was holding a Christmas party for its employees and customers. The Employee and Toland decided to stay at Hot Licks to partake in some of the festivities before heading home. While at Hot Licks, the Employee consumed some appetizers as well as a ½ cup of beer. The Employee asserted that this was the only alcoholic beverage that he consumed on 12/24/2003. After purchasing the aforementioned guitar, and partaking of the festivities at Hot Licks, the Employee and Toland left Hot Licks. The Employee then drove Toland to his vehicle. After that, the Employee proceeded directly home.

When the Employee first arrived home, he went upstairs to show off the guitar to his parents. They both then assisted the Employee in finding an adequate hiding spot for the guitar, since it was intended as a Christmas gift for the Employee's son. After hiding said guitar, the Employee went downstairs to take a nap. The Employee contended that his nap was disrupted by an argument between Desariee and her son James. When he inquired about what was going on, he found only Desariee. At which point, he noticed James missing. After this occurred, Desariee started arguing with the Employee. The Employee contended that Desariee was highly intoxicated at that time. Also, Desariee was both physically and verbally aggressive towards the Employee. After trying yet failing to calm Desariee down, the Employee called for police assistance. Burgess and Wimbush were the officers who responded on behalf of the PGPD. The Employee then related that after both he and Joan told Burgess what happened, Desariee was placed under arrest. The Employee then went on a search for James, who was eventually found later that evening. The Employee also notified Crane of the MPD that Desariee had been arrested. The Employee further asserted that he was not impaired in any way by the use of alcohol on 12/23/2003. *See*, Tr. at 216.

Regarding the 2/21/ 2004, incident, the Employee testified as follows:

Q: Did you strike your wife or throw her to the ground on February 21, 2004?

A: No, I did not.

Q: Did you cause any physical injury to her?

A: No, I did not.

Tr. at 217.

The Employee explained that he was at Desariee's father residence, in Montgomery County, Maryland on 2/21/2004, in order to work on repairing and restoring automobiles. This is a favorite hobby for both the Employee and Desariee's father. It was not uncommon for one or both of them to work in Desariee's father's garage in pursuit of this hobby. The Employee further explained that in spite of his marital difficulties, he counted Desariee's father as a friend. Desariee's father's property is large

and the garage is far removed from the main living quarters. Also, according to the Employee, at that time, Desariee was transient at her father's residence.

On the above referenced date, the Employee went to Desariee's father's to work on a carburetor. The Employee asserted that he did not realize that his wife was present at the residence when he first arrived. However, when he went to the main residence to let Desariee's father know that he was there, he encountered Desariee. The Employee then went to the garage to effectuate the aforementioned repairs. During cross examination, the Employee explained this interaction with his wife as follows:

Q: And how is it that you came to be involved with Desariee later and her getting injured?

A: Some hours later, she came out towards where I was working and said she wanted to talk about our relationship and what was going to happen and getting back together or not, some other language of that nature.

Q: And what happened?

A: I noticed that she was a little aggressive and was really intoxicated at that point and I started cleaning up to leave. I began getting my things together and trying to leave.

Q: And did you leave?

A: Yes, I did, I gathered up my things and I left.

Q: Did you have any other interaction with Desariee before you left?

A: She was trying to prevent me from leaving, she tried to get in my van and tried to back it up. And she was about to hit back into either her dad's truck or his well and so I reached in the vehicle and put it in park, out of reverse. At that point, the van kind of lurched and she tipped over, out of the van.

And then she got up. I took the keys out. I went and tried to gather up the rest of my tools and things, throw them in the side door, in the passenger's side of the van. At which point while I was doing that, she got back in the van and was looking around, apparently trying to restart the van, but I had taken the keys out.

And then she picked up a cell phone that was in the center console and exited the van and tried to run with it and slipped on snow and fell down.

Q: And then what happened?

A: I grabbed the cell phone, I put it in the van, I started the van. I walked over, I picked her up, brushed her off and she had gravel on her from where she fell and slid. And I told her, "Go in the house and get cleaned up and I'll check on you later. I'll call your father and have him check on you and make sure you're okay. It doesn't look too bad but I've got to go." And I left.

Tr. at 225 – 227.

Relative to other alleged incidents between the Employee and Desariee, the Employee denied an incident occurred on November 28, 2002, at the Upper Marlboro residence. He asserted that his only interaction with Desariee on that day was over the telephone, when he told her not to come to his house. The Employee believed she was intoxicated at the time. Later on, Desariee knocked on the door, but the Employee did not answer and eventually Desariee left. *See generally*, Tr. at 232 – 233.

On 12/20/2003, the Employee asserts that Desariee hurt herself when she accidentally ran into a support column at the Upper Marlboro residence. The Employee believed that Desariee was intoxicated at that time. The Employee further believed that this self-inflicted injury probably gave Desariee the black eye that was notated by Wimbush and Burgess on 12/24/2003. *See generally*, Tr. at 233 – 235.

Assistant Police Chief Shannon Cockett¹

Assistant Police Chief Shannon Cockett ("Cockett") testified in relevant part that: she currently is in charge of the MPD's Human Resources department and has served with the Agency for 25 years. Relative to the Employee's character, Cockett was called as a rebuttal witness on behalf of the Agency. *See*, Tr. at 255. On or about January 2003, the Employee served on Cockett's personal staff, when she was assigned as Assistant Chief in charge of the MPD's Institute of Police Science. Cockett disclosed that the Employee conducted some of his personal affairs in such a manner that she felt was a cause for concern. Cockett still harbored some reservations about the Employee's character. However, it was revealed during cross examination that Cockett felt that the

¹ Cockett's testimony in this matter was limited to her opinion regarding the Employee's character. The reasoning for this was two-fold. One, Cockett was the official that initially proposed that the Employee be removed from service. Considering as much, any first hand testimony of Cockett's that favors the Agency would have an untenable hint of bias.

Also, Cockett was not named as a witness by the Agency in this matter. Considering this, the Employee would not have had a reasonable opportunity to prepare for her testimony if said testimony delved into ostensibly relevant first hand matters.

In order to ameliorate this situation, I only considered the portions of Cockett's testimony that squarely addressed the Employee's character relative to the rest of the record.

Employee was “very capable of handling administrative matters.” Tr. at 266. In spite of the Employee’s alleged personal issues, she could not recall any on duty activity that would be cause for concern. *See generally*, Tr. at 226. Further, on or about June 2000, Cockett entrusted the Employee with picking up her own daughter from school, while he was on duty. *See*, Tr. at 268.

Findings of Fact, Analysis and Conclusion

The following findings of facts, analysis and conclusions of law are based on the testimonial and documentary evidence as presented by the parties during the course of the Employee’s appeal process with this Office.

According to the documents of record, the Employee’s removal from service arose from a set of alleged off-duty incidents involving his estranged wife, Desariee. One of the charges and specifications dealt with an allegation that the Employee was under the influence of alcoholic beverage(s) while off duty. Specifically, the Agency alleged that the Employee was under the influence of an alcoholic beverage on 12/24/2003, when Burgess and Wimbush responded to the Employee’s Upper Marlboro residence in response to Desariee’s aggressive behavior. Several witnesses testified before the undersigned concerning the Employee’s sobriety on that date, as well as the Employee’s actions in trying to deal with his wife.

Toland testified that he was with the Employee on the afternoon of 12/24/2004, and that he saw the Employee consume a portion of a beer in a 10-12 ounce cup while at Hot Licks. Toland further testified that he did not see the Employee consume any other alcoholic beverage and that the Employee was sober throughout their time together.

Wimbush testified that when he responded to the Upper Marlboro residence that both Desariee and the Employee had the odor of alcohol. However, he clarified that he did not speak to either the Employee or Desariee throughout this incident. Burgess testified that he interacted with both the Employee and Desariee during this incident. Because of this incident, Burgess was able to form an opinion about the sobriety of the Employee and Desariee. Burgess opined that while the Employee had the odor of alcohol, he did not seem intoxicated. Burgess based this opinion on the actions and demeanor of the Employee whom he described as clear, articulate, and generally cooperative during questioning. Also, Burgess had a stint with the PGPD DWI task force during which he received specialized training in the observation of intoxication in an individual. This lends further credence to Burgess’ assessment of the Employee’s sobriety at the time of the incident. In contrast, it was Burgess’s opinion that Desariee was intoxicated on 12/24/2003.

Both Joan and Stephen interacted with the Employee on the evening of 12/24/2003. Neither of them believed that the Employee was intoxicated on 12/24/2003. Further, Jamar encountered the Employee several hours after the commotion that prompted the aforementioned police response. At that time, he interacted with the Employee and it was his opinion that the Employee was sober.

The Employee explained that he obtained a 10 – 12 ounce cup of beer at Hot Licks and that he drank a portion of it. He further asserts that he did not have any other alcoholic beverages on 12/24/2003. Also, the Employee contends that he was not intoxicated at any point on 12/24/2003.

During the evidentiary hearing, I had the opportunity to observe the demeanor, poise, and credibility of Toland, Wimbush, Burgess, Joan, Stephen, Jamar, and the Employee. I find that the overwhelming majority of their combined testimonial evidence points to the assertion that while the Employee consumed a small portion of alcohol on 12/24/2003, he was otherwise sober throughout the entire incident that, in part, brought rise to the instant adverse action. I further find that the Employee was not under the influence of an alcoholic beverage, while not in uniform, as alleged by the Agency in its removal action. Consequently, I find that the Agency has failed to meet its burden of proof in this regard.

Another of the charges and specifications that brought about the Employee's removal from service dealt with the allegation that the Employee failed to conduct [his] private and professional [life] in such a manner as to avoid bringing discredit upon [himself] or the department. Specifically, it is alleged that the Employee acquitted himself in an unsavory manner during a series of domestic incidents occurring on 11/28/2002, and 12/23/2003. The Agency also considered alleged physical altercations involving the same participants on 5/2000, 12/2000, 12/20/2003, and 12/23/2003, that were included within an ex-parte order against the Employee.

Relative to the 12/23/2003 incident, the Employee testified that on the night of that incident, Desariee was having an argument with her son James in the basement of the Upper Marlboro home. This argument woke the Employee from his slumber. The Employee then questioned Desariee in an attempt to ascertain what was going on. During this questioning, Desariee became both verbally and physically abusive towards the Employee. Her then state of mind was seemingly exacerbated by her high level of intoxication. The Employee being unable to calm Desariee down resorted to calling for police assistance. Joan testified that she was able to hear this argument clearly because of the unique characteristics of her home allowing for the clear transmission of sound from the basement to her bedroom on the top floor of the home where she was located. Also, Stephen testified that he was able to discern that an argument was taking place, but was unable to make out who said what from his location in the living room.

After the police arrived, Burgess initially interviewed both the Employee and Desariee regarding what was going on. Burgess testified that at that time, the Employee was both level headed and cooperative, while Desariee was belligerent, uncooperative, and verbally abusive towards the officers. Burgess and the other officers finally decided that Desariee would be placed under arrest.

During the evidentiary hearing, I had the opportunity to observe the demeanor, poise, and credibility of Wimbush, Burgess, Joan, Stephen, and the Employee. I find that

the overwhelming majority of their combined testimonial evidence points to the revelation that, relative to the incident in question on 12/23/2003, the Employee complied, to the best of his ability, with the MPD's general orders, and conducted himself in a reasonable manner. Accordingly, I further find that the Agency has failed to meet its burden of proof in this regard.

As it relates to the 12/20/2003, incident, the Employee testified that Desariee injured herself when she ran into a support column while intoxicated. The Employee also denied that an incident between Desariee and himself occurred on 11/28/2002. The Employee explained that the only interaction that he had with Desariee on this date was over the telephone. Further, because the Employee believed that Desariee was intoxicated at that time, he refused to see her. *See generally*, Tr. at 232 – 233. I also find that the Agency presented no credible testimonial or documentary evidence that the alleged physical altercations involving the Employee and Desariee occurred 5/2000, or 12/2000. During the evidentiary hearing, I had the opportunity to observe the demeanor, poise, and credibility of the Employee. I find that the Employee's testimony in this regard was both credible and persuasive. Accordingly, I further find that the Agency has failed to meet its burden of proof in this regard.

As it relates to the 2/21/2004, incident involving the Employee and Desariee, the Employee explained that he and his father-in-law have a shared passion for fixing and restoring automobiles. In that same vein, it was not uncommon for both of them to work on vehicles at the Employee's father-in-law's garage in Montgomery County, Maryland. I take note that it was not alleged by any party that the Employee was trespassing when he was at the garage on 2/21/2004.

The garage on this property is detached and far removed from the main residence. The Employee explains that on the day in question, he was fixing a carburetor when Desariee came to the garage wanting to discuss aspects of their troubled relationship. Noticing that Desariee was intoxicated, the Employee attempted to leave the garage. Desariee prevented his egress by attempting to commandeer the Employee's van. In order to prevent any damage to his van, the surrounding property, or possibly Desariee herself, the Employee took the car keys from out of the ignition. Desariee then took the Employee's cellular phone and got out of the vehicle. It was then that she tripped and fell in the gravel. The Employee asserted that he did not touch her when she fell. He further asserted that the minor injuries that she sustained were of her own doing. After determining that Desariee's injuries were minor, the Employee left.

A day or so later, Desariee reported this incident to the MCPD. Wofsey responded to the residence and proceeded to create Agency's Exhibit No. 2 Attachment No. 3, which is an MCPD police report based on Desariee's singular rendition of events. Wofsey noted Desariee's injuries and offered to assist her in pursuing charges against the Employee. According to Wofsey's testimony, Desariee declined his offer for assistance. I take note that during cross examination, Wofsey indicated that it is possible that Desariee's injuries could have been self inflicted. I also note that the possibility of Desariee's injuries being self inflicted is buttressed by Langley's transcribed interview of

Desariee wherein she seemingly admitted that she had been drinking when the Employee arrived and that she exacerbated and instigated the incident. *See generally*, Tr. at 92-93.

During the evidentiary hearing, I had the opportunity to observe the demeanor, poise, and credibility of Wofsey, Langley, and the Employee. I find that the majority of their combined testimonial evidence points to the revelation that, relative to the incident in question on 2/21/2001, the Employee complied, to the best of his ability, with the MPD's general orders and conducted himself in a reasonable manner. Accordingly, I find that the Agency has failed to meet its burden of proof in this regard.

I conclude that given the aforementioned findings, the Agency's action of removing the Employee from service should be reversed.

ORDER

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency's action of removing the Employee from service is **REVERSED**; and
2. The Agency shall reinstate the Employee to his last position of record; and
3. The Agency shall reimburse the Employee all back-pay and benefits lost as a result of his removal; and
4. The Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

ERIC T. ROBINSON, Esq.
Administrative Judge