



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
BRITTNEY RICHARDSON, CHAIRPERSON
JOHN H. KORN, VICE-CHAIRPERSON
CLIFTON J. MOORE, JR.
MARK SURPRENANT
RUTH WHITE DAVIS

Tuesday, April 11, 2023

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Ms. Daphne Cross

Re: **Daphne Cross VS.**
Office of Independent Police Monitor
Docket Number: 9442

Dear Ms. Cross:

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 - 4/11/2023 - 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, Sec.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,


Doddie K. Smith
Chief, Management Services Division

cc: Stella Cziment
Sharonda Williams
Jay Ginsberg
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**DAPHNE CROSS,
Appellant**

Docket No. 9442

v.

**OFFICE OF INDEPENDENT POLICE
MONITOR,
Appointing Authority**

DECISION

Appellant, Officer Daphne Cross, 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 December 13, 2022, three-day suspension by the Office of Independent Police Monitor. (Exhibit HE-1). At all relevant times, Appellant had permanent status as an Outreach Coordinator. (HE-1; Tr at. 76). A Hearing Examiner, appointed by the Commission, presided over a hearing on March 14, 2023. 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 April 5, 2023, and controlling Louisiana law.

For the reasons set forth below, Ms. Cross' appeal is DENIED.

I. FACTUAL BACKGROUND

The undersigned Commissioners adopt the description of the facts in the Hearing Officer's Report. A copy of the report is attached.

II. ANALYSIS

A. Legal Standard for Commission's Review of Discipline

1. The Appointing Authority must show cause for discipline

“Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A).” *Whitaker v. New Orleans Police Dep't*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep't of Police*, 2000-1682 (La. App. 4 Cir. 5/9/01)). “Legal cause exists whenever an employee’s conduct impairs the efficiency of the public service in which the employee is engaged.” *Id.* “The Appointing Authority has the burden of proving the impairment.” *Id.* (citing La. Const., art. X, § 8(A)). “The appointing authority must prove its case by a preponderance of the evidence.” *Id.* “Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the “efficient operation” of the public service.” *Id.* “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).

2. The Appointing Authority must show the discipline was commensurate with the infraction

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 disciplining the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Durning v. New Orleans Police Dep't*, 2019-0987 (La. App. 4 Cir. 3/25/20), 294 So. 3d 536, 538, *writ denied*, 2020-00697 (La. 9/29/20), 301 So. 3d 1195; *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 Appointing Authority has the burden of showing that the discipline was reasonable and not arbitrary or capricious. *Neely v. Dep't of Fire*, 2021-0454 (La. App. 4 Cir. 12/1/21), 332 So. 3d 194, 207 (“[NOFD] did not demonstrate . . . that termination was reasonable discipline”); *Durning*, 294 So. 3d at 540 (“the termination . . . deemed to be arbitrary and capricious”).

a. Factors considered by Commission

“In determining whether discipline is commensurate with the infraction, the Civil Service Commission considers the nature of the offense as well as the employee’s work record and previous disciplinary record.” *Matusoff v. Dep't of Fire*, 2019-0932 (La. App. 4 Cir. 5/20/20), 2020 Westlaw 2562940, *writ denied*, 2020-00955 (La. 10/20/20), 303 So. 3d 313. The Commission considers the nature of the offense, the employee’s work ethic, prior disciplinary records, job evaluations, and any grievances filed by the employee.” *Honore v. Dep't of Pub. Works*, 14-0986, pp. 8-9 (La. App. 4 Cir. 10/29/15), 178 So. 3d 1120, 1131, *writ denied*, 2015-2161 (La. 1/25/16), 185 So. 3d 749.

B. OIPM Has Shown Cause for Discipline

OIPM has carried its burden of showing the occurrence of the complained-of conduct. Even though Ms. Cross testified on multiple occasions that she did not “flash her badge,” a review of the video evidence shows that Ms. Cross did show her badge to Detective Mitchell. (Tr. at 78-80,


Ex. OIPM-4C). In addition, Ms. Cross mentioned to Detective Mitchell that she had a meeting scheduled with Stella Cziment, the Police Monitor, the following day. (Ex. OIPM-4C). Ms. Cross attempted to use her position in the Office of Police Monitor to influence Detective Mitchell's behavior in a matter involving Ms. Cross' mother. Ms. Cross' behavior violated the OIPM Conflict of Interest Policy, which prohibits OIPM employees from engaging in any conduct that can be perceived as an attempt to obtain preferential treatment. (Ex. OIPM-1). This conduct impairs the efficient operation of the OIPM. As Ms. Cziment testified, OIPM is an independent branch of City government. (Tr. at 61). In order for OIPM to carry out its mission of oversight over NOPD, it must preserve its neutrality and independence. (Tr. at 62). Ms. Cziment testified that "[i]t is vital that we have credibility and trust." (Tr. at 62). Ms. Cross's attempt to leverage her position in the OIPM to influence a police officer's actions in a personal matter damaged OIPM's credibility in its oversight of NOPD.

The three-day suspension is commensurate with the infraction.

For all of the above reasons, Ms. Cross' appeal is DENIED.

This the 11th day of April, 2023

WRITER:


Brittney Richardson (Apr 10, 2023 13:31 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

CONCUR:


Ruth Davis (Apr 10, 2023 20:57 CDT)

RUTH DAVIS, COMMISSIONER


CJ MOORE (Apr 10, 2023 13:38 CDT)

CLIFTON J. MOORE, JR., COMMISSIONER

DAPHNE CROSS

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

**OFFICE OF THE INDEPENDENT
POLICE MONITOR**

NO. 9442

HEARING EXAMINER'S REPORT

I. Introduction

At time of the incident, Daphne Cross ("Appellant") was employed by the Office of the Independent Police Monitor ("Appointing Authority" or "OIPM") as an Outreach Coordinator with permanent status. By letter dated December 13, 2022, the Appointing Authority suspended the Appellant for three (3) days after determining that she violated OIPM policy regarding Conflicts of Interest¹ and CAO policy regarding Standards of Behavior². (H.E. Exh. 1, OIMP Ex.'s 1 and 2).

The Appointing Authority's justification is reflected in the first paragraph of the disciplinary letter, which states as follows:

It was brought to the attention of OIPM leadership that you, Daphne Cross, "flashed her badge" and indicated that you...worked for the OIPM, specifically for Stella Cziment, the IPM, [Independent Police Monitor] while in your personal capacity in a manner that may have been construed as trying to intimidate. I, Stella Cziment was aware of the situation and that you were calling 911 in your personal capacity regarding an incident with your

¹ OIPM Policy, Conflict of Interest, Section 2.8 provides, "OIPM employees are not to engage in any conduct that reflects unfavorably upon the OIPM... OIMP employees are prohibited from engaging in any official conduct that is intended, or that which can be perceived, to secure private gain, give preferential treatment to any person, or prevent any person from securing benefits to which he or she is entitled. They are also prohibited from engaging in any conduct which creates the impression that they will use their office for these purposes."

² CAO Policy Memorandum83 (R), Standards of Behavior for City Employees, II. (O) provides, City property shall be used only for the purpose for which it was intended...Use of City property is for work-related purposes and not for personal benefit...

family, but I did not authorize you to invoke my name or this office when speaking to the NOPD.

II. Facts and Testimony

A. Stella Cziment

Stella Cziment, the Independent Police Monitor, provided testimony both as a fact witness and as the decision maker. Cziment testified that the Appellant called her in the early evening, on December 13, 2022, while the Appellant was standing outside of her mother's apartment. Cziment stated that the Appellant was upset because she feared that her mother was going to be evicted by her landlord unless a male individual staying with her was evicted. The Appellant told Cziment that her mother was not competent to make decisions for herself. Cziment described the Appellant as very angry because the police were not doing anything. The Appellant had called 911 seeking to have the police remove her mother's guest for trespassing. (Tr. at 42 -44).

Cziment testified that she informed the Appellant that she probably could not act on her mother's behalf regarding her guest because she did not have power of attorney. Cziment stated that she attempted to calm the Appellant by encouraging her to use the encounter as an opportunity to document her concerns about her mother's circumstances with the police department. (Tr. at 44 – 46).

Cziment stated that she never authorized the Appellant to use her office badge or Cziment's name during the Appellant's encounter with the police. She testified that it would be inappropriate and violative of policy to do so

because her office has oversight over the police department. Specifically, OIMP employees are prohibited from using their professional assignment to influence personal interactions with the police department. (Tr. at 47 – 48).

Cziment testified that a few weeks after the telephone call, she learned that the Appellant had filed a formal complaint with the Public Integrity Bureau against the police officer who responded to her 911 call. Cziment stated that she learned that the matter was investigated by Lt. Kevin Burns who had reviewed the Body-worn camera (BWC) footage of the call for service. Lt. Burns informed her office that the Appellant may have committed an ethics violation and he wanted to bring it to her office's attention. (Tr. 48 – 49).

Cziment reviewed the BWC footage and confirmed that the Appellant angrily flashed her badge for an extended period identifying herself as an OIPM employee and repeatedly mentioned Cziment as someone who was aware of the incident and prepared to become involved in the Appellant's personal matter concerning her mother by setting up a meeting. (Tr. at 50 – 56).

Cziment testified that she met with the Appellant and informed her of the three-day suspension. Cziment explained that the Appellant violated the conflict-of-interest policy by flashing her badge and using Cziment's name for personal purposes. She stated that the Appellant's behavior undermined her office's status as an independent and neutral entity. Cziment determined that the Appellant attempted to use her position for personal gain by seeking to threaten, intimidate, or sway the police to take the actions she desired, that

being the removal of her mother's guest for trespassing. Cziment found that the Appellant was aware of the policy, but failed to adhere to it. (Tr. 59 – 64).

Cziment also found that the Appellant violated CAO policy regarding the use of City property. She stated that the Appellant violated this policy by using her badge, which is City property, in a personal police encounter. (Tr. 57 – 58).

B. Kevin Burns

Cpt. Kevin Burns, while a lieutenant, investigated the Appellant's complaint against Detective Roshain Mitchell. Burns confirmed that, after he reviewed Mitchell's BWC video, he reported his concerns to the OIPM. He testified that while he felt that the Appellant may have violated ethics policy, it was not for him to decide. (Tr. at 25 -29).

C. Daphne Cross/Appellant

The Appellant denied that she flashed her office badge and stated that she was merely using it for identification purposes. She confirmed that she referred to Ms. Cziment during the encounter, but insisted that it was not to gain influence over a police investigation. The Appellant acknowledged that Cziment never authorized her to present her office badge to the police and admitted that Cziment would not want her to use her name in a personal police encounter. She also acknowledged that she received annual ethics training, which included a review of the office's conflict of interest policy. The Appellant maintains that she should have received a warning because it was her first violation of the policies. (Tr. at 10 – 19, 75 -81).

III. Analysis and Conclusion

The Appointing Authority has established by a preponderance of evidence that the Appellant violated its internal policies and that the penalty is commensurate with the violation. The BWC video overwhelmingly supports the Appointing Authority's conclusions. The Appellant is shown flashing her badge for an extended period and speaking in a loud and angry voice. In the BWC video, the Appellant is heard stating, "It's about to go down after tonight. I just talked to Stella Cziment, who is my supervisor because this has to go further." The Appellant's actions were calculated to influence a police investigation based upon a threat of reprisal if matters were not handled satisfactorily.

Considering the foregoing, the Appellant's appeal should be DENIED.

April 5, 2023

DATE

s/ Jay Ginsberg

HEARING EXAMINER