



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

MICHELLE D. CRAIG, CHAIRPERSON
RONALD P. MCCLAIN, VICE-
CHAIRPERSON

JOSEPH S. CLARK
TANIA TETLOW
STEPHEN CAPUTO

MITCHELL J. LANDRIEU
MAYOR

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Tuesday, April 11, 2017

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

Re: **Valentino Grayman VS.**
Department of Police
Docket Number: 8453

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 - 4/11/2017 - 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 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: Michael S. Harrison
Elizabeth S. Robins
Victor Papai
Valentino Grayman

file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

VALENTINO GRAYMAN vs. DEPARTMENT OF POLICE	DOCKET No.: 8453
--	------------------

I. INTRODUCTION

Appellant, Valentino Grayman, 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 Police Department for City of New Orleans, (hereinafter “NOPD”) does not allege that the instant appeal is procedurally deficient. And, Appellant stipulated that NOPD’s investigation into Appellant’s alleged misconduct adhered to the standards required by our Rules and La. R.S. § 40:2531. Therefore, the Commission’s analysis will be limited to whether or not NOPD disciplined Appellant for sufficient cause. At all times relevant to the instant appeal, Appellant served as a Police Officer for NOPD and had permanent status as a classified employee.

On Tuesday, January 19, 2016, a hearing examiner appointed by the Commission presided over an appeal hearing. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the hearing examiner’s report.¹ Based upon our review, we render the following judgment.

¹ The Commission points out that the hearing examiner who presided over the hearing, Victor Papi, did not prepare the report in this matter. Due to contractual restrictions, the Commission assigned the drafting of the report to another hearing examiner, Brendan Greene.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

NOPD suspended Appellant for one-day for violating NOPD Rule 3: Professional Conduct; Paragraph 1 Professionalism. (H.E. Exh. 1). This rule reads as follows:

Employees shall conduct themselves in a professional manner with the utmost concern for the dignity of the individual with whom they are interacting. Employees shall not unnecessarily inconvenience or demean any individual or otherwise act in a manner which brings discredit to the employee or the New Orleans Police Department.

Id.

Appellant allegedly violated the above-cited rule on November 28, 2014 when he attempted to return an expensive leather coat to a retail outlet. *Id.* Though Appellant was off-duty at the time, he was wearing an “NOPD class A uniform” and allegedly became “very loud and argumentative” toward employees at the retail outlet. *Id.*

B. November 28, 2014

Appellant is a nineteen-year veteran of the NOPD, and, prior to the one-day suspension at issue here, NOPD had never sustained an allegation of misconduct against him. *Id.* at 49:25-50:2. Appellant’s supervisors observe that Appellant is an excellent employee who is naturally “loud” with a “boisterous” personality. *Id.* at 21:15-22:1, 43:5-8.

On or about November 13, 2014, Appellant purchased several coats from Wilsons Leather store located in the Riverside Mall, New Orleans. The total cost of his purchase was approximately eight hundred dollars (\$800) and he paid in cash. *Id.* at 50:5-10. On November 28th – the day after Thanksgiving and known colloquially in the retail world as “black Friday” – Appellant attempted to return one of the coats. Appellant was not on duty at the time, but was

wearing an NOPD uniform because he was on his way to work a paid detail assignment within the Downtown Development District. *Id.* at 50:16-22.

When he entered Wilsons Leather, Appellant recognized the same clerk who assisted him with his original purchase and attempted to return the coat for a refund. *Id.* at 50:23-24. When the clerk asked Appellant for the receipt, Appellant stated that he had either lost or misplaced it. As a result, the clerk informed Appellant that she could not process his return. *Id.* at 51:6-20. Eventually, Appellant was able to speak to the store's manager who asked Appellant to return to the store on Tuesday. *Id.* at 52:8-16. Presumably, the manager based this request on an expectation that Tuesday would be a slower day for the store and she would be able to dedicate more attention to Appellant's transaction.

However, Appellant had already made arrangements to be out of the country on Tuesday and asked the manager if there was anything she could do for him at that moment. *Id.* at 52:14-19. When the manager refused to render further assistance, Appellant began making a video recording of the Wilsons Leather staff and indicated that he would be lodging a formal complaint with Wilsons Leather's corporate offices. *Id.* at 53:16-54:3. At this point in the exchange, the manager asked Appellant if he was on duty. *Id.* at 54:3-5. Appellant responded that he was off-duty, and the manager proceeded to ask for his name and badge number, which Appellant provided. *Id.* at 54:14-15.

Appellant's interaction with the Wilsons Leather staff lasted approximately ten minutes after which he left the store and immediately called Wilsons Leather's corporate offices to file a formal complaint. *Id.* at 54:17-18. On December 1, 2014, the store manager submitted a "webmail complaint" in which she alleged that Appellant was very loud, verbally abusive, and cursed at both her and members of her staff. (NOPD Exh. 1). Specifically, the manager alleged

that Appellant yelled “I want my fucking money today,” and “you are going to give me my fucking money today.” *Id.* Appellant’s immediate supervisor, Sergeant Miro Brekalo investigated the manager’s complaint.

There was some confusion as to whether or not Sgt. Brekalo interviewed the store manager as part of his investigation. *Id.* at 23:14-17. It appears that the only statements from the manager came from an on-line complaint she made through NOPD’s complaint portal. (*See* NOPD Exh. 1). Sgt. Brekalo did interview other Wilsons Leather employees who alleged that Appellant had been loud on November 28, 2014 and they felt threatened as a result. *Id.* at 14:8-9. However, only the manager’s complaint contained an allegation that Appellant cursed. No other employee made a similar claim except for one employee who asserted that Appellant had said “this is bullshit” when the employees refused to provide a cash refund. *Id.* at 15:14-16.

Sgt. Brekalo testified that there is no NOPD policy restricting an Officer from wearing his or her uniform while traveling to or from a shift or a paid detail. He also confirmed that there is no policy prohibiting Officers from conducting personal business while in uniform. Nevertheless, Sgt. Brekalo recommended that NOPD substantiate the allegations against Appellant because he felt that Appellant had been loud and disruptive in the retail outlet while partially dressed in an NOPD uniform. *Id.* 17:18-25.

Commander Jeffrey Walls presided over the disciplinary hearing that eventually led to NOPD’s decision to issue Appellant a one-day suspension. (NOPD Exh. 5). Cmdr. Walls’s viewed Appellant’s argument with the staff at Wilsons Leather as a minor violation of NOPD’s rule regarding professionalism and recommended that NOPD issue Appellant a letter of reprimand. (36:21-37:5; NOPD Exh. 5).

When asked whether or not he thought that a one-day suspension was an appropriate level of discipline for Appellant's actions, Cmdr. Walls answered "I don't." *Id.* at 43:25-44:2. Cmdr. Walls expanded upon his answer and observed that NOPD could have addressed and corrected Appellant's conduct with a letter of reprimand rather than a suspension. *Id.* at 44:12-17. When pressed further on this point by the hearing examiner, Cmdr. Walls testified that he did not believe that any discipline was appropriate. *Id.* at 46:18-22.

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 Activities

There was nothing inherently inappropriate in Appellant stopping at Wilsons Leather store to return a coat. And, the Commission does not find that Appellant intentionally sought special treatment due to his status as a law enforcement official. However, in choosing to conduct personal business while in uniform, Appellant should have been very sensitive to the fact that he was readily identifiable as a law enforcement official. As soon as it became clear that the return of the coat was not going to be a routine matter, Appellant should have withdrawn himself from the situation. Instead, he asked at least one employee if she could “do something for him” and engaged in a confrontational interaction with the manager of the store. Whether Appellant intended to pose as an intimidating figure is beside point. The fact is that employees at Wilsons Leather actually perceived him to be loud and intimidating while wearing an NOPD uniform and representing the New Orleans Police Department. Based upon the foregoing, we find that NOPD established that Appellant violated NOPD Rule 3, Paragraph 1.

B. Impact on NOPD’s Efficient Operations

When a police officer uses his/her status as law enforcement officials for personal gain, the reputation of that officer, as well as the department suffers. It is not inherently inappropriate for off-duty NOPD personnel to conduct personal business while in uniform, but every NOPD Officer, and especially one with nineteen years of experience, must appreciate how residents react to and perceive the NOPD uniform.

NOPD and the Civil Service Department employ a rigorous screening process for new NOPD recruits due to the power and responsibility that comes with issuing someone a badge and uniform. The opportunity to misuse that power requires constant vigilance. As noted above, the

Commission does not find that Appellant intentionally used his uniform as a tool to intimidate the Wilsons Leather employees, but it is likely that his actions compromised the trust several Wilsons Leather employees had in NOPD.

C. Was the Discipline Commensurate with Appellant's Offense

In conducting its analysis, the Commission must determine if Appellant's suspension 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 *Staeble v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

The Commission's authority to "hear and decide" disciplinary cases "includes the authority to modify (reduce) as well as to reverse or affirm a penalty." *Whitaker v. New Orleans Police Dept.*, 863 So.2d 572, 576 (La.App. 4 Cir. 9/17/03)(citing La. Const. art. X, § 12; *Branighan v. Department of Police*, 362 So.2d 1221, 1223 (La.App. 4 Cir.1978)). However, the authority to reduce a penalty can only be exercised if there is insufficient cause for imposing the greater penalty. *Id.* at 1222. The Commission does not exercise this authority lightly. Yet, in the matter now before us, there appears to be insufficient cause to support the one-day suspension issued by NOPD.

Both Sgt. Brekalo and Cmdr. Walls testified that Officer Grayman was an exemplary officer with no known substantiated allegations of misconduct. This is a substantial accomplishment for a nineteen-year veteran of NOPD assigned to a district.

It was NOPD's own witness, Cmdr. Walls, who provided compelling testimony in support of a **lesser** penalty:

Q: So, sitting here today, do you think that [Officer Grayman's actions] warrants (sic) any punishment?

A: No.

Q: Not even a letter of reprimand?

A: I don't believe so at this point, no....

Q: So [Officer Grayman has] learned his lesson is what I am hearing you say?

A: Yes, I believe he's learned his lesson just from going through this process along. (sic) I believe we could have avoided this with just a simple counseling and handled it that way. I don't feel that there was enough to actually support sustaining the violation.

(Tr. at 46:18-47:25).

Cmdr. Walls was very confident that a counseling session would have served as a sufficient deterrent. Yet, he felt bound by the consent decree and penalty matrix to issue some manner of discipline since he found that Appellant had engaged in misconduct, albeit very minor misconduct. *Id.* at 48:1-6. Therefore, he recommended the most lenient form of discipline available. Deputy Superintendent Bardy disagreed with Cmdr. Walls and authored a "cover letter" in which he recommended a one-day suspension. The cover letter did not contain an explanation for Bardy's recommendation, and NOPD did not introduce any evidence that supported the harsher penalty.

Based upon the record before us, we find that the one-day suspension is not commensurate with Appellant's misconduct.

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby GRANTS the Appellant's appeal IN PART. NOPD is hereby ordered to remit to Appellant all back pay and emoluments related to the one-day suspension referenced in Hearing Examiner Exhibit 1. Furthermore, NOPD shall expunge any record of the one-day suspension from Appellant's records. NOPD shall then issue a letter of reprimand to Appellant for the violation of Rule 3, paragraph 1 cited in Hearing Examiner Exhibit 1.

Judgment rendered this 11th day of April, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

Tania Tetlow
TANIA TETLOW, COMMISSIONER

4/10/17
DATE

Ronald P. McClain
RONALD P. McCLAIN, VICE-CHAIRMAN

4/10/17
DATE

Michelle D. Craig
MICHELLE D. CRAIG, CHAIRPERSON

4/10/2017
DATE