



CITY OF NEW ORLEANS

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Thursday, June 17, 2021

Mr. Eric Hessler
PANO 2802 Tulane Avenue #102
New Orleans, LA 70119

Re: **Brianne Verrett VS.
Department of Police
Docket Number: 9186**

Dear Mr. Hessler:

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 - 6/17/2021 - 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: Shaun Ferguson
William R. H. Goforth
Jay Ginsberg
Brianne Verrett

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**BRIANNE VERRETT,
Appellant**

Docket No. 9186

**v.
DEPARTMENT OF POLICE,
Appointing Authority**

DECISION

Appellant, Brianne Verrett, 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 June 14, 2020, termination. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a police officer. (Tr. at 143). A Hearing Examiner, appointed by the Commission, presided over a hearing on October 1, 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 January 26, 2021, and controlling Louisiana law.

For the reasons set forth below, Verrett's appeal is DENIED.

I. FACTUAL BACKGROUND

On November 5, 2018, Police Officer Brianne Verrett responded to a call for service by Marla Belin. (Tr. at 8). NOPD originally classified this call as threats (66). Verrett's interview of Belin was recorded on Verrett's body-worn camera. (Tr. at 8). Belin reported to Officer Verrett that Tyrone Fountain had damaged Belin's car with a brick, and that her neighbor Byron had a video. (Tr. at 11-12). Belin had recorded a call between Fountain and Byron during which Fountain threatened bodily harm and death to Belin. (Tr. at 12). This call was recorded with Byron's

permission. (Tr. at 113). Belin also described to Officer Verrett twice that Fountain had approached Belin and threatened her. (Tr. at 13). Belin also had text messages from Fountain, which Belin showed to Verrett. (Tr. at 14). Further, Belin identified Byron as a witness to the in-person threat. (Tr. at 14). Belin told Verrett she was nervous about Fountain, and that Belin felt safe at work but not at home. (Tr. at 15).

Verrett went to her vehicle to call Sergeant Willie Jenkins. (Tr. at 9). This conversation is also on Verrett's body-worn camera. (Tr. at 9). During her conversation with Jenkins, Belin failed to inform Jenkins (1) that Belin reported an in-person threat to Belin; (2) that there was a witness (Byron); (3) that there were text messages between Fountain and Belin; and (3) that Belin feared for her safety. (Tr. at 16, 21). Jenkins told Verrett to downgrade the classification to a disturbance (103). (Tr. at 10). Sgt. Jenkins testified that his understanding was that a direct threat was required in order for a complaint to be classified as a threat. (Tr. at 35). Sgt. Jenkins testified that if he had known about the direct threat, he would not have advised Verrett to downgrade the classification. (Tr. at 28). In addition, Sgt. Jenkins testified he would have gotten a warrant for Fountain's arrest. (Tr. at 28, 36-37).

Verrett informed Belin the phone call was insufficient, and Belin repeated to Verrett that Fountain threatened her in person. (Tr. at 16).

Verrett conceded that if she had relayed to Jenkins the information about Fountain's direct threat to Belin, then there would have been a sufficient basis to obtain a warrant for Fountain's arrest. (Tr. at 22).

In her written report, Verrett included Fountain's threat to kill Belin. (Tr. at 40).

NOPD initiated a Public Integrity Bureau investigation of Verrett based on neglect of duty. (Tr. at 17-18). When Verrett was interviewed on March 15, 2019, by the PIB investigator, Ms. Davis, Verrett provided the following information:

Q: Did the victim of the incident advise you at any time that she feared for her safety against the person she was filing the report about?

A: Not at that moment.

....

Q: Did the victim provide you with the name of any potential witnesses to the threats against her?

A: No.

....

Attorney Hessler: Did you explain all of the facts and circumstances to that rank?

SPO Verrett: Yes

Attorney Hessler: Umm, who was the rank?

SPO Verrett: Sergeant Jenkins

(Ex. NOPD-1 at 2-3). After this investigation was concluded, NOPD initiated another PIB investigation (2019-0295-R) based on Officer Verrett's untruthfulness during the first PIB investigation. (Tr. at 47).

Deputy Superintendent John Thomas testified that an untruthfulness violation may be brought up in court when an officer is testifying on an unrelated case. (Tr. at 47-48). Under the penalty matrix, termination is the presumed penalty. (Tr. at 49).

The PIB investigator for 2019-0295-R testified that the information Verrett failed to provide to Jenkins was material as to whether to issue a warrant, and Fountain's behavior was escalating. (Tr. at 114-15). Verrett's statement during the initial PIB investigation contradicted the video from the body-worn camera. (Tr. at 117).

Officer Verrett testified that her mistakes were not intentional. (Tr. at 144). Verrett sought guidance from Sgt. Jenkins, and Verrett also called Kiera Moore, another police officer, about how

to classify the matter. (Tr. at 146-47). In her written report, Verrett stated that Fountain wanted to kill Belin and wanted to beat her. (Tr. at 147). As for her interview with Ms. Davis, Verrett testified that she had reviewed the body-worn camera one month before the interview, and Verrett did not intentionally mislead Ms. Davis or omit any facts. (Tr. at 148-50). Verrett explained that the witness, Byron, was uncooperative, and that affected her description of the events. (Tr. at 150).

NOPD terminated Verrett's employment for untruthfulness on June 14, 2020. (Ex. HE-1).

II. 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 terminating 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 Commission finds that NOPD has carried its burden of showing the occurrence of the complained-of activity. According to NOPD Rule 2, Verrett must have made a materially false statement with the intent to deceive. (*See* HE-1). Verrett does not dispute that she made a materially

false statement during the PIB interview, but she claims that she did not intend to deceive Ms. Davis or NOPD. Verrett gave a starkly different description of events during the PIB interview than transpired on November 5, 2018, as documented by the recording from the body-worn camera. (Ex. NOPD-1, NOPD-4). Verrett had a motive to omit facts to lessen any discipline against her as a result of the initial PIB investigation, and the Commission finds Verrett's claim to the contrary not credible.

Untruthfulness impairs the efficient operation of the police department, as officers with a record of untruthfulness are subject to impeachment on this basis during testimony in other cases. (Tr. at 47-48). In *Gant*, “[t]he Commission found the NOPD's argument that severe penalties should accompany violations of Rule 6, Paragraph 2 because it would be problematic if such a compromised officer be required to serve as a material witness in a criminal prosecution to be persuasive.” *Gant*, 286 So. 3d at 533 (citing *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d. 215 (1963) and *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972)). Likewise, the Commission finds this argument persuasive in Verrett's case, where Verrett's version of events during a disciplinary investigation differed so significantly from the recording of the events.

Based on this significant handicap to a police officer, the presumed penalty is termination, which the Commission finds is commensurate with the violation in this case. As the Fourth Circuit recognized in a similar case concerning NOPD, “no range of penalties applies to violations of the Truthfulness Rule.” *Rivet v. Dep't of Police*, 2018-0229 (La. App. 4 Cir. 10/24/18), 258 So. 3d 111, 119 (affirming Commission's denial of police officer's appeal of his termination for untruthfulness). “The NOPD acted within its authority to apply its own penalty matrix and in determining that the NOPD cannot employ workers who make false statements.” *Id.*

The appeal is DENIED.

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This the 17th day of June, 2021

WRITER:

Bled

Brittney Richardson (May 31, 2021 16:40 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

CONCUR:

J H Korn

J H Korn (Jun 17, 2021 09:53 CDT)

JOHN KORN, COMMISSIONER

Mark C. Surprenant

Mark C. Surprenant (May 28, 2021 17:23 EDT)

MARK SURPRENANT, COMMISSIONER