

B-63



STATE OF NEW JERSEY

In the Matter of Hope Harden, et al.,
City of Newark

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket Nos. 2015-2478, 2015-
2473, and 2015-2479

Request for Counsel Fees

ISSUED: JUL 16 2015 (SLK)

Hope Harden, Alan Knight, and Henry Suarez, Police Officers with the City of Newark, represented by Anthony J. Fusco Jr., Esq., seek enforcement of the attached Civil Service Commission (Commission) decision rendered on April 3, 2013, awarding counsel fees.

By way of background, the appointing authority charged the appellants with neglect of duty and five other charges stemming from a motor vehicle incident, and Mr. Knight and Mr. Suarez were suspended for 10 days while Ms. Harden was suspended for six days. Specifically, the appointing authority asserted that Mr. Knight and Mr. Suarez neglected their duty when they observed a victim of a robbery/assault bleeding from his head after being assaulted with a blunt object and failed to summon medical assistance. The appointing authority also asserted that Ms. Harden neglected her duty when she failed to execute an incident report relating to a robbery/assault after being notified by the victim. The appellants subsequently appealed to the Commission, and the matters were referred for a hearing as a contested case at the Office of Administrative Law. Following a hearing, the Administrative Law Judge (ALJ) recommended that the charges against the appellants should be dismissed. Upon its *de novo* review of the record, the Commission adopted the ALJ's initial decision, reversed the suspensions, and awarded counsel fees in accordance with *N.J.A.C. 4A:2-2.12*.

In support of their requests, the appellants' attorney filed an application for counsel fees and provided a bill of services for work performed between December 21, 2011 and April 8, 2013, requesting \$9,927.50 for 36.10 hours of work at a rate of

\$275.00 an hour, plus \$40.00 for costs, for a total of \$9,967.50. The appellants provide an itemized statement for services performed by A.J. Fusco, Jr. Esq. from December 21, 2011 to April 8, 2013, by Darryl M. Saunders, Esq. from December 10, 2012 to October 29, 2012, and by Alfred V. Gellene, Esq. from January 3, 2013 to April 8, 2013. These records indicate that Mr. Fusco dedicated a total of 14.3 hours, Mr. Saunders spent 9.7 hours, and Mr. Gellene dedicated a total of 12.1 hours on the appellants' appeals. Public records reflect that Mr. Fusco is a partner in a law firm and he was admitted to the New Jersey Bar in 1972. Public records indicate that Mr. Saunders¹ was an Associate Attorney in a law firm and that he was admitted to the New Jersey Bar in 1990. Public records indicate that Mr. Gellene is an Associate Attorney in a law firm and that he was admitted to the New Jersey Bar in 1979.

Although provided the opportunity, the appointing authority did not provide any arguments or information for the Commission to review.

CONCLUSION

N.J.A.C. 4A:2-2.12(c) provides as follows: an associate in a law firm is to be awarded an hourly rate between \$100 and \$150; a partner in a law firm with fewer than 15 years of experience in the practice of law is to be awarded an hourly rate between \$150 and \$175; and a partner in a law firm with 15 or more years of experience practicing law, or notwithstanding the number of years of experience, with a practice concentrated in employment or labor law, is to be awarded an hourly rate between \$175 and \$200. *N.J.A.C.* 4A:2-2.12(e) provides a fee amount may also be determined or the fee ranges in (c) above adjusted based on the circumstances of a particular matter, in which case the following factors (see the Rules of Professional Conduct of the New Jersey Court Rules, at RPC 1.5(a)) shall be considered: the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; the fee customarily charged in the locality for similar legal services, applicable at the time the fee is calculated; the nature and length of the professional relationship with the employee; and the experience, reputation and ability of the attorney performing the services. *N.J.A.C.* 4A:2-2.12(g) provides that reasonable out-of-pocket costs, such as costs associated with expert witnesses, subpoena fees and out-of-state travel, shall be awarded. However, costs associated with normal office overhead shall not be awarded. *N.J.A.C.* 4A:2-2.12(d) provides that, if an attorney has signed a specific fee agreement with the employee or the employee's negotiations representative, the fee ranges set forth above *may* be adjusted (emphasis added).

¹ Mr. Saunders is no longer an associate of Fusco & Macaluso, the law firm which represents the appellants in this matter.

The appellants request \$9,927.50 in counsel fees for 36.10 hours of legal work at a rate of \$275 an hour. The Commission finds that the appellants are not entitled to the hourly amounts requested. Initially, the fees of \$275 an hour as requested for Mr. Saunders and Mr. Gellene fall outside the established rates in *N.J.A.C.* 4A:2-2.12 for an Associate Attorney. In this regard, the above rules indicate that the established rate for an Associate with a law firm is to be awarded an hourly rate between \$100 and \$150. The rule also states that a partner with 15 or more years of experience practicing law is to be awarded an hourly rate between \$175 and \$200. Given these rules, the Commission finds that the length and breadth of their legal careers justify an hourly rate of \$150 for Mr. Saunders and Mr. Gellene and an hourly rate of \$200 for Mr. Fusco. Therefore, counsel fees are awarded as follows:

Mr. Fusco: 14.3 hours x 200 = \$2,860

Mr. Saunders: 9.7 hours x 150 = \$1,455

Mr. Gellene: 12.1 hours x 150 = \$1,815

Total: \$6,130

Therefore, the Commission finds that the appellants are entitled to reimbursement for \$6,130 in counsel fees.

In addition, as indicated above, the costs that represent normal office overhead will not be awarded. See *N.J.A.C.* 4A:2-2.12(g). These costs include photocopying expenses and expenses associated with the transmittal of documents through use of Federal Express or a messenger service. See e.g., *In the Matter of Monica Malone*, 381 *N.J. Super.* 344 (App. Div. 2005). Further, fees or costs associated with telephone or facsimile equipment are considered normal office overhead. Moreover, parking fees and mileage fees that are not associated with out-of-state travel expenses are not compensable. However, as the appellants' attorney has not explained the nature of the \$40.00 in costs, an award of these expenses is not warranted.

The Commission notes that it is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service law or rules or any order of the Commission. *N.J.S.A.* 11A:10-3; *N.J.A.C.* 4A:10-2.1(a)2. See *In the Matter of Fiscal Analyst (M1351H)*, Newark, Docket No. A-4347-87T3 (App. Div. February 2, 1989). Therefore, the appointing authority is ordered to pay the counsel fees in this matter within 30 days of issuance of this decision. If the appointing authority fails to pay this counsel fee award in the prescribed time frame, beginning the 31st day after

issuance of this decision, it shall be assessed a fine of \$100 per day for each day of continued violation up to a maximum of \$10,000.

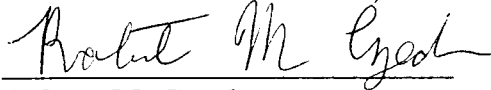
Accordingly, since the outstanding issues concerning the amount of counsel fees ordered in the Commission's prior decision have been resolved, that decision is now final. *See Dolores Phillips v. Department of Corrections*, unpublished, Docket No. A-5581-01T2F (App. Div. February 26, 2003) (A decision of the Commission is a final administrative decision when all issues of back pay and/or counsel fees are resolved).

ORDER

Therefore, it is ordered that the appointing authority pay counsel fees in the amount of \$6,130 within 30 days of issuance of this decision.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 15th DAY OF JULY, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and
Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: Hope Harden
Alan Knight
Henry Suarez
Anthony J. Fusco Jr., Esq.
Michael Greene
Joseph Gambino



STATE OF NEW JERSEY

DECISION OF THE CIVIL SERVICE COMMISSION

In the Matter of Hope Harden :
City of Newark, Police Department :
CSC DKT. NO. 2012-2574 :
OAL DKT. NO. CSV 03372-12 :

In the Matter of Alan Knight :
City of Newark, Police Department :
CSC DKT. NO. 2012-2577 :
OAL DKT. NO. CSV 04343-12 :

In the Matter of Henry Suarez :
City of Newark, Police Department :
CSC DKT. NO. 2012-2576 :
OAL DKT. NO. CSV 04344-12 :

ISSUED: April 3, 2013 PM

Consolidated

The appeals of Hope Harden, Police Officer, City of Newark, Police Department, six-day suspension and Alan Knight and Henry Suarez, Police Officers, City of Newark, Police Department, 10-day suspension, on charges, was heard by Administrative Law Judge Jeffrey A. Gerson, who rendered his initial decision on February 20, 2013 dismissing all charges and reversing the six-day and 10-day suspensions. No exceptions were filed on behalf of the parties.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on April 3, 2013, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision. However, the Commission awarded counsel fees.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, Dolores Phillips v. Department of Corrections, unpublished, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning counsel fees are finally resolved.

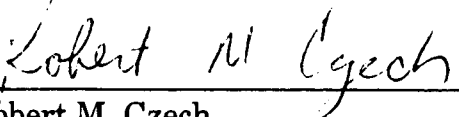
ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellants was not justified. The Commission therefore reverses these actions and grants the appeals of Hope Harden, Alan Knight and Henry Suarez. The Commission further orders that the appellants be granted back pay, benefits, and seniority for the amount of time they served their suspensions. The amount of back pay awarded is to be reduced and mitigated to the extent of any income earned. Proof of income earned shall be submitted by or on behalf of the appellants to the appointing authority within 30 days of issuance of this decision.

The Commission further orders that counsel fees be awarded to the attorney for the appellants pursuant to *N.J.A.C. 4A:2-2.12*. An affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of the appellants to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C. 4A:2-2.12*, the parties shall make a good faith effort to resolve any dispute as to the amount of counsel fees.

The parties must inform the Commission, in writing, if there is any dispute as to counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R. 2:2-3(a)(2)*. After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION
APRIL 3, 2013



Robert M. Czech

Chairperson

Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

**IN THE MATTER OF HOPE HARDEN,
CITY OF NEWARK POLICE DEPARTMENT.**

OAL DKT. NO. CSV 03372-12
AGENCY DKT. NO. 2012-2574

**IN THE MATTER OF ALAN KNIGHT,
CITY OF NEWARK POLICE DEPARTMENT.**

OAL DKT. NO. CSV 04343-12
AGENCY DKT. NO. 2012-2577

**IN THE MATTER OF HENRY SUAREZ,
CITY OF NEWARK POLICE DEPARTMENT.**

OAL DKT. NO. CSV 04344-12
AGENCY DKT. NO. 2012-2576

Alfred Gellene, Esq., for appellants (Law Offices of Fusco & Macaluso,
attorneys)

Meredith A. Accoo, Assistant Corporation Counsel for respondent, City of
Newark Police Department (Anna P. Pereira, Corporation Counsel,
attorney)

Record Closed: January 3, 2013

Decided: February 20, 2013

BEFORE JEFFREY A. GERSON, ALJ:

STATEMENT OF THE CASE

On October 19, 2011, identical Preliminary Notices of Disciplinary Action (PNDAs) were filed against Detective Allen Knight and Detective Henry Suarez. The

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PNDA contained six charges stemming from a motor vehicle incident that occurred on September 3, 2011.

Charge 1 accused both Detective Suarez and Detective Knight of neglect of duty with a specification which reads as follows:

On September 3, 2011 at approximately 2:15 a.m. at Sanford Avenue and Lenox Avenue, City Detective Alan Knight did neglect his duty when he observed Mr. Clifford Poulard (victim of a robbery/assault) bleeding from his head after being assaulted with blunt object and failed to summon medical assistance. Instead, Mr. Poulard responded to the hospital where he received over twenty stitches to the right side of his head.

All of the subsequent five charges evolved essentially from the same aforesaid Specification.

Also charged on the same date, October 19, 2011, in a Preliminary Notice of Disciplinary Action was Officer Hope Harden. There were also six charges against Harden, the first of which was neglect of duty, and the Specification read as follows:

On September 3, 2011, at 22 Franklin Street, Newark Police Headquarters, Police Officer Hope Harden, assigned to main desk, did neglect her duty when she failed to execute incident report, DPI:802, relating to a robbery/assault after being notified by Mr. Clifford Poulard that he was a victim of same. Instead, Police Officer Harden advised the victim to respond to the Fourth Precinct where the report was executed.

The remaining five charges arose as a result of the same contention as stated in the above Specification that Officer Harden neglected her duty.

Final Notices of Disciplinary Action were issued on February 14, 2012, against Detective Suarez, Detective Knight, and Police Officer Harden. Detective Knight and Detective Suarez were suspended for ten days, while Police Office Harden was suspended for six days. No hearings were held at the local level as all three officers waived the hearing to the Office of Administrative Law.

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The hearings were held and concluded on January 3, 2013.

BACKGROUND

The cornerstone of the complaint filed against these three officers arises from what amounts to a citizen's complaint filed by Clifford Poulard.

Not in dispute is that on September 3, 2011, in the early morning hours Detective Suarez and Detective Knight in separate Newark patrol vehicles came upon the doubled-parked vehicle occupied by Poulard outside the Knockout Go-Go Bar. According to Detective Suarez and Detective Knight, when Poulard was asked to move his vehicle, he responded "in a minute" which resulted in Detective Knight parking in front of Poulard and approaching Poulard's vehicle. After requesting Poulard's credentials, Detective Knight noticed a cut on Poulard's face and some blood on his clothing. When Knight asked Poulard what happened to cause the cut on his face, Poulard indicated that he had been involved in a dispute inside the Knockout Bar concerning his girlfriend. He refused medical attention. Detective Suarez in assisting Detective Knight also observed the blood from the cut on Poulard's face and confirmed that Poulard refused medical attention. Detective Knight issued five motor vehicle summonses to Poulard and Poulard drove home to Hillside. Subsequently, he and his mother drove to Mountainside Hospital to get medical treatment for the facial cut.

After treatment was rendered to Poulard at Mountainside Hospital, he and his mother went to the Franklin Street Police Station where they conversed with Officer Harden who subsequently sent them to Newark Municipal Court where they could contest the motor vehicle violations. The above skeletal outline of the factual circumstances surrounding the genesis of charges against these three officers is subsequently dramatically enhanced by accusations made by Poulard concerning what he alleges took place and what the officers contend took place.

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TESTIMONY

The first witness to testify in this matter was Clifford Poulard.

Accompanying Poulard's testimony at the hearing was an Exhibit Book containing R-1 through R-19, which encompassed not only photographs of Poulard on the night in question and subsequent thereto, but all of the police reports generated as a result of this incident.

Before analyzing Poulard's testimony at the hearing, a chronological examination of the police reports generated as a result of his complaints is enlightening.

According to Poulard and confirmed by other officers, the first police officer to whom Poulard gave his first oral statement was Officer Robert Williams, who responded to the Fourth Precinct where he was assigned to question Poulard concerning Poulard's accusation that he was robbed and assaulted.

Officer Williams's report (R-4 in evidence) confirmed by Officer Williams's testimony in court described Poulard's version of the incident as follows:

Incident took place directly on Lenox Street and Sanford Avenue. The victim also stated that he was knocked out unconscious and that when he got up, he noticed that he was bleeding profusely from his head and his shirt was painted with blood. He further stated that the four unknown black males all with dreadlocked hair fled the scene in an unknown direction. The victim then stated, while still in a daze, he scrambled to get to his vehicle in fear that the suspects would come back. The victim then stated that he was stopped by two officers which he tried to make aware to that he was robbed, assaulted, and injured and that he needed an ambulance for medical assistance. The victim then claimed that he drove himself home at which time, he and his mother responded to Mountainside Hospital located in Montclair, New Jersey to be treated for his head injury. For the record, the victim gave a statement to Sergeant Detective Clarken of the Major Crimes Unit located at 22 Franklin Street in Newark, New Jersey, Fourth Floor Office area. Also, the name of the store the victim left from before

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being attacked: Mead Medina Family Grocery Store
address, address, 658 Sanford Avenue, Newark, New
Jersey.

A subsequent report filed on the same date, September 3, 2011, by Lieutenant Felix M. Conlin described the details of the complaint as follows:

The complainant states that he was robbed by a group of unknown males on Sanford Avenue near Lenox Street. The males demanded his money. He gave them the \$1.25 that he had. At that point someone hit him on the head with a blunt object. Dazed and bleeding from his forehead, he fell to the ground. When he got up the actors were gone. He got into his car and began to pull off. He stopped momentarily to gather himself, at which time he states that two marked police cars pulled up and boxed him in. He further states that a Black male officer and a Hispanic male officer walked up to him and asked him for his paperwork. He states that the officers did not offer him any type of assistance, and instead issued him 5 traffic summonses. The complainant went home and told his mother what happened. They drove to Mountainside Hospital in Glen Ridge to get medical treatment. After leaving the hospital the complainant and his mother (Maryse Dezulmat) drove to the 4th precinct to make a complaint about being issued the summonses.

The ID number on the summonses indicated that they were issued by Detective Alan Knight of the Safe City Task Force, P/O Rhodes (desk) called Major Crimes and spoke with Detective Richard Warrant who requested that the victim be brought down to the Major Crimes squad. P/O R. Williams responded into the precinct to escort the victim to Major Crimes. The victim was hesitant about seeing the detectives. He stated that he wasn't concerned about the robbery since he only lost \$1.25. He had responded to the precinct to make a complaint against the officers for giving him the summonses.

The complaint to Lieutenant Conlin resulted in a referral to the Internal Affairs Division for investigation, which was subsequently conducted by Sergeant Locke, who also testified at the hearing.

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On or about September 19, 2011, Sergeant Locke submitted a report to Niles R. Wilson, Acting Deputy Chief Commander, the Office of Professional Standard (Evidence R-7). According to Locke's report, "the facts/details of the investigation clearly prove that Detective Knight/Detective Suarez violated the Newark Police Department Rules and Regulations: Chapter 18:6 Neglect of Duty."

Subsequently, on or about September 22, 2011, Sergeant Locke and Lieutenant Abdul-Hakeem took a video statement from Poulard. This video statement summarized at R-7, page 3, was now replete with significantly more detail and read as follows:

At approximately 1130hrs and at the Office of Professional Standards, this writer along with Lt. Abdul-Hakeem took a video statement from complainant in regards to this investigation. Complainant stated that he and his female friend name Liz (Witness) went to a studio somewhere in the area of Sanford Avenue and Lenox Avenue late Friday evening on September 2, 2011 into early Saturday morning September 3, 2011. The Complainant stated that around 0200hrs he left the studio and while walking to his car, he decided to get a honey bun from the corner store located on the corner of Lenox/Sanford. Complainant went to state that as he was walking towards the store, he noticed four unknown black males standing in front of the store looking suspect, but he decided to continue going towards the store and as he approached the front of the store, the four males robbed him of \$1.25 and one of the males hit him over the head with a blunt object. Complainant stated that he fell to the ground and as he got up he felt dazed and was bleeding profusely from the forehead, so he called his friend Liz to come assist him and then called his mother (Maryse Dezulmat) whom was on the phone for the duration of his encounter with the police.

Complainant stated that he began to drive and felt dizzy so he stopped his car and people were telling him not to drive because he may pass out. Complainant went on the state that as he was sitting in his car dazed – he was suddenly boxed in by two marked police cars and two Officers in uniform exited their cars and approached him as he was bleeding. Complainant described the Officers as one heavy set African American male approximately 5-6 to 5-7 with gray hair on the sides and one medium built Hispanic male approximately 5-9 with black hair with the front being flipped up. The complainant stated both Officers approached on the

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driver's side and were standing maybe two feet away from him. **The complainant stated that the Hispanic Officer asked him what happened and he explained to the Officer that he was just robbed and hit in the head with a blunt object. The complainant went on to state that the Hispanic Officer flashed his light in his face and asked do he know who did this. The complainant went on to state that neither Officer called for medical assistance. The complainant stated he asked for medical assistance but was ignored, and instead of getting help from the Officers, the Hispanic Officer asked for his driving credentials. Complainant stated that he told the Officers, can't you see that I am bleeding and need medical attention, and was told by the Hispanic Officer- give me your credentials.**¹

Sergeant Locke's report (R-7) at page 5 gives the genesis of the complaint against Officer Hardin where at the end of paragraph 1, Poulard apparently stated that, "Officer Williams brought him back to 22 Franklin Street and as they were going up stairs, he noticed the same female officer that he reported his robbery to earlier, was still at the desk." This was later determined to be Officer Hardin.

On September 26, 2011, Sergeant Locke along with Lieutenant Abdul-Hakeem continued the investigation of Poulard's complaint by going to the grocery store where Poulard alleged that he had left from just prior to his assault. An interview with an employee of the store revealed that the store was not opened at the time of the alleged assault since they close at 9:00 p.m. on weekends. Further investigation by Locke and Abdul-Hakeem resulted in the discovery that the assault on Poulard actually took place inside the Knockout bar and was available to be viewed on video. The video is in evidence as R-19 and does reflect a confrontation between Poulard and several other males at the bar at which time he appears to have been struck in the head with a bottle. Locke confronted Poulard with these rather blatant inconsistencies, at which time Poulard confirmed that the incident took place inside of the bar and not on the street as he had previously indicated, but stated that everything else in his initial video tape statement was the truth.

¹ Bold-faced text appeared in the report as depicted herein.

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Poulard was asked to explain in detail what occurred and he stated as follows:

The complainant stated that as he and his friend Liz was leaving the music studio, Liz decided that she wanted a drink so they went to the Knockout Go-Go Bar. This writer asked the complainant if he drink [sic] and he answered no, he stated that he went because he saw it as an opportunity for him to make a music business deal. The complainant went on to state that he was talking with one unknown male about his music management company and the unknown male must have assumed that the complainant had money because he told the unknown male that he is from New York and he is in the music industry. The complainant stated that he notice that another three unknown black males surrounded him and suddenly he was attacked and robbed of a \$1.25. Complainant continued and stated that he was struck in the head with a blunt object which caused him to bleed profusely.

Poulard went on to say that there were security officers and police officers in the bar at the time of the assault and that police officers in the bar saw him bleeding, escorted him to a bathroom and when he came out, both police officers (officers other than those involved in this disciplinary hearing) offered to get him medical assistance and he refused.

According to Poulard, after leaving the Knockout Go-Go Bar, he retrieved his car and was then confronted by the officers. He contends that he was bleeding from his head and asked them for medical assistance but they offered none. Surprisingly, he went on to testify that he did not tell the officers about the robbery until after he had gotten the tickets.

Poulard indicates that after receiving the tickets, he drove Liz and her cousins to their cousins' house and then went home. Upon his arrival home, he and his mother went to Mountainside Hospital. When asked why he traveled all the way to Montclair from Hillside to go to an emergency room, he indicated that it was a hospital that he was familiar with and that is why he went there.

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The medical documentation submitted by Poulard confirms treatment for a head injury but fails to mention anything about the head injury requiring stitches and certainly makes no mention of the number of stitches required. The picture marked as R-1, page 1, is supposedly a depiction of the stitches received by Poulard, but appears to be a childish rendition of what stitches may look like and actually appears to be drawn on an unidentifiable face. The original of this picture supposedly in Poulard's mother's cell phone was never produced. This apparently contrived picture is useless from an evidential standpoint. The only other picture supposedly taken on the night of the incident was at R-1, page 4, and is nothing more than a black square reflecting nothing. The original of this picture was once again supposedly contained in Poulard's mother's cell phone and was to indicate that the shirt that he was wearing on the night of the incident was stained with blood. The other two pictures at R-1, page 2, and R-1, page 3, depicted work boots supposedly blood-stained and pants worn by Poulard, also supposedly blood-stained. Neither of these pictures was taken on the night in question and in fact were taken at a significant time period afterward.

Poulard went on to indicate that it was the advice of a physician at Mountainside Hospital that resulted to his return to the Police Department to register his complaint. He testified that when he saw Officer Hardin that he told her that he was robbed. When queried about why he initially lied about the location of incident, he stated that he was embarrassed about being in a Go-Go bar. When he was confronted about the fact that he also lied in the video-taped statement given under oath, weeks after the incident, he stated that he was lying because "he was scared of his mother judging him so he did not want to tell her."

Also testifying at the hearing was Elizabeth Bunge, a friend of Poulard's, who was with him on the night in question. Despite Poulard's assertion that he drove her home, she said that he didn't. Ms. Bunge's testimony was that she was intoxicated, a fact which can hardly be disputed upon reviewing the security tape marked in evidence at R-19.

Both Detective Suarez and Detective Knight confirmed their version of the incident as it appears in R-9, page 1, of Suarez's statement and R-9, page 3, of Knight's

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statement. Both acknowledged the cut on Poulard's face and both confirmed that Poulard refused medical attention and just wanted to get home.

Sergeant Locke testified at the hearing and confirmed the contents of her reports. Sergeant Locke provided no indication of what standard an officer in the street should use when confronted by an injured citizen to determine whether or not medical assistance is warranted. Her reports, which surprisingly emphasized Poulard's contention that he requested medical assistance is strangely void of any indication that Poulard's every word might be questionable. Nonetheless, Sergeant Locke asserted that despite what Suarez and Knight contended was a refusal by Poulard to accept medical attention; they should have called for it anyway so that EMS could make the medical decision.

Poulard's mother also testified at the hearing but added little to the case from a factual standpoint. She indicated that she was talking to her son on a cell phone while the police were there and supposedly overheard either his request for medical assistance or a failure by the police officers to offer any. However, the testimony was not of any particular value.

DISCUSSION

To give any credence to Clifford Poulard's testimony given at anytime during either the investigation or actual court testimony is incomprehensible. The initial report filed by Officer Williams is replete with false statements offered by Poulard contending that he was knocked unconscious; that the incident took place on the street; and that he had been at a family grocery the Medina Family Grocery Store prior to the attack. All false. More detail was offered to Lieutenant Conlin (R-6, page 2) at which time Poulard indicated that he gave his assaulters \$1.25 and that he was then hit in the head with a blunt object and fell to the ground. Of significance in Lieutenant Conlin's report was the fact that Poulard stated " . . . he was not concerned about the robbery since he only loss a \$1.25. He had responded to the precinct to make a complaint against the officers for giving him the summonses." This one statement alone confirms Officer Hardin's testimony that when Poulard appeared with his mother at the police station with the

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motor vehicle violation tickets in hand, they were not concerned with a robbery or an assault. I have no doubt that Poulard never mentioned a robbery to Hardin and that she followed her duties completely and thoroughly by referring him to the appropriate place to dispute the motor vehicle summonses.

A review of R-19, the security video tape of this incident in the bar undoubtedly confirms that Poulard was assaulted and did in fact receive a head wound, but there is certainly no confirmation that he was robbed of a \$1.25.

Even after Poulard was confronted with the falsity of his initial recorded statement, the Internal Affairs Investigation concluded that his contention that he asked for medical assistance and was bleeding profusely when approached by Detective Suarez and Detective Knight was worthy of belief. Poulard's testimony at the hearing was almost as unbelievable as his initial statement to Officer Williams. The variety of versions of this incident presented by Poulard makes it quite perplexing as to how his veracity was accepted as a foundation for the disciplinary charges filed against these officers. Poulard's explanation for his lying is weak at best and clearly duplicitous in the sense that his initial appearance at the police station was confirmed to be for the purpose of contesting the traffic tickets. The severity of his head wound is not confirmed by any medical report and the assertion by Poulard that he received twenty stitches cannot be accepted; for there were few portions of Poulard's testimony that could be deemed credible. Thus, there would be no reason to afford any credibility to that particular statement.

The disciplinary complaint against Officer Hardin is squarely based on the assertion made by Poulard that he had advised her that he wanted to report a robbery and an assault. Having little to no credibility, Poulard's assertion is completely rejected and the testimony of Officer Hardin that she referred him to the municipal court because he complained only of the motor vehicle summonses issued is the credible version with respect to the complaint against her. She is not guilty of any of the six charges filed against her.

OAL DKT. NOS. CSV 03372-12, CSV 04343-12 and CSV 04344-12

With respect to Detective Suarez and Detective Knight, the City has failed to establish that they neglected their duty with respect to Poulard. Although both Detectives confirmed that Poulard was bleeding from a cut on his face or head, there is simply no reason to inflate the severity of that injury based on Poulard's testimony and characterize Suarez's and Knight's discretionary decision not to get EMS for Poulard as neglect of duty. I **FIND** as a **FACT** that Poulard refused medical attention and that severity of his injury as displayed to Detective Suarez and Detective Knight did not warrant their forcing medical attention on an unwilling recipient.

I **FIND** that Poulard is not the least bit credible. Sergeant Locke's second-guessing of discretionary judgments made at the point of the incident does not warrant a conclusion that either of these Detectives neglected their duty.

ORDER

It is **ORDERED** that all the complaints against these three officers are **DISMISSED**.

I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

OAL DKT. NOS. CSV 03372-12, CSV 04343-12 and CSV 04344-12

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

February 20, 2013

DATE



JEFFREYA. GERSON, ALJ

Date Received at Agency:

2/20/13

Date Mailed to Parties:

FEB 21 2013



DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

sej

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APPENDIX

WITNESSES

For Appellants:

Officer Hope Hardin

Detective Alan Knight

Detective Henry Suarez

For Appointing Authority:

Clifford Poulard

Officer Robert Williams

Sergeant Christine Locke

Elizabeth Bunge

Maryse Dezulmat

EXHIBITS

For Appellants:

P-1 None

For Appointing Authority:

R-1 Photographs of Clifford Poulard's head injury and blood-stained clothing

R-2 Traffic Complaints-Summonses, nos. AU 869258, AU 869259, AU869260, AU869261, and AU 869262: issued by Detective Alan Knight, September 3, 2011

R-3 Mountainside Hospital Discharge Instructions for patient Clifford Poulard, from Mountainside Hospital Emergency Room, September 3, 2011

R-4 Newark Police Department Incident Report, September 3, 2011

R-5 Newark Police Department Office of Internal Affairs Photo Display Instructions, Photo Identification Forms and Six-Person Photograph Display of Police Officers, September 22, 2011

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- R-6 Newark Police Department Investigation of Personnel Report for Detective Alan Knight and Detective Henry Suarez, September 9, 2011
- R-7 Newark Police Department Internal Affairs Investigation of Detective Alan Knight and Detective Henry Suarez by Sergeant Christine Locke, CAP 2011-174, IOP 2011-611, September 19, 2011
- R-8 Newark Police Department Motor Patrol Log of Detective Henry Suarez, September 2, 2011
- R-9 Newark Police Department Administrative Submissions (Newark Police Department Form DPI 1001's) of Detective Alan Knight and Detective Henry Suarez, October 25, 2011, and October 24, 2011, respectively
- R-10 Newark Police Department Personnel Charging Forms for Detective Alan Knight and Detective Henry Suarez, October 24, 2011
- R-11 State of New Jersey Civil Service Commission Preliminary Notice of Disciplinary Action with Charges attached thereto, for Detective Alan Knight and Detective Henry Suarez, CAP 2011-174 IOP 2011-611, October 19, 2011
- R-12 Concise Officer Histories (Disciplinary Records) for Detective Alan Knight and Detective Henry Suarez, October 26, 2011
- R-13 Newark Police Department Investigation of Personnel Report for Police Officer Hope Harden, October 4, 2011
- R-14 Newark Police Department Internal Affairs Investigation of Police Officer Hope Harden by Sergeant Christine Locke, CAP 2011-173, 2011-673, October 28, 2011
- R-15 Newark Police Department Daily Attendance Record and Newark Police Department Prisoner Processing Division Projected Assignment Sheet, September 3, 2011
- R-16 Newark Police Department Administrative Submission (Newark Police Department form DOI 1001) of Police Officer Hope Harden, October 27, 2011
- R-17 Newark Police Department Personnel Charging Form for Police Officer Hope Harden, October 24, 2011
- R-18 State of New Jersey Civil Service Commission Preliminary Notice of Disciplinary Action with Charges attached thereto, for Police Officer Hope Harden, CAP 2011-173, 2011-673, October 19, 2011

OAL DKT. NOS. CSV 03372-12, CSV 04343-12 and CSV 04344-12

R-19 DVD Video Surveillance Recording of Knockout Go-Go Bar, 667 Sanford Avenue, Newark, New Jersey, dated September 3, 2011

