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MAYOR

# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

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Thursday, August 18, 2016

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

Re: **Lawrence Jones VS.  
Department of Police  
Docket Number: 8482**

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 - 8/18/2016 - 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  
Lawrence Jones

file

**CIVIL SERVICE COMMISSION**

**CITY OF NEW ORLEANS**

|                      |                  |
|----------------------|------------------|
| LAWRENCE JONES       |                  |
| vs.                  | DOCKET No.: 8482 |
| DEPARTMENT OF POLICE |                  |

**I. INTRODUCTION**

Appellant, Lawrence Jones, 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 does not contend that NOPD’s investigation violated La. R.S. § 40:2531. Therefore, the Commission’s analysis will be limited to whether or not the Appellant was disciplined 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.

**II. FACTUAL BACKGROUND**

**A. Applicable Policies**

NOPD issued Appellant a written reprimand for Appellant’s alleged violation of Rule 4, Paragraph 4 of NOPD’s Operations Manual. (H.E. Exh. 1). Specifically, NOPD alleged that Appellant became aware of an allegation of rape against an unknown NOPD Officer on February 2, 2015. Relying upon a review of video footage from Appellant’s body-worn camera, NOPD

further alleged that Appellant failed to “further the investigation” into the allegation when he did not ask the complainant about the identity of the alleged perpetrator or any other details and did not notify the special victims unit. (H.E. Exh. 1). According to the disciplinary notice, Appellant’s failures amounted to a violation of NOPD policy. That policy is found below:

Any Department employee who observes or becomes aware of any act of misconduct by another employee must report the incident to a supervisor or directly to PIB for review and investigation. Where an act of misconduct is reported to a supervisor, the supervisor shall immediately document and report this information to PIB. Failure to report or document an act of misconduct or criminal behavior is an egregious offense and shall be grounds for discipline, up to and including termination of employment.

The refusal to accept a misconduct complaint, discouraging the filing of a misconduct complaint, or providing false or misleading information about filing a misconduct complaint, shall be grounds for discipline, up to and including termination.

All officers and employees who receive a misconduct complaint in the filed shall immediately inform a supervisor of the misconduct complaint so that the supervisor can ensure proper intake of the complaint. All misconduct complaints received outside of PIB shall be documented and submitted to PIB by the end of the shift in which it was received.

(H.E. Exh. 1).

Through the disciplinary notice, NOPD also alleged that Appellant failed to maintain an adequate level of service and cited to Civil Service Rule IX, § 1.1 which requires an appointing authority to “take action warranted by the circumstance to maintain the standards of effective service” when a classified employee:

...is unwilling or unable to perform the duties of his/her position in a satisfactory manner, or has committed any act to the prejudice of the service, **or has omitted to perform any act it was his/her duty to perform...**

Rule IX, § 1.1. (emphasis added)

### **B. February 2, 2015 Allegation**

On February 2, 2015, Appellant and another Officer responded to a call for service on Canal Street; originally the nature of the call related to criminal damage. (Tr. at 12:1-4). When Appellant and his fellow Officer arrived on scene, they took into custody a female subject accused of damaging another citizen's eyeglasses during a physical interaction. *Id.* at 12:4-8.

As the Officers were transporting the subject to central lockup, she made an allegation that a NOPD Officer had sexually assaulted her. *Id.* at 12-15. The female subject did not identify the NOPD Officer by name. Both Appellant and his fellow Officer had body-worn cameras and those cameras became activated during the course of the interaction with the female subject. *Id.* at 9-11. Neither Appellant nor the other Officer made an attempt to engage the female subject in a further discussion about her allegations in order to collect some additional detail as to the identify of the alleged perpetrator or the date, time and location of the sexual assault. *Id.* at 15-18.

When Appellant arrived at central lock up, he informed Sergeant Henry Burke that the female subject had alleged that an NOPD officer had sexually assaulted her. *Id.* at 20-25. At some point on February 2nd, Appellant and his partner transported the female complainant to the hospital. However, the reason for this hospital visit is not clear. The PIB investigator assigned to the case stated that the purpose of the hospital visit was not related to the allegation of sexual assault and a rape kit was not completed on the female subject. *Id.* at 13:17-22. Appellant did not inform the sex crimes unit of the female subject's allegations or sexual assault.

### **III. LEGAL STANDARD**

Employees in the classified service may only be disciplined for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that his/her discipline was issued 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

###### 1. NOPD Policy 1020.5.1

The specific policy cited by NOPD required Appellant to report alleged misconduct perpetrated by a fellow NOPD officer to his “supervisor or directly to PIB for review and investigation.” (H.E. Exh. 1).

Thus, NOPD’s own policy appears to intentionally remove the responsibility of investigating allegations of NOPD Officer/Employee misconduct from non-supervisory NOPD Officers/Employees. (App. Exh. 1). As shown by the following exchange between NOPD’s

counsel and the PIB investigator charged with investigating Appellant's alleged misconduct, Appellant complied with the letter of the NOPD policy identified in the disciplinary letter:

Q: So your investigation found that the only person [Appellant] reported [the allegation of Officer misconduct] to was his supervisor Sergeant Burke when they met?

A: That's correct.

Tr. at 19:22-25.

Based upon the foregoing, the Commission finds that NOPD has failed to establish that Appellant violated NOPD Policy 1020.5.1.

## ***2. Civil Service Rule IX, § 1.1***

Given that Appellant's conduct was consistent with NOPD Policy 1020.5.1 as it pertains to reporting allegations of NOPD Officer/Employee misconduct, the Commission must turn to whether or not Appellant's action – or lack thereof – with respect to the female subject's complaints of sexual assault constituted an omission of an act Appellant had a duty to perform.

NOPD takes the position that Appellant should have notified both his supervisor AND the sex crimes unit regarding the female subject's allegations. Commander Otha Sandifer conducted the disciplinary hearing related to the allegations against Appellant and testified that “[a]ny time a sexual allegation is made, sex crimes is notified, whether or not [the alleged perpetrator] is a police officer or not.” (Tr. at 24:1-6).<sup>1</sup> Appellant did not offer any contradictory testimony with respect to Commander Sandifer's assertions.

As a result of Commander Sandifer's testimony, and Appellant's failure to notify the sex crimes unit of the female subject's allegations of sexual assault, the Commission finds that

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<sup>1</sup> Appellant objected to any line of questioning pertaining to Appellant's failure to notify the sex crimes unit of the allegation of sexual assault made by the female subject. While the hearing examiner sustained some of these objections, the Commission finds that the line of questioning was appropriate given that NOPD relied upon both its own policy and the Commission's Rules.

NOPD has satisfied its burden in establishing that Appellant failed to perform a function it was his duty to perform. Namely, reporting any sexual assault directly to the sex crimes/sexual assault unit.

**B. Adverse Impact on Efficient Operation of Appointing Authority**

NOPD alleges that, had Appellant notified the sexual assault unit, specialized investigators could have become involved and determined whether or not this alleged sexual assault actually occurred. However, because Appellant failed to take a more active posture in connection with the allegation, NOPD lost an opportunity to better assess the veracity of the female subject's allegation. The Commission agrees.

Allegations of sexual assault are among the most serious fielded by NOPD. Regardless of whether or not an Officer believes a particular complainant, he or she has an obligation to investigate allegations to the best of his/her ability. In the matter now before the Commission, Appellant need only to have made the sex crimes unit aware of the allegation of sexual assault pursuant to standard operating procedure. The Commission finds that, when Officers fail to notify the sex crimes unit of allegations of sex crimes, the effectiveness and efficiency of this specialized unit is diminished.

**C. Discipline Commensurate with Offense**

In conducting its analysis, the Commission must determine if the Appellant's letter of reprimand 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 Commission recognizes that Officers, like Appellant, are under an enormous amount of pressure and must often triage certain complaints. In the matter now before the Commission, it is possible that Appellant did not believe the female complainant's claims. Nevertheless, he should have processed the allegation of sexual assault as he would have any other similar allegation. For reasons known only to Appellant, he failed to do so. The fact that Appellant notified his supervisor mitigates his omission to a certain extent, but does not excuse Appellant from performing his duty.

A written reprimand is the lowest level of discipline available to appointing authorities and the Commission finds that NOPD's issuance of a written reprimand in this instance was an appropriate correctional action in its attempt to maintain a high level of performance.

#### **V. CONCLUSION**

As a result of the above findings of fact and law, the Commission hereby DENIES the Appellant's appeal. However, NOPD shall rescind the written reprimand in evidence as Hearing Examiner Exhibit 1 and reissue a reprimand consistent with this Order and without any reference to an allegation that Appellant failed to adhere to Rule 4, Paragraph 4 of NOPD's Operations Manual.

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**SIGNATURES APPEAR ON THE FOLLOWING PAGE.**



L. Jones  
No. 8482

Judgment rendered this 19 th day of August, 2016.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

  
MICHELLE D. CRAIG, CHAIRPERSON

8/17/2016  
DATE

  
RONALD P. McCLAIN, VICE-CHAIRMAN

8/17/16  
DATE

  
TANIA TETLOW, COMMISSIONER

8/16/16  
DATE