

American Arbitration Association
Case Number: 01-21-0016-5561

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In the Matter of the Arbitration

Between

FRATERNAL ORDER OF POLICE, LODGE 5
"UNION"

OPINION

-and-

AND

CITY OF PHILADELPHIA
"CITY"

AWARD

Sgt. Sharon Conaway (206495) - Suspension
-----X
BEFORE: Randi E. Lowitt, Esq., Arbitrator

APPEARANCES

For the City

Fara Cohen, Esq.
Cozen O'Connor

For the Union

William Campbell, Esq.
Willig Williams Davidson

Pursuant to the provisions of the collective bargaining agreement between the CITY OF PHILADELPHIA (hereinafter, "the City") and the FRATERNAL ORDER OF POLICE, LODGE 5 (hereinafter, "the Union"), the above-named arbitrator was designated by the American Arbitration Association as Arbitrator to hear and decide the matter in dispute between the above-identified parties.

A hearing was held by ZOOM, with consent of all parties, on December 13, 2022. The parties were represented by counsel and were afforded a full and fair opportunity to conduct direct and cross examination of sworn witnesses, to present relevant evidence and to argue their relative positions. The record was closed after oral closing arguments. All matters, while not necessarily cited in this Opinion and Award, have been considered. All Claims not expressly granted herein are denied.

Prior to the start of the hearing, the parties notified the Arbitrator that the claim of a five (5) day suspension involving the motor vehicle accident was not being grieved anymore and would not be argued. The only issue for determination was the fifteen (15) day suspension for conduct unbecoming.

Some quotation marks (""") may be used to denote parts of testimony or argument. While no court reporter or stenographer was present and no actual record was taken of the proceedings, the quotation marks denote portions of the notes taken by the Arbitrator during the course of the hearing and represent a close approximation of what was said by a witness or by counsel. Those notes and all attendant materials will be destroyed at the time this Opinion is disseminated.

The Issue:

Was there just cause to discipline the Grievant, Sharon Conaway?

If not, what shall be the remedy?

BACKGROUND

Most of the facts in this case are not in dispute. On July 12, 2019, Sgt. Sharon Conaway, a police officer with thirty two (32) years on the force, was involved in a motor vehicle accident while driving her city-owned police vehicle. Subsequent to the accident, Sgt. Conaway answered the "20 questions," which are actually twenty-one (21) questions, that are required to be answered by a police officer involved in an accident. The form with the answers was reviewed by the officer involved, in this instance, Sgt. Conaway, and was then signed by her. The Accident Investigation District (AID) is tasked with reviewing all accidents involving city vehicles. It determined that some of the answers Sgt. Conaway gave on the 20 questions were not true or accurate. This led to AID sending its report to the Internal Affairs Division (IAD), which conducted its own investigation. IAD determined that Sgt. Conaway had falsified her report. The inquiry was passed on to the Police Board of Inquiry (PBI), which determined that a fifteen (15) day suspension was the appropriate penalty. Sgt. Conaway grieved the suspension, ultimately leading to the instant arbitration.

██████████ was the officer who completed the 20 questions with Sgt. Conaway. He classified it as “21 standard questions asked of anyone involved in an auto accident while operating a police vehicle.” Pursuant to Directive 9.6., a supervisor is responsible for obtaining a statement subsequent to an accident. (City Exhibit #1).

██████████ was shown the 20 questions filled out by him and containing his signature and Sgt. Conaway's signature. (City Exhibit #2). As he recalled, “we sat at the computer, I would ask her a question...and I type in the answer. ...I can't type like a stenographer...I had her check it and see I got it right.” ██████████ said he “provided her with a copy to review...don't recall she asked for any changes.” Sgt. Conaway signed the document.

On cross examination, ██████████ said that the form was completed the same day as the accident.

██████████ ██████████ is the Commanding Officer of the Accident Investigation Division (AID) and has held that position for a little over four (4) years. While he knew Sgt. Conaway from having worked with her in “the late '90s,” he had no ill will towards her. He was directed to review the accident in which she was involved, and he received a video of the accident from the WaWa on Grand Avenue and Blue Grass Road. (City Exhibit #3). He also ordered a crash reconstruction report be prepared, because of “inconsistencies with the way the crash was reported and

what was observable in the video...important to prove or disprove." (City Exhibit #4).

Among the conclusions reached were that Sgt. Conaway was not travelling at 5 mph, but at 20-25 mph at the point of contact. The vehicle she hit was "stopped the entire time." That vehicle had not "veered into the travel lane of the police vehicle." And, the video refuted Sgt. Conaway's contention that she "remained at the point of contact of the crash as it occurred."

██████████ prepared a final investigation report, approved on July 30, 2019, in which he concluded that the statement received from Sgt. Conaway is incorrectly written, and that the facts find her to be clearly at fault. (City Exhibit #5). He sent a memo to the Deputy Commissioner (DC) on July 31, 2019, telling the DC that the crash did not occur as reported. (City Exhibit #6). The memo also noted that Capt. Otherwise thought the incident should be referred to IAD for further investigation.

On cross examination, Capt. Otherwise said that he had not interviewed Sgt. Conaway during his investigation, and he had not shown her the video he obtained. He noted that AID investigators are not permitted to interview officers who are the drivers of vehicles involved in accidents.

she was not travelling at 5 mph. “She said she felt the other vehicle hit her car, but we know from watching the video that she struck the stopped vehicle and she says the other vehicle veered into her lane which we know did not happen.” Question #7s response is inaccurate because “she did not stop. She continued through...later returning to the scene...approximately three (3) minutes later.” “She admitted the answers she provided were different then what really happened.”

Ultimately, ■■■■■ prepared a memo for the Police Commissioner, dated February 4, 2020. (City Exhibit #7). ■■■■■ does not recommend charges to be brought; that is not his role.

On cross examination, ■■■■■ said he was familiar with the body-worn camera policies for police officers, and that an officer is permitted to review such footage prior to making any statement or report, to ensure that the recollection related is correct. He acknowledged that his interview with Sgt. Conaway was the first time she would have been able to view the video of the accident, but that he did not show it to her until after the interview was concluded.

■■■■■ sat on the Police Board of Inquiry involving Sgt. Conaway. The Board is made up of a Captain, a Lieutenant, and a peer of the person accused. While ■■■■■ knew Sgt. Conaway, she harbored no ill will towards her. The charges filed against Sgt. Conaway include conduct unbecoming. (City Exhibit #9).

Sgt. Conaway was in receipt of the charges. (City Exhibit #10). She pled not guilty and requested a hearing.

The disciplinary code for all officers is contained within the collective bargaining agreement. (Joint Exhibit #1). The penalties for conduct unbecoming and false entries are clearly spelled out. [REDACTED] [REDACTED] created a summary of the PBI's conclusions. (City Exhibit #11). It found that Sgt. Conaway had engaged in conduct unbecoming and "recommended a fifteen day suspension."

[REDACTED] [REDACTED] [REDACTED] sat on the PBI. He explained that "based on the evidence presented, Sgt. Conaway's 20s, multiple questions found to be contradictory to the actual video evidence we observed...specifically where she said she stopped...and the civilian vehicle veered into her lane...clearly showed it stopped in traffic and not moving..," a penalty was assessed. "Based upon what we saw in the evidence and the false answers to the questions, in my own opinion I felt fifteen days was a fair and lenient penalty for the charges." [REDACTED] [REDACTED] said they could have assessed a penalty of dismissal, the range of penalties being five days to dismissal. "Having honesty and integrity is part of the core values. False statements...tarnishes the reputation and leads to distrust among the public."

The documented suspension was ultimately served on Sgt. Conaway. (City Exhibit #12).

On cross examination, ■■■■■ said they had not compared the discipline assessed against Sgt. Conaway with that given to others. Nor did they consider her work record, because it was not given to the PBI. They did not consider her entire disciplinary history, only that which was still relevant, within the reckoning period.

Sgt. Conaway testified on her own behalf. She explained she had been in multiple motor vehicle accidents during her thirty-two (32) year career and was familiar with the 20 questions, both because she had filled them out herself and because she had overseen other officers filling them out (as ■■■■■ had with her). She was also familiar with the initial crash report and the confidential report, also filled out in the case of an accident.

On the day of the accident, prior to the accident, there was a priority call that a veteran, with PTSD, might be suicidal and might have or be accessing guns, to shoot up his apartment complex. Sgt. Conaway knew this person already. She "let radio know I'm in route...I have CIT training, but I didn't have a taser. I needed ...back up, and asked for 2 radios to go in with me with tasers...I was fairly close to the location, half a mile from where he supposedly was...thought I saw him...had prior dealings with him...going into the WaWa...." Sgt. Conaway was travelling westbound on Grant, towards Blue Grass, with the WaWa to her left. She was trying to move from the left lane to the turn lane to go to the WaWa.

It is an area with which she is familiar. The public storage area where the veteran allegedly had the guns is "between the WaWa and the apartment complex. My attention was to the left, where I thought I saw him...I tried to proceed around...in the interim I thought I ran over something...I looked real quick and didn't see anything...when I went over I saw it wasn't the male in question...I pulled in to my right to check the vehicle...my mirror...saw the glass out of it...concerned something happened...checked the back of my car, went around the passenger side, noticed a scrape from back to front...immediately radioed, please send an RPC to my location, notified supervisor, made all the notifications I could...the van in question was there and I engaged with the driver, making sure he was ok, passengers were ok...I radioed AID and told them what I thought had happened...said to the guy let's get out the intersection, very busy, rush hour...went into the WaWa to look at the video, didn't have my reading glasses...little tiny screen, liked like white blurs, couldn't ascertain what happened, couldn't find what I was looking for...I thought I ran over something."

Sgt. Conaway reiterated that she had thought she ran over a metal plate, that once she realized it was more than that, she went back to the white paratransit van, and that, although technically she should not have moved her car and the van, it was safer to get herself and the van out of the intersection. She went into the WaWa when "[REDACTED] got there and

was talking to the van driver. ...I said I'm going into the WaWa to see if I can ascertain what occurred...I legitimately tried...monitor was too small...all black and white." The van driver said he was stopped, but "at the time he told me he might've come over. I didn't want to blame him...he had a lot more to lose than I did...he's a paratransit driver and I didn't want to blame him and have him lose his job."

Sgt. Conaway did not recall filling out the 20 questions that day. ■
■ "didn't want elaboration...no room to elaborate...I just answered as best I could from my recollection...he's not a very good typer." As to the questions, Sgt. Conaway acknowledged that, as to question #3, she "believed I had room to get over, apparently I didn't." As to question #5, "apparently I was going faster than 5 miles per hour...its like apples and oranges, I was looking for something...I didn't know what happened to my car." As to question #7, Sgt. Conaway "should've elaborated...said when I realized I was involved in the accident...I pulled over, saw my mirror, saw damage, realized I as involved in an accident, radioed, went back. ...he stopped." They did not both stop. Similarly, with question #10, "I should've said I stopped 300 feet...I came back. I stopped." She insisted she would never leave the scene of an accident.

Sgt. Conaway did not know IAD was investigating until they called her in for an interview. She had already been reassigned to the auto pound two weeks after the accident. "I didn't know there was a video fill

I went to IAD and answered all the questions...not till after I answered every question, after I finished the interview," they offered to show her the video. "I was sick to my stomach. If I saw this video initially, I would have been able to recall and answer the 20 questions appropriately. ...I could not remember what happened. Didn't want to blame the person driving the paratransit van if he wasn't to blame...I would take the hit with 3 to 5 day suspension... trying to protect this guy... didn't want to accuse him."

Sgt. Conaway insisted she did not and would not intentionally misrepresent on the 20 questions. "I know what could happen...why risk a 32 year career...it just didn't make sense."

On cross examination, Sgt. Conaway reiterated that she had completed for herself and reviewed the 20 questions with other officers she supervises, and that she knows the importance of truthfully answering all questions. She reiterated that she "surmised" the accident was "due to something coming into my lane...I didn't determine it, I wasn't sure." She reiterated she went into the WaWa after she spoke to radio and AID and after the police officer arrived, after they moved out of the intersection. And, she reiterated that she could not make anything out on the video she was shown at the WaWa, although when she was at IAD and "I saw it on a giant TV at IAD, it was obvious." She contended that "I tried to piece together...I went through different scenarios...I was trying my best to recollect...it was annoying me, why didn't I recall that...my attention was

diverted. ...20 questions have to be short and brief...I answered briefly...as I could elaborate further, I did.”

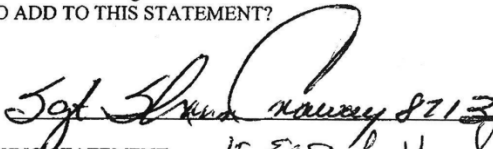
When asked why she did not say that she was not sure what happened, Sgt. Conaway said “that’s not one of the questions.” When asked if she had the chance to review and change her answers on the 20 questions before she signed, Sgt. Conaway said “review, but not change. It was the standard 3 word answers, that’s it. If you can’t elaborate further, you just get the answer in...3 words or less...later I was afforded the opportunity to elaborate further...at IAD.” The 20 questions are based on what she assumed had happened.”

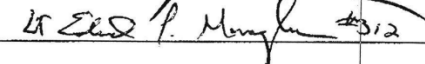
RELEVANT DOCUMENTS

"20 Questions"

DC #	19-08-024542	AID #		DATE OF ACCIDENT	07-12-19
LOCATION	Grant and BlueGrass Rd.	DISTRICT OF OCCURRENCE	8th		
VEHICLE #	815	EXTENT OF DAMAGE	Minor damage to passenger side door and mirror		
NAME, ADDRESS OF POLICE OPERATOR	Sgt. Sharon Conaway #8713, 3100 Red Lion Rd.				
NAME, ADDRESS & AGE OF OTHER OPERATOR	Philip Sowinski 63, 12009 Salina Place				

1. WHAT DIRECTION WERE YOU TRAVELING AND ON WHAT STREET?
I was traveling westbound on Grant Ave in the far left turning lane. I was planning to turn left onto Bluegrass Rd.
2. WHICH PORTION OF THE HIGHWAY WERE YOU TRAVELING ON AND AT WHAT SPEED?
I was in the far left turning lane traveling westbound at about 5 miles per hour.
3. DID YOU CHANGE YOUR SPEED PRIOR TO COMING IN CONTACT WITH THE OTHER VEHICLE, PEDESTRIAN, OR OBJECT?
I was slowing down to come to stop at a red arrow traffic light.
4. WHAT WAS YOUR REASON FOR CHANGING (NOT CHANGING) YOUR SPEED?
I was stopping for the traffic control device at Grant Ave. and Bluegrass Rd.
5. WHERE WAS YOUR VEHICLE AND THE OTHER VEHICLE, PEDESTRIAN, OR OBJECT WHEN YOU FIRST SAW IT? SPECIFY THE DISTANCE.
I did not see it. I felt the other vehicle hit my car. I was in the left turning lane at about about 5 miles per hour when Vehicle #1 veered into my lane striking my vehicle on the passenger side and knocking my passenger side mirror outwards.
6. WHAT EVASIVE ACTION DID YOU TAKE TO AVOID THE ACCIDENT?
I was unable to take any evasive action. I did not see the vehicle until it struck me.
7. WHAT WAS THE ACTION OF THE OTHER VEHICLE/PEDESTRIAN WHEN YOU FIRST SAW IT, HIM OR HER?
We both stopped.
8. WHAT EVASIVE ACTION DID THE OTHER OPERATOR/PEDESTRIAN TAKE TO AVOID THE ACCIDENT?
I don't know. I did not see him.
9. WHAT PART OF YOUR VEHICLE CAME IN CONTACT WITH WHAT PART OF THE OTHER VEHICLE, PEDESTRIAN, OR OBJECT?
My passenger side and my passenger side mirror came in contact with driver's side of his vehicle.
10. WHERE DID YOUR VEHICLE STOP AFTER THE CONTACT?
Vehicle stopped at point of contact - Westbound Grant at Bluegrass.
11. WHERE DID THE OTHER VEHICLE, PEDESTRIAN, OR OBJECT COME TO REST AFTER CONTACT?
Point of contact - Westbound Grant at Bluegrass
12. WERE THERE ANY TRAFFIC CONTROLS AFFECTING THE OTHER VEHICLE'S (PEDESTRIAN'S) PATH OF TRAVEL?
There was traffic control green signal for his lane travel - westbound traffic.
13. WERE THERE ANY TRAFFIC CONTROLS AT THE LOCATION OF THE ACCIDENT? IF SO, HOW DID THEY GOVERN YOUR PATH OF TRAVEL?
Yes - I was slowing while approaching the traffic control red arrow at Grant and Bluegrass.
14. DID YOUR VEHICLE SKID IN THE ACCIDENT?
No.
15. DID THE OTHER VEHICLE SKID IN THE ACCIDENT?
No.
16. WHAT WAS THE MECHANICAL CONDITION OF YOUR VEHICLE?
Vehicle was satisfactory at the time of pre-tour inspection. Vehicle had minor scuffs and scrapes on the front bumper and passenger side mirror at that time.
17. WHAT WAS THE WEATHER, TIME OF DAY, AND HIGHWAY CONDITIONS AT THE TIME OF THE ACCIDENT?
The weather was clear. It was about 4:10PM. There were no adverse highway conditions.
18. DID THE OPERATOR/PEDESTRIAN SAY ANYTHING TO YOU?
He said that he did not think he veered into my lane. He said that he believes I struck his vehicle. He then stated that it could have possibly veered slightly.
19. WERE THERE WITNESSES? (IF YES, ENSURE INFORMATION IS PLACED ON THE AA-500 OR 75-48C.)
No.
20. WHAT WAS YOUR ASSIGNMENT AT THE TIME OF THE ACCIDENT?
I was surveying the area for a possible 302 with a gun.
21. DO YOU HAVE ANYTHING TO ADD TO THIS STATEMENT?
No.

FULL SIGNATURE OF OPERATOR 

SIGNATURE OF SUPERVISOR TAKING STATEMENT 

(City Exhibit #2)

Charge against Sgt. Conaway:

ARTICLE 1 CONDUCT UNBECOMING
CHARGE 1-§010-10 KNOWINGLY AND WILLFULLY MAKING A FALSE ENTRY IN ANY DEPARTMENT RECORD OR REPORT
WITNESS LIEUTENANT LOUIS HIGGINSON #156, INTERNAL AFFAIRS

(City Exhibit #9)

The Philadelphia Police Department Disciplinary Code states:

Section	Charge	1st Offense	2nd Offense	3rd Offense	Reckoning Period
...					
1-§010-10	Knowingly and willfully making a false entry in any Department record or report.	5 days to Dismissal	15 days to Dismissal	Dismissal	5 Years

(Joint Exhibit #1)

POSITIONS OF THE PARTIES

The City:

The City maintains that it has met the just cause standard. “Between the accident reviews, the video evidenced, the witness interviews, and the testimony of everyone including the grievant, it is clear that grievant knowingly falsified the statements in the 20 questions. She did not stop at the point of contact. When she answered the 20 questions, she was not sure if the other driver had veered into her vehicle, but said, unequivocally, that he did. She did not express doubt in any of the 20 questions.

According to the City, the overall evidence establishes, through separate investigations in two separate divisions, that she falsified thereby engaging in conduct unbecoming. As the City avers, Sgt. Conaway admitted that what she answered is not what happened. It points to Lt. Higgenson, and his interview with Sgt. Conaway, when he testified that her answers were definite and she did not express doubt. The City takes note of ■■■■■ who said that truth is an absolute necessity because without trust, the public will not have confidence in the police. It also notes that ■■■■■ asserted that the penalty assessed was fifteen (15) days, but it could have been dismissal.

The City points out that Sgt. Conaway has had numerous motor vehicle accidents before. She is familiar with the 20 questions. She knows

the importance of truthfully and accurately answering. She was not truthful. Therefore, the City demands that the grievance be denied.

The Union:

The Union avers that the City failed to prove just cause to assess a fifteen (15) day suspension for conduct unbecoming, knowingly and willfully making a false entry. The Union highlights two pieces of that charge:

1. False entry, incorrect entry
2. Document, incorrect, made knowingly and willfully

According to the Union, there is no dispute some of the answers to the 20 questions were incorrect. However, the reasons why it was wrong was not because Sgt. Conaway was lying. Rather, it was because she did not have a complete recollection of the events. She tried to watch the video at the WaWa on the day of the incident, but was unable to do so. She was not shown the video until after she had spoken to IAD. While she knew something happened, she did not and could not know what had happened until she saw the video.

The Union takes note of Sgt. Conaway's mental state immediately before and immediately after the accident. It contrasts the fact that she was looking for a distraught veteran with the thought that she ran over a

metal plate, that she inspected the vehicle and saw the damage, and that knew there was an accident. At this point, the Union points to a change in Sgt. Conaway's mental state. She did not know what happened and she did not know who was at fault.

The Union insists that Sgt. Conaway was not deliberately making false statements and that she admitted she was wrong once she saw the video. It argues that the Department, in other circumstances allows officers to watch video or body cam footage before they draft a statement. That is not the case in this instance. It argues that human memory, during a stressful time, while investigating and responding to a stressful call, can be inaccurate. And, it again urges that Sgt. Conaway was more worried about that individual than driving.

The Union takes specific note that ■■■■■ and other witnesses, used words like – information was incorrect; differences between 20 questions and the video. It argues that Lt. ■■■■■ report is devoid of any allegations that Sgt. Conaway lied, only that the information was incorrect in questions 3, 4, 6, 7, and 10. According to the Union, there was no evidence shown during the hearing or throughout the disciplinary process that she lied. Moreover, there was not even a motive as to why she would lie. Sgt. Conaway has had a long career. Dishonesty is a serious offense. There would be no benefit to her in trying to hide

what happened. Without that rationale, the Union does not believe that there is enough to sustain the charge of conduct unbecoming.

The Union asserts that the city failed to show she knowingly and willfully entered the information into the 20 questions document.

Therefore, the Union demands that the grievance be sustained and that the discipline be rescinded.

OPINION

After a complete review of all the evidence and testimony, I find that the City has met its burden to suspend Sgt. Conaway for conduct unbecoming. My reasoning follows.

The charge against Sgt. Conaway is that she knowingly and willfully made a false statement in a Department record or report. Clearly Sgt. Conaway made a false statement, at the time she made the statement, in the form of filling out the 20 questions with ■■■■■■■■■■ that she had not stayed at the scene of the accident when it occurred, that she did not know who hit whom or how, that she did not know whether or if she was (or was not) going 5mph, and et cetera. Yet, having filled out the form myriad times both for herself and with her subordinates, and knowing how important the answers were, she did give answers that appeared to be unequivocal. She did sign the form. And, in the 21st of the "20 questions," she did not add that she was unsure of answers she had given. She did not add that she was concerned about the safety and welfare of the veteran and what might have happened had he gotten the guns he allegedly had, other than giving the answer to question #20. She did not make note of any of that, even in brief.

I do not believe that Sgt. Conaway was maliciously trying to engage in activity that would appear to be conduct unbecoming or lead to her being suspended. As she noted, why would she risk thirty two years of

service? As she noted, an auto accident would subject her to a three to five day suspension, and she would not have had issue with that. However, acting maliciously is not the same as knowingly and deliberately. Sgt. Conaway was, based on her testimony and the testimony of other witnesses coupled with the evidence presented, knowing and deliberate about her assertions on the 20 questions. She seems to be conscientious and certainly she would have cautioned one of the officers in her charge to be careful about filling out the form. Yet she was not. The penalty listed in the contract goes from five (5) days through dismissal. ■■■■■ said that they considered that which they were given about Sgt. Conaway's record, but that there was nothing major in the reckoning period. Therefore, fifteen days is not a minimum necessity. Without malice, but with error, Sgt. Conaway answered the questions. She knew the care she should take when answering. She would have cautioned her subordinates of that care. But, again, there was no active obfuscation or malice. I, therefore, assess a five (5) day penalty of suspension without pay.

In view of the foregoing, I issue the following

AWARD

The penalty is reduced to a five (5) day suspension, without pay.



Randi E. Lowitt
Arbitrator

Dated: January 3, 2023

State of New Jersey)
) ss.:
County of Morris)

I, Randi E. Lowitt, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.



Randi E. Lowitt
Arbitrator

Dated: January 3, 2023