



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON
CLIFTON J. MOORE, JR. VICE-
CHAIRPERSON
BRITTNEY RICHARDSON
JOHN H. KORN
MARK SURPRENANT

LATOYA CANTRELL
MAYOR

Monday, September 21, 2020

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Mr. C. Theodore Alpaugh, III
639 Loyola Avenue, Suite 2130
New Orleans, LA 70113

Re: **Gordon Hyde VS.
Office of Inspector General
Docket Number: 8990**

Dear Mr. Alpaugh:

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 - 9/21/2020 - 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: Derry Harper
Patrice Sullivan
Jay Ginsberg
Gordon Hyde
file



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Mr. C. Theodore Alpaugh, III
639 Loyola Avenue, Suite 2130
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Re: **Gordon Hyde VS.
Office of Inspector General
Docket Number: 9002**

Dear Mr. Alpaugh:

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 - 9/21/2020 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, New Orleans, Louisiana.

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Doddie K. Smith
Chief, Management Services Division

cc: Derry Harper
Patrice Sullivan
Jay Ginsberg
Gordon Hyde

file

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

GORDON HYDE,
Appellant, vs.

DOCKET Nos.: 8990 & 9002

OFFICE OF INSPECTOR GENERAL,
Appointing Authority.

I. INTRODUCTION

Appellant, Gordon Hyde (hereinafter "Appellant"), brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission's Rule II, §4.1 and asks the Commission to find that the Office of Inspector General for the City of New Orleans (hereinafter "Appointing Authority" or "OIG") did not have sufficient cause to discipline him, and alternatively if sufficient cause existed, the Appellant asks the Commission to find that the penalty was not commensurate with the violation. At all times relevant to the instant appeal, Appellant served as an Investigator IV for OIG and had permanent status as a classified employee.

A Hearing Examiner, appointed by the Commission, presided over two days of hearing during which both Parties had an opportunity to call witnesses and present evidence. The Hearing Examiner prepared a report and recommendation based upon the testimony and evidence in the record. 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 DENY the appeal and render the following judgment.

II. FACTUAL BACKGROUND

Derry Harper is the Inspector General for the City of New Orleans and the Appointing Authority. (Tr., Vol. I, at 143-44). He testified that, after starting his job, he quickly discovered that there was discord within the office. (Tr., Vol. I, at 149). In an effort to gain insight into the problems, he sought assistance from a consultant with whom he contracted for services. (Tr., Vol. I, at 152). Specifically, he wanted an assessment of the office and guidance regarding team building and leadership. (Tr., Vol. I, at 152-53). The consultant with whom he contracted was Conchita Robinson who testified that her firm provides business support services. (Tr., Vol. I, at 9-10).

As reflected in Mr. Harper's and Ms. Robinson's testimony, Mr. Harper asked Ms. Robinson to investigate an internal complaint made by an employee, who alleged discrimination based upon gender and ethnicity. (Tr., Vol. I, at 11, 164). Mr. Harper explained that, based upon past criticism of internal investigations conducted by his office, he thought it prudent to use his outside consultant to conduct an independent investigation. (Tr., Vol. I, at 165).

Certain employees were directed to meet with Ms. Robinson and William Moseley, an employment lawyer. (Tr., Vol. I, at 166). The interviews were conducted on January 31, 2019, at a nearby law office. (Tr., Vol. I, at 11). The Appellant was among those interviewed. (Tr., Vol. I, at 13-14). Mr. Harper intentionally chose not to reveal the specifics of the interviews to the individuals prior to their scheduled meetings with Ms. Robinson and Mr. Moseley. (Tr., Vol. I, at 166). While the Appellant was not a target of the investigation, and was considered a potential fact witness, he was annoyed that he was submitting to an interview without any information in advance of the meeting. (Tr., Vol. I, at 55, 340-41). Although the Appellant was apprised of the purpose of the interview and the nature of the investigation upon his arrival, he informed Ms. Robinson and Mr. Moseley that he intended to record the interview. (Tr., Vol. I, at 316-17). Ms. Robinson testified that the Appellant informed her that, as a civil service employee, he had the right to record the interview. (Tr., Vol. I, at 16). Ms. Robinson testified that she found the Appellant's request unusual, but rather than protract

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the process, she acceded to the Appellant's request and conducted the interview without incident. (Tr., Vol. I, at 16).

Ms. Robinson testified that she spoke with Mr. Harper about her investigation. During the conversation, she informed Mr. Harper about the Appellant's insistence on recording the interview and his contention that, as a civil service employee, it was his right to do so. (Tr., Vol. I, at 18-19).

Mr. Harper, in consultation with William Bonnie, the Interim Assistant Inspector General for Criminal Investigations, decided that he and Mr. Bonnie would meet with the Appellant the following day to discuss the Appellant's use of a recording device and his representation to Ms. Robinson and Mr. Mosely that he had a right to do so. (Tr., Vol. I, at 63, 175-77).

A. Alleged Misconduct

The facts upon which disciplinary action was taken are simple, straight forward, and uncontested. Mr. Bonnie informed the Appellant that Mr. Harper wanted to speak to him. (Tr., Vol. I, at 64). A meeting occurred in Mr. Harper's office between Mr. Harper, Mr. Bonnie, and the Appellant, during which Mr. Harper informed the Appellant that he wanted to discuss the interview that occurred the previous day, his insistence on recording the interview, and his representation that civil service rules gave him the right to do so. (Tr., Vol. I, at 177, 179, 347). The Appellant immediately became defensive and informed Mr. Harper that he intended to record the interview on his cell phone because he did not like where this was going. (Tr., Vol. I, at 347-48). Both Mr. Harper and Mr. Bonnie informed the Appellant that he could not record the meeting and ordered the Appellant to turn off the recording device. (Tr. at 65, 311, 350). Believing the Appellant had complied with his order, Mr. Harper began questioning the Appellant regarding his representations that he had a right to record the interview, and asking him what civil service rule gave him the right to do so. (Tr., Vol. I, at 65-66). As it turns out and as indicated on page 312 of the Transcript for the Hearing on July 16, 2019, the Appellant intentionally disobeyed Mr. Harper's order and continued to record until Mr. Harper and Mr. Bonnie noticed that the cell phone was still recording. (Tr., Vol. I, at 312). At this point, Mr.

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Harper stopped the interview and instructed the Appellant to leave. (Tr., Vol. I, at 177). Mr. Harper then placed the Appellant on emergency suspension pending an investigation. (Tr., Vol. I, at 75).

Eventually, the Appellant supplied the recording of their meeting to Mr. Harper and it was played during the hearing and introduced as an exhibit. (Tr., Vol. I, at 71 and Exhibit 22). The recording establishes that the Appellant was quite emotional, and was defiant and insubordinate towards his supervisor. (Exhibit 22). Rather than answer Mr. Harper's questions, the Appellant argued with him. (Exhibit 22).

The Appellant testified that he believed he had a right to record and he recorded the conversation because it was his right. (Tr., Vol. I, at 312, 350). It should be noted that the Appellant was counseled previously after attempting to record a conversation with Mr. Bonnie during a meeting regarding his yearly evaluation. (Exhibit 12). The Appellant confirmed that Howard Schwartz, the previous Assistant Inspector General, met with him to make it clear that conversations are not to be recorded in the OIG's office. (Tr., Vol. I, at 360). The Appellant also confirmed that he told Mr. Schwartz that he understood and would comply. (Tr., Vol. I, at 365-66).

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*, 2014-0993 (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. Occurrence of the Complained of Misconduct

The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for cause. As reflected in the disciplinary letter, it is uncontested that the Appellant attempted to record surreptitiously an interview with his supervisors after receiving unequivocal orders to turn off the recording device. There is no employee right to record an interview and to do so in direct defiance of an order is gross insubordination. Further, the Appellant conducted himself in an alarmingly unprofessional manner prior to the conclusion of the interview. He was disrespectful, irrational, and uncooperative.

B. Negative Impact on the Appointing Authority's Efficient Operations

The Commission has observed that OIG investigators occupy a unique position in the City's classified service. Given that investigators conduct sensitive investigations into the inner workings of the City, it is important that those investigators comport themselves in an honest and respectful manner. In the instant case, the Appellant intentionally disregarded direct orders from his supervisors in an effort to deceive. The Commission has previously found that complete

candor is an essential requirement of the position held by the Appellant.¹

For the above-stated reasons, the Commission finds that Appellant's misconduct had an adverse impact on OIG's efficient operations.

C. Was the Discipline Commensurate with Appellant's Offense

In conducting its analysis, the Commission must determine if Appellant's discipline was "commensurate with the dereliction;" otherwise, the discipline would be "arbitrary and capricious." *Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d 976, 978 (citing *Staehle v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

The Appellant argues that the penalty is not commensurate with the violation. He contends that, because it was his first offense, he should have received a lesser penalty. He attempts to portray himself as a whistleblower of sorts because he reported to Mr. Harper that the office was corrupt. According to the Appellant, Mr. Harper took offense to the Appellant's candid assessment and terminated his employment in retaliation rather than take some lesser disciplinary action.

The Appointing Authority contends that the Appellant's single act of insubordination in conjunction with his behavior during the February 1, 2019 meeting justifies termination. The Appointing Authority maintains that an investigator must have control of his or her emotions, must follow orders, and cannot act in an intentionally deceptive manner based upon an emotional reaction.

The penalty is commensurate with the violation for the reasons stated by the Appointing Authority. Progressive discipline is a tool for use when addressing repeat offenders of less serious violations. The purpose of progressive discipline is to place the offending employee on notice that certain behavior is not acceptable and to allow the employee to correct his or her behavior. In the

¹ *Boudreaux v Office of Inspector General*, Docket No. 7961 (2013)

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instant case, the Appellant acted in a grossly insubordinate manner that rendered him unfit for the position that he occupied. Further, the Appellant's perception of himself as a victim of retaliation is not supported by the facts. Having an arguable basis for complaint or criticism does not give an employee immunity from the consequences of unacceptable behavior.

Based upon the record before us, the undersigned Commissioners find that termination was an appropriate level of discipline.

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby DENIES the appeal.

Judgment rendered this 21st day of September, 2020.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER:

Mark C. Surprenant

Mark C. Surprenant (Sep 12, 2020 12:16 EDT)

MARK SURPRENANT, COMMISSIONER

09/12/20

DATE

CONCUR:

Michelle D. Craig

Michelle D. Craig (Sep 15, 2020 10:56 CDT)

MICHELLE D. CRAIG, CHAIRWOMAN

09/15/20

DATE

BR
Brittney Richardson (Sep 14, 2020 18:55 CDT)

BRITTNEY RICHARDSON, COMMISSIONER

09/14/20

DATE