



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
BRITTNEY RICHARDSON, CHAIRPERSON
JOHN KORN, VICE-CHAIRPERSON
CLIFTON J. MOORE
MARK SURPRENANT
RUTH WHITE DAVIS

Tuesday, January 4, 2022

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

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

Re: **Anthony Edenfield VS.
Department of Police
Docket Number: 9232**

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 - 1/4/2022 - 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
Michael J. Laughlin
Jay Ginsberg
Anthony Edenfield

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**ANTHONY EDENFIELD,
Appellant**

Docket No. 9232

v.

**DEPARTMENT OF POLICE,
Appointing Authority**

DECISION

Appellant, Anthony Edenfield, 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 December 4, 2020 termination by the New Orleans Police Department. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a Police Sergeant. (HE-1; Tr at. 161, 274). A Hearing Examiner, appointed by the Commission, presided over a hearing on February 4, 2021. 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 May 4, 2021, and controlling Louisiana law.

For the reasons set forth below, Edenfield's appeal is GRANTED in part and DENIED in part.

I. FACTUAL BACKGROUND

In May and June of 2020, during a period of civil unrest following the murder of George Floyd by police officers, Sgt. Edenfield posted comments on his private Facebook account along with news articles and videos about this issue:

1. On Sunday at 11:08 PM Sgt. Edenfield shared a *Law Enforcement Today* article with the title, “New York Mayor’s daughter arrested for blocking traffic, throwing objects at police” on his Facebook page with the post, “This trash bitch.” (Ex. NOPD-1(A)).
2. On Saturday, May 30, at 10:35 PM, Sgt. Edenfield posted “Here are your animals” on his Facebook page when sharing a video published by *The Dayumm* with the description, “Man critically injured at Dallas Riots. It appears he attempted to defend a shop with a large . . .” (Exs. NOPD-1(B), NOPD-6).
3. On Saturday, May 30 at 11:23 PM, Sgt. Edenfield posted “SAVAGES!!!! ANIMALS!!!!” and shared a video published by *Proud to Be from East San Jose* with the description, “East San Jose protesters vandalizing people’s cars on the freeway trying to drag people out of their cars and blocking traffic.” (Exs. NOPD-1(C), NOPD-6).
4. On Saturday, May 30 at 10:37 PM, Sgt. Edenfield posted “This shit has moved from being about George Floyd. These idiots want to act like animals, block the road and start a checkpoint asking people if they are police officers? I am running them over and shooting if lethal force were my only way out. The asshole under the truck got what he deserved” on his Facebook page and shared a *Law Enforcement Today* article with the subject line, “Alleged thief dragged by FedEx vehicle in St. Louis riots after protesters break into trucks.” (Exs. NOPD-1(D)).
5. On Saturday, May 30 at 9:15 PM, Sgt. Edenfield posted the comment “LMAO!!!! Out for the count” on his Facebook page and shared a video posted on Mike Gonzales-Guerrero’s Facebook page with the comment, “Justified? or excess force?” (Exs. NOPD-1(E), Ex. NOPD-6). This video contains footage of a woman hitting a police

officer in the face and another officer responding by hitting the woman in the fact. (Ex. NOPD-6).

6. On Thursday, May 28 at 8:40 AM, Sgt. Edenfield posted “Is this what you idiots call social justice? ‘I got my justice!!! Got me some new matching sheets and towels.’” on his Facebook page and shared a video with 34.4 million views published by *FOX6 News Milwaukee* with the description, “Footage taken by a Minneapolis journalist shows people rushing out of Target with loads of looted product in the wake of the officer-involved death of G . . . See more.” (Ex. NOPD-1(F)).
7. On Thursday, June 4 at 5:58 AM, Sgt. Edenfield posted, “Burn down her house. Blow up her car and see if she still feels the same way” to his Facebook page and shared a *Daily Wire* article with the subject line “NYT Writer Nikole Hannah-Jones On Riots: Destroying Property Which Can Be Replaced . . .” (Ex. NOPD-1(G)).
8. On Thursday at 8:29 PM, Sgt. Edenfield posted “Animals!!! What’s the point of this?” to his Facebook page and shared a June 1 *Conservative Nation* video with 6.2 million views with the subject line, “BREAKING VIDEO OF MINNEAPOLIS SEMI TRUCK BEING ATTACKED YESTERDAY BY PEACEFUL PROTESTERS AT I-35W BRIDGE!” (Ex. NOPD-1(H), NOPD-6).

(Tr. at 163). Sgt. Edenfield has worked as a police officer for NOPD for 20 years with no prior discipline. (Tr. at 132, 274). Detective Rayell Johnson, a subordinate of Edenfield’s, who is not a “friend” of Edenfield’s on Facebook, was given printouts of Edenfield’s Facebook posts by an unnamed person, and Detective Johnson complained to NOPD about the posts on June 7, 2020. (Tr. at 10-12; Ex. HE-1). Det. Johnson testified he would be unable to work with Edenfield in the future because of the bias exhibited by Edenfield in the Facebook posts. (Tr. at 27, 30). Det.

Johnson, who is African-American, testified the term “animals” is a derogatory term used toward African-American men and that this term has a meaning in his community. (Tr. at 15-16; Ex. NOPD 2).

NOPD referred the complaint to the Public Integrity Bureau. Sergeant Sylvia Martin issued a DI-1 (“Initiation of a Formal Disciplinary Investigation”) on June 8, 2020, formally beginning the disciplinary investigation of Edenfield. (Tr. at 58; Ex. NOPD 2). The alleged violations of NOPD Policy were:

1. Rule 2, ¶ 2: Moral Conduct (Courtesy)
2. Rule 3, ¶ 3: Professional Conduct (Professionalism)
3. Rule 3, ¶ 13; Professional Conduct (Social Networking)

(Ex. NOPD-2). Lt. Denise Thomas assigned the complaint to its Police Investigator Specialist Arlen Barnes for investigation on June 19, 2020. (Tr. at 58). Barnes requested an extension of time from the Civil Service Commission to complete the investigation, and the Commission granted Barnes an additional 14 days to complete the investigation. (Tr. at 63; Ex. NOPD-3). Officer Barnes interviewed Det. Johnson and Sgt. Edenfield. (Tr. at 70). Sgt. Edenfield acknowledged the social media posts. (Tr. at 70; Ex. A-1). Officer Barnes testified that Edenfield stated that he was frustrated with the attacks on police and that he had put his 11-year-old daughter in therapy because the daughter was worried about Edenfield’s safety. (Tr. at 85; Ex. A-1). Edenfield posted all the comments and items when he was off-duty, and he did not mention on Facebook that he was a police officer. (Tr. at 86-87). Edenfield reported to Officer Barnes that he had reached out to the Officer Assistance Program for counseling. (Tr. at 88; Ex. A-1). Edenfield also provided earlier Facebook posts to Officer Barnes supportive of the LGBTQ community and racial harmony. (Tr. at 89; Exs. A-2 to A-5).

On August 7, 2020, Officer Barnes recommended sustaining the Social Networking violation (Rule 3, ¶ 13). (Tr. at 72). Officer Barnes' supervisor, Lt. Thomas, disagreed with the recommendation, and she authored a cover letter on August 14, 2020, changing the recommendation. (Tr. at 74-75, 95). Lt. Thomas recommended that the courtesy charge be sustained (Rule 2, ¶ 2) in addition to the social media charge (Rule 3, ¶ 13). (Tr. at 95; Ex. NOPD 8). Capt. Sabrina Richardson signed off on Lt. Thomas' recommendation on August 18, 2020. (Tr. at 95).

Capt. Richardson assigned the matter to a captains' committee. (Tr. at 119). Capt. Richardson chaired the captains' pre-disposition committee and served on the captains' penalty committee. (Tr. at 247). The meetings of these committees on October 26 were part of the PIB procedure for adjudication of misconduct. (Tr. at 248). The captains' committee recommended sustaining all three charges and a penalty of a five-day suspension. (Tr. at 98, 138; Ex. NOPD 9). Capt. Richardson testified she does not feel Edenfield is a racist. (Tr. at 270).

A three-person chiefs' committee, instead of a three-person captains' committee, considers the disciplinary charges carrying a potential penalty of termination. (Tr. at 119). Capt. Richardson made the decision to assign the matter to a captains' committee because the usual penalty for a social media violation is a level C on the disciplinary matrix. (Tr. at 119). Capt. Richardson received a verbal counseling because the discipline of Edenfield was a high-profile matter, and the charges should have been considered by a chiefs' committee instead of a captains' committee. (Tr. at 254-55).

On August 22, 2020, Arlinda Westbrook, the Deputy Chief for PIB, reviewed the reports, the captains' committee's recommendation, and determined that the captains' committee had failed to appropriately categorize the posts as hate speech, discriminatory, and advocating

unnecessary force. (Tr. at 102; Ex. NOPD-11 at 12). In particular, Chief Westbrook thought that the captains' committee failed to appreciate that Edenfield's statements advocated unnecessary violence. (Tr. at 102, 131). Chief Westbrook also disagreed with Lt. Thomas' conclusion that the comments did not evidence racial bias. (Tr. at 116). Under guidelines set forth in the disciplinary matrix, this determination about the character of the statements on social media increased the penalty to a Level F, carrying a presumptive penalty of an 80-day suspension, with a maximum penalty of termination. (Tr. at 100, 102, 107; Ex. NOPD-11). Chief Westbrook considered Edenfield's inability to testify as an aggravating factor and, in a cover letter, recommended termination to the Superintendent of Police. (Tr. at 100, 108). Chief Westbrook also testified that it would be difficult for Edenfield to work as a homicide detective. (Tr. at 108-09). Chief Westbrook testified she "heard a lot from the public." (Tr. at 109).

Chief Westbrook also testified she considered a mitigating factor that she "had known this officer for a while." (Tr. at 129). Chief Westbrook said that when Edenfield was assigned to PIB, he did a "good job," and he was a "good officer." (Tr. at 129). On cross-examination, Chief Westbrook testified she considered Edenfield's perfect work history. (Tr. at 132).

Superintendent of Police Shaun Ferguson, the Appointing Authority, testified he reviewed Barnes' report, Lt. Thomas' cover letter, and Chief Westbrook's cover letter. (Tr. at 194-95, 198). Superintendent Ferguson testified he agreed with Chief Westbrook's cover letter and the aggravation of the penalty to a Level F. (Tr. at 198-99). Superintendent Ferguson testified Edenfield cannot a police officer any longer. (Tr. at 200). Edenfield's credibility in court and his ability to lead other officers are compromised. (Tr. at 203, 209). Superintendent Ferguson testified that he did not consider any mitigating factors, and that no mitigating factors were presented to him. (Tr. at 234-36).

Edenfield testified that the Facebook posts were caused by his frustration with the effect of the protests on his daughter. (Tr. at 280). His daughter did not want police officers to go to work, and she would call Edenfield frequently. (Tr. at 279). She did not want to attend her normal activities until she knew “Daddy was coming home.” (Tr. at 279). Edenfield felt frustrated because he was unable to help his daughter with her distressed emotional state. (Tr. at 28). Edenfield was also concerned about the safety of police officers, including the officers under his supervision. (Tr. at 278). Edenfield testified, “Police officers were being attacked more often.” (Tr. at 278).

Edenfield had made posts on Facebook supportive of racial harmony before he was under investigation. One post stated, “I don’t care if you’re black, white, straight, gay, lesbian . . . If you’re nice to me, I’ll be nice to you.” (Ex. A-2). Edenfield had shared a BBC article about U.S. neo-Nazis directing a group from Russia, and stated “We don’t need this crap either. ‘The Base.’” (Ex. A-4). Edenfield also shared a meme stating “There’s only one race,” and posted “I don’t care what you look like, who you do or do not pray to, or who you wake up next to in the morning . . .” (Ex. A-5).

Edenfield testified that no grievance or complaint had been filed against him in 20 years alleging that he was biased, used excessive force, or engaged in biased policing. (Tr. at 291, 302). After this incident, Edenfield sought counseling through the Officer Assistance Program and sought assistance through EPIC (Ethical Policing is Courageous) to address any issues he might have. (Tr. at 307-08).

II. ANALYSIS

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). 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 suspending and terminating the classified employee and, if so, whether such discipline was commensurate with the dereliction. *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 undersigned Commissioners find that the Appointing Authority has carried its burden of showing that the conduct occurred and that it impaired the efficient operation of the Police Department. Edenfield admitted making the posts on Facebook, and the posts violate the Police Department's social media policy. Superintendent Ferguson testified Edenfield's ability to lead other officers and his ability to testify in court were compromised because of these comments. (Tr. at 203, 209).

The undersigned Commissioners find that the penalty of termination is not commensurate with the infraction. Superintendent Ferguson, the decisionmaker, testified he did not consider any mitigating factors, including the officer's 20-year work history with no discipline, his emotional state at the time, and the earlier posts supportive of racial harmony. *Durning v. New Orleans Police Dep't*, 2019-0987 (La. App. 4 Cir. 3/25/20), 294 So. 3d 536, 540, *writ denied*, 2020-00697 (La. 9/29/20), 301 So. 3d 1195. In addition, Superintendent Ferguson aggravated the penalty because of the effect on Edenfield's ability to testify in court and lead other officers. The Appointing Authority increased the level of the penalty to a Level F because of hate speech, discriminatory

statements, or advocacy of violence, based on the disciplinary matrix. (Exs. NOPD-9, NOPD-11 at 12). Statements of this character necessarily compromise an officer's ability to testify in court or lead other officers, so this factor should already be a reason the presumptive penalty is increased from a five-day suspension to an 80-day suspension. (Ex. NOPD-11 at 12). Therefore, the undersigned Commissioners find that the Appointing Authority improperly aggravated the penalty from an 80-day suspension to a termination. *Durning*, 294 So. 3d at 540. The undersigned Commissioners find that the penalty commensurate with the violation is the presumptive penalty for a level F violation, an 80-day suspension.

Edenfield's termination is reduced to the presumptive penalty, an 80-day suspension. The Department of Police shall reinstate Edenfield with back wages and other emoluments of employment.

This the 4th day of January, 2021

WRITER:

J H Korn
J H Korn (Dec 3, 2021 11:33 CST)

JOHN KORN, COMMISSIONER

CONCUR:

CJ Moore
CJ Moore JR (Jan 4, 2022 12:44 CST)

CLIFTON J. MOORE, JR., VICE-CHAIRPERSON

DISSENT BY CHAIRPERSON RICHARDSON

I would affirm the Appointing Authority's discipline. The Appointing Authority appropriately aggravated the penalty for the violation based on Edenfield's inability to testify in

court in the future without impeachment based on racist and violent statements. Therefore, the penalty is commensurate with the violation.


Brittney Richardson (Dec 9, 2021 12:46 CST)
BRITTNEY RICHARDSON, CHAIRPERSON