



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Thursday, November 6, 2025

Mr. Jonathan Picone

Re: **Jonathan Picone VS.
Department of Fire
Docket Number: 9690**

Dear Mr. Picone:

Attached is the decision of the City Civil Service Commission in the above-referenced 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 - 11/6/2025 - 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: Roman Nelson
William R. H. Goforth
Jay Ginsberg
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**JONATHAN PICONE,
Appellant**

Docket No. 9690

v.

**DEPARTMENT OF FIRE,
Appointing Authority**

DECISION

Appellant, Fire Apparatus Operator Jonathan Picone, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from the 12-hour suspension imposed by the Department of Fire's (NOFD) on December 18, 2024. (Ex. HE-1). At all relevant times, Appellant had permanent status as a Fire Apparatus Operator. (Tr. at 8). A Hearing Examiner, appointed by the Commission, presided over a hearing on February 25, 2025. 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 post-hearing brief submitted by Appellant, the Hearing Examiner's report submitted on May 31, 2025, and controlling Louisiana law.

Operator Picone's appeal is DENIED.

I. FACTUAL BACKGROUND

The underlying facts of Operator Picone's appeal are undisputed. On November 27, 2024, and November 30, 2024, NOFD's electronic monitoring software recorded Operator Picone operating the fire apparatus without a seatbelt. On November 30, 2024, Operator Picone was

dispatched to a fire at an address on Decatur, and when no fire was at that address, was dispatched to another address nearby. (Tr. at 14-16). Operator Picone was wearing his seatbelt from the station to the address on Decatur, and from the second address to the station. (Tr. at 16). The only time Operator Picone failed to wear his seatbelt was when he drove a few blocks from the first to the second address. (Tr. at 16). NOFD counseled Operator Picone for the November 27, 2024, incident, and suspended Operator Picone for 12 hours for the second incident. (Tr. at 10). Operator Picone received the counseling and the charge on the same day, December 3, 2024. (Tr. at 10). The disciplinary panel recommending mitigating the penalty because Operator Picone received the counseling the same day as the charge and because Operator Picone failed to wear his seatbelt for only a few blocks. (Tr. at 21). The presumptive penalty for the first offense of a seatbelt violation is a 24-hour suspension, and a 12-hour suspension is the minimum penalty. (Tr. at 39; Ex. CNO-1).

Superintendent Nelson testified that firefighters' use of seatbelts and speeding while in the fire apparatus has improved since NOFD began using electronic monitoring. (Tr. at 33).

II. ANALYSIS

A. Legal Standard for Commission's Review of 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”).

B. The Department of Fire has carried its burden of showing cause for the discipline of Operator Picone

Operator Picone does not dispute that he failed to wear his seatbelt in violation of law and NOFD policy on November 30, 2024, the complained-of conduct. Operator Picone's conduct impaired the efficient operation of the Department of Fire. Superintendent of Fire Roman Nelson testified that one in five fatalities of firefighters is due to a traffic accident. (Tr. at 34-35). Superintendent Nelson also testified that the last death of an on-duty firefighter from NOFD occurred during a traffic accident when none of the firefighters were wearing a seatbelt. (Tr. at 34-35).

1. The penalty imposed by the Department of Fire is commensurate with the violation

Superintendent Nelson imposed the minimum penalty for the violation, as the Disciplinary Panel recommended. Operator Picone argues that he did not receive the benefit of progressive discipline because he received the counseling and the charge on the same day. In briefing, Operator Picone also argues that the counseling was a letter of reprimand.

Superintendent Nelson testified that NOFD policy does not require counseling before imposing formal discipline. He also testified that wearing seatbelts is required by law, and Operator Picone should have been aware of this requirement without a counseling. The penalty of a 12-hour suspension is commensurate with the violation, even if the counseling is considered a letter of reprimand.

Operator Picone's appeal is DENIED.

WRITER:



John Korn, Vice-Chairperson (Oct 31, 2025 18:32:53 CDT)

JOHN KORN, VICE-CHAIRPERSON

CONCUR:



Brittney Richardson, Chairperson (Nov 6, 2025 11:32:39 CST)

BRITTNEY RICHARDSON, CHAIRPERSON

~~Ruth Davis~~ Commissioner (Oct 31, 2025 12:33:02 CDT)

RUTH DAVIS, COMMISSIONER