



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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Tuesday, March 23, 2021

Eric D. Torres
650 Poydras St. Ste. 2615
New Orleans, La. 70130

Re: **Edward Horan VS.
Department of Safety & Permits
Docket Number: 8708**

Dear Mr. Torres:

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 - 3/23/2021 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Amoco Building, New Orleans, Louisiana.

If you choose to appeal this decision, 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 "Stacie Joseph".

Stacie Joseph
Management Services Division

cc: Tammie Jackson
Michael J. Laughlin
Ramona D. Washington
Edward Horan
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**EDWARD HORAN,
Appellant,**

vs.

DOCKET NO.: 8708

**DEPARTMENT OF SAFETY AND PERMITS,
Appointing Authority**

ORDER

I. INTRODUCTION

This appeal concerns the suspension of a Safety and Permits employee, Edward Horan, who improperly approved building permits or removed the flags on properties more than 50% damaged following a tornado in New Orleans East on February 2, 2017. (Tr. at 8; Ex. H.E. 1). Mr. Horan was suspended on August 23, 2017, for 20 days based on errors on 20 separate properties. (Ex. H.E. 1). On September 11, 2017, the Department of Safety and Permits reduced the suspension to 19 days following review of all 20 permits. (Ex. H.E. 2). For the reasons stated herein, the appeal is denied.

II. FACTUAL BACKGROUND

In 2017, Edward Horan served as the Zoning Administrator, a supervisory position in Safety and Permits. (Tr. at 62, 132). At the time of the hearing, on April 11, 2018, Horan had worked for the City of New Orleans for 18 years. (Tr. at 166). Horan processed permit applications for properties damaged by the tornado in New Orleans East on February 2, 2017. (Tr. at 119). Over a three-month period, Horan made 20 errors (later reduced to 19). (Ex. H.E.-1, H.E.-2).

Processing the permit applications was part of Horan's normal workload, and departmental policy (dated April 24, 2013) required completion of a damage assessment revision (DAR) form when the initial damage assessment was changed. (Tr. at 6; Ex. City C). Horan improperly removed red

flags without a DAR form on 15 separate properties. (Ex. City-A(1), City-A(3)-(4), City-A(6)-(7), City-A(9)-(14), City-A(16), City-A(13)-(15)). The properties at issue had been assigned initial damage ratings by on-site inspectors who viewed the property from the exterior. (Tr. at 12, 55). As part of the City's CRS application to the Federal Emergency Management Agency (FEMA), the City must perform a damage rating. (Tr. at 77). For properties rated more than 50% damaged by the on-site inspector, FEMA requires elevation of the property before repairs may commence. (Tr. at 22). If the damage rating by the on-site inspector is changed subsequent to the initial physical inspection, then FEMA requires completion of a form called a DAR form. (Tr. at 77). The DAR form reflects the value of the property and the value of the work to be performed on the property. (Tr. at 56). Mr. Horan had the authority to change the damage assessment but was required to complete a DAR form. (Tr. at 157). By performing inspections to assess damage, requiring documentation to change the assessment, and requiring elevation of properties more than 50% damaged, the City obtains from FEMA lower flood insurance premiums. (Tr. at 27). Removal of the red flag without a DAR form results in a violation of the City's agreement with FEMA. (Tr. at 22). The Deputy Director of Safety and Permits, Jennifer Cecil, testified that Horan had received training on the DAR form, including training in 2013. (Tr. at 64-66). Horan testified that when processing permits after hurricanes, he was aware that DAR forms were in the file and that the forms were required. (Tr. at 230-32).

Horan offered evidence that the underlying information for completion of the DAR was in the electronic file for all but four properties. (Ex. Horan-5). The Director, Jared Munster, testified that the DAR form could be completed after-the-fact. (Tr. at 159).

Horan also failed to require plans for review and engineer reports in the permitting process. (Tr. at 157). According to departmental policy, an engineer's report is required to remove a red flag. (Tr. at 25, 157). This requirement is for safety purposes. (Tr. at 22). For example, as to one property located at 4659 Lancelot Drive, Ms. Cecil explained that the scope of repairs in the permit application

was narrower than the damage observed on the property, and the permit application contained no engineer's report to ensure that the property would be stable after such minor repairs. (Tr. at 18-19).

In the case of structural damage, stamped plans must be submitted to the City and reviewed by the plan review division. (Tr. at 25, 59). Horan marked on at least nine properties, 4710 Knight Drive, 4666 Charlene Drive, 4683 Arthur Drive, 4675 Lancelot, 4619 Read Road, 4743 Arthur Drive, 4659 Charlmark, 4767 Knight Drive, 4710 Longfellow Drive, that a plan review was not required, when, in fact, all nine properties had suffered structural damage. (Tr. at 25-27; Ex. City-A(2), City-A(3), City-A(4), City-A(8), City-A(9), City-A(11), City-A(14), City-A(16), City-A(17)). The City requires a plan review and for public safety purposes. (Tr. at 25). Removal of a red flag also removes the requirement of plan review. (Tr. at 231).

The issuance of a certificate of occupancy does not cure the defect in the permit application. (Tr. at 78).

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 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 (quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094). 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); 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.

A. Occurrence of complained-of activity

The parties stipulated that DAR forms were absent from the files for specific properties. (Tr. at 29). Mr. Horan did not dispute that he removed the red flags from these properties, only that information that could have been used to complete a DAR form was in the electronic file. (Tr. at 193-94; Exhibit Horan-5). Mr. Horan also conceded that his summary of the deficiencies, admitted as Exhibit Horan-5, did not address engineer reports or document review. (Tr. at 229).

B. Whether conduct impaired the efficiency of Safety & Permits

Jennifer Cecil, the Deputy Director of Safety and Permits, testified that the absence of DAR forms violated the City's agreement with FEMA, which had the potential to adversely affect flood insurance rates. (Tr. at 22, 27). Also, as detailed above, plan review for structural damage and engineer reports are health and safety issues. Therefore, Horan's conduct impaired the efficiency of Safety and Permits.

C. Whether the discipline was commensurate with the infraction

Other employees in Safety and Permits were suspended one day for each instance of failing to include a DAR form, so the discipline was commensurate with the infraction.

IV. CONCLUSION

For the reasons stated herein, the appeal is denied.

New Orleans, Louisiana, this 23 day of March, 2021

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER:


CJ Moore (Mar 15, 2021 13:46 CDT)

CLIFTON J. MOORE, VICE-CHAIRPERSON

CONCUR:


Mark C. Surprenant (Mar 11, 2021 10:09 CST)

MARK SURPRENANT, COMMISSIONER


J. H. Korn (Mar 23, 2021 15:09 CDT)

JOHN KORN, COMMISSIONER