



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
SUITE 900 – 1340 POYDRAS ST.
NEW ORLEANS LA 70112
(504) 658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON
RONALD P. MCCLAIN, VICE-
CHAIRPERSON

JOSEPH S. CLARK
TANIA TETLOW
STEPHEN CAPUTO

MITCHELL J. LANDRIEU
MAYOR

Tuesday, May 30, 2017

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Mr. Donovan A. Livaccari
101 W. Robert E. Lee, Suite 402
New Orleans, LA 70124

Re: **Eddie Thompson VS.
Department of Police
Docket Number: 8521**

Dear Mr Livaccari:

Attached is the decision of the City Civil Service Commission in the matter of your appeal.

This is to notify you that, in accordance with the rules of the Court of Appeal, Fourth Circuit, State of Louisiana, the decision for the above captioned matter is this date - 5/30/2017 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Amoco Building, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal must conform to the deadlines established by the Commission's Rules and Article X, 12(B) of the Louisiana Constitution. Further, any such appeal shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,

A handwritten signature in blue ink that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Michael S. Harrison
Elizabeth S. Robins
Jim Mullaly
Eddie Thompson

file

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

EDDIE THOMPSON vs. DEPARTMENT OF POLICE	DOCKET No.: 8521
---	------------------

I. INTRODUCTION

Appellant, Eddie Thompson, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Police Department for City of New Orleans, (hereinafter “NOPD”) does not allege that the instant appeal is procedurally deficient. And, Appellant stipulated that NOPD’s investigation into Appellant’s alleged misconduct adhered to the standards required by our Rules and La. R.S. § 40:2531. Therefore, the Commission’s analysis will be limited to whether or not NOPD disciplined Appellant for sufficient cause. At all times relevant to the instant appeal, Appellant served as a Police Officer for NOPD and had permanent status as a classified employee.

On August 18, 2016, a hearing examiner appointed by the Commission presided over a hearing in connection with the above-referenced appeal. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the hearing examiner’s report. Based upon our review, we render the following judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

NOPD issued Appellant a one-day suspension for violating NOPD Rule 4, paragraph 2: Instructions for an Authoritative Source. The relevant portion of NOPD Rule 4, Paragraph 2 reads as follows:

An employee shall professionally, promptly, and fully abide by or execute instructions issued from any authoritative source, including any order relayed from a superior by an employee of the same or lesser rank. If the instructions are reasonably believed to be in conflict with the Rules, Policies and Procedures of the Department or other issued instructions, this fact shall respectfully be made known to the issuing authority. If the issuing authority elects to insist upon execution of the instructions which are reasonably believed to be in conflict with Department Rules, Policies, and Procedures, the employee receiving the instructions shall have the right to request and is entitled to receive, IMMEDIATELY, said instructions in writing, except in cases of emergency as determined by the supervisor. The issuing authority shall be held responsible should any conflict materialize; however, no instructions shall be issued or executed which are in violation of law.

Id.

NOPD takes the position that its rules, policies and procedures constitute “orders from an authoritative source.” Such policies include NOPD Policy 43.3.10, Paragraph 9(r) pertaining to the activation of an Officer’s Body-Worn Camera (“BWC”). *Id.* Paragraph Policy 43.3.10 requires an Officer to activate his/her BWC during all “calls for service.” *Id.* According to NOPD, Appellant allegedly violated this policy when he failed to activate his BWC during a call for service on June 8, 2015. *Id.*

B. June 8, 2015

Lieutenant Duralph Hayes was responsible for the investigation into Appellant’s misconduct. Initially, Lt. Hayes was investigating an allegation of misconduct against another member of NOPD stemming from an interaction with a civilian on June 8, 2015. It was during this investigation that Lt. Hayes discovered that Appellant and several other NOPD Officers who

reported to the scene of the incident did not activate their BWCs. After making this determination, Lt. Hayes proceeded to investigate Appellant's actions on June 8, 2015.

According to Lt. Hayes, Appellant acknowledged that he did not turn on his BWC, but believed that he was not required to do so because the incident had been rendered a "Code 4."

"Code 4" is used by NOPD to indicate an incident when an NOPD Officer originally requested assistance but that such assistance was no longer required. In such cases, Officers on route to the scene are "freed" from the obligation to actually report to the scene. Officers who had already arrived at the scene may leave once they have "cleared themselves." *Id.* at 9:15-18.¹ Appellant believed that, since the incident was a "Code 4" by the time he arrived, there was no need to activate his BWC.

Lt. Hayes testified that NOPD's BWC policy required an Officer to activate his/her BWC at all calls for service. He further testified that there were very limited circumstances during which an Officer was allowed to cease using his/her BWC. Officers have discretion to activate their BWC during "consensual contacts of a non-criminal nature." *Id.* at 15:4-17. For example, if someone asks an Officer for directions, the Officer has the discretion to activate his or her BWC. *Id.* at 15:4-17. Lt. Hayes stated that, since Appellant was on the scene of a call for service, NOPD Policy mandated activation of Appellant's BWC. From Lt. Hayes's perspective, it did not matter whether or not Appellant had any contact with a civilian during the course of the incident. What concerned Lt. Hayes was the possibility that a situation that appeared to be under control could have escalated and there would have been no BWC footage from Appellant to lend perspective on the encounter. *Id.* at 25:5-17. On cross-examination, Lt. Hayes acknowledged that there was

¹ The Commission notes that the process through which an Officer "clears himself" from a Code 4 is not clear from the record. Therefore, we must assume that, since an Officer may clear himself, he does not need authorization from a supervisor to do so.

BWC footage of the underlying interaction that triggered the initial investigation and that he could, “for the most part,” figure out what happened. *Id.* at 12:15-19.

During the course of the hearing, Appellant stipulated that he did not activate his BWC during the incident in question. (Tr. at 5:18-24). Appellant’s testimony was consistent with the statements he provided to Lt. Hayes and Deputy Superintendent Paul Noel. Specifically, Appellant acknowledged that he did not activate his camera, but insisted that activation was not required because the incident was a “Code 4.” Appellant also testified that he did not interact with any civilians during the June 8th incident and did not take any steps to investigate a crime.

III. LEGAL STANDARD

An appointing authority may discipline an employee with permanent status in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that an appointing authority issued discipline without sufficient cause, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, an Appointing Authority has the burden of proving, by a preponderance of the evidence; 1) the occurrence of the complained of activity, and 2) that the conduct complained of impaired the efficiency of the public service in which the appointing authority is engaged. *Gast v. Dep't of Police*, 2013-0781 (La. App. 4 Cir. 3/13/14), 137 So. 3d 731, 733 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094 (La. Ct. App. 2007)). If the Commission finds that an appointing authority has met its initial burden and had sufficient cause to issue discipline, it must then determine if that discipline “was commensurate with the infraction.” *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of*

New Orleans, 454 So.2d 106, 113 (La. 1984)). Thus, the analysis has three distinct steps with the appointing authority bearing the burden of proof at each step.

IV. ANALYSIS

A. Occurrence of the Complained of Activities

NOPD Policy 43.3.10 Paragraph 9(r) requires Officers to activate their BWC when responding to all calls for service. And, on the night of June 8, 2015, Appellant responded to a call for service but did not activate his BWC. The Policy 43.3.10 does not exclude incidents labeled “Code 4” as exceptions to the BWC activation requirement.

The Commission appreciates Appellant’s honesty and candor during the course of the investigation and hearing. We accept that Appellant did not intentionally violate Policy 43.3.10 and believed that, since he was not actively involved in the call for service, he did not need to activate his BWC. However, the clear wording of Policy 43.3.10 requires activation on any call for service, regardless of the Officer’s role in that call.

Based upon the foregoing, the Commission finds that NOPD has established that Appellant violated Policy 43.3.10.

B. Impact on NOPD’s Efficient Operations

It is vital that all NOPD personnel recognize and put into practice policies promulgated by NOPD. The Commission notes that NOPD has placed a particular emphasis on its policy regarding the use of BWCs. NOPD established its BWC policy with the goal of promoting officer safety, improving prosecution of crimes, protecting officers from false allegations and preventing misconduct and racial profiling. NOPD has committed to the use of BWCs and provided all Officers with training and notice regarding such use. The Commission finds that BWCs provide a degree of transparency and accountability that New Orleans residents demand and deserve.

Furthermore, the Commission accepts the testimony provided by Lt. Hayes that, simply because a situation appears to be under control, does not mean things will stay that way. By failing to activate his BWC at the scene of a call for service, Appellant created the possibility that valuable video footage would be unavailable. Yet, from a practical perspective, the actual impact of Appellant's failure was minimal given that another Officer had captured the incident with his own BWC.

Based upon the foregoing, we find that Appellant's failure to adhere to the BWC Policy had an adverse effect on NOPD's efficient operations, albeit a minor one.

C. Was the Discipline Commensurate with Appellant's Offense

In conducting its analysis, the Commission must determine if Appellant's suspension was "commensurate with the dereliction;" otherwise, the discipline would be "arbitrary and capricious." *Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d 976, 978 (citing *Staeble v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

The Commission's authority to "hear and decide" disciplinary cases "includes the authority to modify (reduce) as well as to reverse or affirm a penalty." *Whitaker v. New Orleans Police Dept.*, 863 So.2d 572, 576 (La.App. 4 Cir. 9/17/03)(citing La. Const. art. X, § 12; *Branighan v. Department of Police*, 362 So.2d 1221, 1223 (La.App. 4 Cir.1978)). However, the authority to reduce a penalty can only be exercised if there is insufficient cause for imposing the greater penalty. *Id.* at 1222.

Deputy Superintendent Noel testified that the compliance rate for Officers properly activating a BWC had risen drastically over the course of the 2015 and 2016. He attributed this improvement to NOPD's consistent enforcement of Policy 43.3.10. He stated that NOPD's

E. Thompson
No. 8521

compliance rate was now among the best in the country. Given the emphasis NOPD has placed upon the proper use of BWC, the Commission finds that deterring violations of the policy with discipline – even for first time offenders like Appellant – is neither arbitrary nor capricious.

Therefore, we find that a one-day suspension was commensurate with Appellant's misconduct.

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby DENIES the underlying appeal.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.

SIGNATURES APPEAR ON THE FOLLOWING PAGE.

E. Thompson
No. 8521

Judgment rendered this 30th day of May, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION



TANIA TETLOW, COMMISSIONER

5-26-17

DATE



RONALD P. McCLAIN, VICE-CHAIRMAN

5-26-17

DATE



STEPHEN CAPUTO, COMMISSIONER

5-26-17

DATE