



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
BRITTNEY RICHARDSON, CHAIRPERSON
CLIFTON J. MOORE, VICE-CHAIRPERSON
JOHN KORN
MARK SURPRENANT
RUTH WHITE DAVIS

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Tuesday, April 13, 2021

Joseph R. Casanova
650 Poydras, Suite 1400
New Orleans, La 70130

Re: **Mike Perry VS.
Sewerage & Water Board
Docket Number: 9135**

Dear Mr. Casanova:

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 - 4/13/2021 - 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 shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,


Stacie Joseph
Management Services Division

cc: Ghassan Korban
Joseph Zanetti
Christina Carroll
Mike Perry

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

MICHAEL PERRY

Appellant

v.

DOCKET NO. 9135

SEWERAGE & WATER BOARD

Appointing Authority

DECISION

Appellant, Michael Perry (hereinafter "Appellant"), brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission's Rule II, §4.1, asking this Commission to find that the Sewerage & Water Board (hereinafter "Appointing Authority") did not have sufficient cause to issue a five-day suspension. (Ex. HE-1). At all times relevant to the instant appeal, Appellant was employed as Utilities Plant Worker II for the Pumping and Power Department at the Sewerage & Water Board and had permanent status as a classified employee. (Ex. HE-1; Tr.at 105).

The below Commissioners have reviewed the transcript from the September 30, 2020, hearing, all exhibits introduced into the record, and the December 16, 2020, attached report from the Hearing Examiner, which is advisory in nature. After reviewing this record, we DENY the appeal.

I. FACTUAL BACKGROUND

The Sewerage & Water Board suspended Michael Perry for five days following a vehicle accident on September 26, 2018, in a Sewerage & Water Board truck. (Ex. HE-1). It is undisputed

that the truck had faulty brakes on the date of the accident. (Ex. J-1, J-2). The only fact in dispute is whether Appellant was aware of the brake problem prior to the accident.

According to the Disciplinary Action Summary prepared by Byron Iverson, submitted into the record without objection, Perry testified at the November 12, 2019 accident review board hearing that he was aware of the brake issues prior to the September 26, 2018 accident. (Ex. B-1). At the civil service hearing on September 30, 2020, Perry testified that he said what he did at the accident review board hearing about prior knowledge of the brakes because he was scared. He testified at the September 30, 2020 hearing that he was actually unaware of the problem with the brakes prior to the accident. (Tr. at 137). This change in testimony as to his lack of pre-accident knowledge as to a problem with the brakes is not convincing to the undersigned Commissioners. If he did not know of the brake problem before the accident, he should have so stated at the accident review board hearing.

II. LEGAL ANALYSIS

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 (quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094). Based on Appellant's well-documented statements at the November 12, 2019, internal hearing, the Commission finds that the Sewerage & Water Board has shown that Appellant was aware of the brake problems before the September 26, 2018 accident. The Sewerage & Water Board has shown

that the Appellant's conduct impaired the efficiency of the public service, as driving a truck with known brake problems posed a risk to the public.

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); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). Based on Sewerage & Water Board Policy, the five-day suspension is commensurate with the infraction. Therefore, the appeal is DENIED.

This the 13th day of April, 2021

CIVIL SERVICE COMMISSION

WRITER:

Mark C. Surprenant
Mark C. Surprenant (Mar 24, 2021 18:08 CDT)

MARK SURPRENANT, COMMISSIONER

CONCUR:

J. H. Korn
J. H. Korn (Apr 13, 2021 13:51 CDT)

JOHN KORN, COMMISSIONER

C. J. Moore
CJ Moore (Apr 13, 2021 13:56 CDT)

CLIFTON J. MOORE, JR., VICE-CHAIRPERSON

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

MICHAEL PERRY

Appellant

v.

DOCKET NO. 9135

SEWERAGE & WATER BOARD

Appointing Authority

HEARING OFFICER'S REPORT

The undersigned conducted a hearing on September 30, 2020, of a January 10, 2020, five-day suspension issued to Michael Perry, who is a Utilities Plant Worker II for the Pumping and Power Department at the Sewerage & Water Board. (Ex. HE-1; Tr.at 105). The Sewerage & Water Board hired Perry in 1987. (Tr. at 105). Witnesses included Byron Iverson, Kevin Burfect, and Michael Perry. Joseph Zanetti represented the Sewerage & Water Board, and Joseph Casanova represented Michael Perry.

The Sewerage & Water Board suspended Michael Perry for five days following a vehicle accident on September 26, 2018, in a Sewerage & Water Board truck. (Ex. HE-1). According to the Sewerage & Water Board, the severity of the penalty was increased because Perry was at fault in three previous accidents: December 12, 2012; November 3, 2017; and March 20, 2018. (Ex. HE-1; Tr. at 26)). The Sewerage & Water Board policy sets forth appropriate discipline as “30 days LWOP, grounding and/or dismissal.” (Ex. B-1). Employee Relations recommended a reduced penalty to Perry because of his tenure with the agency, the poor driving was a recent development, and Perry had informed his chain of command of the brake problem, but no action was taken to address the brake issue. (Ex. B-1).

The parties stipulated to several documents establishing that the truck had faulty brakes on the date of the accident. The parties stipulated that the police report from the September 26, 2018, accident reflected the New Orleans Police Department brake inspector on the scene determined that the brakes were slipping: “NOPD Brake Inspector, Unit 5616, came to the scene for mechanical defects. He stated that the brakes had slippage when applied firmly.” (Ex. J-1). According to the police report, Perry informed the officer that as he approached the intersection of Eagle Street and Claiborne Avenue, the brakes on the truck failed when he attempted to stop at a stop sign, causing Perry’s truck to collide with another vehicle. (Ex. J-1). The parties also stipulated to the service history for the truck at issue, including inspection of the brakes on 8/14/17, 5/16/18, 9/7/18 (“checked front end and brakes for ware”), and 9/27/18 (“checked brake system. Found vacuum line off of brake booster”). (Ex. J-2). The parties stipulated to a summary report prepared by Wayne Minor, Sr., the Sewerage & Water Board Auto Service Supervisor, who

described his conversation with Perry about the brake failure while Perry was parked at the Carrollton Water Plant immediately following the accident, and the subsequent decision by Perry to drive the vehicle to Central Yard. (Ex. J-3). The summary by Minor reflects that Minor instructed Perry to leave the truck at the Carrollton Water Plant, and Minor would tow the truck the following day to Central Yard for repair. (Ex. J-3).

According to the Disciplinary Action Summary prepared by Byron Iverson and Iverson's testimony, Perry testified at the November 12, 2019, accident review board hearing that Perry was aware of the brake issues prior to the September 26, 2018, accident, and that Perry had informed his supervisor of the brake issues prior to the accident. (Ex. B-1; Tr. at 33). At the November 12, 2019 internal hearing, Perry's supervisor testified he was unaware of the brake problem prior to the accident. (Tr. at 36). Perry's supervisor, Kevin Burfect, who has been employed by the Sewerage & Water Board for 28 years, testified at the civil service hearing. (Tr. at 71). Burfect testified credibly that Perry never informed him of a problem with the brakes on the truck. (Tr. at 74). Burfect also testified he has known Perry for 15 years, and that he has a good relationship with Perry. (Tr. at 73). Burfect further stated that Perry knew Perry could call Burfect if Perry needed anything. (Tr. at 74). Burfect described Perry as a "personal friend." (Tr. at 75). At the civil service hearing, Perry testified that "[a]fter the accident happened, I knew that it had – brake problems, yet. But, before that, I didn't know this truck had brake problems." (Tr. at 137). Perry testified that he was nervous in the accident review board hearing on November 12, 2019, and described the experience as "scary." (Tr. at 137). Therefore, Perry changed his testimony about his knowledge of the brake problem prior to the accident and changed his testimony about informing his supervisor of the brake problem prior to the accident. If the Commission accepts this testimony, Perry was not at fault in the September 26, 2020, accident.

Byron Iverson, the Sewerage & Water Board disciplinary specialist, testified that one reason Perry's conduct was dangerous was because Perry drove the truck on September 26, 2018, despite the fact that Perry knew the truck had a brake problem. (Tr. at 22, 24-25). Iverson's Disciplinary Action Summary states that "Mr. Perry was responsible for the preventable accident because he knew prior to operating the vehicle and the accident, there were issues with the vehicle's brakes, yet he still chose to operate it." (Ex. B-1). The November 13, 2019, Inter-Office Memorandum following the Accident Review Board hearing states that "Mr. Perry knew the vehicle had mechanical issues with the braking system and left the plant onto a public street the day of the accident." (Ex. B-2).

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 (quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094). The Sewerage & Water Board has met its burden of showing that Perry engaged in unsafe conduct when he drove a truck with known brake problems from the Carrollton Water Plant to Central Yard. The Sewerage & Water Board has likewise shown that this conduct impaired the efficiency

of the public service, as driving the truck from the Carrollton Water Plant to Central Yard exposed the public to a dangerous truck. (Tr. at 21-24). 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); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). Because the Sewerage & Water Board based the five-day suspension of Perry, in part, on his negligence in driving a truck Perry knew had brake problems before the accident, the discipline is not commensurate with the infraction. Crediting the sworn testimony of Burfect and Perry at the civil service hearing, the only unsafe conduct Perry engaged in was driving the truck from Carrollton Water Plant to Central Yard, and this unsafe conduct did not cause the September 26, 2018, accident at issue. Therefore, I recommend that the Commission reduce the discipline to a two-day suspension.

DATED: December 16, 2020.

s/Christina Carroll

Christina Carroll
Hearing Officer