



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

CITY CIVIL SERVICE COMMISSION
BRITTNEY RICHARDSON, CHAIRPERSON
JOHN H. KORN, VICE-CHAIRPERSON
MARK SURPRENANT
RUTH WHITE DAVIS
ANDREW MONTEVERDE

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Wednesday, March 26, 2025

Ms. Stephanie Dovalina
700 Camp St., Ste 105
New Orleans, LA 70119

Re: **Larry Meyers VS.
Department of Fire
Docket Number: 9612**

Dear Ms. Dovalina:

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 - 3/26/2025 - 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 purple ink that reads "Stacie Joseph".

Stacie Joseph
Management Services Division

cc: Roman Nelson
James M. Roquemore
Jay Ginsberg
Larry Meyers

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**LARRY MEYERS,
Appellant**

v.

Docket No. 9612

**DEPARTMENT OF FIRE,
Appointing Authority**

DECISION

Appellant, Fire Apparatus Operator Larry Meyers, 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 Department of Fire's (NOFD) April 15, 2024, demotion of him from the position of Fire Captain to the position of Fire Apparatus Operator. (Ex. HO-1). At all relevant times, Appellant had permanent status as a Fire Captain. (Tr. at 16-17). A Hearing Examiner, appointed by the Commission, presided over a hearing on July 2, 2024. 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 parties' post-hearing briefs submitted on November 4, 2024, and November 8, 2024, the Hearing Examiner's report submitted on November 12, 2024, and controlling Louisiana law.

Operator Meyers' appeal is DENIED.

I. FACTUAL BACKGROUND

The underlying facts of Operator Meyers' appeal are undisputed. While still serving as a Fire Captain, Captain Meyers and the three firefighters under his supervision responded in Fire Engine 4 to a medical call on December 24, 2023. (Tr. at 17). One of the firefighters under his

supervision was Fire Apparatus Operator Antonius Grayer. (Tr. at 17). A Fire Apparatus Operator drives the fire truck. (Tr. at 17). Engine 4 arrived after 7:00 P.M. at the residence in New Orleans East, and Operator Grayer parked behind the EMS unit. (Tr. at 18).

When departing, Operator Grayer backed Engine 4 into a vehicle parked behind the fire truck. (Tr. at 18). Operator Grayer failed to use a spotter when backing up the fire truck, in violation of NOFD rules. (Tr. at 19). One person was in the passenger seat in the vehicle at the time of the accident, and she said she was uninjured (Tr. at 22-23). It was dark and raining. (Tr. at 23). Captain Meyers observed no damage to the fire truck. (Tr. at 23).

When the driver of the other vehicle returned to his vehicle from the house, Operator Grayer and the driver agreed that Operator Grayer would personally pay for the repairs to the vehicle. (Tr. at 31). The other driver thought the damage to his vehicle was minor, and he did not want to wait for the police to arrive in the rain on Christmas Eve. (Tr. at 29). Operator Grayer paid the driver for the damage to the other vehicle. (Tr. at 29, 90; Ex. NOFD-13).

Captain Meyers failed to complete and submit an accident report, as required by NOFD. (Tr. at 25).

The City of New Orleans received a demand letter from Morris Bart for physical injuries to the passenger of the vehicle involved in the December 24, 2023, accident. (Tr. at 40; Ex. NOFD-12). When NOFD was unable to locate any report of an accident, Captain Meyers' District Chief, Paul Hellmers, asked Captain Meyers to complete a special report about the accident. (Tr. at 41). Captain Meyers and the three firefighters in his company agreed to state in their special reports that Operator Grayer was alone in the fire truck when he backed into the vehicle parked behind him on December 24, 2023. (Tr. at 40-42). Captain Meyers submitted a special report on February 16, 2024, stating that Operator Grayer was alone in the fire truck at the time of the accident and

that Operator Grayer informed Captain Meyer about the accident when they returned to the fire house following the medical call. (Tr. at 43; Ex. NOFD-5).

After Captain Meyers and the firefighters under his supervision decided to retract their prior untruthful reports, Captain Meyers completed a new special report dated February 22, 2024, in which he admitted witnessing the accident and that he and all three firefighters were on the truck. (Tr. at 58, 60, 79, 88; Ex. NOFD-8). Captain Meyers also completed a Vehicle/Equipment Damage Supervisor's Report on February 22, 2024. (Tr. at 65; Ex. NOFD-11).

II. ANALYSIS

A. NOFD provided sufficient notice to Operator Meyers

Operator Meyers argues he failed to receive sufficient notice of the factual basis of his discipline under the United States Constitution¹, the Louisiana Constitution, and Civil Service Rule IX. Operator Meyers also argues he failed to receive sufficient factual notice of the investigation and an interrogation under the Firefighter Bill of Rights. As discussed more fully below, Operator Meyers received sufficient legally required notice.

1. Sufficiency of Notice under the Louisiana Constitution and Civil Service Rule IX

Operator Meyers received sufficient written notice under the Louisiana Constitution and Civil Service Rule IX. The Louisiana Constitution requires that an appointing authority provide written notice of disciplinary action to a classified employees in advance of the post-deprivation

¹ Operator Meyers argues in post-hearing briefing that he failed to receive sufficient notice under *Cleveland Bd. of Education v. Loudermill*, 470 U.S. 532 (1985), setting forth due process requirements under the federal due process clause before discipline is imposed. A classified employee is not entitled to a pre-disciplinary hearing (or notice of same) under *Loudermill* when the employee suffers a defined period of suspension. *Hampton v. Dep't of Fire*, 2016-1127 (La. App. 4 Cir. 5/3/17), 220 So. 3d 111, 114 ("Normally, permanent employees in the classified service facing discipline are entitled to a 'pre-disciplinary hearing' only when the discipline is termination. Rule IX, § 1.2. On the other hand, La. R.S. § 33:2181 mandates that any fire employee have an opportunity to present witnesses and evidence regarding any allegation prior to the issuance of discipline").

hearing:

Disciplinary Actions. No person who has gained permanent status in the classified state or city service shall be subjected to disciplinary action except for cause expressed *in writing*. A classified employee subjected to such disciplinary action shall have the right of appeal to the appropriate commission pursuant to Section 12 of this Part.¹The burden of proof on appeal, as to the facts, shall be on the appointing authority.

La. Const., art. X, § 8(A) (emphasis added). Likewise, Civil Service Rule IX, § 1.3 requires written notice within five (5) days of disciplinary action:

In every case of termination, suspension, reduction in pay, letter of reprimand, or fine of any employee in the classified service or of involuntary retirement or demotion of the employee, within five (5) working days of the effective date of the action, the appointing authority shall furnish the employee and the Personnel Director *a statement in writing of the reasons therefore*. The notification must advise the employee of the possible right of appeal, which must be exercised within thirty (30) calendar days of the date of the disciplinary letter.

(emphasis added). The rules of the Civil Service Commission have the effect of law. *Civil Service Commission of City of New Orleans v. City of New Orleans*, 2002-1812 (La. 9/9/03), 854 So. 2d 322, 328 (citing *New Orleans Firefighters Ass’n Local 632 v. City of New Orleans*, 590 So. 2d 1172, 1175 (La. 1991)). *See also Thoreson v. Dep’t of State Civil Service*, 433 So. 2d 184, 190 (La. 1983) (holding that State Civil Service Rules have the effect of law).

a. Content of written notice

The written notice should describe the “cause” or the “reasons” for the 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)). “Cause” includes proof of “improper conduct” or the “complained-of activity.” *Whitaker*, 863 So. 2d at 575; *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), Therefore, to inform the employee of the “cause,” the letter should describe facts -- the underlying “conduct” or “complained of activity.”

In this case, NOFD informed Operator Meyers of its decision to demote him to Fire Apparatus Operator because of an incident on December 24, 2023, involving “a vehicular collision with Engine 4 assigned apparatus and a private owned citizen’s vehicle.” (Ex. HO-1). The disciplinary letter also states that “you along with assigned engine house members failed to report the accident and/or follow NOFD/CNO accident protocols.” (Ex. HO-1). The disciplinary letter also references violations of several NOFD policies, including the rule prohibiting false statements and the rule requiring a spotter when backing up a fire truck. (Ex. HO-1). Unlike the situation in *Carey v. Sewerage & Water Bd.*, Docket No. 9407 (Civil Service Commission 3/10/23)², in which the Sewerage & Water Board relied only on its rule requiring professionalism with no explanation of the factual basis, NOFD references the date of the accident, the vehicles involved in the accident, and the individuals who engaged in the misconduct. (Ex. HO-1). NOFD also quotes the rules violated, including truthfulness, having a spotter when backing up a fire truck, and completing an accident report. (Ex. HO-1) The reference to the specific rules violated in this appeal in addition to the factual description provided Operator Meyers with a sufficient description of the “complained of activity.” The complained-of activity was untruthfulness and failure to report an accident that occurred on December 24, 2023.

2. Sufficiency of notice of investigation and notice of interrogation under Firefighter Bill of Rights

The Firefighter Bill of Rights requires NOFD to provide notice to a fire employee when NOFD commences an investigation and before the fire employee is interrogated:

² Available publicly at nola.gov/getattachment/02fa7209-6f7a-4eaf-a8cb-66a60c52ca66/Carey,-Carol-9407/.

B. Whenever a fire employee is under investigation, the following minimum standards shall apply:

- (1) Prior to commencing a formal investigation of a fire employee, the appointing authority shall notify the employee in writing of the nature of the investigation, of the identity and authority of the person conducting such investigation, and of the specific charges or violations being investigated.
- (2) The fire employee being investigated shall be informed in writing at the commencement of any interrogation of the nature of the investigation, of the identity and authority of the person conducting such investigation, of the identity of all persons present during such interrogation, and of the specific charges or violations being investigated. The fire employee shall be allowed to make notes.
- (3) Any interrogation of a fire employee in connection with an investigation shall be for a reasonable period of time and shall allow for reasonable periods for the rest and personal necessities of such fire employee.

La. R.S. 33:2181(B). The February 22, 2024, Notice of Investigation, Exhibit NOFD-1, provided to Operator Meyers in advance of the interview by Laval Franklin on February 22, 2024, references the December 24, 2023, incident and identifies the specific charge being investigated as false statements. The Notice of Investigation identifies Captain Franklin as the investigator.

Following Captain Franklin's interview of Operator Meyers, District Chief Paul Hellmers issued a Documentation of Disciplinary Action, signed by Operator Meyers on March 26, 2024. (Ex. NOFD-2). Attached to this document is inter-office correspondence stating all the rule violations for which Operator Meyers was ultimately demoted. (Ex. NOFD-2). Operator Meyers does not challenge the sufficiency of the March 26, 2024, Documentation of Disciplinary Action.

On April 7, 2024, NOFD provided a Notice of Pre-disciplinary Hearing to Operator Meyers. (Ex. NOFD-3). The factual description in the Notice of Pre-Disciplinary Hearing reads as follows: "Unit was involved in an accident that was not properly reported to the Department. When accident was discovered by Department member provided false information in regard to the accident." (Ex. NOFD-3).

Operator Meyers takes the position that the February 22, 2024, Notice of Investigation is deficient because NOFD failed to advise Operator Meyers of the factual basis for the initiation of the investigation. Notably, Operator Meyers admitted misleading NOFD in his February 16, 2024, special report, so he complains of an insufficient factual description in the notice when he and firefighters under his supervision actively impeded NOFD's investigation. Before the investigator obtained the complete facts on February 22, 2024, NOFD informed Operator Meyers it was investigating him for making false statements related to a December 24, 2023, incident. As the Second Circuit Court of Appeal has recognized, "[t]he notice requirements of La. R.S. 33:2181(B) do not require to give an explicit, detailed *ex ante* rendition of every single fact which may have bearing on the outcome of the investigation." *Craft v. Benton Fire Dist. #4*, 52,578 (La. App. 2 Cir. 4/10/19), 268 So. 3d 384, 392–93, *writ denied*, 2019-00708 (La. 9/6/19), 278 So. 3d 364.

After Operator Meyers provided an accurate special report and answered Captain Franklin's questions, NOFD was able to provide Operator Meyers with all the charges and a fuller description of the underlying conduct.

Contrary to Operator Meyers' assertions, the April 7, 2024, Notice of Pre-Disciplinary Hearing provides an accurate, although succinct, description of the underlying facts, even though a new notice of interrogation may not be required each time a fire employee is interrogated. *See Craft*, 268 So. 3d at 393.

Operator Meyers received sufficient notice under the Firefighter Bill of Rights.

B. NOFD's penalty is commensurate with the infraction

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 suspending 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”).

a. Factors considered by Commission

“In determining whether discipline is commensurate with the infraction, the Civil Service Commission considers the nature of the offense as well as the employee’s work record and previous disciplinary record.” *Matusoff v. Dep't of Fire*, 2019-0932 (La. App. 4 Cir. 5/20/20), 2020 Westlaw 2562940, *writ denied*, 2020-00955 (La. 10/20/20), 303 So. 3d 313. The Commission considers the nature of the offense, the employee’s work ethic, prior disciplinary records, job evaluations, and any grievances filed by the employee.” *Honore v. Dep't of Pub. Works*, 14-0986, pp. 8-9 (La. App. 4 Cir. 10/29/15), 178 So. 3d 1120, 1131, *writ denied*, 2015-2161 (La. 1/25/16), 185 So. 3d 749.


2. The penalty of demotion is commensurate with the infraction

Superintendent Nelson testified that he demoted Operator Meyers instead of terminating his employment because of the mitigating factors of the absence of prior discipline and Operator Meyers’s willingness to take responsibility for his mistake. (Tr. at 156-57). Superintendent Nelson


emphasized the severity of the conduct, and the need for NOFD and the City of New Orleans to be able to rely on its officers' statements, especially when those statements may be submitted in a lawsuit filed against the City. (Tr. at 156, 162). On cross-examination at the hearing of this matter, Operator Meyers testified that that his untruthfulness was "definitely" a serious problem, and he agreed that NOFD must have honest captains. (Tr. at 64-65). Because of the seriousness of the offense, the Commission finds that the penalty of demotion is commensurate with the infraction.


Operator Meyers' appeal is DENIED.

WRITER:


Mark C. Surprenant (Mar 4, 2025 10:33 CST)
MARK SURPRENANT, COMMISSIONER

CONCUR:


Brittney Richardson (Mar 26, 2025 04:07 CDT)
BRITTNEY RICHARDSON, CHAIRPERSON


Ruth Davis (Mar 7, 2025 15:00 CST)
RUTH DAVIS, COMMISSIONER