



CITY OF NEW ORLEANS

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Thursday, June 6, 2019

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

Re: **Amy Fields-Henry VS.
Department of Police
Docket Number: 8839**

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 - 6/6/2019 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, 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: Shaun Ferguson
Mary Katherine Kaufman
Brendan M. Greene
Amy Fields-Henry

file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

AMY FIELDS-HENRY, Appellant, vs. DEPARTMENT OF POLICE, Appointing Authority.	DOCKET No.: 8839
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I. INTRODUCTION

Appellant, Amy Fields-Henry, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1 and asks the Commission to find that the Police Department for the City of New Orleans (hereinafter “NOPD”) did not have sufficient cause to discipline her. At all times relevant to the instant appeal, Appellant served as a Police Officer for NOPD and had permanent status as a classified employee. The Parties stipulated that NOPD’s investigation in the Appellant’s alleged misconduct complied with all aspects of Louisiana Revised Statute 40:2531 (commonly referred to as the “Police Officer’s Bill of Rights”)(Tr. at 3:21-4:7).

A referee, appointed by the Commission, presided over one day of hearing during which both Parties had an opportunity to call witnesses and present evidence. The referee prepared a report and recommendation based upon the testimony and evidence in the record. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the referee’s report. Based upon our review, we DENY the appeal and render the following judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

The allegations against Appellant stem from her investigation of an apparent homicide. (H.E. Exh. 1). According to NOPD, Appellant failed to thoroughly investigate the crime scene – which was the victim’s vehicle – in violation of a provision in NOPD Rule 4 that reads as follows:

Rule 4: Performance of Duty, Paragraph 4, Neglect of Duty, subsection C, paragraph 8 – Failing to thoroughly search for, collect, preserve, and identify evidence in an arrest or investigative situation.

Id.

Appellant’s alleged failure to collect and preserve possible evidence resulted in the victim’s mother (hereinafter “Complainant”) lodging a formal complaint against Appellant. After investigating Complainant’s concerns, NOPD suspended Appellant for two days. *Id.*

B. Appellant’s Investigation

The facts of this case are tragic. On Fathers’ Day 2015 (June 21st) Appellant received an order to investigate a possible homicide in the Fourth District. When she arrived on scene, she observed the deceased victim (a young man referred to hereinafter as “Mr. H”) slumped inside of a black truck. (Tr. at 63:14-23). Appellant also noted that there were several spent shell casings near the passenger-side door of the truck. *Id.* at 63:21-25. According to Appellant, she made brief introductions to members of Mr. H’s family, including the Complainant. Appellant denied that any of her initial conversations with witnesses at the scene involved a possible motive for the murder. *Id.* at 64:23-65:7.

Once she had completed her initial observation of the scene, Appellant arranged to have Mr. H’s vehicle impounded in order to execute a search warrant of the vehicle’s contents. NOPD

personnel relocated the vehicle to NOPD's crime lab facility where Officer Theodore Koelling, a crime lab technician, assisted Appellant in a search of the vehicle. *Id.* at 17:2-8. While searching the vehicle, Appellant looked in the center console and found a yellow grocery bag with \$660 in cash along with two empty currency bags with markings from Chase Bank and Hancock Bank (hereinafter referred to as the "bank bags"). *Id.* at 14:14-15:6, 65:17-66:6. Initially, Appellant did not believe that the bank bags were pertinent to her investigation because she did not believe (at the time) that Mr. H had been the victim of a robbery prior to his death. In support of her initial impression that Mr. H had not been robbed, Appellant testified that; 1) the yellow grocery bag with \$660 in cash was undisturbed and found in the same location as the empty bank bags, 2) Mr. H's wallet was still on his person at the time of his death, and 3) Mr. H's vehicle did not appear to have been ransacked. *Id.* at 70:1-71:1.

Following Appellant's search of Mr. H's vehicle, NOPD returned the vehicle to Mr. H's family. Shortly thereafter, the Complainant contacted NOPD to complain that Appellant had failed to conduct a thorough investigation because she had left the two bank bags in the vehicle without processing them as evidence. *Id.* at 14:14-15:6. The Complainant further suggested that Appellant had ignored the Complainant's statement that Mr. H had been robbed of approximately \$15,000 in cash on the day of his death. *Id.* at 15:21-16:10.

Appellant denied that the Complainant had made any allegations regarding a robbery until after Appellant had already searched Mr. H's vehicle. Appellant insisted that she was previously unaware that Mr. H may have had up to \$15,000 in cash in the bank bags. *Id.* at 68:21-69:4. Eventually, the Complainant informed Appellant that she was not satisfied with the investigation.

Sergeant Peter Hansche was a supervisor within NOPD's homicide division at all times relevant to the instant appeal and reviewed Appellant's investigation. *Id.* at 39:17-25. He initially

became concerned about the thoroughness of Appellant's investigation after speaking with the Complainant and learning about the two bank bags Appellant had failed to collect and process as evidence. Sgt. Hansche acknowledged that the families of homicide victims often raise concerns about the lack of progress in an investigation. *Id.* at 40:5-16. He also observed that NOPD cannot collect every piece of evidence at a crime scene and relies upon detectives to identify items with probative value. *Id.* at 46:22-47:7, 47:20-48:3. In this case, however, Sgt. Hansche viewed the bank bags as "obvious" pieces of evidence and Appellant's failure to collect such evidence as a serious problem. *Id.* at 52:23-53:2. Sgt. Hansche went so far as to compare Appellant's action to leaving behind a firearm or a piece of ammunition at a crime scene. *Id.* at 53:2-5. Ultimately, Sgt. Hansche and his supervisor decided to reassign Mr. H's murder investigation to another detective. *Id.* at 41:7-12. According to Sgt. Hansche, reassigning an investigation is a rare step for NOPD, but believed that there were "exceptional circumstances" justifying Appellant's reassignment. *Id.* at 41:13-19.

Commander Doug Eckert, a twenty-one-year veteran of NOPD, presided over Appellant's pre-disciplinary hearing. *Id.* at 55:7-16. After reviewing the facts of the case, Cmdr. Eckert came to the conclusion that Appellant had acted in a negligent manner when she failed to collect the bank bags and log them as evidence in Mr. H's murder. *Id.* at 56:11-16. Cmdr. Eckert testified that Appellant's actions could have impaired the criminal prosecution of the perpetrators of Mr. H's murder and reflected poorly upon NOPD. *Id.* at 57:9-18. Ultimately, Cmdr. Eckert recommended that NOPD suspend Appellant for two days and then-Superintendent Michael Harrison adopted that recommendation.

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 Misconduct

NOPD’s policy regarding the collection of evidence states in part:

Officers must include in their reports adequate reference to all material evidence and facts which are reasonably believed to be exculpatory to any individual in the case....Evidence or facts are considered material if there is a reasonable probability that they may impact the result of a criminal proceeding or trial.

(NOPD Exh. 6).

Appellant argued that the empty bank bags were not “material” at the time for her initial investigation because other evidence suggested that Mr. H had not been the victim of a robbery prior to his death. Sgt. Hansche and Cmdr. Eckert strongly disagreed with Appellant’s position with Sgt. Hansche describing the empty bank bags as “obvious” pieces of evidence and Cmdr. Eckert arguing that Appellant was negligent for not collecting them.

The Commission is aware that hindsight is often 20/20 and detectives in the field must be able to exercise discretion when it comes to conducting investigations. Nevertheless, the Commission accepts the testimony of Sgt. Hansche and Cmdr. Eckert that empty bank bags at the scene of a murder are/were obviously important pieces of evidence that could impact the outcome of the investigation. The fact that Appellant did not maintain a chain of custody for the bank bags subsequent to her execution of the search warrant rendered them virtually useless when she eventually did learn that Mr. H may have been the victim of a robbery. Cmdr. Eckert argued that this in turn could negatively impact any criminal prosecution of the perpetrators of Mr. H’s murder.

Bearing in mind the above findings of fact, the Commission finds that NOPD has established that Appellant’s failure to collect and process the bank bags constituted a breach of NOPD policy.

B. Impact on the Appointing Authority’s Efficient Operations

The Complainant was clearly dissatisfied with Appellant’s approach to the investigation into her son’s murder and made that dissatisfaction known to Appellant’s supervisors. Both Sgt. Hansche and Cmdr. Eckert asserted that Appellant’s failure to diligently collect and process evidence at the scene of a crime reflected poorly upon NOPD as a whole and suggested that the Homicide Division did not thoroughly investigate cases. Other members of Mr. H’s family raised similar concerns.

The Commission finds that there is a great deal at stake when considering the public's trust in the thoroughness of NOPD investigations. Victims, families of victims and the general public must be able to have confidence that NOPD will diligently collect evidence and pursue perpetrators of crimes to the fullest extent of the law. This perception is a comfort for law abiding residents and a deterrent for those who would break the law.

The Commission does not suggest that Appellant's actions were intentional or had wide-ranging impact. But they did serve to compromise the relationship between NOPD and the family of a victim of homicide. So much so that NOPD made the rare move of reassigning the investigation to another detective.

Based upon the record before us, the undersigned Commissioners find that Appellant's misconduct did have an adverse impact on NOPD's efficient operations.

C. Was Appellant's Discipline Commensurate with his Misconduct

In conducting its analysis, the Commission must determine if Appellant's discipline 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 *Staehle v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

NOPD suspended Appellant for two days after substantiating allegations that she violated NOPD's policy regarding evidence collection. In support of the suspension, NOPD introduced testimony from veteran personnel who described the severity of Appellant's actions and the potential impact it could have on a future criminal prosecution.

NOPD has an interest and responsibility to promote the diligent and thorough investigation of crimes, especially homicides. In doing so, NOPD has chosen to hold its officers and detectives

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to very high standards when it comes to evidence collection. This case presents an example of those high standards at play. The presence or absence of \$15,000 in cash at the scene of a homicide would be an important piece of evidence. NOPD has established that Appellant's failure to collect the bank bags and process them as material evidence compromised the integrity of the investigation. While a two-day suspension is a serious form of discipline given NOPD did not introduce any aggravating factors, it is not so severe a form of discipline as to be arbitrary or capricious. The Commission would only caution NOPD that it has set a very high bar when it comes to the collection of evidence and should diligently hold all officers and detectives to the same standard.

V. CONCLUSION

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

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SIGNATURES APPEAR ON THE FOLLOWING PAGE.

Judgment rendered this 6th day of June, 2019.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER



JOHN H. KORN, COMMISSIONER

5/21/19

DATE

CONCUR



BRITTNEY RICHARDSON, COMMISSIONER

5/21/2019

DATE



CLIFTON MOORE, JR., VICE-CHAIRPERSON

5/6/2019

DATE