



CITY OF NEW ORLEANS

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Tuesday, April 23, 2019

Mr. Eric Hessler
PANO 2802 Tulane Avenue #102
New Orleans, LA 70119

Re: **Sean Carrigan VS.
Department of Police
Docket Number: 8797**

Dear Mr. Hessler:

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 - 4/23/2019 - 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: Shaun Ferguson
William R. H. Goforth
Jay Ginsberg
Sean Carrigan

file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

SEAN CARRIGAN, Appellant, vs. DEPARTMENT OF POLICE, Appointing Authority.	DOCKET No.: 8797
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I. INTRODUCTION

Appellant, Sean Carrigan, 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 Police Department for the City of New Orleans (hereinafter “NOPD”) did not have sufficient cause to discipline him. At all times relevant to the instant appeal, Appellant served as a Police Officer for NOPD and had permanent status as a classified employee. Appellant stipulated that NOPD’s investigation into his alleged misconduct conformed to the procedures established by Louisiana Revised Statute article 40:2531. (Tr. at 3:5-8).

A referee, appointed by the Commission, presided over one day of hearing during which both Parties had an opportunity to call witnesses and present evidence. The referee 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

A. Alleged Misconduct

The allegations against Appellant stem from his response to an in-person complaint submitted by a female resident (hereinafter referred to as “Ms. C”) on May 30, 2016. (H.E. Exh. 1). NOPD asserts that, during Appellant’s interaction with Ms. C, he twice failed to comply with instructions from an authoritative source in violation of NOPD Rule 4, Paragraph 4, subparagraph C-6. (H.E. Exh. 1). According to NOPD, the “authoritative source” at issue here is NOPD’s policy governing the investigation of domestic violence (hereinafter “the Policy”). *Id.*

The first infraction pertained to Appellant’s alleged failure to follow Chapter 42.4, Paragraph 12 of the Policy which reads:

Officers shall incorporate the following into their investigations:

- (a) Take a proactive approach in responding to domestic violence.
- (b) Attempt to determine the predominant aggressor and arrest him or her.
- (c) Officers shall not arrest a person who acted in self-defense as defined by State statute (La. R.S. 14:19).
- (d) Take appropriate action for violation of protection orders.
- (e) Prioritize safety and protection for adult and child victims of domestic violence at each stage of its response to a report of domestic violence.
- (f) Promote the safety of law enforcement personnel responding to incidents of domestic violence.
- (g) Provide victims or witnesses of domestic violence with support and assistance through cooperative efforts with community stakeholders in order to prevent further abuse and harassment or both.
- (h) Respond to and investigate reports of domestic violence professionally, effectively, and in a manner without bias based on race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, or gender identity, in (sic)
- (i) Accordance with the rights secured or protected by the Constitution (sic) and laws of the United States.
- (j) Appropriately classify and investigate reports of domestic violence.

(H.E. Exh. 1).

NOPD alleges that Appellant violated the above-cited policy when he “failed to make an attempt to locate the known perpetrator, interview the neighbors, corroborate the victim’s statements or verify what was in the video the victim present[ed] was the same as what was in the victim’s residence.” *Id.*

NOPD further alleged that Appellant violated Chapter 42.4, Paragraph 16 of the Policy which reads:

Officers shall make initial observations and note spontaneous statements by those at the scene, including:

- (a) Immediate statements made by the victim, suspect or witnesses.
- (b) Observations of the crime scene (furniture tipped over, broken phones, doors, other damaged property; torn clothing; blood; no sign of physical altercation, etc.).
- (c) Emotional demeanor of parties at the scene.
- (d) Physical appearance of parties (disheveled clothing or hair, torn clothing, obvious injury, flushed face, etc.).
- (e) Indications of drug or alcohol use by those at the scene and apparent level of intoxication or impairment (coherent in responding to questions).
- (f) Photograph victim and crime scene.
- (g) Determine if a weapon was involved.
- (h) Determine if any children were present.
- (i) Check for the existence of a protective order through the Louisiana Protective Order Registry, or by whatever means available.

(H.E. Exh. 1).

NOPD asserted that Appellant violated the policy quoted immediately above when he “did not relocate to the scene where the crime allegedly occurred and document [Appellant’s] observations.” *Id.*

B. May 30, 2016

On May 30, 2016, Appellant was working as a platoon officer in NOPD’s Fourth District when his supervisors dispatched him to a call for service regarding a “domestic disturbance.” (Tr. at 6:3-10). Appellant relocated to a commercial building in the Fourth District where he met Ms. C, who had initiated the call to NOPD.

Appellant activated his body-worn camera (hereinafter “BWC”) during his interaction with Ms. C. The video footage captured by Appellant’s BWC is in evidence as “NOPD Exhibit 4.” In the video, Ms. C makes the following statements: 1) her ex-boyfriend entered her house the day before, 2) she has existing claims against her ex-boyfriend, 3) had previously obtained a restraining order against her ex-boyfriend, 4) had shut off the electricity to her home. When Appellant asked Ms. C how she believed her ex-boyfriend obtained access to her home, Ms. C replied that the ex-boyfriend claimed he entered her back door “using a shoe” but that she did not believe that to be the case. Appellant also did not believe that the ex-boyfriend entered the house using the shoe, but attributed the dubious claim to Ms. C rather than the ex-boyfriend.

Ms. C then told Appellant that her ex-boyfriend had recently sent her a video that appeared to be recorded in her home. Ms. C claimed to recognize recently-purchased furniture in the video that allowed her to determine that her ex-boyfriend had made the video in Ms. C’s home. NOPD Exh. 4 at min. 5:15-5:54. Appellant appears to express some incredulity as to Ms. C’s ability to identify items in the video, but she insists that she is able to do so. Further, she provided text messages that were allegedly from her ex-boyfriend confirming that he was in her home and had not edited the images. *Id.* at min. 6:30-7:36. Appellant’s BWC footage captured Appellant frequently complaining about the quality of the video.

During her interaction with Appellant, Ms. C appears composed but expressed concern about her ex-boyfriend’s conduct. When Appellant asked what Ms. C wanted to do, she asks if Appellant can “pick up” the ex-boyfriend and hold him until the next court date. Appellant informed Ms. C that there was not enough to establish that the ex-boyfriend had been in Ms. C’s home and she replied that she was “certain” that the video showed her home. NOPD Exh. 4 at min. 14:00-14:21. Appellant then rightly observes that the video shows items that Ms. C would not be

able to identify unless “they were her things” to which Ms. C replies, “but I have all these things in my house.” *Id.* at min. 15:30-15:46. Ms. C then provided Appellant with the address and phone number of her ex-boyfriend. *Id.* at min. 21:00-21:15.

Ms. C also alleged that there was some minor damage to the locking mechanism on her front door and that her door was unlocked upon her return. She was adamant that she had locked the door prior to her departure. NOPD Exh. 5 at min. 2:40-__:__ . According to Ms. C, a neighbor helped her repair the damage caused by her ex-boyfriend.

After hearing Ms. C’s account, Appellant informed Ms. C that he had done “all he can do” and would provide her with an item number for her report. Appellant then proceeded to return to his NOPD vehicle for approximately five minutes. He then returned to Ms. C’s place of business to provide her with the item number for her report. He also told her to get a restraining order in case her ex-boyfriend “tries to do anything.” Then, Appellant left the scene and deactivates his BWC.

Appellant asserted that he did not view Ms. C’s claim as one involving domestic violence. Instead, Appellant believed that Ms. C was complaining about a domestic disturbance, which is why he “coded” the report as “103-D.” (Tr. at 34:14-25). Appellant acknowledged that NOPD’s domestic violence policy covers property damage as well, but suggested that Ms. C was trying to “pretend” that there was damage. *Id.* at 35:1-4. In fact, NOPD’s domestic violence policy clearly identifies “battering” in the context of domestic disputes to include “property crime directed against the victim.”¹ And, “domestic violence” includes battering between “adults or minors who are dating or who have dated.”

¹ Though neither party introduced NOPD’s domestic abuse policy, the Commission takes judicial notice of NOPD’s definition sections since it is published by NOPD and available to the public and, importantly, Appellant’s understanding of the policy is consistent with the published policy.

During the course of his testimony, Appellant repeatedly sparred with questioners regarding whether or not he believed Ms. C's account. *See tr.* at 35:5-36:1. The Commission appreciates that officers in the field must exercise a degree of discretion when interviewing residents about possible criminal activity. However, in the matter now before the Commission, Ms. C had presented Appellant with allegations that matched NOPD's definition of domestic violence. The fact that Appellant did not find Ms. C credible is important, but did not relieve him of the responsibility to conduct a follow-up investigation. Appellant himself admitted at one point that Ms. C "believed" that her ex-boyfriend had entered her home without permission. (*Tr.* at 7:5-9). Appellant then acknowledged that he did not relocate to Ms. C's home, interview the ex-boyfriend or otherwise attempt to corroborate Ms. C's account because he believed that "it needed further investigation." *Id.* at 12:19-13:11.

Appellant did claim that he consulted with his supervisor, Sergeant Sal Corona, although the timing of this consultation is not clear. Based on Appellant's testimony, he appeared to suggest that he was consulting with Sgt. Corona in making the determination that all he could do was provide Ms. C with a report. *Id.* at 13:17-23. Appellant testified that he told Sgt. Corona that he could not determine when the video was made and that, at some point, the ex-boyfriend had access to the home and there were no signs of forced entry. *Id.* at 13:24-14:25. Yet, at no point during either BWC video does Appellant appear to contact his supervisor. (*See* NOPD Exhs. 4, 5). Ultimately, Appellant made the assessment that there was no reason for him to conduct a further investigation until Ms. C provided the video to NOPD. (*See tr.* at 28:12-17).

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

There is no dispute that Ms. C made very disturbing allegations regarding the conduct of her ex-boyfriend. According to Ms. C, her ex-boyfriend had repeatedly entered her home without permission in order to send intimidating and threatening photos and videos. His actions demonstrate an attempt to exert power over Ms. C. The Commission recognizes that Appellant expressed reservations regarding Ms. C's story, but given the focus NOPD has placed on investigating incidents of domestic violence and the serious consequences that follow any failure to fully investigate allegations, all officers must be very careful when exercising discretion and assessing the credibility of complainants. The fact that Ms. C had already obtained a restraining

order against the same ex-boyfriend that allegedly entered her home without permission was a red flag that should have prompted further action by Appellant. Appellant claimed that “domestic violence” means “when one person hits another person, makes threats towards that person, or does something at that point” and, pursuant to Appellant’s definition, there was no domestic violence in Ms. C’s account. (Tr. at 34:19-25). Appellant’s testimony is inconsistent with NOPD’s policy that includes crimes against property in the definition of domestic battery.

Another troubling element to Appellant’s testimony is that he did not view any of Ms. C’s account of her ex-boyfriends conduct as “threatening.” It is reasonable to believe that most people view their homes as places of safety and security. By making a video in Ms. C’s home, her ex-boyfriend was demonstrating that he could still get into her home. His actions were not subtle and clearly intended to demonstrate power over Ms. C.

In past decisions, the Commission has expressed concern when appointing authorities fail to present important witnesses for testimony and cross-examination. Here, Appellant claimed that he consulted with his supervisor, Sgt. Corona, but did not call Sgt. Corona to provide any testimony. While NOPD bears the burden of proof in this matter, the evidence and testimony NOPD presented established that Appellant, absent some manner of authorization, was bound by policy to conduct a more detailed investigation of Ms. C’s claim. Sgt. Corona allegedly provided such authorization, but did not testify as a corroborating witness. Sgt. Corona testimony was/is important for at least two reasons. First, Sgt. Corona was in a position to testify as to the information Appellant conveyed regarding Ms. C’s claims. This is pertinent because NOPD alleged that elements of Appellant’s report regarding Ms. C’s claims were inaccurate. Indeed, Appellant’s own testimony suggests that Appellant portrayed Ms. C’s account to Sgt. Corona as unbelievable and lacking credibility. If Appellant did not fully brief Sgt. Corona on Ms. C’s case,

then any authorization regarding Appellant's actions in this matter is tainted. Further, Sgt. Corona would be in a position to explain to the Commission the instructions he gave to Appellant regarding Ms. C's claims.

Appellant also attempted to defend his actions by claiming that Ms. C only wanted a report. BWC footage establishes that Ms. C wanted NOPD to directly intervene and pick up her ex-boyfriend. While there is certainly doubt as to whether, at that point, Appellant had sufficient evidence to arrest Ms. C's ex-boyfriend, her concern and the facts presented warranted additional investigation. Appellant went out of his way to focus on Ms. C's credibility. Appellant also had the option of reaching out to the Assistant District Attorney who worked with Ms. C in issuing the initial restraining order.

Based upon the above findings, the Commission finds that NOPD established that Appellant failed to adhere to the Policy.

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

Appellant represents NOPD and the City of New Orleans when he is in the field. Residents who seek assistance from NOPD rightfully expect officers will be professional, respectful and diligent. Appellant made up his mind that Ms. C was not a credible complainant and his lack of any follow-up investigation reflects his decision. As noted above, the Commission recognizes that officers in the field must exercise a degree of discretion when responding to calls for service. And neither NOPD nor the Commission suggests that Appellant should have sought out and arrested Ms. C's ex-boyfriend. But due to the nature of the allegations and the stakes involved, Appellant should have adhered to the Policy and at least attempted to locate and interview the ex-boyfriend. By violating the Policy, Appellant made it more difficult for NOPD to establish set protocols when it comes to investigations of domestic violence.

In a paramilitary organization like NOPD, employees' adherence to established policies is vital for the orderly execution of NOPD's mission. Therefore, violations of policy necessarily undermine NOPD's mission to serve and protect the residents of New Orleans.

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

NOPD suspended Appellant for a total for four days for allegedly violating two separate portions of NOPD's Domestic Violence Policy. First, Appellant NOPD cites Appellant's failure to locate Ms. C's ex-boyfriend and interview neighbors who would have been in a position to corroborate her account. The second manner in which Appellant allegedly violated the policy was his failure to relocate to Ms. C's residence and conduct an investigation as to the condition of her home. The Commission has determined that Appellant failed to fully investigate what was an alleged incident of domestic violence pursuant to NOPD policy. While the two policies establish specific procedures for investigating such incidents, the Commission shares the hearing examiner concern that parsing any overall failure to fully investigate an allegation of domestic violence into each constituent element.

The Commission does not view Appellant's conduct as two separate and distinct failures. Appellant's failure to relocate to Ms. C's residence and his failure to attempt to locate Ms. C's ex-boyfriend were elements in to the Commission's finding that Appellant failed to adequately investigate an incident of alleged domestic violence. Each investigatory step – mandated by the Policy – that Appellant failed to take properly serves as an aggravating factor in determining discipline rather than a separate incident of misconduct.

Notwithstanding the foregoing, the Commission recognizes and respects NOPD's prerogative to establish standards and policies for the investigation of incidents of domestic violence. NOPD personnel in the field necessarily exercise discretion when responding to calls for service, but must exercise such discretion in light of clearly established policies. Here, Appellant acknowledged that he was familiar with NOPD's Domestic Violence Policy, and even at one point admitted that NOPD included crimes against property with the definition of Domestic Battery in certain circumstances. Given Appellant's knowledge of the Policy, the Commission finds that NOPD had an obligation to initiate corrective action. As the Commission noted above, Appellant's numerous failures to follow through on information provided by Ms. C serve as aggravating factors warranting a more severe disciplinary sanction. Bearing the above in mind, the Commission finds that a four-day suspension was commensurate with Appellant's misconduct.

V. CONCLUSION

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

S. Carrigan
No. 8797

Judgment rendered this 23rd day of April, 2019.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER



MICHELLE D. CRAIG, CHAIRPERSON

3/27/2019

DATE

CONCUR


CLIFTON J. MOORE, Jr., COMMISSIONER

4/15/19

DATE



BRITTNEY RICHARDSON, COMMISSIONER

4-1-2019

DATE