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LISA M. HUDSON
DIRECTOR OF PERSONNEL

Tuesday, May 24, 2016

Mr. C. Theodore Alpaugh, III
639 Loyola Avenue, Suite 2500
New Orleans, LA 70113

Re: **Irma Regis VS.
Department of Police
Docket Number: 7973**

Dear Mr. Alpaugh:

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 - 5/24/2016 - 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 "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Michael S. Harrison
Shawn Lindsay
Jim Mullaly
Irma Regis

file

IRMA REGIS

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7973

Appellant was a Police Sergeant with permanent status. She was first hired by the Appointing Authority on March 17, 1991, and was promoted to Police Sergeant on February 3, 2006. Appellant was demoted and terminated from her employment with the New Orleans Police Department (“the Appointing Authority”) by letter dated January 30, 2012. As set forth in the disciplinary letter:

Sergeant Regis as a police supervisor had the duty and responsibility to perform certain tasks when she was informed that force was used towards the officer and on the arrested subject by the officer. Sergeant Regis neglected to properly supervise Officer Fortuna and failed to complete the necessary paperwork required when force is used. Instead she advised, and instructed Officer Fortuna to remove the mention of use of force and battery of a police officer from his gist of the arrest. This is a violation of Rule 4: Performance of Duty, paragraph 4, Neglect of Duty, Section C Subparagraph 4 – Failing to make a written report when such is indicated (Resisting Arrest Report).

As to the violation of Rule 6: Official Information, paragraph 2 - False or inaccurate reports which was sustained in the original investigation. Deputy Superintendent Albert concurred with the investigator's recommended disposition of Rule 6: Official Information, paragraph 2 - False or inaccurate reports.

Sergeant Regis violated this rule when Officer Fortuna provided her the details of an arrest and also presented her with the gist for the arrest of the suspect he was involved in a use of force incident with. Sergeant Regis instructed him to remove the details regarding the use of force incident causing or allowing a false or inaccurate report of an official nature to be recorded, or intentionally withholding material from such report, which is a violation of Rule 6: Official Information, paragraph 2 - False or inaccurate reports...

Sergeant Regis was additionally SUSTAINED for Rule 2: Moral Conduct, paragraph 3, Honesty and Truthfulness. Because she stated that she only told Officer Fortuna to remove the charge of battery on a Police Officer from the gist. Sergeant Regis said she did this because the elements

written in the gist did not justify the charge. The investigation revealed that Officer Fortuna wrote the justification in the gist before Sergeant Regis reviewed the gist. After reviewing the gist Sergeant Regis instructed him to take facts regarding use of force and battery on a police officer out of the police report. Sergeant Regis stated that the current gist in the report was the only gist she read. The only part of the gist she made the officer change was the removing the charge of battery on a police officer, because she stated the facts in the gist did not support the charge. This fact was refuted by Officer Fortuna and was also observed in the gist by Sergeant Michael Stalbert and Officer Marcia Thompson. As such you were not honest and truthful which is a violation of Rule 2: Moral Conduct, paragraph 3, Honesty and Truthfulness.

For the sustained violation of, Rule 4: Performance of Duty, paragraph 4, Neglect of Duty, Section C, subparagraph 4 – Failing to make a written report when such is indicated "Resisting Arrest Report" (Second Offense), the Appellant was demoted to her last Civil Service Status. For the sustained violation of Rule 2: Moral Conduct, paragraph 3, Honesty and Truthfulness, the Appellant was dismissed. For the sustained violation of Rule 6: Official Information, paragraph 2 – False or inaccurate reports, the Appellant was likewise dismissed effective January 30, 2012.

The matter was assigned by the Civil Service Commission to a Hearing Examiner pursuant to Article X, Section 12 of the Constitution of the State of Louisiana, 1974. The hearing was held over the course of three days on May 29, 2013, June 26, 2014 and August 21, 2014. The testimony presented at the hearing was transcribed by a court reporter. The three undersigned members of the Civil Service Commission have reviewed a copy of the transcript and all documentary evidence.

The Appointing Authority met its burden of proof and established that the Appellant was disciplined for cause and that the discipline imposed was commensurate with the infractions and in accordance with the Departmental disciplinary matrix.

LEGAL PRECEPTS

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer except for cause expressed in writing. LSA Const. Art. X, sect. 8(A); *Walters v. Department of Police of New Orleans*, 454 So. 2d 106 (La. 1984). The employee may appeal from such a disciplinary action to the city civil service commission. The burden on appeal, as to the factual basis for the disciplinary action is on the appointing authority. *Id.*; see also *Goins v. Department of Police*, 570 So 2d 93 (La. App. 4th Cir. 1990).

The Civil Service Commission has a duty to decide independently, from the facts presented, whether the appointing authority has good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. *Walters, supra*. Legal cause exists whenever the employee's conduct impairs the efficiency of the public service in which the employee is engaged. *Cittadino v. Department of Police*, 558 So. 2d 1311 (La. App. 4th Cir. 1990). The appointing authority has the burden of proving by a preponderance of the evidence the occurrence of the complained of activity and that the conduct complained of impaired the efficiency of the public service. *Id.* The appointing authority must also prove the actions complained of bear a real and substantial relationship to the efficient operation of the public service. *Id.* While these facts must be clearly established, they need not be established beyond a reasonable doubt. *Id.*

ANALYSIS

The Appointing Authority met its burden of proof and established that the Appellant was disciplined for cause.

Officer Fortuna testified that when he presented the Gist of his report – which is the document used to book the offender with a crime and charge him – to the Appellant for approval and signature, the Appellant informed him that he could not write the report as it was written and instructed him to remove the battery on a police officer charge as well as the verbiage that a brief struggle had ensued. Officer Fortuna testified that the Appellant explained that he would have to take a urinalysis if the battery and flight from an officer charges, along with the information regarding the struggle, were left in the report. Officer Fortuna testified that, at the direction of the Appellant (his supervising rank), he submitted what was an inaccurate report. Officer Fortuna's testimony was supported by the testimony of Sgt. Bagneris, Sgt. Stalbert, Officer Thompson and Officer Kendrick.

All of the supervisors that testified were in agreement that a supervisor is never authorized to instruct an Officer to remove a crime from a report where there are sufficient facts supporting a determination that a crime was committed. Further, each supervisor stated that whenever an officer uses force, or force is used against an Officer, a supervisor must document the use of force in a formal report.

The Appellant testified that on March 22, 2011, she noticed that Officer Fortuna had green grass stains on the back of his shirt. The Appellant testified that when she inquired about the stains on his shirt, Officer Fortuna never mentioned any use of force or battery.

The Appellant's testimony as to why she instructed Officer Fortuna to remove the battery charge is unpersuasive. On cross-examination, the Appointing Authority established that the Appellant did not inform PIB investigators that she had explored a list of possible batteries with Officer Fortuna. The Appellant admitted that she observed signs that Officer Fortuna had been involved in a struggle. The most obvious being the grass stains on Officer Fortuna's shirt. She admitted learning that Officer Fortuna used force to bring a subject to the ground and that this use of force resulted in the grass stains Appellant observed. And, when the Appellant was asked the direct question "[j]ust to be clear, you would also agree... that Officer Fortuna included language regarding a brief struggle in the initial gist that he presented to you for your approval and signature, correct?" the Appellant responded: "Yes."

Upon further cross-examination the Appellant testified that the original gist did in fact include language that "a brief struggle ensued." Further cross-examination also revealed that the original gist reviewed by Appellant clearly indicated that Officer Kendrick was also present at the scene. This contradicts Appellant's earlier testimony that she had no knowledge or information that Officer Kendrick knew of the incident. The Appellant admits that no Use of Force Report was written. Appellant also acknowledged that it was possible that she informed Officer Fortuna that he would have to submit to a urinalysis if a Use of Force Report were written.

The Appointing Authority thus proved that the Appellant neglected her duty when she failed to perform specific facts when presented with information related to Officer Fortuna's use of force. Further, the Commission finds that Appellant neglected to properly supervise Officer Fortuna, and failed to complete the necessary paperwork

required to enforce its use. Instead, Appellant advised and instructed Officer Fortuna to remove the mentioned use of force and battery on a police officer from his gist of the arrest.

The Appointing Authority also proved that the Appellant violated the Departmental Rule regarding false and inaccurate reports when she instructed the Officer Fortuna to remove the details regarding the use of force incident. The Appointing Authority further established that the Appellant provided materially false information at her pre-disciplinary hearing in violation of the Department's policy regarding honesty and truthfulness.

Additionally, the Appointing Authority established that the complained of conduct impaired the efficient operation of the Department and that the penalties imposed were commensurate with the offenses and in accordance with established guidelines. Where a Supervisor instructs a subordinate to inaccurately or falsely report a crime and gives materially false testimony to avoid the consequences, public confidence in the police service is undermined.

Lastly, the Appointing Authority demonstrated compliance with La. R.S. 40:2531. The relevant facts are not disputed. The DI-1 Complaint was received on March 21, 2011, and the DI-1 Form was completed on March 23, 2011. The Appointing Authority requested and was granted a sixty day extension, which gave the Appointing Authority 120 days or until on or about July 21, 2011, to complete its investigation. On July 19, 2011, the Appointing Authority presented the Appellant with a "Notice to Accused Law Enforcement Officer Under Investigation of a Pre-Disciplinary Hearing or Determination of an Unfounded or Unsustained Complaint (per La. R.S. 40:2531: Rights of Law

Enforcement Officers Under Investigation)” which was received by the Appellant on July 20, 2011.

The Notice provided as follows:

The internal disciplinary investigation into the allegation(s) made against you under PIB Control # 2011-0310-R, initiated on March 19, 2011, has been completed. The alleged violation(s) and the investigator's recommended disposition(s) are written below. If the disposition of any alleged violation is SUSTAINED, your disciplinary hearing date will be September 7, 2011. If the complaint's disposition is Unfounded or Not-Sustained, no disciplinary hearing will be conducted.

The Hearing scheduled for September 7, 2011, was not had. However, any argument that the July 19, 2011 “Notice to Accused” did not signal the timely completion of the investigation is unpersuasive, as is any argument regarding “the inclusion in the notice of an arbitrary hearing date.” *Abbott v. Department of Police*, NO. 2014-CA-0993, p. 23 (La. App. 4 Cir. 2/11/2015), – So.3d – (citing *Hurst v. Department of Police*, 14-0119 (La. App. 4 Cir. 7/23/14), 146 So.3d 857). Here, as in *Abbott* and *Hurst*, the July 19, 2011 notice:

[I]nform[ed] the recipient that the investigation has been completed. The next section of the document contain[ed] the investigator's recommended dispositions, and in this case, clearly state[d] that violations of departmental rules were sustained. Last, the document conclude[d] with a statement that the superintendent or his designee [was] the final approving authority. Thus, the sustained violations are subject to the Superintendent's final approval, explaining the term “recommended dispositions” ... [and] was sufficient to provide meaningful notice that the charges against [her] had been sustained and that a pre-disciplinary hearing was scheduled in compliance with La. R.S. 40:2531B(7).

Abbott, *supra* at 22 (citing *Hurst*, at 861).

Therefore, the Appointing Authority proved compliance with the mandates of La.
R.S. 40:2531(B).

Considering the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 24th DAY OF
May, 2016.



RONALD P. McCLAIN, COMMISSIONER

CONCUR:



CORDELIA D. TULLOUS, COMMISSIONER



MICHELLE D. CRAIG, CHAIRMAN