

TYRONE ROBINSON

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7667

The Department of Police ("Appointing Authority") employs Tyrone Robinson ("Appellant") as a Police Sergeant with permanent status. The Appellant received a thirty day suspension for violation of internal regulations regarding Adherence to Law.

The factual basis for the disciplinary action is contained in the second paragraph of the September 1, 2009 disciplinary letter, which provides as follows:

The investigation has determined that on Wednesday, March 4, 2008, at or about 10:00 a.m., you worked a paid detail at 3520 Dryades Street, Walter L. Cohen High School. A student extended her middle finger at you and simultaneously addressed you with offensive words. You responded by slapping the student on the side of her head and dared her to do it again. The student repeated her actions and you grabbed her by the neck with both hands, pinned her against a table and chastised her for her lack of respect. Ms. Ann Beck, a school social worker, witnessed you slap the student and grab her by the neck...

The Appellant contends that the facts as contained in the disciplinary letter are inaccurate, and that he did not commit a battery. The Appellant further contends that the disciplinary action must be reversed because the Appointing Authority failed to complete its investigation within sixty days as required by La. R.S. 40:2531.¹

The Appointing Authority relied primarily upon the testimony of Ann Beck. Ms. Beck was employed as a School Social Worker at Walter L. Cohen High School at the time of the incident. She testified that a seventeen year old female student arrived late to

¹ The Appellant also received a letter of reprimand for violation of internal rules regarding Instructions from an Authoritative Source for failure to timely notify the police district of the location of the paid detail. The Appellant admits that he violated the rule, but reserves his right to challenge the disciplinary action based upon La. R.S. 40:2531.

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school and was upset because school security would not allow her to enter without a parent. Ms. Beck spoke to the student outside the school. They agreed that she would be allowed to enter the school in order to call her parents from the school's administrative office. As Ms. Beck and the student passed through security, the student "flipped off" the Appellant, who was working a paid detail at the school as a security officer. According to Ms. Beck, the Appellant responded by "smacking" the student on the side of her head. The Appellant's actions caused the student to become more upset. She began cursing and "flipped off" the Appellant a second time. Ms. Beck further testified that the Appellant then grabbed the student around the neck pushing her onto a table. Within a few seconds, a male employee of the school pulled the Appellant away and the incident came to an end. Ms. Beck reported the incident to her supervisor and within a few hours prepared a social worker incident report recounting the above described events.

Sgt. Omar Diaz conducted the internal investigation. Sgt. Diaz testified that he relied primarily upon Ms. Beck's version of events finding her more credible than the Appellant because she was an independent third party witness, she witnessed the entire incident, and she had no reason to lie. He further noted that Ms. Beck's written report was made prior to any complaint against the Appellant and was consistent with the statement that she provided to him during his formal investigation.

Sgt. Diaz testified that he reviewed the complaint with the City Attorney assigned to Municipal Court, who advised him that the allegations supported a criminal charge for simple battery. The Appellant received a summons and was informed that he was the subject of a criminal investigation. He declined to give a statement during the criminal investigation. Once the criminal charges were dismissed, Sgt. Diaz testified that he

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began his administrative investigation, which included taking an administrative statement from the Appellant. In his statement, the Appellant denied striking the Appellant, stating that he pushed her away when she stuck her finger in his face. The Appellant also denied grabbing the Appellant around the neck. According to Sgt. Diaz, the Appellant stated that he grabbed the Appellant by her shirt collar after she came towards him in an aggressive manner for a second time.

The Appellant testified that he was working a paid detail providing security for the students and faculty at the school. The Appellant stated that he did not strike the student and denied grabbing her around the neck. He stated that he pushed her away when she stuck her finger in his face and then he grabbed her by her shirt collar after she approached him a second time, pointed her finger in his face, and spoke to him in a disrespectful manner using profanity.

Officer Jamaane Roy testified that she was also working the same paid detail as the Appellant. All Officer Roy observed was the Appellant grab the student by the shoulders and tell her she was disrespectful. She did not see the Appellant strike the student or grab her around the neck. The Appellant was Officer Roy's immediate supervisor at the time.

The Appellant also contends that the criminal investigation does not toll the requirements of La. R.S. 40:2531, which requires the completion of an internal investigation within sixty days. If Appellant's contention is correct, the investigation, including the time the matter was pending before the municipal court, was well beyond the statutory limitations.

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The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for cause. Ms. Beck's credible testimony supports the allegations contained in the disciplinary letter. The Appellant lost his temper and responded violently towards a visibly upset student. The student's misbehavior and disrespect did not justify the Appellant's response.

Further, the Appellant's legal argument that the Appointing Authority's criminal investigation did not toll the sixty day requirements of La. R.S. 40:2531(B)(7) is without merit. The statute upon which the Appellant relies specifically provides that "nothing in this Paragraph shall limit any investigation of alleged criminal activity." In the instant case, the Appointing Authority completed the administrative investigation in a timely manner after the criminal charges were dismissed. This conclusion is consistent with the Commission's previous determination in *Franklin v. Department of Police*, Case No. 7681. In *Franklin v. Department of Police*, Case No. 7681, the Commission ruled that an administrative investigation can convert to a criminal investigation tolling the Sixty Day Rule pending the completion of the criminal investigation. Recently, the Louisiana

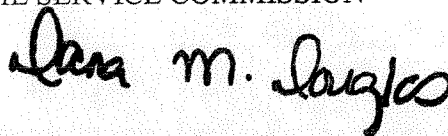
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Fourth Circuit Court of Appeal affirmed the Commission's determination in *Franklin v. Department of Police*, Case No. 2010-CA-1581 (La. App. 04/06/11).

Based upon the foregoing, the Appellant's appeal should be DENIED.

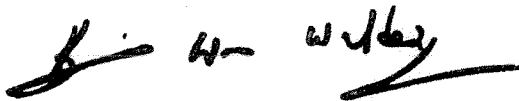
RENDERED AT NEW ORLEANS, LOUISIANA THIS 15TH DAY OF MARCH, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



DANA M. DOUGLAS, VICE-CHAIRMAN

CONCUR:



REV. KEVIN W. WILDES, S.J., CHAIRMAN



AMY L. GLOVINSKY, COMMISSIONER