



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION  
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DIRECTOR OF PERSONNEL

Friday, September 13, 2024

Mr. Eric Hessler  
PANO 320 N. Carrollton Avenue #202  
New Orleans, LA 70119

Re: **Ernest Crayton VS.  
Department of Police  
Docket Number: 9614**

Dear Mr. Hessler:

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 - 9/13/2024 - 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: Anne E. Kirkpatrick  
Elizabeth A Weigand  
Jay Ginsberg  
Ernest Crayton  
file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**ERNEST CRAYTON,  
Appellant**

**Docket No. 9614**

v.

**DEPARTMENT OF POLICE,  
Appointing Authority**

**DECISION**

Appellant, Ernest Crayton, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his demotion effective May 19, 2024, to Police Investigator Specialist. (Ex. HE-1). At all relevant times, Appellant, who retired from the New Orleans Police Department with 30 years of service, had permanent status as a civilian Police Investigator Specialist Supervisor. (Ex. HE-1; Tr. at 30). A Hearing Examiner, appointed by the Commission, presided over a hearing on July 9, 2024. At this hearing, both parties had an opportunity to call witnesses and present evidence.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the hearing, all exhibits submitted at the hearing, the Hearing Examiner's report dated August 28, 2024, and controlling Louisiana law.

For the reasons set forth below, Mr. Crayton's appeal is DENIED.

**I. FACTUAL BACKGROUND**

On July 26, 2023, Social Service Worker Senior Kythaia Hale complained that Mr. Crayton had made several unwelcome comments of a sexual nature to her, and that Mr. Crayton's behavior was making her uncomfortable. (Ex. HE-1; 11). Mr. Crayton and Ms. Hale work in the special victims' section of the New Orleans Police Department. (Tr. at 23). At the hearing, Ms. Hale

testified about the incidents underlying her complaint. (Tr. at 9-21). Ms. Hale reported that Mr. Crayton asked for her address on the day after Father's Day, after he told Ms. Hale and a co-worker that they hated men because they failed to wish him a happy Father's Day. (Tr. at 12). This comment prompted Ms. Hale to ask for his cell phone number and text him a belated "Happy Father's Day." (Tr. at 12). Mr. Crayton responded by asking for Ms. Hale's address. (Tr. at 12).

On July 14, 2023, while Ms. Hale was working in her supervisor's office, Mr. Crayton had a conversation with her, during which he said, "I can eat you out until you cry." (Tr. at 14). Ms. Hale responded, "no, you won't" and "this is getting weird." (Tr. at 14). Mr. Crayton left the office. (Tr. at 20-21).

On July 18, 2024, Ms. Hale was leaving the office to walk to Chick-Fil-A, and Mr. Crayton was in the parking lot when she left. (Tr. at 14-15). Mr. Crayton called Ms. Hale while she was walking, and she ignored the first call. (Tr. at 15). When he called a second time, she answered, and he said, "I'm glad I wasn't hungry." (Tr. at 15). Mr. Crayton also asked for assistance with his cell phone, and Ms. Hale told him to have someone else help him. (Tr. at 15). Mr. Crayton was still in the parking lot when she returned to the office. (Tr. at 20).

## II. ANALYSIS

### A. Legal Standard for Commission's Review of Discipline

"Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A)." *Whitaker v. New Orleans Police Dep't*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep't of Police*, 2000-1682 (La. App. 4 Cir. 5/9/01)). "Legal cause exists whenever an employee's conduct impairs the efficiency of the public service in which the employee is engaged." *Id.* "The Appointing Authority has the burden of proving the impairment." *Id.* (citing La. Const., art. X, §

8(A)). “The appointing authority must prove its case by a preponderance of the evidence.” *Id.* “Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the “efficient operation” of the public service.” *Id.* “It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, the 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).

**1. The Appointing Authority must show the discipline was commensurate with the infraction**

The Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance of evidence that it had good or lawful cause for disciplining the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Durning v. New Orleans Police Dep’t*, 2019-0987 (La. App. 4 Cir. 3/25/20), 294 So. 3d 536, 538, *writ denied*, 2020-00697 (La. 9/29/20), 301 So. 3d 1195; *Abbott v. New Orleans Police Dep’t*, 2014-0993 (La. App. 4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d 106 (La. 1984). The appointing authority has the burden of showing that the discipline was reasonable and not arbitrary or capricious. *Neely v. Dep’t of Fire*, 2021-0454 (La. App. 4 Cir. 12/1/21), 332 So. 3d 194, 207 (“[NOFD] did not demonstrate . . . that termination was reasonable

discipline”); *Durning*, 294 So. 3d at 540 (“the termination . . . deemed to be arbitrary and capricious”).

**B. NOPD Carried its Burden of Showing Cause for the Demotion of PIS Crayton**

The Commission credits the testimony of Ms. Hale about the offensive remarks Mr. Crayton made to her. These comments violate NOPD policy, including NOPD Operations Manual Chapter 26.3, paragraph 13. Paragraph 13 requires all NOPD employees to “[c]onduct themselves in a professional manner” and to “[a]void any type of act or discussion that the employee knows or should know others will regard as offensive.” (Ex. NOPD-1 at ¶ 13). Mr. Crayton failed to conduct himself in a professional manner, and he made offensive comments to Ms. Hale that he should have known would be offensive to her.

Mr. Crayton’s conduct impaired the efficient operation of NOPD, including undermining the working relationship between Mr. Crayton and Ms. Hale and lowering morale. (Tr. at 26). Mr. Crayton negatively affected Ms. Hale’s working conditions, making her uncomfortable at work on a number of occasions. (Tr. at 11). Ms. Hale requested that a co-worker walk with her to Chick-Fil-A on July 18, 2024, because Mr. Crayton was present in the parking lot. (Tr. at 14-15). The efficient operations of NOPD were impaired when Ms. Hale felt she needed the presence of a third party to avoid interacting with Mr. Crayton.


**C. NOPD Carried its Burden of Showing the Penalty is Commensurate with the Violation**

Deputy Superintendent Ryan Lubrano testified that NOPD aggravated the penalty against Mr. Crayton because NOPD expects supervisors to ensure a workplace free of sexual harassment, not to engage in sexually harassing conduct. (Tr. at 24). Deputy Superintendent Lobrano also testified that Mr. Crayton’s behavior was egregious, justifying the aggravated penalty. (Tr. at 44).

Further, Mr. Crayton was a civilian supervisor in the special victims' section, which investigates child abuse, rape, and domestic violence. (Tr. at 24-25). Deputy Superintendent Lobrano testified that "I certainly wouldn't tolerate that behavior anywhere, but in SVS, it was just – it was even, you know, worse." (Tr. at 24). NOPD has carried its burden of showing that the aggravated penalty was commensurate with the violation. A supervisor who exhibits sexually harassing behavior should not be acting in a supervisory capacity in a section of NOPD investigating sexual offenses.


For the reasons set forth above, Mr. Crayton's appeal is DENIED.

WRITER:

  
Mark C. Surprenant (Sep 4, 2024 10:32 EDT)

MARK SURPRENANT, COMMISSIONER

CONCUR:

  
Brittney Richardson (Sep 11, 2024 23:12 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

  
Andrew Monteverde (Sep 4, 2024 09:54 CDT)

ANDREW MONTEVERDE, COMMISSIONER