



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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RUTH WHITE DAVIS

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Friday, April 23, 2021

Mr. Donovan A. Livaccari
101 W. Robert E. Lee, Suite 402
New Orleans, LA 70124

Re: **Tonisha Goodwin VS.
Department of Police
Docket Number: 8848/8890**

Dear Mr. Livaccari:

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 - 4/23/2021 - 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,


Stacie Joseph
Management Services Division

cc: Shaun Ferguson
David J. Patin, Jr.
Jay Ginsberg
Tonisha Goodwin

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

TONISHA GOODWIN
Appellant

v.

Docket Nos. 8848 and 8890

NEW ORLEANS POLICE DEPARTMENT
Appointing Authority

DECISION

Appellant, Tonisha Goodwin, 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 emergency suspension of and subsequent termination imposed by the New Orleans Police Department ("NOPD") on January 17, 2019. (See Exhibits HE-1 and HE-2). At the time she was terminated, Appellant was employed as a police officer with the NOPD and had permanent status as a classified employee. A Hearing Examiner, appointed by the Commission, presided over a hearing held on April 17, 2019. At this hearing, both parties had an opportunity to call witnesses and present evidence. The Hearing Examiner provided the Commission with his advisory report dated May 24, 2019.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the April 17, 2019 hearing, all exhibits submitted at the hearing, the Appellant's (untimely) Motion for Summary Disposition as to Docket no. 8848 and the opposition to same, the Hearing Examiner's May 24, 2019, report, and controlling Louisiana law. For the reasons set forth below, we GRANT the appeal in part and DENY the appeal in part.

I. 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 suspending and 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).

A. Did NOPD show good cause for the discipline at issue?

Appellant admitted at the April 17, 2019 hearing that she committed all of the various offenses enumerated in HE-2. (Tr. at 10-13). The Appointing Authority also carried its burden of proving that the suspensions and termination assessed against the Appellant, as set forth in HE-2, were appropriate and commensurate with the offenses committed. (Tr. at 78-79).

B. Did Appellant receive procedural due process as to the September 9, 2018 emergency suspension?

The only remaining issue for this Commission to decide is whether the Appointing Authority's actions or non-actions in regard to the emergency suspension from September 9, 2018 to October 2, 2018 violated Appellant's procedural due process rights as set forth in La. R.S. 40:2531 (commonly referred to as the Police Officers' Bill of Rights). If such a procedural due process violation occurred, then by law that emergency suspension becomes an absolute nullity in accordance with La. R.S. 40:2531(C).

The Police Officers' Bill of Rights legally required that the Appellant receive notice of the charges against her and an opportunity to be heard relative to those charges before she was disciplined with an emergency suspension without pay on September 9, 2018. *See, e.g., Saulny v. Dep't of Police*, Nos. 8423, 8251 (CSC 8/24/18) (relying on *Hampton v. Department of Fire*, 220 So 3d 111 (La. App. 4 Cir. 5/3/2017), discussed *infra*). It is clear from the record presented that the Appellant was never afforded her legally protected statutory procedural due process rights.

More specifically, at approximately 7 pm or 8 pm on September 9, 2018, the exact same day she was involved in the accident which led to her suspensions and termination, the Appellant was hand delivered and asked to sign a letter, dated September 9, 2018, notifying her that she was suspended without pay as of 5:25 pm that day. (See Ex. HE-1 and Tr. at 114-116). At no time was the Appellant afforded an opportunity to be heard prior to receiving that 5:25 pm September 9, 2018 emergency suspension. Such a procedural due process violation on the part of the Appointing Authority legally renders the emergency suspension from September 9, 2018 to October 2, 2018 a complete nullity under La. R.S. 40:2531(C).

The Louisiana Fourth Circuit Court of Appeal addressed a very similar issue relative to a fireman in *Hampton v. Department of Fire*, 220 So 3d 111 (La. App. 4 Cir. 5/3/2017). The Court ruled that Hampton's procedural due process rights had been infringed in that the emergency suspension was imposed before Hampton had an opportunity to respond to the offenses alleged. Although *Hampton* involved a fireman, the reasoning of the Court is equally applicable to a classified police officer such as Goodwin. Rulings from the Fourth Circuit Court of Appeal serve as binding precedent upon this Commission. Therefore, the reasoning which the court used in

Hampton to reach its decision is respectfully adopted by this Commission in finding that Goodwin's procedural due process rights were violated relative to the emergency suspension.

In addition, the undersigned Commissioners have reviewed *Reed v. Dept. of Police*, 967 So. 2d 606 (La. App. 4 Cir. 10/10/2007), wherein the Fourth Circuit made an exception to the general rule that a classified police officer had a legally protected right to notice and an opportunity to be heard before discipline was imposed when there existed "unique" circumstances such as that which existed following Hurricane Katrina. We have no such unique circumstances present in regard to Goodwin who should have had an opportunity to be heard prior to receiving the hand delivered September 9, 2018 emergency suspension notice.

II. CONCLUSION

Given the entire record presented, as viewed in the light of controlling Louisiana law, the undersigned Commissioners GRANT Appellant's appeal relative to rendering the emergency suspension an absolute nullity, but DENY the appeal in all other respects. Appellant is entitled to back pay and other emoluments of employment relative to her emergency suspension from September 9, 2018 to October 2, 2018.

This the 23rd day of April, 2021

WRITER:

Mark C. Surprenant
Mark C. Surprenant (Apr 16, 2021 16:09 CDT)

MARK SURPRENANT, COMMISSIONER

CONCUR:

BRD
Brittney Richardson (Apr 16, 2021 16:08 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

J H Korn
J H Korn (Apr 23, 2021 11:10 CDT)

JOHN KORN, COMMISSIONER