



# 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  
CLIFTON J. MOORE, JR, VICE-  
CHAIRPERSON  
JOHN KORN  
MARK SURPRENANT  
RUTH WHITE DAVIS

Monday, October 4, 2021

AMY TREPAGNIER  
DIRECTOR OF PERSONNEL

Mr. Louis Robein  
2540 Severn Avenue, Suite 400  
Metairie, LA 70002

Re: **Robert Pitre Jr. VS.**  
**Department of Fire**  
**Docket Number: 9215**

Dear Mr. Robein:

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 - 10/4/2021 - 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: Roman Nelson  
William R. H. Goforth  
Alexandra Mora  
Robert Pitre

file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**ROBERT PITRE, JR.**  
**Appellant**

**Docket No. 9215**

v.

**DEPARTMENT OF FIRE,**  
**Appointing Authority**

**DECISION**

Appellant, Robert Pitre, Jr., brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his termination communicated by letter dated September 28, 2020. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a firefighter. A Hearing Examiner, appointed by the Commission, presided over a hearing on December 4, 2020, and December 7, 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 May 19, 2021, and the updated report dated September 23, 2021 (a copy of which is attached), the post-hearing briefs submitted by the parties, and controlling Louisiana law.

For the reasons set forth below, the undersigned Commissioners agree with the recommendation received from the Hearing Examiner and DENY the appeal.

**I. FACTUAL BACKGROUND**

Because the attached hearing examiner's report contains a thorough discussion of the facts, the undersigned Commissioners will not repeat the facts in this decision.

## II. ANALYSIS

As a threshold issue, the NOFD's discipline of Pitre must comply with the Firefighter's Bill of Rights. This Louisiana statute requires that any investigation of a fire employee be concluded within 60 days, with an exception for an extension of time. La. R.S. § 33:2186(A). The minimum standards during an investigation address the written notice to a fire employee (including the charges against the firefighter), recording of the interrogation, and the presence of counsel and/or a representative. La. R.S. § 33:2181. The Bill of Rights applies only to a "fire employee" defined as an employee of a fire department "under investigation with a view to possible disciplinary action, demotion, or dismissal." La. R.S. § 33:2181(A)(1). Any discipline imposed without strict compliance with the minimum standards is an absolute nullity. La. R.S. § 33:2181(C).

Pitre's position is that the NOFD's investigation as to him began on July 8, 2020, when he was interviewed by the NOFD in connection with Ebbs's alleged accident pursuant to the July 8, 2020 Notice of a Formal Investigation. (Ex. NOFD-3). If such were the case, the NOFD's investigation, concluded on September 28, 2020, would not have been concluded within the statutorily required 60 days, resulting in all discipline being legally rendered an absolute nullity.

The undersigned Commissioners find that the July 8, 2020 Notice of a Formal Investigation (Ex. NOFD-3) is ambiguous on its face in that it does not state whether the investigation being conducted as of that date related to Ebbs, Pitre, or both. Given that ambiguity, the undersigned Commissioners have reviewed all parol and written evidence submitted at the hearing before the Hearing Examiner in order to resolve this ambiguity. The undersigned Commissioners particularly find the testimony of Superintendent McConnell most compelling and convincing as to the

resolution of this issue. As indicated above, Superintendent McConnell testified that Pitre was not being investigated before August 7, 2020 (Tr. at. 204). Thus, the NOFD's investigation was concluded within the required 60 days. To find that the investigation as to Pitre started on July 8, 2020, as Pitre contends, the undersigned Commissioners would have to conclude that McConnell's sworn testimony as to when the Pitre investigation started is not to be believed.

Upon reviewing the entire record, the undersigned Commissioners find that the Pitre investigation did not start before August 7, 2020, when Chief Hardy received the enhanced version of the video. (Tr. at 63). Although the July 8, 2020 Notification of a Formal Investigation and the interview of Pitre on that same date comply with the requirements of the Firefighter's Bill of Rights, NOFD was interviewing Pitre on July 8 as a witness in connection with the fact-finding investigation of Captain Ebbs for making false statements. The charges described in the July 8, 2020, letter (violation of Rule 5.2.1) are the charges regarding which Ebbs was being investigated as of that date, not Pitre. Therefore, the NOFD complied with the 60-day requirement of La. R.S. 33:2186(A) relative to the Pitre investigation in that the investigation did not start before August 7, 2020, and concluded on September 28, 2020.

In addition to the above issue, 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).

The undersigned Commissioners find that NOFD has carried its burden of showing the complained-of conduct. It is difficult to reconcile Firefighter Pitre's statements with the enhanced video evidence. Clearly, Pitre was cleaning the station instead of proceeding directly to a working fire. Further, the overhead doors go up and down a number of times – including on the bucket. However, at no time is the overhead door on Captain Ebb's legs or ankle. These apparent untruthful statements by Pitre impaired the efficient operation of the fire department, interfering with the investigation of Ebbs's worker's compensation claim. (Tr. at 274). Generally, NOFD must be able to rely on the statements of its fire personnel. The undersigned Commissioners further find that the penalty is commensurate with the dereliction. Pitre's appeal is DENIED.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

This the 4<sup>th</sup> day of October, 2021

WRITER:

Mark C. Surprenant

Mark C. Surprenant (Sep 29, 2021 17:27 EDT)

---

MARK SURPRENANT, COMMISSIONER

CONCUR:

Brittney Richardson

Brittney Richardson (Oct 3, 2021 15:10 CDT)

---

BRITTNEY RICHARDSON., CHAIRPERSON

J H Korn

J H Korn (Oct 4, 2021 14:47 CDT)

---

JOHN KORN, COMMISSIONER

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**ROBERT PITRE, JR.**

**DOCKET NO. 9215**

**VERSUS**

**NEW ORLEANS FIRE DEPARTMENT**

**UPDATED REPORT OF THE HEARING  
EXAMINER**

On December 4<sup>th</sup> and 8<sup>th</sup>, 2020, this sufficiency cause was heard, in which Robert Pitre (“Appellant”) who was a Firefighter assigned to Station 24 at the time of the incident, appealed a termination, decided and imposed on him by the New Orleans Fire Department (“Appointing Authority” or “NOFD”). Ex. HE1. Appointing Authority was represented by William Goforth; Appellant was represented by Louis Robein. Additionally, the Appellant had his union representative, Aaron Mischler, President of Local 632 FF. Appointing Authority called 6 witnesses, Deputy Chief of Safety Terry Hardy, Sr.; former Superintendent Timothy McConnell; Interim Superintendent Roman Nelson, who was a Deputy Superintendent at the time of the incident; Fire District Chief, William Edwin Shanks; and Robert Pitre, Jr. the Appellant. The Appellant testified on his own behalf. The witnesses were sequestered. After hearing and reviewing the evidence, and considering post-hearing briefs, Robert Pitre's appeal is denied.

**PROCEDURAL HISTORY**

On July 8, 2020, Appointing Authority sent the Appellant a letter notifying him of a formal investigation of claims arising from a workers' compensation claim injury related to an overhead door at Station 24, and that a fact-finding hearing would be held that day. NOFD 3. On August 7, 2020,

Appointing Authority sent a letter notifying Appellant that a continuation of the July 8, 2020 hearing would be held that day. NOFD 5. Both letters were signed by Pitre as received.

On August 10, 2020, a notice of Formal Charges was issued against Pitre, specifying that he had violated Article 5 Section 5.2.1, which pertains to false statements:

“No member shall make any false statements or reports concerning another member's conduct or character, or regarding any business of the Department. Members shall not make any false entries or statement in any Department record books, reports, or testimony. Omission of any facts from any reports or record books with the intent to deceive shall be considered the same as a false entry.” NOFD 8. Tr. p. 340.

The Formal Charges alleged that Pitre made several false statements during the formal investigation:

“In this violation Firefighter Robert Pitre made several false statements during a formal investigation fact finding hearing for the overhead door at Station 24 and an employee worker's compensation injury claim. Firefighter Pitre's statements and omission of facts given at the hearing were false and was intended to deceive the hearing panel.” NOFD 8.

On September 12 2020, Appointing Authority sent Appellant a Notification of a Disciplinary Hearing to be held on September 14th, regarding the Formal Charges issued. NOFD 10. Tr. pp. 100-107. It was signed as received by Pitre.

The pre-disciplinary hearing was held on September 14, 2020, at which time the Appellant had an opportunity to present his case. On that same date, Appointing Authority issued a Notification of Suspension & Pre-Termination Hearing, to be held on September 18, 2020, as well as a Notification at Disciplinary Hearing. NOFD 11 & 12. Tr. pp. 100-107. The letters tracked the same language regarding the violations of Article 5 Section 5.2.1. NOFD 11 & 12. In the first letter, he was advised that as a result of the findings, Pitre was suspended with pay, pending the pre-termination hearing. NOFD 11. He was advised of his right to present testimony and documents as evidence of why he should not be terminated, and signed receipt of the letter. Id. Tr. pp. 100-107.

On September 18, 2020, a Notification at Pre-Termination Hearing was given to Pitre, for which he signed receipt. NOFD 13.



On September 28, 2020, Superintendent of NOFD, Timothy McConnell, sent a notification of its decision to terminate the Appellant's employment. HE 1. The NOFD found Appellant had violated the article previously cited regarding false statements. HE 1. McConnell referenced 8 false statements that he found Pitre had made, and based on the totality of the circumstances, found that those statements were "clearly false," were "made with the intent to deceive," and thus, "interfered with the NOFD's investigation into the misconduct of another NOFD employee." HE 1. The 8 false statements Pitre was accused of making were based on a conflict between his statements at interviews and video footage. Tr. p. 240:

1. You falsely stated that upon arriving for work, you entered the station and were immediately ordered to get your gear by Captain Ebbs, then proceeded directly to the locker room to retrieve your bunker gear, and then immediately walked out of the locker room to find Captain Ebbs on the ground with the overhead door on him;
2. - You falsely stated that after retrieving your bunker gear, you did not put your gear on, but you were instead carrying it;
3. - You falsely stated that a few minutes after arriving at the station, you found Captain Ebbs on the ground with the overhead door on him;
4. - You falsely stated that both you and Captain Ebbs had just arrived at the station when the incident involving Captain Ebbs and the overhead door occurred;
5. - You falsely stated that retrieving your bunker gear was the only thing you did that morning before the incident involving Captain Ebbs and the overhead door occurred;
6. - You falsely stated that you did not perform any kind of housework or similar tasks before the incident involving Captain Ebbs and the overhead door occurred;
7. - You falsely stated that you did not see, speak to, or address any civilian that morning;
8. - You falsely stated that you were not present when the overhead doors were opened or closed that morning. " HE 1.

Appellant filed an appeal letter to the NOFD objecting to the findings generally, and also claiming procedural violations by the NOFD:

"Furthermore, as Firefighter Pitre and his Bill of Rights representative have asserted throughout the pre-disciplinary investigation underlying this now appealed disciplinary action, the appointing authority, New Orleans Fire Department, has repeatedly violated the Firefighter Bill of Rights, La. R.S. 33:2181, minimum standards. The record of the multiple interrogations and related conferences fully document the deficiencies associated with this "investigation."

Moreover, the "investigation" of Firefighter Pitre was initiated on or about July 8, 2020 (if not earlier). R.S. 33:2186 mandates that "(a)ny investigation of a fire employee . . . be

completed within sixty days, including the conducting of any pre-disciplinary hearing or conference.” The pre-termination hearing conducted in this matter was held on September 18, 2020. The termination was effected on September 28, 2020. Both events fall well outside the 60-day mandate of §2186.

The ultimate discipline of Firefighter Pitre must be found and deemed to be an “absolute nullity” under the mandatory provisions of R.S. 33:2181(C) given that the adverse action taken against him was conducted “without complete compliance” with R.S. 33:2181 and 2186.”

HE 2.

### **FACTS**

Deputy Chief of Safety, Terry Hardy, Sr. testified first as to how the investigation started. He has been with the department for 28 years, 12 years in his current position, in charge of mitigating safety issues, investigating workers compensation claims, and related misconduct. Tr. pp. 15-17. He testified at length about his role in the investigations. Tr. pp. 15-185. District Chief William “Billy” Shanks also testified for NOFD. He is the district chief in charge of a number of stations, including the one at issue here, Station 24. Tr. pp. 186-187. He read the actual charges to Pitre on August 10<sup>th</sup>, at 13:00 hours, as reflected in his daybook. Tr. pp. 190-191. NOFD 9. Tr. p. 340. Superintendent McConnell corroborated the testimony of Hardy and Shanks, adding some information about the final discipline as well. Tr. pp. 201-269.

On June 14, 2020, Chief Larry White called Chief Hardy to advise him that a firefighter, Captain Ebbs, was injured when an “apparatus” door, also called a “bay” door, which is the door that firetrucks exit through, abruptly fell on Ebbs, pinning him on the ground, at which point he was taken via ambulance to a local hospital. Tr. pp. 17-23. The injury occurred at Station 24, which is located in Bywater, in the Upper 9<sup>th</sup> Ward, on the corner of Poland and St. Claude. Tr. p. 17. Hardy was very concerned about this possible malfunction, so he went to the Station, inspected the door, and used the buttons to move it up and down to see if they worked. Tr. pp. 18-19. He talked to the Captain that was at the Station (not Ebbs), inquired if there was prior malfunctioning, and whether a PM001 Form for Preventative Maintenance, was completed. Id. Hardy was told it was. Id.

Normally for a workers' compensation injury, Hardy notifies the injured employee's supervisor to make sure that the necessary documents are forwarded to headquarters for his review; This would include a first report of injury, and witnesses statements. Tr. pp. 19-20. The firefighter is then drug screened, and taken to Ochsner for immediate evaluation. Id. Once completed, all the reports and documents are all forwarded to headquarters to be processed. Id. This is the normal procedure. Id. If there are concerns about the authenticity of the claim, a fact-finding investigation is done to see if the claim is compensable. Tr. pp. 20-21.

In this case, Hardy requested all documentation, and reviewed it, including special reports submitted by Captain Ebbs, and Firefighter Pitre. Tr. pp. 21-22, 24; NOFD 1, p. 1(Ebbs special report) and p.2(Pitre report). Ebbs was given a drug screen, which came back positive for morphine, which was understood to have been given to him in the hospital, so that was not a problem. Id.

The morning of the workers compensation incident, there was a fire 5 blocks from Station 24. It would have been Ebbs' and Pitre's responsibility to get their bunker gear, and relieve the firefighters there. Tr. pp. 53-54.

According to the reports, Ebbs claimed that on June 14<sup>th</sup> 2020, around 7:20 a.m., he and his crew attempted to close the apparatus door, but it did not respond. Tr. pp. 24-25. It looked like the door was off its tracks. Tr. pp. 25-27. Ebbs then pressed the up button hoping it would adjust and realign itself on the tracks, but instead it came down swiftly, causing him to fall backwards injuring his elbow, left foot and back. Id. From reading Pitre's report, Hardy understood that Pitre was present in the Station grabbing his gear, when he heard Ebbs scream for help and found Ebbs with his leg pinned under the door. Id. Pitre called dispatch. Id. Hardy confirmed that only Ebbs and Pitre were at the Station at the time of the accident. Tr. p. 77.

After reading the reports, Hardy considered what other information he might gather for the claim, when it occurred to him that there was a "Realtime" crime camera at the intersection of Poland and St. Claude, pointing towards Station 24. Tr. pp. 27-28. He asked for the footage, thinking he

would be able to see the door fall on Ebbs leg. *Id.* The video footage, marked as NOFD 2, showed Station 24 from an angle. NOFD 2; Tr. pp. 28-43. You could see the bay doors going up and down, but the view is not straight on so it is possible to miss some of the activity. NOFD 2. Also, the camera was far away enough that one could not readily identify the persons walking in and out of the Station. *Id.* Tr. p. 284.

Hardy received the footage from the Realtime crime camera on July 6, 2020. NOFD 2; Tr. pp.44. At the time Hardy received the footage, Pitre was not under investigation; there was no reason to think he had violated any policy or engaged in misconduct. *Id.* However, Hardy did have unanswered questions, in particular who were the individuals on the scene—who was wearing the baseball cap, who had “bunker” pants—firefighter pants, etc. Tr. pp. 44-45. He felt that they needed more facts.

In order to further the fact-finding investigation, on July 8, 2020, the the Superintendent of the NOFD, Timothy McConnell, sent Pitre a Notice of Formal Investigation set for that same date, for which Pitre signed receipt. Tr. pp. 44-46, 203; NOFD 3. The notice stated McConnell and others, including Hardy, were conducting a “fact-finding investigation related to the incidents” described in the letter and that it was holding a “formal investigation and fact-finding interview ... in connection to these incidents.” *Id.* Hardy explained that the NOFD was still trying to get some clarity on what they saw in the video, and thought since Pitre was there as he stated in his special report, they should interview him. Tr. pp. 45-47. Hardy clarified that he believed this was a fact-finding investigation, and not an investigation of Pitre. Tr. pp. 113-115.

Superintendent McConnell, who authored the July 8<sup>th</sup> letter, testified that this letter was to give Pitre notice that he was being brought in for fact-finding related to the Ebbs' investigation. Tr. p. 203-204 (misspoken as July 18<sup>th</sup> in the hearing testimony in places). McConnell, and his successor, Interim Superintendent Roman Nelson, both confirmed that Pitre was not being investigated for misconduct at this time, despite any language in the letters that might be interpreted otherwise. *Id.*, p. 243-244, 252,

280. For comparison, McConnell described similar letters he sent to witnesses who were never charged with or under investigation for misconduct, but who were nonetheless brought in for the fact-finding investigation of the June 14<sup>th</sup> incident. Tr. pp. 207-215. NOFD 14 & 15.

The July 8<sup>th</sup> interview, which was recorded and later transcribed by Appellant's counsel, was presided over by Superintendent Timothy McConnell, who commenced the hearing by indicating that this was an investigation of the workers' comp claim of Captain Ebbs, and of charges against him of falsifying documents and statements. NOFD 4 (audio); Appellant 1 (transcript), Tr. pp. 47-51, 52, 55, 56. NOFD issued disciplinary charges against Ebbs on Jun 11<sup>th</sup> June 17<sup>th</sup>, and then August 10<sup>th</sup>. Tr.p. 220. As of July 8<sup>th</sup>, there were no charges of misconduct against Pitre, Tr. pp. 52, 113-115; 243-244, 252.

At one point in his testimony, Hardy sated that Pitre lied about what he was wearing—fatigues rather than jeans, and denied wearing a white cap. Tr. pp. 57-59. However, according to the transcript of the interview, Pitre never lied about what he was wearing. In the transcript, Pitre never denies having had on blue jeans or a white cap. Appellant 1. Pitre at first said he had on his regular fatigues. App. 1, p. 16. However, when asked if he could have had on blue jeans or if he owned a white cap, he admitted he might have worn those. Id. On cross examination, Hardy admitted that Pitre was not lying on this point. Tr. pp. 156-157.

There are other places in the transcript, however, where Pitre was certainly inaccurate and may have been lying. App. 1. In the transcript, Pitre said he parked his truck in back. In the video, it was in front. Pitre said it was about 5 minutes from when he arrived to when the door came down, “pretty quick” as he said at one point, but the video showed it was longer. Appellant 1, p. 3, 9; NOFD 2 & 7. He said he was advised about the fire and that he needed to get his gear to relieve Engine 24, then he came out and Ebbs was pinned under the door. Id. Pitre repeatedly said he was getting his gear when he heard Ebbs yell and that this was right after he came in. Appellant 1, p. 3-4, top of page 5, 7, 8, 13, 14, 21. Pitre said he found Ebbs with the door pinning his ankle. App. 1,p. 14-15. The video,

however, showed a longer set of events occurred before Pitre put on his bunker pants. It also showed, that Pitre was doing some housekeeping first, which Pitre denied. App. 1, p. 6. After the July 8<sup>th</sup> hearing, Hardy thought it would be helpful to get an enhanced version of the video so that they could understand the conflicting information received, and see who was in the white cap and jeans. Tr. pp. 63-64.

On the morning of August 7, 2020, Hardy received the enhanced video, reviewed it, and on that same date contacted Pitre and had him come in to answer questions that afternoon. Id. NOFD 7 (enhanced video) & NOFD 5 (notice to Pitre). The interview with Pitre was recorded. NOFD 6. The beginning of the interview referenced charges, however, McConnell and Hardy, who were both present, testified those charges were not against Pitre. Tr. pp. 89, 91; 237, 267-268. Hardy did suspect Pitre of having been untruthful in his previous statement. Id. Following that interview, and on August 10<sup>th</sup>, the NOFD submitted disciplinary charges against Pitre. Tr. pp. 96-97. NOFD 8. Although the copy of the formal charges submitted into evidence was an unsigned copy, there was evidence that Pitre received them. Tr. pp. 98-100. NOFD 9.

In the enhanced video, Hardy could see who was Pitre and who was Ebbs—for one thing Pitre is caucasian and Ebbs, African-American. Tr. p. 68. The enhanced video clearly showed that Pitre was wearing the baseball cap and blue jeans, and that he was kneeling down at the engine house. Tr. pp. 63-64. It initially showed him going in and out of the Station 24 apparatus or “bay” doors. Tr. p. 67. At one point, it showed Pitre going inside, approaching the column between the bay doors where the operating buttons are located, and then one of the bay doors opens. Id. Later, Pitre takes a bucket outside and dumps out the water. Tr. pp. 67-68.

The bay doors are opened and closed numerous times, and other activities occur. At one point, a bucket seems to be set in the doorway, the door starts coming down on it, then retracts and opens. Tr. p. 74. At another point, a caucasian male with a white cap and blue jeans, presumably Pitre, comes outside, puts something in the trash, goes back in, immediately after which the door closes. Tr.

p. 72. Later, a caucasian male, still wearing a white cap, but now wearing “bunker” pants, with a dark blue shirt and red suspenders, comes out to reposition the bucket by the door. Tr. p. 76. Presumably this also is Pitre, but now he has put on part of his gear. Tr. pp. 76-79. This occurred about 13 minutes into the video, so at least 13 minutes after Pitre entered the Station.

Soon after, a pair of moving legs, clad in dark pants, with the person appearing to be face down, emerge from the doorway of the bay doors, with the bay door fully open. Tr. pp. 79-80. This first occurs around 13 minutes and 32 seconds into the video. Id. At 14 minutes 30 seconds, a white male, presumably Pitre, comes out of the Station house, and kneels down to tend to the person laying on the ground, who is presumably Ebbs. Id. A civilian approaches briefly, is gestured to move on by Pitre, and then the civilian walks away. Tr. p. 80. The civilian again approaches and appears to be engaging with Pitre. Id. Pitre remains kneeling until about 16 minutes into the video, when he stands up and enters the Station. Tr. p. 81. At 19 minutes, Pitre comes back outside, kneels down by Ebbs again. Tr. p. 82. Shortly thereafter at 19:40, a civilian appears again. Id.

Hardy believed that Pitre was perhaps untruthful because the video differed from what Pitre said. For example, in the video, the door never came down on Ebbs' legs, but in his statements he said it did. Tr. p. 126, 166. The video shows legs, with the door all the way open. Id. Later, Hardy testified at length as to what was shown on the video, and how it differed from what Pitre said in his statements. Tr. pp. 164-185. It was not until he received the enhanced video, however, that Hardy could clearly see who was Pitre and who was Ebbs.

Whether the door came down on Ebbs' legs was an issue of contention during the hearing since that involved an alleged falsehood by Pitre. Tr. p. 300-302. During the few days break in the civil service proceedings, Appellant's attorney had pictures taken of the bay door. Appellant 2A to 2p. Tr. p. 245. Most of the pictures were admitted. Tr. pp. 245-300. In one, you could see that there are 2 rows of 3 windows on the doors. Tr. pp. 308-309. In the picture someone placed a boot close to the pillar between the two doors. The Realtime camera viewed the 2 bay doors from an angle so that only

2 rows of 2 windows are visible on the bay door at question, the last column of windows being obscured by the pillar. Tr. pp. 308-309, 310-311. Thus, if the boot were below the window closest to the pillar, it might be obstructed from view of the camera. Tr. pp. 245, 309.

Another pictured showed an individual with their foot under the door and reaching to open the bay door button. Tr. pp. 307-308. The witness who took the pictures and testified about them was not an expert and had no experience with photographic or digital evidence. Tr. pp. 321, 327-329. And, of course, even though shots were taken with the boot under the door, the boot was empty so it did not give a realistic idea of how far down the door would be when someone's leg or ankle was under it. Tr. p. 327. The evidence provided did not clarify whether the door was open a crack, which could have indicated that something was under it. Tr. 333-336. The few times in the enhanced video that legs are in view, the door is either fully open, Tr. p. 336, or hitting a mop bucket, with the legs next to the mop bucket. Tr. pp. 332-333.

Appellant attempted to show where in the video, the door closed and may have hit someone's leg or ankle, but where the leg or ankle could have been obstructed from view by the pillar. Appellant pointed to 13:04 in the enhanced video where the door closed. Tr. p. 315. However, if it hit someone's leg or ankle, presumably it would not have closed all of the way, and would have immediately gone back up.

Pitre was shown the enhanced video during his testimony and explained that he was truthful regarding the accident, but that some of the events occurred out of the range of the camera. He testified that when he came out in bunker gear, he had just opened the door off of Ebbs' ankle, and went to catch the mop bucket which was rolling away. Tr. pp. 352-360, 372-373. He testified that the Realtime camera did not catch what happened to Ebbs initially because Ebbs' ankle was near the pillar, hidden from view. *Id.* Pitre also testified that looking at the footage at that moment, even though you could not see Ebbs' leg, it did appear as though the door was not fully shut. *Id.* Tr. pp. 370-371, 389-390. A moment later, when the viewer can see Ebbs' legs come into view with the door



fully open, it is because he had rolled over onto his stomach. Tr. 352-360. He then called dispatch and around that time a civilian approached him a few times to try to talk to him. Tr. pp. 373-374.

Pitre was shown earlier clips of the video and asked to confirm what he was doing. Pitre confirmed that he was emptying a mop bucket early in the video, wearing a cap and jeans, and shortly afterwards taking out the trash. Tr. pp. 361-364. He thought Ebbs likely told him that there was an active fire and they were needed to relieve the crew right before he went to grab his gear, as he would not have done other chores if he knew that they were getting ready to go. Tr. pp. 362-364. Pitre stated that he then went to grab his gear, at which time he found Ebbs on the ground, with his ankle pinned, after which Pitre pushed the button to move the door up and off of Ebbs. Tr. pp. 367-368.

During his direct testimony, Pitre went through the list of false statements he was alleged to have made and categorically denied lying Tr. pp. 391-398. He explained each point and why it was not a lie, but was at most confusion or failure to remember some unimportant details. On the main issue, of whether he found Ebbs pinned under the door, Pitre testified that was absolutely true. He also testified that he was not shown the video at any time prior to his termination. Tr. pp. 398-399.

There was a great deal of testimony regarding whether the investigation of Pitre started on July 6<sup>th</sup> (receipt of first video) or 8<sup>th</sup> (notification letter), or August 7<sup>th</sup> (receipt of enhanced video), or 8<sup>th</sup> (notification letter). Pitre, through counsel, made the argument that since the July 8<sup>th</sup> letter referenced a formal investigation, that was when the investigation began. Tr. pp. 113-136. However, Hardy believed that this was just a formal investigation of Ebbs at this point, starting July 6<sup>th</sup>. Tr. pp. 131; 113-135, 164-165. Hardy also testified that based on the enhanced video, he did not believe that the door actually fell on Ebbs legs. Tr. pp. 135; 115-136. It was at the time that he saw the enhanced video, therefore, that he believed that the investigation of Pitre began—which was August 7<sup>th</sup>. Tr. p. 128.

Pitre's falsehoods impeded the investigation of Ebbs. For example, on the original video, where it was hard to identify the individuals on it, Pitre's inaccurate statements—whether intentional lies or

inaccuracies—made it hard to understand what was happening. Tr. pp. 245-246, 249-250, 283-284. Accurate and truthful reports are certainly important to the functioning of the NOFD. Tr. pp. 274-275.

### ANALYSIS

The Appellant raised the issue of whether more than 60 days had passed from the date the investigation of Pitre commenced until the date of termination, arguing that this would render the termination a nullity as it would be contrary to La. R.S. 33:2186. HE 2. Appellant argues that the investigation of Pitre commenced on July 8<sup>th</sup> or earlier; NOFD claims it was on August 10<sup>th</sup>, when formal charges issued, or at the earliest on August 7<sup>th</sup> when NOFD received footage that allowed them to identify the figures on the footage and consider that Pitre was untruthful. The termination was September 28, 2020.

The evidence is overwhelming that the investigation of Pitre did not commence on July 8<sup>th</sup>. On that date, the NOFD only had the raw footage and could not identify clearly who was in the video. Hardy testified extensively about the course of his investigation. He was clearly investigating Ebbs, not Pitre, especially since Ebbs had at this point already had formal charges against him.

Superintendent McConnell, who authored the notification letters, testified stated that as of July 8<sup>th</sup> Pitre had not been charged with misconduct. Appellant argued that the wording of the letter, “Notice of Formal Investigation” showed that the intention was to investigate Pitre. At best, the wording is ambiguous; McConnell showed that he sent similar letters to other witnesses who also were never charged.

Nowhere on the letters at issue did it say that Pitre was being investigated. The fact that the NOFD was being transparent about its investigations and giving the firefighters more rights than they are entitled to under the Bill of Rights, does not somehow give these letters greater meaning. An investigation of an individual cannot start until there is evidence gathering against that person; that there is notice to that particular employee that he is being investigated. In this case, it was not until the raw footage was received by NOFD that one could argue that they had evidence of any

wrongdoing by Pitre. Thus, the investigation into his actions commenced at the earliest when the footage was received on August 7<sup>th</sup>, or when the formal charges against him were made on August 10<sup>th</sup>. Thus, the investigation was timely completed.

The only issue then is whether the Appointing Authority met its burden on this appeal of a sufficiency cause challenge. The appointing authority has the burden of proof in this case to establish sufficient cause to issue discipline in this case. The Appointing Authority has the burden with respect to (3) three elements of this case. The first element is to establish that the misconduct alleged in the disciplinary notice occurred. Appointing Authority listed 8 instances of false statements by Pitre that were determined to be false by comparing his statement to Realtime camera footage. The Appointing Authority considered those instances of false statements and the totality of the circumstances to determine that these inaccuracies were made with the intent to deceive.

Pitre was wrong about a lot that happened on June 14<sup>th</sup>. Besides the 8 listed instances, he said he parked his car in back, when he parked it in front, and he said he was pretty sure he was not wearing a cap and jeans. Related to the listed instances, he denied doing any housekeeping before getting his gear. He denied having operated the door or seeing it operated before finding Ebbs. Pitre was adamant that the time between coming to the station, and grabbing his gear to go to the fire was pretty quick. He claimed he carried his gear, when he was seen wearing at least part of it, and didn't seem to have anything in hand. He denied talking to any civilians, when he clearly engaged with one while tending to Ebbs. All of these statements were wrong. The question is whether they were because of faulty memory or with the intention to deceive.

Pitre also said he found Ebbs pinned under the bay door and released it. This is a more complicated issue. At first look at the video, it would appear that Pitre was absolutely lying. However, when one compares the still photos of the bay doors taken close up and straight on that were admitted into evidence by Appellant, it's clear that there is a section of door that cannot be seen by the Realtime camera because of the angle and a pillar blocking the view. The only indicator of whether

something could be caught under the door but still be out of view would be if one could see if the door was open a crack—big enough to fit an ankle. It is simply difficult to see whether that is the case or not. The footage is not of great quality and not clear enough to see if there's a bit open at the point in question in the film. Thus, it's not clear from a review of the video alone that Pitre is lying on this point.

There may be many reasons why NOFD decided not to show Pitre the video footage during the initial investigations and interviews, but it is surprising that at least during the pre-termination hearing he was not shown the Realtime camera footage. He may have been able to offer more of an explanation at that point. However, Appointing Authority was not required to do so.

While this is a close call, considering everything, Pitre's responses impeded the investigation at the very least. There are so many inconsistencies in Pitre's statements, and while there is nothing that clearly contradicts his statements about Ebbs, there is nothing to back it up either. Against the backdrop of so many inconsistencies, all of which occurred less than one month earlier, the Appointing Authority has sufficient evidence to find that he was intentionally impeding the investigation of a serious workers compensation issue. Whether the false statements were made intentionally or with a lack of concern for their accuracy, this was a serious investigation that required full cooperation. Pitre's lack of forthrightness about the events of June 14<sup>th</sup> undoubtedly slowed the investigation and complicated it.

The second element is that the misconduct had an adverse impact on the efficient operations of the New Orleans Fire Department. There was convincing evidence that the investigation was important and that the inaccuracies delayed and interfered with the investigation. Thus, that element is easily met.

Finally, the Appointing Authority had to establish that the discipline that was imposed in this case matched the severity of the misconduct. In this case, impeding a workers compensation claim is certainly serious enough to impose termination.

The Appointing Authority met its burden of showing that Pitre violated employee conduct policies, that this kind of behavior adversely affects the efficient operation of the Department, and proved that the termination imposed matched the severity of the misconduct.

**CONCLUSION**

Considering the above, the Appointing Authority has met its burden, the Appellant's appeal should be DENIED.

09/23/21  
DATE

BY: s/ Alexandra E. Mora  
Hearing Examiner