



CITY OF NEW ORLEANS

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CITY CIVIL SERVICE COMMISSION

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LATOYA CANTRELL
MAYOR

Thursday, April 11, 2019

Mr. Jared Cook

Re: **Jared Cook VS.
Recreation Department
Docket Number: 8759**

Dear Mr. Cook:

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 - 4/11/2019 - 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, Sec.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: Larry Barabino
Elizabeth S. Robins
Ramona D. Washington
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

<p>JARED COOK, Appellant,</p> <p>vs.</p> <p>RECREATION DEPARTMENT, Appointing Authority.</p>	<p>DOCKET No.: 8759</p>
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I. INTRODUCTION

Appellant, Jared Cook, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Recreation Department for City of New Orleans, (hereinafter “NORD” or “Appointing Authority”) suspended Appellant for three days without pay after substantiating allegations of misconduct against Appellant.

At all times relevant to the instant appeal, Appellant had permanent status as a classified employee. A referee appointed by the Commission presided over one day of hearing on April 17, 2018. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the hearing examiner’s report. Based upon our review, we GRANT the appeal and render the following judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

On February 5, 2018, NORD issued Appellant notice of a three-day suspension. The cause for the suspension expressed in the notice was Appellant's "fabricated, illegitimate claim against a NORD staff member." (H.E. Exh. 1). Specifically, NORD alleged that Appellant falsely accused another NORD employee, Shawn Wyatt, of saying, "man, fuck you" when Appellant attempted to shake Mr. Wyatt's hand on December 13, 2017.

NORD asserted that Appellant's alleged action violated the standards of behavior for City employees contained in "Policy 83(R)" adopted by the City's Chief Administrative Officer. According to Policy 83(R), employees must conduct themselves in a "professional and courteous manner" toward the public, "co-workers and supervisors." NORD further alleged that Appellant's actions were inconsistent with the "service philosophy" contained within the NORD Staff Handbook. Per the service philosophy, NORD is "committed to serving the citizens of New Orleans, not ourselves. We are honest and trustworthy...." *Id.* Finally, NORD asserted that Appellant's alleged misconduct evidenced an inability or unwillingness to perform his duties in a satisfactory manner and warranted discipline per Civil Service Rule IX, Section 1.1.

B. December 13, 2017

Around noon on December 13, 2017, several NORD recreation center managers met with NORD athletic coordinator staff to discuss duties and responsibilities of NORD staff vis-à-vis NORD facilities. (NORD Exh. 1). During the meeting, some participants discussed how staff should deal with unruly and/or rowdy fans who attend athletic events. *Id.* Appellant then decided to provide an example of what an unruly fan would say and in doing so referred to Shawn Wyatt as a "bitch." *Id.*

After the meeting ended, participants gradually filtered out of the meeting room and went back to attend day-to-day responsibilities. When Mr. Wyatt entered NORD's administration building to return to his office, he observed Appellant. (NORD Exh. 1). As Mr. Wyatt approached his office, Appellant reached out his hand to Mr. Wyatt as if attempting to shake Mr. Wyatt's hand. Mr. Wyatt did not accept Appellant's apparent gesture of conciliation and avoided physical contact. *Id.*

It is at this point in the story where the Parties have differing accounts. According to Appellant, when Mr. Wyatt refused to accept Appellant's handshake, he told Appellant, "man, fuck you." Mr. Wyatt acknowledged that Appellant attempted to shake his hand, but denied that any words passed between the two of them. The only witness to the exchange that testified during the appeal hearing was Ms. Yolanda Brown.

Ms. Brown, who worked as the "uptown district manager" at the time of the alleged incident, provided a written statement to Ms. Maya Wyche. In that statement, Ms. Brown recalled attending the meeting between recreation center managers and athletic coordinators, and Appellant's use of the word "bitch." (NORD Exh. 1). Ms. Brown confirmed that, after the meeting, she relocated to NORD's administration building in order to meet with another NORD employee, Steve Martin. (Tr. at 107:5-15; NORD Exh. 1). As Ms. Brown was waiting to meet with Mr. Martin, she knelt down towards a bin located on the floor when she observed Mr. Wyatt approach. (Tr. at 110:3-6). Ms. Brown claimed that Mr. Wyatt was by himself. *Id.* at 110:7-8. While she did not observe any physical interaction between Appellant and Mr. Wyatt, Ms. Brown claimed that she heard Mr. Wyatt say "man, eff you." *Id.* at 110:14-19. Ms. Brown worked with Mr. Wyatt and was very familiar with his voice. *Id.* at 110:20-22. Ms. Brown claimed that she

was “shocked” upon hearing Mr. Wyatt’s profanity and urged Appellant to report it. *Id.* at 111:3-10.

On cross-examination, Ms. Brown went into further detail regarding what she did after the meeting between recreation center managers and athletic coordinators ended. She stated that, immediately following the meeting, she walked to her desk located in the main administration building where she, Appellant and another NORD employee, Tyna Preatto, engaged in a conversation about Ms. Preatto’s volleyball program. (Tr. at 105:21-106:5, 116:9-15). Ms. Brown estimated that the conversation ended approximately ten minutes after the earlier meeting. It was at this point in time that Ms. Brown claimed to have observed Mr. Wyatt, alone, approach Appellant and utter the profanity.

NORD called Anita Clark as part of its case-in-chief. Ms. Clark, who was an office assistant trainee at the time of the incident, occupied a cubicle in NORD’s main administration building. (Tr. at 23:16-24:3). The cubicle had “walls” that were between four and five feet high. *Id.* at 24:4-6. Ms. Clark did not attend the meeting between recreation center managers and athletic coordinators due to another commitment, but does recall being at her cubicle at around 1:45 p.m. on December 13th. At that time, Ms. Clark recalled seeing Mr. Wyatt along with Tyrone Vincent (recreation center manager) and “possibly” Jerome Cochran. *Id.* at 29:24-30:21. Shortly after observing Mr. Wyatt, Ms. Clark saw Appellant “probably talking to somebody and walking into the lounge.” *Id.* at 31:8-12. And, at this time, Ms. Clark did not see Appellant “interact” with Mr. Wyatt. *Id.* at 31:13-15. While Ms. Clark insisted that there was not a time Appellant could have interacted with Mr. Wyatt after the meeting without her observing it, she did acknowledge that, while sitting at her cubicle, there were areas of the office that she could not see.

Ms. Clark's testimony differs from Mr. Wyatt's statement in at several material respects. First, Mr. Wyatt claimed that he was preparing to attend a "1 on 1" meeting with Jerome Cochran when he encountered Appellant who was "standing in the doorway of the breakroom" outside Mr. Wyatt's office. (NORD Exh. 1). Mr. Wyatt made no mention of Mr. Vincent while Ms. Clark was positive that Mr. Vincent was with Mr. Wyatt during the time in question. Further, Ms. Clark testified that Appellant was walking and talking as he passed Mr. Wyatt while Mr. Wyatt alleged that Appellant was standing by the breakroom. Ms. Clark testified that Appellant was "walking into the employee lounge" when he passed Mr. Wyatt, but in her statement she wrote that Appellant was coming out of the "employee kitchen" past Mr. Wyatt. Finally, Ms. Clark testified that Mr. Wyatt had already been to his office in order to "put down the briefcase or whatever and then he came back out." (Tr. at 34:20-35:3). Mr. Wyatt claimed that he encountered Appellant when he was returning to his office. (NORD Exh. 1). The Parties did not explore these inconsistencies on the record and Mr. Wyatt did not testify.

Mr. Cochran, identified by Ms. Clark as one of the individuals in Mr. Wyatt's presence as Appellant walked by Mr. Wyatt on the afternoon of December 13th, also submitted a statement. (NORD Exh. 1). In his statement, Mr. Cochran does not reference Appellant but does claim that Mr. Wyatt "had no interaction anyone (sic)." *Id.* The Commission presumes that Mr. Cochran meant to write "had no interaction **with** anyone" but Mr. Cochran did not testify and thus could not provide clarification as to what he meant and whether or not he saw Appellant after the meeting. Mr. Cochran also claimed that "at no time was Shawn Wyatt out of my presence." *Id.* This claim, however, was later contradicted by the testimony of Aisha Kelly who claimed to have seen Mr. Cochran leave Mr. Wyatt's company in order to pursue a conversation with another NORD staff member. (Tr. at 92:25-93:9).

Ms. Mya Wyche, NORD's Chief Operating Officer at the time, conducted the investigation into Appellant's initial allegations. As part of her investigation, Ms. Wyche collected written statements (via email or handwritten) from some of the individuals identified by Appellant and others who Ms. Wyche believed may have witnessed the interaction between Mr. Wyatt and Appellant. After receiving the statements and reviewing them, Ms. Wyche believed that Appellant had fabricated his account. According to Ms. Wyche, five of the statements she collected contradicted Appellant's account as opposed to only one statement (that of Ms. Brown) that supported Appellant's account. Based upon her findings, Ms. Wyche believed she had ample evidence to move forward with disciplinary action against Appellant and did not conduct any further interviews.

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/she 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 (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)). 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-

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0993 (La. App. 4 Cir. 2/11/15, 7); 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.

IV. ANALYSIS

A. Hearsay Evidence

The majority of NORD's case depends upon the Commission accepting hearsay evidence over live testimony. Hearsay evidence is admissible in appeal hearings, however, the mere fact that such evidence is admissible does not mean that it is "competent." It is for the Commission to determine if such evidence is "competent" or "of the type a reasonable person would rely upon." *Taylor v. New Orleans Police Dep't*, 2000-1992 (La.App. 4 Cir. 12/12/01, 5); 804 So.2d 769, 773, writ not considered, 2002-0139 (La. 3/22/02); 811 So.2d 935; see also, *Johnson v. Dep't of Police*, 2008-0467 (La.App. 4 Cir. 12/10/08, 13); 2 So.3d 501, 510 (out of court victim statement supported by cell phone records, other eye witness accounts and NOPD Officer statements).

Here, NORD introduced out of court statements from Mr. Wyatt, Mr. Cochran, Mr. Hall, Mr. Jones and Ms. Clark in an attempt to support its case. Appellant, while he did not testify, called Ms. Brown as an eye witness to Mr. Wyatt's alleged vulgarity. Ms. Clark testified as an eye witness to what she observed on the day in question, but had obstructed lines of sight and, despite her testimony to the contrary, could well have missed an interaction between Appellant and Mr. Wyatt that occurred over the course of one or two seconds. For example, Ms. Clark did not observe Appellant reach out to shake Mr. Wyatt's hand nor Mr. Wyatt's avoidance of Appellant's gesture. Ms. Clark's testimony contradicts Mr. Wyatt's testimony in several other areas as described above.

Ms. Wyche testified that NORD had collected five statements that contradicted Appellant's account of his interaction with Mr. Wyatt. This is not supported by the record. One allegedly contradictory statement, submitted by Jeremy Jones, indicated that, immediately after the meeting, he went to check to see if he had mail and then left the facility. Mr. Jones makes no mention of any interaction between Appellant and Mr. Wyatt; he apparently missed the brief interaction – Appellant reaching out to attempt to shake Mr. Wyatt's hand – which both Mr. Wyatt and Appellant acknowledged occurred. The Commission does not view Mr. Jones's statement as contradictory. At best, Mr. Jones's statement suggests that NORD should have asked for a more definite statement or called him as a witness.

Another statement submitted by Jermaine Hall referenced Appellant's inappropriate language during the meeting between recreation managers and athletic directors. But Mr. Hall made no mention of any interaction between Appellant and Mr. Wyatt. Importantly, neither Mr. Hall nor Mr. Jones provided any information about where they went immediately after the meeting nor whether they observed Mr. Wyatt interact with Appellant.

Bearing the above in mind, the Commission finds that the hearsay evidence introduced by NORD has very little probative value.

B. Occurrence of the Complained of Activities

In order to satisfy its burden of proof, NORD had to establish that it was more likely than not that Appellant lied when he reported that Mr. Wyatt had cursed at him. As part of its presentation NORD called only one witness, Ms. Clark, whose testimony undermined Appellant's initial allegations. Ms. Clark's testimony, however, raised as many questions as it answered. The record would have benefited from the testimony of Mr. Wyatt and Mr. Cochran. Further, a diagram (even a hand-drawn one) of the office layout in the area where the alleged incident occurred would

have provided vital context for the testimony. From the Commission's review of the record, there appear to be several obstacles, including walls and cubicles, which would impact one's ability to see and hear what was happening in the office.

Finally, NORD did not present evidence that Appellant had some motive to fabricate his account. If there was some history of animosity between Appellant and Mr. Wyatt, the Commission may have been more inclined to believe that Appellant would be willing to make a false allegation, in writing, to a supervisor. In fact, Appellant's ill-advised example of a possible confrontation during which he referred to Mr. Wyatt as a "bitch" establishes a possible reason for Mr. Wyatt's expletive. Similarly, there was no evidence showing why Ms. Brown, a relatively new NORD employee, would fabricate her account of the incident.

The Commission recognizes that Appellant did not introduce evidence that would tend to show Mr. Wyatt or other witnesses were being untruthful. But Mr. Wyatt did not testify, thus the Commission, through the hearing examiner, did not have an opportunity to assess his credibility.

As a result of the foregoing findings of fact, the Commission holds that the NORD has failed to establish that Appellant fabricated his account of Mr. Wyatt using profanity towards him.

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby GRANTS Appellant's appeal. NORD shall remit to Appellant all back pay and emoluments associated with the three-day suspension at issue in the instant appeal. Further, NORD shall rescind the disciplinary letter and expunge any record of the three-day suspension from Appellant's employee files.

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Judgment rendered this 11th day of April, 2019.

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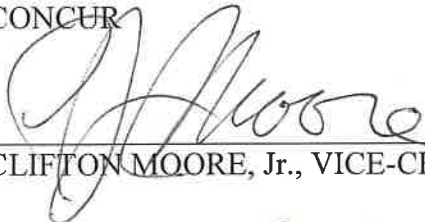
WRITER



MICHELLE D. CRAIG, CHAIRPERSON

3/27/2019

DATE

CONCUR


CLIFTON MOORE, Jr., VICE-CHAIRPERSON

3/19/19

DATE



BRITTNEY RICHARDSON, COMMISSIONER

4/1/19

DATE