



# 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

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Thursday, May 10, 2018

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

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

Re: **LaQuana Ruffin VS.  
Department of Police  
Docket Number: 8399**

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 - 5/10/2018 - 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: Michael S. Harrison  
Elizabeth S. Robins  
Jim Mullaly  
LaQuana Ruffin

file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

LAQUANA RUFFIN  vs.  DEPARTMENT OF POLICE	DOCKET No.: 8399
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**I. INTRODUCTION**

Appellant, LaQuana Ruffin, 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 Complaint Operator for NOPD and had permanent status as a classified employee.

A referee, appointed by the Commission, presided over three days 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 hearing examiner’s report. Based upon our review, we render the following judgment.

## II. FACTUAL BACKGROUND

### A. Procedural Posture

Prior to the hearing, Appellant filed a motion for summary disposition pursuant to Rule II, § 6.1(f) which provides for summary disposition where, “the written notice expressing the cause for the action complained against is insufficient; or, that the cause as expressed does not constitute legal grounds for the disciplinary action.” Appellant alleged that the termination notice did not sufficiently express the grounds for her discipline and asked the Commission to vacate the discipline and reinstate Appellant. The Commission denied Appellant’s motion and found that the termination notice issued to Appellant did sufficiently articulate the grounds upon which it based its termination decision. In issuing its order, however, the Commission did issue the following guidance to the hearing examiner; “should NOPD attempt to introduce alleged misconduct outside of March 1-16, 2014 or beyond the eight calls identified in the letter, the hearing examiner, **or** the Commission itself, will be in a position to prevent such an overreach.” (emphasis added).

During the first day of hearing, the Hearing Examiner considered a motion *in limine* by Appellant. Through her motion, Appellant sought to prevent the introduction of any evidence beyond March 1-16, 2014. The Parties agree that the alleged misconduct, at issue - eight “dropped” 911 calls - occurred in April 2014 not March 2014. NOPD argued that the March dates cited in the letter were a typographical error. The Hearing Examiner rightly focused on the Commission’s use of the word “or.” The Commission’s guidance contained the above-quoted disjunctive phrase to make clear that NOPD was free to introduce evidence regarding the eight alleged “dropped” calls identified in the termination notice. This was true even if some or all of the calls occurred beyond March 16, 2014.

The Commission also emphasizes that Appellant was well aware that NOPD's investigation focused upon eight alleged instances when she allegedly hung up on 911 callers. She met with representatives from the Orleans Parish Communications District and NOPD regarding the allegations against her. During that meeting, Appellant had the opportunity to review audit records that are in evidence. Clearly then, her ability to prepare an adequate defense was not compromised by the Appointing Authority's error in communicating the timeframe of the audit. We find that the Hearing Examiner's denial of Appellant's motion *in limine* was consistent with the Commission's denial of Appellant's motion for summary disposition.

### **B. Alleged Misconduct**

NOPD terminated Appellant effective April 10, 2015. (H.E. Exh. 1). The reason NOPD gave for Appellant's termination was her violation of "NOPD Rule 4: Performance of Duty; Paragraph 4: Neglect of Duty, subparagraph (a) to wit; NOPD Communications Services; SOP, Policy 81.4.1 E9-1-1 Calls: Processing 9-1-1 Calls" (hereinafter referred to as "911 Policy"). *Id.* The relevant portion of the 911 Policy reads as follows:

Some "911" calls may be received in which the caller hangs up or the call is disconnected before relaying any information to the operator. On these calls, the operator must immediately attempt to call the phone number as indicated on the "ANI" and "ALI" screens.

*Id.* According to NOPD, Appellant violated this policy on eight occasions when she hung up on callers and failed to call six of the callers back. *Id.* NOPD also suspended Appellant for a total of sixty days in connection with two other alleged rule violations that stem from the same set of facts. Appellant did not actually serve any suspension days.

### **C. NOPD Call Center & Audit of Appellant's Activity**

During the relevant period of time, NOPD maintained its 911 call center in a building operated by the Orleans Parish Communications District ("OPCM"). Police Complaint Operators

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(“PCOs”), like Appellant, were stationed at computer terminals within the OPCM and a software program would automatically distribute incoming 911 calls to the OPC that had been “available” (not responding to a call) for the longest duration of time. (Tr. v. 2 at 35:11-15).<sup>1</sup> When a call came into a PCO, he/she would hear a “beep” or “tone” in their headset and see the caller’s information on their computer screen. They would then automatically be connected to the caller. The call-management software in use at the time instantly provided PCOs, like Appellant, with the caller’s phone number and address. PCOs would then be able to generate a call for service and aid in the dispatch of NOPD resources, or transfer the call to the Fire Department or Emergency Medical Services. *Id.* at 61:3-9.

At some point in time during in 2014, NOPD received a handwritten, anonymous note alleging that Appellant had hung up on 911 callers and left her line “open” for several minutes after calls. (Tr. v. 2 at 7:21-8:4; NOPD Exh. 1). Captain Simon Hargrove supervised NOPD’s Communications Section at the time and sought assistance from Frith Malin, an OPCM staff member, to investigate the allegations contained in the note. *Id.* at 12:20-13:15.

In response to Capt. Hargrove’s request for investigation, Ms. Malin prepared a memorandum and a spreadsheet that contained an analysis of all of the 911 calls – with a duration of three seconds or less – fielded by Appellant between March 1, 2014 and April 15, 2014. *Id.* at 14:15-23. For the period of time in question, Ms. Malin identified 110 calls that lasted three seconds or less. Capt. Hargrove testified that the three second duration of the calls was concerning because it was unlikely that Appellant would have been able to secure all required information in such short period of time. *Id.* at 15:9-22. He was also concerned about the high volume of calls.

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<sup>1</sup> An apt analogy used by one of the witnesses likened the call distribution software to a card dealer. Essentially, the software “dealt” calls to PCOs depending upon how long they had been idle.

OPCD maintains “workstation logs” that contain detailed information regarding each call including every action an operator takes in relation to the call. Generally, the software OPCD uses to manage the workstation logs “writes over” existing data once every twenty-one days, depending on the volume of calls. *Id.* at 16:20-17:5.<sup>2</sup> As a result, Capt. Hargrove was only able to retrieve detailed information regarding eight out of the 110 calls with a duration of three seconds or less. For all eight calls, Capt. Hargrove determined that Appellant – identified in the reports as “Operator 240” – executed a disconnect function by pressing a button on her keyboard. *Id.* at 17:17-18:20.

NOPD policy required Appellant to attempt to call back any disconnected caller using the number provided by the software. (H.E. Exh. 1). Therefore, after discovering that Appellant had disconnected the eight calls in question, Capt. Hargrove set out to determine if Appellant had made an attempt to call back any of the disconnected callers. Record show that Appellant did not call six of the eight disconnected calls. Appellant’s failure to make call-backs coupled with her active role in disconnecting calls caused Capt. Hargrove to believe that Appellant had intentionally disconnected the six calls identified in the termination notice.

Captain Stephen Gordon oversaw the operations of the OPCD and was ultimately responsible for ensuring that the facilities, equipment and software met the needs of emergency call operators for NOPD, NOFD and EMS. (Tr. v. 2 at 59:2-18). Capt. Gordon explained that all PCOs had three computer screens at their workstations. One that contained information regarding the incoming call, one that displayed the computer-aided dispatch system (“CAD”) and another that displayed the geographical origin of the call on a map.

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<sup>2</sup> Though not explicitly stated in the record, the undersigned Commissioners assume that the write-over function keeps the volume of data manageable.

Capt. Gordon testified that, in his estimation, it would be very difficult, if not impossible, for a PCO to capture all of the information necessary to process an emergency call in three seconds or less. (Tr. v. 2 at 70:17-22). Capt. Gordon met with Appellant, Capt. Hargrove and Ms. Malin to review the 110 short-duration calls and audit records related to those calls. *Id.* at 71:23-72:12. Capt. Gordon testified that records maintained by OPCD – in evidence as “NOPD Exhibit 7” – show that Appellant actively disconnected the call as opposed to some other action. (Tr. v. 2 at 74:24-75:4). Capt. Gordon also identified two incidents involving callers who, after being disconnected by Appellant, called 911 again and spoke to a different PCO; in one instance the second 911 call lasted for four minutes and fifty-seven seconds and the other lasted eight minutes and twenty-nine seconds. *Id.* at 79:12-18, 87:2-13. For each of the eight calls, the records reflect that Appellant took an active measure to disconnect the call rather than some action taken by the caller. *E.g.*, tr. v. 2 at 86:14-16; 87:2-8.

Capt. Gordon noted that Appellant’s call volume was much higher than other call takers, in some cases Appellant handled twice as many calls as other PCOs. (Tr. v. 2 at 90:21-25). He acknowledged that, out of the approximately 157 calls per day that Appellant handled, NOPD and the OPCM was able to confirm that Appellant had actively disconnected only eight of them. *Id.* at 91:1-18. Capt. Gordon also testified that, if a PCO received a call that presented with a busy signal or a ring, the PCO would have to release that call by hitting a key on his or her keyboard. *Id.* at 99:14-100:1.

Karl Fasold was the Assistant Manager of Technology for the OPCD during all times relevant to the instant appeal. (Tr. v. 3 at 6:1-10). He had worked at OPCD since 2004 and was responsible for ensuring that all telephone and computer systems were in good working order at the OPCD. Mr. Fasold testified that, based upon his review of the audit logs, the calls at issue



were “valid voice calls” and not abandoned calls. *Id.* at 15:16-23. He went on to explain that the audit logs were not intended to be a personnel management tool but rather a method to monitor the operation of the software and address malfunctions, glitches or bugs. As a result, the audit log captured every single keystroke and function executed by an operator during a finite period of time. (Tr. v. 3 at 16:15-24; NOPD Exh. 16). According to Mr. Fasold, the logs unequivocally showed that Appellant had disconnected the emergency calls at issue by pressing a button. *Id.* at 17:23-18:3, 22:22-23:5. Mr. Fasold also confirmed that Appellant did not call back any of the disconnected callers. *Id.* at 28:3-29:1. Mr. Fasold also observed that Appellant did not make any attempt to greet the caller or follow-up silence with typical questions like; “Is there anybody there?” or “You’ve reached 911, do you have an emergency, do you need the police?” *Id.* at 34:18-35:1.

The call-intake system in place at the time tracked “abandoned” 911 calls and classified them into a separate category. In those circumstances, there is no “voice path” established between the caller and the PCO. *Id.* at 37:6-15. While abandoned calls are returned to an “abandoned call queue” to be addressed by available operators, a disconnected call would not go into such a queue and it is the responsibility of the PCO that disconnected the call to make a call-back. *Id.* at 54:7-20. The software did not classify any of the eight disconnected calls as “abandoned” and therefore none of them were ever in the abandoned call queue.

When asked about the possibility that an equipment malfunction or software glitch could have caused the call in question to be disconnected, Mr. Fasold recounted an earlier incident. During a previous investigation, Mr. Fasold believed that the short duration of some calls sent to a specific workstation was the product of an equipment or software malfunction. *Id.* at 11:21-11:1. As a result, Mr. Fasold took the workstation out of service and then rebuilt it “from scratch” to



eliminate the possibility of any equipment malfunction. *Id.* at 32:21-334. After an exhaustive examination of the workstation equipment, however, Mr. Fasold and the vendor of the equipment determined that the workstation was fully functional and the dropped calls were attributable to the operator(s). *Id.* at 11:7-12:16, 33:17-24. When OPCD put the workstation back into service, Mr. Fasold began monitoring all activity occurring on the workstation. Based upon his observations, he determined that operators had actively terminated emergency calls prior to taking any information or rendering any assistance. Several operators, including Appellant, received discipline for their role in the disconnected calls. (NOPD Exh. 2).

Ms. Gesielle Roussel-Hayes testified as part of Appellant's case-in-chief. Ms. Hayes was an Assistant Police Communications Supervisor and directly supervised Appellant during all times relevant to the instant appeal. As a supervisor in NOPD's Communications Division, Ms. Hayes was familiar with the process employed by PCOs to report any difficulties with respect to the 911 call-taking equipment. (Tr. v. 3 at 61:14-62:1). Ms. Hayes recalled that at least two other PCOs – but not Appellant – had complained about “hang ups” while working under her supervision. *Id.* at 63:2-16. As part of her quality control practices, Ms. Hayes would randomly select PCOs and listen in to calls to ensure that the PCO was executing his/her duties pursuant to NOPD rules. Ms. Hayes did not recall having any issues with the manner in which Appellant handled calls.

Appellant challenged NOPD's evidence with respect to the action it allegedly recorded Appellant taking, namely, pressing the “F8” button on her keyboard to disconnect the call. Appellant claimed that she never used her keyboard and would exclusively manipulate her mouse to operate her workstation. *Id.* at 79:2-8. Yet she admitted that, if a call was disconnected, she had to report it to her supervisors. *Id.* at 80:6-11. But the record does not contain any evidence that Appellant had reported any issues with her equipment or with abandoned calls during the relevant

period of time. Appellant denied hanging up on emergency callers and claimed that she would not risk her livelihood in taking such action. She went on to observe that supervisors would listen in on calls from time to time and PCOs did not know if a supervisor was also listening to a call. *Id.* at 82:7-83:7.

### 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

The Commission makes the following findings of fact:

1. NOPD established that Appellant took an active measure to disconnect eight calls.
2. Out of the eight calls, NOPD did not pursue discipline on two of those calls.
3. Appellant did not make any attempt to call back the individuals who initiated the six calls that form the basis of her discipline.

Before the Commission were two versions of events supported by very different types of evidence. First, there was NOPD's version in which Appellant intentionally disconnected six 911 calls. In support of this evidence, NOPD introduced the testimony of experienced professionals who had worked in the OPCM for several years and were very familiar with the equipment and software in use. According to this several witnesses, Appellant, identified in the audit logs as "Operator 240" pressed a button on her keyboard to hang up on incoming 911 calls. The audit logs constitute compelling evidence in support of NOPD's version.

Appellant presented a second version of events in which she never used a keystroke to disconnect a call. In support of her version, Appellant offered only her vague denial of having any recollection of the six calls at issue. And, while she complained that the workstations at OPCD were not "put together correctly," she did not bring any concerns about the functionality of the equipment to her supervisor's attention during the period of time in question. Appellant called Ms. Hayes to support her version of events, but Ms. Hayes's testimony actually had the opposite effect. For example, Ms. Hayes testified that PCOs would routinely approach her with concerns about the equipment, but did not identify any concerns brought by Appellant. Then, Ms. Hayes attempted to defend Appellant by suggesting that the calls in question were "abandoned" as opposed to "disconnected." The Commission did not question Ms. Hayes's candor or credibility, but it was

clear that she did not have all of the information available to her. Ms. Hayes herself acknowledged that OPCD's system placed "abandoned" calls in a distinct queue to be addressed by the next available caller. For disconnected calls, the individual operator had the responsibility to make a call-back. The evidence established that none of the six calls in question were placed in the "abandoned" call queue. This serves to completely undercut Ms. Hayes's assumption regarding the calls.

Witnesses for both NOPD and OPCD testified that Appellant's call volume was almost double that of her peers. At first blush this may suggest that Appellant was an efficient call-taker. But upon further examination, we agree with Mr. Fasold and the hearing examiner that the high call volume coupled with the 110 calls that lasted three seconds or less tends to support NOPD's claim that Appellant was regularly hanging up on callers.<sup>3</sup>

The undersigned appreciate that the call audit logs were never intended to be a personnel management tool and are therefore require some expert translation. Appellant did not object to the translation provided by Mr. Fasold and Capt. Gordon and the Commission finds that the testimony provided by these two witnesses to be both credible and compelling.

Based upon the evidence before us, the undersigned Commissioners find that NOPD has established that Appellant engaged in the misconduct alleged in the termination notice.

### **B. Impact on NOPD's Efficient Operations**

Appropriately, the Parties spent the majority of the hearing on testimony regarding the allegations against Appellant rather than the impact such misconduct would have on NOPD's

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<sup>3</sup> The Commission notes that NOPD did not discipline Appellant for the 110 calls that lasted three seconds or less and instead focused on a subset of the 110 because it was not able to recover audit logs for all 110. Thus, instead of serving as the basis for discipline, the 110 calls represent circumstantial evidence that tends to support the underlying allegation.

efficient operations. There is no doubt that residents of New Orleans put a great deal of faith in the 911 emergency call system. The dedicated professionals who work in the pressure-packed world of first responders are often overlooked and underappreciated but play a vital role in how NOPD, NOFD and EMS respond to life-or-death situations. When an emergency call-taker actively hangs up on a caller, he or she is committing an act of betrayal that compromises the City's ability to respond to emergencies. Worse still, he or she compromises the caller's faith in the City's commitment to safety and security. Finally, he or she does a disservice to the other hardworking professionals who handle each and every call that comes to them.

Appellant compounded the severity of her misconduct by failing to call back callers she disconnected. Had she done so, she would have possibly been able to claim that her actions were innocent mistakes. Some of the disconnected callers did call 911 again and were able to communicate their emergencies to NOPD personnel. One caller was trying to get NOPD assistance because someone was trying to gain entry to her home and another was reporting an armed individual repeatedly walking around her residence. (NOPD Exh. 4). This drives home the fact that the calls at issue were genuine and urgent.

The Commission finds that Appellant's actions had an adverse impact on the efficient operations of both NOPD and the City at large.

### **C. Was the Discipline Commensurate with Appellant's Offense**

In conducting its analysis, the Commission must determine if Appellant's termination 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 agrees with Mr. Fasold that one instance of a 911 call taker intentionally disconnecting an emergency call prior to obtaining any information from the caller warrants termination. In her testimony, Ms. Hayes appeared to echo this sentiment when she observed that no one, in her twenty-four years of service in 911 call centers, ever intentionally hung up on an individual calling for help. To her, such an action was “inconceivable.” This speaks to the extreme nature of Appellant’s misconduct.

NOPD relied in part on a prior three-day suspension issued to Appellant for hanging up on three 911 callers. (NOPD Exh. 2). In the prior disciplinary notice, NOPD advised Appellant that any future violation of a similar nature could result in more severe disciplinary action....” *Id.* The Commission views this prior disciplinary action as lenient and further evidence that Appellant should have fully recognized that intentionally disconnecting a 911 call represented serious misconduct.

Based upon the record before us, the undersigned Commissioners find that termination was an appropriate level of discipline given the nature of Appellant’s misconduct.

## V. CONCLUSION

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

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L. Ruffin  
No. 8399

Judgment rendered this 10<sup>th</sup> day of May, 2018.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER  
  
\_\_\_\_\_  
CLIFTON MOORE, JR., COMMISSIONER

5/2/2018  
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DATE

CONCUR  
  
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MICHELLE D. CRAIG, CHAIRPERSON

4/25/2018  
\_\_\_\_\_  
DATE

  
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RONALD P. McCLAIN, VICE-CHAIRMAN

5/9/18  
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DATE