



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
SUITE 900 - 1340 POYDRAS ST.  
NEW ORLEANS LA 70112  
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CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J.,  
CHAIRMAN  
JOSEPH S. CLARK  
MICHELLE D. CRAIG  
EDWARD PAUL COHN  
RONALD P. MCCLAIN

MITCHELL J. LANDRIEU  
MAYOR

Tuesday, June 03, 2014

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Mr. Raymond C. Burkart, III  
19407 Front Street  
Covington, LA 70433

Re: **Albert Miller VS.  
Department of Police  
Docket Number: 8028**

Dear Mr. Burkart, III:

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 - 6/3/2014 - 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 "Germaine Bartholomew".

Germaine Bartholomew  
Chief, Management Services Division

cc: Ronal Serpas  
Gregory Brumfield  
Jay Ginsberg  
Albert Miller

**ALBERT MILLER**

**CIVIL SERVICE COMMISSION**

**VERSUS**

**CITY OF NEW ORLEANS**

**DEPARTMENT OF POLICE**

**NO. 8028**

Albert Miller (“Appellant”) is employed by the Department of Police (“Appointing Authority”) as a Police Sergeant with permanent status. The Appellant received a five (5) day suspension for violation of the Appointing Authority’s internal rules concerning Neglect of Duty. The factual basis for the violations is contained in the second paragraph of the May 1, 2012 disciplinary letter, which provides as follows:

This investigation determined that on July 13, 2010, approximately 1:30 p.m., while on duty as a supervisor you were summoned to Slidell and Leboeuf Streets on a complaint of a 911 that requested a supervisor to the scene. Officer William Torres had been on the scene and handled an incident involving two citizens. You later met the citizens and during your interview they expressed their intent and desire to file a complaint against Officer Torres for injuries sustained while in Officer Torres’ custody. Their statement of requesting to file a complaint was witnessed and verified by another police officer on the scene. You failed to initiate a DI-1 investigation into the facts and circumstances that occurred at the intersection of Leboeuf Street and Slidell Street against Officer Torres. As such, you violated Rule 4: Performance of Duty, Paragraph 4 – Neglect of Duty, subparagraphs to wit: sub-paragraph b. Failing to take appropriate police action.

The matter was assigned by the Civil Service Commission to a Hearing Examiner pursuant to Article X, Section 12 of the Constitution of the State of Louisiana, 1974. The hearing was held on February 14, 2013 and March 7, 2013. The testimony presented at the hearing was transcribed by a court reporter. The three undersigned members of the Civil Service Commission have reviewed a copy of the transcript and all documentary evidence.

The Appellant testified that he was summoned to the scene by Officer Torres, who was his subordinate. The Appellant stated that upon arrival he commenced an investigation, speaking first to a Mr. Ross, one of the two citizens who were the subject of a police stop. Mr. Ross informed the Appellant that Officer Torres pushed the other citizen, Mr. Benjamin, down while

he was handcuffed. However, when the Appellant spoke to Mr. Benjamin, he insisted that Officer Torres had done nothing wrong. The Appellant testified that he asked Mr. Benjamin several times if he was sure that was what happened and Mr. Benjamin did not change his version of events. The Appellant then confronted Mr. Ross in an effort to resolve the conflicting statements. Mr. Ross stated that whatever Mr. Benjamin said was what happened. He then directed Mr. Benjamin to the EMS unit that was on the scene to treat a small cut underneath his chin. The Appellant stated that he took no action while on the scene because he had no reasonable basis for initiating a complaint. The alleged victim insisted nothing happened and no one else would come forward except for Mr. Ross, who ultimately went along with Mr. Benjamin.

The Appellant stated that he continued his investigation because he had conflicting versions of events and he did not want to initiate a complaint without the cooperation of the alleged victim. To this end, the Appellant encouraged Mr. Benjamin to contact him later if there was anything he wanted to add. The Appellant, a veteran police officer, testified that sometimes witnesses are more candid when they are away from the scene. The Appellant also wanted confirmation of what occurred from one of the other witnesses who was on the scene. The Appellant testified that, because he worked in the district, he knew many of the residents and hoped to find out more by speaking to them. However, no one came forward. Again, knowing that witnesses are sometimes reluctant to come forward in a public setting, the Appellant stated that he distributed his card with his telephone numbers to other potential witnesses. He also returned to the neighborhood during the following two days to see if anyone wanted to talk to him. However, rather than cooperating with the Appellant, Mr. Benjamin instead filed a

complaint with the Public Integrity Bureau the following day against Officer Torres. The Appellant stated that he was still investigating when Mr. Benjamin contacted PIB.

Commander Heather Kouts supervised the Fourth Police District where the Appellant worked. She conducted the Commander's Hearing and recommended to the Appointing Authority that the Appellant be exonerated of all charges. She explained that she recommended exonerating the Appellant because, after receiving the evidence at the hearing, she determined that the Appellant took all of the appropriate steps as a supervisor when called to the scene. According to Commander Kouts, the Appellant interviewed the subject and asked him several times if he wanted to file a complaint. He also tried to talk to individuals who were potential witnesses and even gave them his card if they wanted to speak to him anonymously. Ultimately, she concluded that the Appellant did all that he could to encourage witnesses to come forward, but based upon what he was able to uncover on the scene, there was no basis for initiating a complaint. She stated that under circumstances such as this, she would not expect those under her command to initiate a complaint; particularly considering that the alleged victim insisted that nothing had occurred.

Sgt. Damon Murray, assigned to the Public Integrity Bureau, conducted the internal investigation and credited the Appellant's version of events, including the steps he took in investigating the incident. However, Sgt. Murray still maintained that the Appellant neglected his duty because he did not initiate a complaint based upon Mr. Ross' initial statement while on the scene.

Asst. Supt. Darryl Albert testified that he reviewed the investigative file and recommended overriding Commander Kouts' recommendation to exonerate. He also maintained

that the Appellant should have initiated a formal investigation because there was some indication that Officer Torres pushed Mr. Benjamin down.

#### LEGAL PRECEPTS

An employer cannot discipline an employee who has gained permanent status in the classified city civil service except for cause expressed in writing. LSA Const. Art. X, sect. 8(A); *Walters v. Department of Police of New Orleans*, 454 So. 2d 106 (La. 1984). The employee may appeal from such a disciplinary action to the city Civil Service Commission. The burden of proof on appeal, as to the factual basis for the disciplinary action, is on the appointing authority. *Id.*; *Goins v. Department of Police*, 570 So 2d 93 (La. App. 4th Cir. 1990).

The Civil Service Commission has a duty to decide independently, based on the facts presented, whether the appointing authority has good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. *Walters, v. Department of Police of New Orleans, supra*. Legal cause exists whenever the employee's conduct impairs the efficiency of the public service in which the employee is engaged. *Cittadino v. Department of Police*, 558 So. 2d 1311 (La. App. 4th Cir. 1990). The appointing authority has the burden of proving the occurrence of the complained of activity by a preponderance of the evidence and that the conduct complained of impaired the efficiency of the public service. *Id.* The appointing authority must also prove the actions complained of bear a real and substantial relationship to the efficient operation of the public service. *Id.* While these facts must be clearly established, they need not be established beyond a reasonable doubt. *Id.*

### CONCLUSIONS

The Appointing Authority has failed to establish by a preponderance of evidence that it disciplined the Appellant for good cause. The Appellant performed his duties according to the expectations of his commander in a reasonable manner. He did not neglect his duty. The Appellant cannot investigate a complaint if the witnesses do not cooperate; this is particularly true when the alleged victim declines to cooperate. The Appellant did not discourage anyone; in fact he encouraged them to come forward confidentially, if they preferred. He clearly took all reasonable steps to obtain evidence that would justify initiating a complaint.

Further, there is no evidence that the efficient operation of the department was undermined in any way. Mr. Benjamin, for whatever reasons, decided to take his complaint to the Public Integrity Bureau the next day. There is no evidence that he chose this avenue because the Appellant did anything to discourage him from taking the same steps the day before. It appears that everyone did their jobs and that the public was properly served.

Considering the foregoing, the Appellant's appeal is GRANTED. The Appointing

A. Miller  
#8028

Authority is ordered to pay to the Appellant five days of back pay, costs, and emoluments of employment.

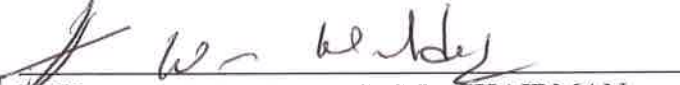
RENDERED AT NEW ORLEANS, LOUISIANA THIS 3rd DAY OF  
June, 2014.

CITY OF NEW ORLEANS  
CIVIL SERVICE COMMISSION

  
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JOSEPH S. CLARK, COMMISSIONER

CONCUR:

  
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MICHELLE D. CRAIG, COMMISSIONER

  
\_\_\_\_\_  
REV. KEVIN W. WILDES, S.J., CHAIRMAN