



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 H. KORN, VICE-CHAIRPERSON
MARK SURPRENANT
RUTH WHITE DAVIS
ANDREW MONTEVERDE

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Thursday, January 11, 2024

Mr. Everett Route III

Re: **Everett Route III VS.
Department of Police
Docket Number: 9466**

Dear Mr. Route:

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 - 1/11/2024 - 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, Sec.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
Max V. Camp
Imtiaz A. Siddiqui
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**EVERETT ROUTE, III,
Appellant**

Docket No. 9466

v.

**DEPARTMENT OF POLICE,
Appointing Authority**

DECISION

Appellant, Sergeant Everett Route, III, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from a June 6, 2023, four-day suspension. (Ex. HE-1). At all relevant times, Appellant had permanent status as a Senior Police Officer. A Hearing Examiner, appointed by the Commission, presided over a hearing on August 10, 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 December 14, 2023, and controlling Louisiana law.

For the reasons set forth below, Sgt. Route's appeal is GRANTED.

I. PERTINENT FACTUAL BACKGROUND

The New Orleans Police Department (NOPD) imposed a four-day suspension on Sgt. Route based on his pursuit of a suspect on March 27, 2018.¹ (Ex. HE-1). NOPD promoted Sr.

¹ NOPD had informed Officer Route on July 7, 2018, that the charges were sustained. (Ex. NOPD-4). NOPD thus complied with the Police Officer Bill of Rights by completing the investigation within 60 days: "The investigation shall be considered complete upon notice to the police employee or law enforcement officer under investigation of a pre-disciplinary hearing or a determination of an unfounded or unsustained complaint." La. R.S. 40:2531(B)(7).

Police Officer Route to Sergeant in the interim. (Tr. at 6-7). Jennifer Dupre, who was serving as Commander of the Second District in 2018, testified she did not recall whether she instructed Officer Route to be on the lookout for the suspected carjacker on March 27, 2018, because of the passage of time. (Tr. at 47). The penalty was changed based on a change in the vehicle pursuit policy in 2019. (Tr. at 51). NOPD also confused the application of the penalty matrix based on whether the March 27, 2018, pursuit, was a first offense or a second offense, based on the passage of time. (Tr. at 71).

II. ANALYSIS

A. NOPD failed to show cause for the discipline of Sgt. Route

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 disciplining 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).

NOPD has failed to show the complained-of conduct impaired the efficiency of NOPD by failing to impose discipline for over five years. The Commission is aware of decisions holding that

stale charges may form the basis for discipline, so long as the Appointing Authority exhibits good faith. *See, e.g., McGee v. Dep't of Transportation & Dev.*, 1999-2628 (La. App. 1 Cir. 12/22/00), 774 So. 2d 1280, 1284, *writ denied sub nom. McGee v. Dep't of Transp. & Dev.*, 788 So. 2d 432 (La. 2001) (“[t]he argument that Mr. McGee's violation of Department policy is ‘stale,’ insulating him from disciplinary action, is without merit.”). In particular, when the delay is caused by a change in administration, Louisiana appellate courts have upheld the discipline. *See, e.g., Ragusa v. Dep't of Pub. Safety Div. of State Police*, 238 So. 2d 193, 195–96 (La. App. 4 Cir. 1970), *writ refused sub nom. Ragusa v. State Civ. Serv. Comn.*, 256 La. 885, 239 So. 2d 542 (1970) (“But can it be said that an appointing authority should be forced to keep an undesirable employee because his predecessor made a mistake in judgment in evaluating the employee's conduct?”).

However, at some point, the underlying conduct is too stale to support discipline: “Although our jurisprudence has recognized that there must be a point at which an appointing authority must take action relative to an employee's misconduct or else be precluded from doing so, each case must be decided on its own facts.” *Lombas v. Dep't of Police*, 467 So. 2d 1273, 1276 (La. App. 4 Cir. 1985), *writ denied*, 470 So. 2d 120 (La. 1985) (concerning one-year delay). *See also Linton v. Bossier City Mun. Fire & Police Civ. Serv. Bd.*, 428 So. 2d 515, 520 (La. App. 2 Cir. 1983) (concerning 1.5 year delay) (“We do note that an employee could be disciplined on charges so stale that the appointing authority's good faith could be effectively impugned and the disciplinary action overturned”); *Ragusa*, 238 So. 2d at 197 (“there must be a point at which an appointing authority must take action relative to an employee's misconduct or else be precluded from so doing”). In the converse situation, when an employee moved for a writ of mandamus to force a civil service board to schedule a hearing on his appeal of his termination of employment five and one-half years after the appeal, the First Circuit Court of Appeal stated that the delay

“obviously ma[de] evidence of the propriety of the disciplinary action stale.” *Dantzler v. Hammond Fire and Police Civil Service Bd.*, 2004-1498 (La. App. 1 Cir. 8/3/05), 923 So. 2d 40, 44, *writ denied*, 924 So. 2d 1016 (La. 2/17/06). The NOPD Operations Manual provides recognizes the importance of timely discipline: “The timely disposition of an investigation is an indispensable component of handling misconduct complaints and imposing discipline, and the untimely imposition of discipline is unfair to the employees involved, community members affected by employee misconduct, and the NOPD as a whole.” NOPD Operations Manual, Section 26.2(5). The absence of impairment to the efficient operation of NOPD is exhibited by the five-year delay, NOPD’s violation of its own policy, and by the fact that NOPD elected to promote Sgt. Route subsequent to the occurrence of the underlying conduct, despite sustaining the charges.


B. NOPD’s five-year delay in imposing discipline raises due process concerns

A delay of five years also implicates due process concerns. *See Washington v. Shreveport Fire & Police Civ. Serv. Bd.*, 54,463 (La. App. 2 Cir. 5/25/22), 339 So. 3d 1276, 1280, *writ denied*, 2022-01001 (La. 10/12/22), 348 So. 3d 78 (“should we find that a violation of Ofc. Washington's due process rights occurred, the discipline imposed will be set aside”); *Bell v. Dep't of Health & Hum. Res.*, 483 So. 2d 945, 950 (La. 1986) (“Where the power of the government or an agency is to be used against an individual there is a right to a fair procedure to determine the basis for, and the legality of, such action”). Under the facts of this case, when Sgt. Route’s supervisor is unable to recall events because of the passage of time and when NOPD’s application of the disciplinary matrix is confused because of intervening discipline being treated as previous discipline, the delay is prejudicial to the officer subject to discipline.

The appeal is GRANTED. The Department of Police shall remove the four-day suspension from Sgt. Route's record and reimburse Sgt. Route all back pay and other emoluments of employment flowing from the four-day suspension.


New Orleans, Louisiana, this the 11th day of January, 2024

WRITER:


Brittney Richardson (Jan 10, 2024 16:05 CST)
BRITTNEY RICHARDSON, CHAIRPERSON

CONCUR:


J H Korn (Dec 27, 2023 18:04 CST)
JOHN KORN, VICE-CHAIRPERSON


Ruth Davis (Dec 27, 2023 18:15 CST)
RUTH DAVIS, COMMISSIONER