

JOSEPH SCANIO

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE for the
CITY OF NEW ORLEANS

CASE NUMBER: 8193

I. PROCEDURAL BACKGROUND

Police Sergeant Joseph Scanio appealed a written reprimand issued to him for failure to call back a complainant who had been waiting for an NOPD response to her 911 call for over an hour. The Commission originally sustained the appeal and overturned the decision based upon a finding that NOPD's investigation failed to comply with R.S. 40:2531, colloquially known as "the Police Officer's Bill of Rights." Specifically, the Commission held that the investigation was not completed in a timely manner (i.e., within the 120 days provided for after an extension) because the "Notice of Accused," 1) set a tentative hearing date rather than a concrete one, and 2) indicated that such a hearing would be necessary "if" the allegations of misconduct were sustained. In light of developing case law within the Fourth Circuit, the Commission granted NOPD's motion for reconsideration. *See, Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15), 165 So. 3d 191, 202 (La. Ct. App. 2015); *Hurst v. Dep't of Police*, 2014-0119 (La. App. 4 Cir. 7/23/14), 146 So. 3d 857, 861 (La. Ct. App. 2014).

II. FACTUAL BACKGROUND

Appellant does not dispute the one basic fact set forth in the disciplinary letter - that he failed to call the Complainant for over sixty minutes. And, while most of the facts surrounding this matter are not in dispute, we summarize them here in order to provide context for our decision.

Appellant was one of two Sergeants assigned to the Fifth District on June 7, 2012. At 4:08 p.m. on June 7th, a female citizen made a 911 call indicating that her apartment had been broken into and that the perpetrator had killed one of her dogs. (City Exh. 5). Further, she notified the

dispatcher that she was concerned that the perpetrator was still in her apartment. *Id.* The Complainant provided her information to the 911 call-taker, and called back several times during the course of the afternoon to check on the status of her call. Approximately two-and-a-half hours after the Complainant initiated her first call, NOPD officers arrived at her apartment and conducted an initial investigation. (City Exh. 5).

NOPD policy requires that the “on duty district rank” monitor the computer system that tracks incoming calls. (FOB Policy #39). And, “if a call is holding sixty minutes or more, an on duty sergeant or the desk officer shall make contact with the complainant.” *Id.* The policy then provides a suggested script to use when speaking with a complainant who has been waiting. *Id.* Neither Appellant, nor the other Sergeant on duty, Christina Watson, called the Complainant back, nor did they direct the desk officer to call.¹

Appellant asserted that he was managing a variety of duties during his shift on June 7th was doing his best to prioritize these duties. (*See generally* Tr. 78-82) Appellant also stated that he did check on pending calls throughout his shift by speaking with the desk officer, but that the desk officer never informed him that there was a call pending for more than an hour. At one point in his shift, Appellant recalled that he overheard Sergeant Watson speaking with the desk officer regarding the backlog of calls and made the assumption that all such calls had been addressed. (Tr. at 107:18-24) Appellant did not identify any emergencies or other pressing assignments that would have taken precedent over calling the Complainant back or that would have prevented him from making such a call.

III. TIMELINESS

The Police Officer’s Bill of Rights governs the timing of investigations into alleged

¹ Sergeant Watson was also issued a written letter of reprimand for her violation of NOPD’s policy regarding call backs. (Tr. 50:10-13) Sergeant Wilson did not appeal her discipline “because [she] forgot.” *Id.* at 50:14-16

misconduct by a police officer:

When a formal, written complaint is made against any police employee or law enforcement officer, the superintendent of state police or the chief of police or his authorized representative shall initiate an investigation within fourteen days of the date the complaint is made. Except as otherwise provided in this Paragraph, each investigation of a police employee or law enforcement officer which is conducted under the provisions of this Chapter shall be completed within sixty days. However, in each municipality which is subject to a Municipal Fire and Police Civil Service law, the municipal police department may petition the Municipal Fire and Police Civil Service Board for an extension of the time within which to complete the investigation.... If the board finds that the municipal police department has shown good cause for the granting of an extension of time within which to complete the investigation, the board shall grant an extension of up to sixty days. ... The investigation shall be considered complete upon notice to the police employee or law enforcement officer under investigation of a pre-disciplinary hearing or a determination of an unfounded or unsustained complaint....

R.S. 40:2531(B)(7)(emphasis added)

Thus, the question of whether or not an investigation was completed in a timely manner turns on two questions:

- 1) When did the investigation start?
- 2) When did the investigation end?

In *Abbott*, the Fourth Circuit held that NOPD's DI-1 form constitutes the "formal written complaints" referenced by R.S. 40:2531 and that the date NOPD initiates a DI-1 form "signal[s] the initiation of [an] investigation." *Abbott*, at 202-203. In doing so, the Fourth Circuit explicitly rejected the proposition that an investigation begins when the appointing authority engages in a "systematic inquiry." *Id.* (citing *Nunnery v. City of Bossier*, 822 F.Supp.2d 620, 632 (W.D.La.2011)).

The completion of the investigation is defined by statute as occurring "upon notice to the police employee or law enforcement officer under investigation of a pre-disciplinary hearing or a determination of an unfounded or unsustained complaint." *Id.* at 203. (citing R.S. 40:2531(B)(7)).

J. Scanio
Case No: 8193

In *Abbot*, a December 2011 “Notice to Accused” sent to each of the appellants in that case constituted the conclusion of the investigation since it: 1) informed them that the complaint was sustained, 2) that the investigation was complete, and 3) provided a hearing date. *Id.* at 205.

In the matter now before the Commission, the DI-1 form was completed on June 11, 2012 and the Notice of Accused to Appellant indicates that the investigation was initiated on “June 8, 2012.” (City Exh. 1). On July 3, 2012, the Appointing Authority requested, and was granted, an extension of time in which to complete its investigation. (City Exh. 2). On October 1, 2012, the Appointing Authority issued the Appellant a “Notice to Accused” that was received by the Appellant on October 4, 2012. (City Exh. 3). This Notice indicated that, the investigation was complete, that the investigator was recommending that the allegations against Appellant be sustained and that a disciplinary hearing was scheduled for December 5, 2012.

The contents of the “Notice of Accused” issued to Sergeant Scanio are virtually identical in nature and content to the notices received by the officers in *Abbot*. In *Abbott*, the officers argued that their notices were deficient because of conditional language contained therein and that the notice only indicated the investigator's recommended disposition, not the final disposition. *Id.* at 204. The Fourth Circuit rejected the officers’ contentions and held that the notices were “sufficient to provide meaningful notice that the charges against them had been sustained and that a pre-disciplinary hearing had been scheduled in compliance with La. R.S. 40:2531(B)(7).” *Id.* at 205; *see also Hurst v. Dep't of Police*, 2014-0119 (La. App. 4 Cir. 7/23/14), 146 So. 3d 857, 861 (La. Ct. App. 2014).

Based upon the facts of the instant appeal, and in consideration of the holdings in *Abbot* and *Hurst*, the investigation into the Appellant’s misconduct began on June 8, 2012. Bearing in mind the extension granted by the Commission, NOPD had until October 6, 2012 to issue

Appellant a Notice to Accused. NOPD's issued such a notice within the prescribed timeline and that notice contained the required elements signaling an end to the investigation. Therefore, NOPD's investigation complied with the timelines established by R.S. 40:2531.

IV. CAUSE FOR DISCIPLINE

Given that the Commission finds that the discipline issued to Appellant was not procedurally deficient, we now turn our attention to whether or not NOPD has met its burden in establishing that there was sufficient cause to discipline Appellant.

In a Civil Service disciplinary action, 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. *Gast v. Dep't of Police*, 2013-0781 (La. App. 4 Cir. 3/13/14), 137 So. 3d 731, 733 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094 (La. Ct. App. 2007)).

1) Appellant Violated NOPD Policy

There is no doubt that Sergeants in the NOPD have an enormous amount of responsibility and make a variety of critical decisions on a daily basis, all while supervising officers in the field and completing necessary administrative matters. (*See generally* Tr. at 78-82). And, while the Appellant offered several mitigating reasons for his failure to provide the complainant with a callback, the following facts are not in dispute:

1. NOPD policy requires the ranking officer on duty monitor calls that are coming in and arrange for calls to complainants who have been waiting for an NOPD response for more than an hour. (FOB Policy #9)
2. Appellant was aware of this policy. (Tr. 108:3-12)
3. Appellant was one of two ranking officers assigned to duty at the Fifth District on June 7, 2012. (Tr. at 43:10-14)
4. There was a call to 911 on June 7, 2012 assigned to the Fifth District. (City Exh. 4)

5. Appellant, along with two other NOPD staff members, were responsible for ensuring that the Complainant received a call back. (Tr. 56:6-57:2)
6. No call back was made. (City Exh. 4; Tr. 22:23-23:23)

Given the above undisputed facts, NOPD has met its burden in establishing that Appellant engaged in the conduct that led to his discipline. The fact that no one told Appellant that there was a call pending for more than an hour does not absolve Appellant of liability for violating NOPD's policy given that policy requires the ranking officer to monitor the pending calls. (FOB Policy #39). Ultimately, the supervisors bear the responsibility to initiate call backs.

2) Appellant's Conduct Impaired the Efficiency of NOPD

Commander Christopher Goodly described how the Appellant's conduct impaired the efficiency of the Department in the following manner:

Although it's a minor infraction [FOB Policy #39] in my opinion was created to provide the citizenry with a more customer service atmosphere. The nature of our police work we sometimes through supervisory management we have to prioritize things. And in essence based on resources or the resources available you may have times where certain incidents are [waiting for action] for an excessive amount of time. When those things persists, according to FOB Policy #39 past sixty minutes then it's incumbent upon the field supervisors to just makes sure it provides the citizenry with an update, a continued update to let them know what the situation is. And it actually makes for a more customer service friendly atmosphere with the citizenry to let them know that we care, to let them know that we are taking their calls serious.

(Tr. at 65:16-66:6)

Appellant failed to mount an serious challenge to Commander Goodly's testimony and the Commission accepts it.

V. CONCLUSION

Based upon the above findings of fact and law, NOPD's investigation into Appellant's misconduct adhered to the procedural requirements of Louisiana Revised Statute 40:2531. Furthermore, NOPD has established, by a preponderance of the evidence, that Appellant engaged in the conduct of which he stood accused and that such conduct impaired the operations of NOPD. Thus, the letter of reprimand received by Appellant was in accordance with this Commission's Rules. The Commission relied upon the entire record before it including the transcript from the appeal hearing as well as the exhibits admitted by the hearing officer. Therefore:

It is hereby ORDERED that Appellant's Appeal is dismissed.

Judgment rendered this 3rd day of November 2015.


JOSEPH S. CLARK, COMMISSIONER

CONCUR


RONALD P. McCLAIN, VICE-CHAIR


TANIA TETLOW, COMMISSIONER