



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON
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CLIFTON MOORE, JR.

MITCHELL J. LANDRIEU
MAYOR

Monday, November 13, 2017

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Mr. Donovan A. Livaccari
101 W. Robert E. Lee, Suite 402
New Orleans, LA 70124

Re: **Corey Clark VS.
Department of Police
Docket Number: 8520**

Dear Mr Livaccari:

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 - 11/13/2017 - 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: Michael S. Harrison
Stephanie Dovalina
Brendan M. Greene
Corey Clark

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

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| COREY CLARK vs. DEPARTMENT OF POLICE | DOCKET No.: 8520 |
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I. INTRODUCTION

Appellant, Corey Clark, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Police Department for City of New Orleans, (hereinafter “NOPD”) does not allege that the instant appeal is procedurally deficient. And, Appellant stipulated that NOPD’s investigation into Appellant’s alleged misconduct adhered to the standards required by our Rules and La. R.S. § 40:2531. Therefore, the Commission’s analysis will be limited to whether or not NOPD disciplined Appellant for sufficient cause. At all times relevant to the instant appeal, Appellant served as a Police Officer for NOPD and had permanent status as a classified employee.

On June 15, 2017, a hearing examiner appointed by the Commission presided over an appeal hearing. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the hearing examiner’s report. Based upon our review, we render the following judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

NOPD suspended Appellant for one-day for violating NOPD Rule 4: Performance of Duty; Paragraph 4: Neglect of Duty; subparagraph (c)(4). That rule states that a failure to “make a written report when such is indicated” shall constitute neglect of duty. (H.E. Exh. 1).

Appellant allegedly violated the above-cited rule on June 8, 2016 when he failed to generate a report after receiving a complaint from a resident regarding threatening phone calls and text messages. *Id.*

B. June 8, 2016

Appellant was serving as the “desk officer” for the Seventh District Police Station on June 8, 2016 because the regular desk officer was not available. (Tr. at 21:12-21). As the desk officer, Appellant was responsible for interacting with residents who walked into the station with a question or concern.

At some point in time during Appellant’s shift, a woman (hereinafter “Complainant”) entered the Seventh District Police Station with her daughter. She explained to Appellant that she and her daughter had received threatening phone calls from an unknown source. *Id.* at 22:1-5. When Appellant requested to see the cell phone through which the Complainant received the alleged threatening calls, he discovered that the cell phone did not have any power and its battery was dead. *Id.* at 22:3-6. Since the Complainant did not have the battery charger for her phone, Appellant advised her to return with a fully charged phone so that he could use the information to generate a report. *Id.* at 22:10-11.

As the Complainant and her daughter were leaving, Complainant's daughter mentioned that NOPD was investigating her boyfriend's death as a homicide. *Id.* at 22:12-13. Appellant then immediately engaged the daughter in a conversation about the investigation and asked her if she knew the name of the detective working the case. When the daughter indicated that she did not know the name of the detective, Appellant attempted to contact NOPD's Homicide Division but could not reach anyone. *Id.* at 22:12-16. He provided the daughter with the contact information for the Homicide Division and encouraged the Complainant to return with a charged phone and records reflecting incoming calls. *Id.* at 22:17-21. Appellant denied that either the Complainant or her daughter mentioned threatening text messages or showed him any threatening text messages. *Id.* at 22:22-25.

The Complainant returned to the Seventh District Police Station on June 9, 2016. (NOPD Exh. 1). When she attempted to explain her situation to another NOPD Officer, that officer allegedly told her that he could not handle her complaint because "he had too many other reports to do." *Id.* The Complainant did not identify the Officer whom she encountered on June 9th and NOPD records established that it was not Appellant. *Id.*

Sergeant Raymond Young was responsible for conducting the initial investigation into Appellant's alleged misconduct, and Commander Lawrence Dupree oversaw the investigation. (Tr. at 8:23-9:4). Sgt. Young initially found no substance to the allegations against Appellant and recommended that Appellant receive no discipline. Cmdr. Dupree disagreed and prepared a "cover letter" to NOPD Superintendent Michael Harrison in which he recommended discipline for Appellant. (NOPD Exh. 4). In preparing the cover letter, Cmdr. Dupree reviewed the report prepared by NOPD investigators in evidence as "NOPD Exhibit 1." Cmdr. Dupree also read a handwritten statement the Complainant supplied to PIB in which she wrote the specific language

contained in the threatening texts. (16:18-18:1). However, Cmdr. Dupree did not allege that Appellant had such a written statement on June 8, 2016. For his part, Appellant denied having knowledge of threatening texts and claimed that the Complainant only mentioned phone calls during their interaction.

If Appellant's account of his interaction with the Complainant was inaccurate, NOPD could have impeached his credibility by introducing video footage captured by Appellant's BWC. Yet, the only information regarding the contents of Appellant's BWC footage from June 8th was a vague statement authored by Sergeant Robert Kirton in which he noted that the Complainant "explain[ed] her situation to [Appellant]." (NOPD Exh. 1). The Commission finds that, if the footage collected by Appellant's BWC on June 8, 2016 contradicted Appellant's account of his interaction with the Complainant and her daughter, NOPD would have sought to introduce it. The fact that NOPD did not attempt to introduce Appellant's BWC footage serves to support Appellant's version of events.

III. LEGAL STANDARD

An appointing authority may discipline an employee with permanent status in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that an appointing authority issued discipline without sufficient cause, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, an 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 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964

So. 2d 1093, 1094 (La. Ct. App. 2007)). If the Commission finds that an appointing authority has met its initial burden and had sufficient cause to issue discipline, it must then determine if that discipline “was commensurate with the infraction.” *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). Thus, the analysis has three distinct steps with the appointing authority bearing the burden of proof at each step.

IV. ANALYSIS

A. Occurrence of the Complained of Activities

Cmdr. Dupree based a great deal of his testimony, and indeed a great deal of his frustration, on Appellant’s alleged failure to appreciate the gravity of the threatening texts received by the Complainant’s daughter. However, the Commission finds that Appellant never saw these texts because the phone on which the Complainant and/or her daughter received threatening calls and texts was dead on June 8, 2017. When the Complainant returned the following day, she did not speak with Appellant.

At no point in his interaction with the Complainant was Appellant dismissive or rude. His suggestion that the Complainant return with a fully charged phone and any records that would show incoming calls to the phone was reasonable in light of the circumstances. In fact, Appellant had no reason to believe that the Complainant and her daughter would not return in a matter of minutes with a phone bill and cell phone charger.

Unfortunately, the Complainant did not return until the following evening and received brusque treatment from an unknown officer. It was only after this encounter that the Complainant decided to pursue a complaint. It is that unknown Officer who did a disservice to NOPD by suggesting that Complainant’s concerns were unimportant. Appellant was a conscientious law

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enforcement officer trying to make sure that he had all of the necessary information before proceeding with an official report. He also attempted to reach the Homicide Division – to no avail – after the Complainant’s daughter mentioned, in passing, that her boyfriend had been murdered.

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby GRANTS the Appellant’s appeal. NOPD shall remit to Appellant all back pay and emoluments associated with the one-day suspension referenced in the letter of discipline in evidence as “Hearing Examiner Exhibit 1.” Furthermore, NOPD shall remove any and all reference to the one-day suspension from Appellant’s employment files including, but not limited to, the long and short PIB form.

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SIGNATURES APPEAR ON THE FOLLOWING PAGE.

Judgment rendered this 13th day of November, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER



MICHELLE D. CRAIG, CHAIRPERSON

11/8/2017

DATE

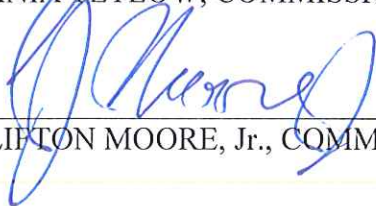
CONCUR



TANIA TETLOW, COMMISSIONER

11/3/17

DATE



CLIFTON MOORE, Jr., COMMISSIONER

11/13/17

DATE