



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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**CITY CIVIL SERVICE COMMISSION**  
BRITTNEY RICHARDSON, CHAIRPERSON  
JOHN H. KORN, VICE-CHAIRPERSON  
CLIFTON J. MOORE  
MARK SURPRENANT  
RUTH WHITE DAVIS

AMY TREPAGNIER  
DIRECTOR OF PERSONNEL

Wednesday, May 3, 2023

Mr. Louis Robein  
2540 Severn Avenue, Suite 400  
Metairie, LA 70002

Re: **Ryan Neely VS.**  
**Department of Fire Docket Number: 9434**  
**consolidated with**  
**Francis Williams II VS.**  
**Department of Fire Docket Number: 9436**

Dear Mr. Robein:

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 - 5/3/2023 - 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,

A handwritten signature in blue ink that reads "Stacie Joseph".

Stacie Joseph  
Management Services Division

cc: Roman Nelson  
Max V. Camp  
Imtiaz A. Siddiqui  
Ryan Neely

Francis Williams

file

"AN EQUAL OPPORTUNITY EMPLOYER"

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**RYAN NEELY,  
Appellant**

**Docket No. 9434**

**v.**

**DEPARTMENT OF FIRE,  
Appointing Authority**

**CONSOLIDATED WITH**

**FRANCIS WILLIAMS, II,  
Appellant**

**Docket No. 9436**

**v.**

**DEPARTMENT OF FIRE,  
Appointing Authority**

**DECISION**

Appellants, Captain Ryan Neely and District Chief Francis Williams, II, bring these appeals pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from their respective December 7, 2022, letter of reprimand issued by the Department of Fire. (Exhibits HE-1, HE-2). These matters were combined for hearing at the request of the parties because the discipline arose from the same operative facts. Appellant Neely has permanent status as a Fire Captain. (Tr. at 11). Appellant Williams has permanent status as a Fire District Chief. (Tr. a t27). A Hearing Examiner, appointed by the Commission, presided over a hearing on March 6, 2023. 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 April 17, 2023, and controlling Louisiana law.

For the reasons set forth below, Captain Neely's appeal is GRANTED, and Chief Williams' appeal is also GRANTED.

### **I. FACTUAL BACKGROUND**

On September 2, 2022, Fire Recruit Devontrell Jones (now a Probationary Firefighter) was assigned to Ladder 13, Fire Station 36, 5403 Read Boulevard for the 12-hour shift beginning at 7:00 PM. (Tr. at 12, 28). Firefighter Jones was in training, and, as part of his training, the training instructor had scheduled him for a ride-along with Captain Ryan Neely. (Tr. at 13). Captain Neely had supervisory responsibility over Firefighter Jones for that shift. (Tr. at 13). When Firefighter Jones arrived, eight firefighters from two shifts were about to sit down to dinner. (Tr. at 139). Captain Neely asked Mr. Jones if he had any family members working for the Fire Department, and when Mr. Jones identified his stepfather, Captain Neely stated, "you may want to keep that to yourself." (Tr. at 14). Captain Neely explained that Varrick Dyer, Jones' stepfather has a history of workplace violence. (Tr. at 14). Chief Williams witnessed Captain Neely make this remark and viewed the incident as an "innocuous conversation between two guys." (Tr. at 33). Captain Christopher Keller also testified that Neely said, "I would keep that to myself." (Tr. at 136). The parties stipulated that three other firefighter witnesses would testify to the same effect. (Tr. at 149; Ex. NOFD-6).

Firefighter Jones reported this incident to his instructor at the training school, Captain Magee, the next work day. (Tr. at 45). Captain Magee suggested to Firefighter Jones that he submit a special report. (Tr. at 56, 61). Firefighter Jones submitted a special report about the comment

about a month later, on October 8, 2022, to Chief Michael Windsay and stated that Captain Neely told him, “we’re going to mess you over on the Second Platoon.” (Tr. at 46; Ex. NOPD-7). Firefighter Jones testified he felt intimidated by Captain Neely. (Tr. at 50). At the hearing, Firefighter Jones testified that Captain Neely said, “we’re going to give you hell on the Second Platoon.” (Tr. at 45).

The Fire Department instructed Chief Williams to charge Captain Neely with a violation of the policy against workplace harassment, but Chief Williams refused. (Tr. at 30).

Superintendent Roman Nelson testified that he credited the reports of the witnesses stating Captain Neely told Firefighter Jones that Firefighter Jones should not tell others about his relationship to Captain Dyer. (Tr. at 72). Superintendent Nelson determined that Captain Neely’s statement violated Fire Department policy prohibiting “hazing, horseplay, or pranks that interfere with another members work performance or job satisfaction” and directing firefighters not to “create an intimidating, humiliating, hostile or offensive work environment.” (Ex. HE-1; Ex. NOFD-1). According to Superintendent Nelson, Captain Neely’s statement created a hostile work environment, and Nelson considered the effect of the statement on a brand-new fire recruit. (Tr. at 75). Superintendent Nelson testified that he believed Captain Neely’s admissions justified the discipline. (Tr. at 92). In addition, he reprimanded Chief Williams for a violation of the same rule for allowing the behavior to occur in his presence. (Tr. at 105, 115; Ex. HE-2).

## II. ANALYSIS

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

#### 1. The Appointing Authority must show cause for 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”).

**a. Factors considered by Commission**

“In determining whether discipline is commensurate with the infraction, the Civil Service Commission considers the nature of the offense as well as the employee’s work record and previous disciplinary record.” *Matusoff v. Dep't of Fire*, 2019-0932 (La. App. 4 Cir. 5/20/20), 2020 Westlaw 2562940, *writ denied*, 2020-00955 (La. 10/20/20), 303 So. 3d 313. The Commission considers the “nature of the offense . . . . the employee’s work ethic, prior disciplinary records, job evaluations, and any grievances filed by the employee.” *Honore v. Dep't of Pub. Works*, 14-0986, pp. 8-9 (La. App. 4 Cir. 10/29/15), 178 So. 3d 1120, 1131, *writ denied*, 2015-2161 (La. 1/25/16), 185 So. 3d 749.

**B. The Department of Fire has Failed to Show Captain Neely and Chief Williams were Disciplined for Cause**

The Department of Fire has failed to show that the complained-of conduct occurred. In particular, Captain Neely’s statement that Firefighter Jones should keep his relationship to Varrick Dyer to himself did not violate NOFD’s policy against workplace harassment (RR-24). (Ex. NOFD-1). This single comment was not severe enough to create an intimidating or hostile environment for Firefighter Jones. The undersigned Commissioners agree with Chief Williams that “[n]othing was said that could be remotely considered hostile, or, let’s say, intimidating to Devontrell Jones.” (Tr. at 33).

Because the undersigned Commissioners find that Captain Neely's conduct did not violate RR-24, Chief Williams's failure to reprimand Captain Neely also did not violate RR-24.

The Department of Fire also failed to show that the complained-of conduct impaired the efficiency of the department. As Chief Williams testified, the incident was a "nothing situation." (Tr. at 33).

**C. The Discipline was not Commensurate with the Offense**

The Department of Fire failed to carry its burden of proof of showing that the discipline was commensurate with the violation. Captain Neely's comment was not severe enough to warrant formal discipline, especially given the credibility issues with Firefighter Jones' complaint. For the same reason, the written reprimand of Chief Williams was not commensurate with his failure to counsel Captain Neely.

**III. CONCLUSION**

For the reasons stated above, Captain Neely's and Chief Williams's appeals are GRANTED. The Department of Fire shall rescind the letters of reprimand and remove the discipline from the record of Captain Neely and Chief Williams.

This the 3<sup>rd</sup> day of May, 2023

WRITER:

Mark C. Surprenant  
Mark C. Surprenant (May 1, 2023 16:30 CDT)

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MARK SURPRENANT, COMMISSIONER

CONCUR:

*J H Korn*

J H Korn (May 1, 2023 17:02 CDT)

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JOHN KORN, VICE-CHAIRPERSON

*Ruth White Davis*

Ruth Davis (May 3, 2023 12:17 CDT)

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RUTH DAVIS, COMMISSIONER