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

Monday, January 24, 2022

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

Re: **Keisha Ferdinand VS.**
Department of Police
Docket Number: 9208

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 - 1/24/2022 - 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,

Doddie K. Smith
Chief, Management Services Division

cc: Shaun Ferguson
Darren Tyus
Jay Ginsberg
Keisha Ferdinand

file

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

KEISHA FERDINAND,
Appellant

Docket No. 9208

v.

DEPARTMENT OF POLICE,
Appointing Authority

DECISION

Appellant, Sgt. Keisha Ferdinand, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from her August 31, 2020, letter of reprimand. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a Police Sergeant. (Tr. at 37; HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on November 19, 2020. 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 February 24, 2021, and controlling Louisiana law.

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

I. 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 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).

The Appointing Authority has failed to carry its burden of proof to show that the complained-of activity, unprofessionalism, occurred. Sgt. Ferdinand was disciplined for having an argument with a subordinate in public in the presence of a citizen. (Tr. at 14). The investigating officer, Sgt. Michael Hamilton, testified that his decision to sustain the violation of the professionalism policy was based solely on Sgt. Ferdinand's body-worn-camera footage, (Tr. at 18), yet the footage was not offered into evidence. Further, the citizen witness, Tamira Nelson, informed Sgt. Hamilton that Burmaster was aggressive toward Ferdinand. (Tr. at 19). Sgt. Ferdinand testified that she responded to the scene of an unclassified death, where a supervisor is required, and her subordinate, Officer Burmaster, was in his vehicle. (Tr. at 44-46). Burmaster had failed to turn on his body-worn camera. (Tr. at 53). When Sgt. Ferdinand tried to give Burmaster direction, he complained that Ferdinand was micromanaging him. (Tr. at 50). According to Sgt. Ferdinant, she gave Burmaster an order because she needed him to do his job. (Tr. at 54).

For the above-stated reasons, the letter of reprimand shall be removed from Sgt. Ferdinand's personnel file.

This the 24th day of January, 2022

WRITER:

Ruth White Davis
Ruth Davis (Jan 12, 2022 11:59 CST)

RUTH DAVIS, COMMISSIONER

CONCUR:

C J Moore
CJ MOORE (Jan 24, 2022 06:10 CST)

CLIFTON J. MOORE, JR., COMMISSIONER

Mark C. Surprenant
Mark C. Surprenant (Jan 10, 2022 12:01 CST)

MARK SURPRENANT, COMMISSIONER