



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

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DIRECTOR OF PERSONNEL

Wednesday, December 21, 2016

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

Re: **Kimberly Hunt VS.
Department of Police
Docket Number: 8537**

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 - 12/21/2016 - 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
Brendan M. Greene
Kimberly Hunt
file

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

KIMBERLY HUNT vs. DEPARTMENT OF POLICE	DOCKET No.: 8537
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I. INTRODUCTION

Appellant, Kimberly Hunt, 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. Similarly, Appellant conceded that NOPD’s investigation into her alleged misconduct conformed to the procedural requirements established by Louisiana Revised Statute § 40:2531 and our Rules. Therefore, the Commission’s analysis will be limited to whether or not NOPD had sufficient cause to discipline Appellant. The undersigned Commissioners have reviewed the transcript of the appeal hearing that occurred on August 30, 2016, the Hearing Examiner’s report, and the exhibits accepted into the record by the hearing examiner. After reviewing such testimony and evidence, we render the following decision and judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

Appellant, was a permanent, classified employee serving in the capacity as Police Sergeant at all times relevant to the instant appeal. Appellant worked within the Public Integrity Bureau (hereinafter “PIB”) which is the entity responsible for investigating allegations of misconduct

(criminal and administrative) against NOPD personnel. Appellant's responsibilities during the relevant period of time included administrative investigations, or instances where NOPD personnel were accused of violating rules and/or procedures – as opposed to criminal statutes.

Effective June 12, 2016, NOPD suspended Appellant for two days in connection with Appellant's alleged violation of NOPD Rule 3: Professional Conduct; Paragraph 1: Professionalism. (H.E. Exh. 1).¹ That Rule reads in pertinent part:

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.

Specifically, NOPD alleged that Appellant addressed her direct supervisor, Lieutenant Denise Thomas, in an unprofessional manner on or about August 22, 2015 during a “counseling session.” (Tr. at 16:10-22). Lt. Thomas convened the counseling session due to an allegation that Appellant had failed to timely submit paperwork related to sick leave. *Id.*

According to Lt. Thomas, Appellant “raised her voice” during the counseling session and accused Lt. Thomas of having a personal vendetta against her. *Id.* at 17:2-7. Appellant then stood up, disregarded an instruction from Lt. Thomas to resume sitting, and left the session prior to being dismissed by Lt. Thomas. *Id.* at 17:2-7. As a result of Appellant's actions, Lt. Thomas was unable to complete the counseling session. *Id.* at 24:7-25:5. In the course of leaving the counseling session, Appellant suggested that Lt. Thomas initiate a formal disciplinary investigation if Lt.

¹ During the course of the hearing, Appellant moved to amend her appeal to include a challenge to a letter of reprimand issued by NOPD. The Hearing Examiner denied Appellant's motion finding that any right to challenge to the letter of reprimand in question had prescribed. We agree.

Thomas was so concerned about Appellant's behavior. *Id.* at 26:3-7. Lt. Thomas perceived Appellant's behavior as disrespectful and unprofessional.

Appellant acknowledged meeting with Lt. Thomas after returning from leave to discuss an alleged failure to submit sick leave paperwork. Appellant further acknowledged that she was "very upset" during the meeting and stood up prior to the meeting's conclusion. Appellant then claimed that she asked Lt. Thomas to reconvene the counseling session at a later time so that Appellant could regain her composure. Appellant admitted that she refused to sign the counseling form but claims she did so because she thought, if she signed the counseling form, she could not later contest it. Appellant then asserted that both she and Lt. Thomas raised their voices during the session.

Appellant recalled Lt. Thomas's instruction to remain seated during the counseling session but did not follow this order because she was "upset" and did not feel that she and Lt. Thomas could come to a reasonable resolution to the meeting. *Id.* at 98:23-99:4. Appellant did not believe she violated NOPD policy when she addressed Lt. Thomas, denied using demeaning language, and claims that she did not inconvenience Lt. Thomas or bring discredit to herself or NOPD. *Id.* 98:17-22.

Sergeant Julie Jacobs investigated the allegations against Appellant. And, during the course of that investigation, Sgt. Jacobs found that Appellant had "raised her voice, refused to remain seated, refused to continue the [counseling session], and refused to sign the counseling form provided by Lieutenant Thomas." *Id.* 52:18-22. On cross-examination, Sgt. Jacobs acknowledged that employees should have the freedom to raise a concern with a supervisor. However, she emphasized that NOPD personnel must not engage in confrontational or disrespectful behavior when doing so. *Id.* at 64:16-24.

Commander Gwen Nolan presided over Appellant's disciplinary hearing related to the above-mentioned allegations and had experience working with both Appellant and Lt. Thomas. Cmdr. Nolan described Lt. Thomas as being "by the book" and expected her subordinates to be "by the book" as well. *Id.* at 69:14-17. On the other hand, Cmdr. Nolan found Sgt. Hunt to be "loud, boisterous and confrontational." *Id.* at 70:11-71:23. The Commission finds this testimony relevant for the limited purpose of calling into question Appellant's assertion that both she and Lt. Thomas had used loud language in the course of the counseling session.

III. LEGAL STANDARD

An appointing authority may only discipline a permanent classified employee if there exists sufficient cause for such discipline. La. Con. Art. X, § 8(A). If an employee believes that his/her discipline is not supported by 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

Sgt. Jones identified four actions that prompted her to substantiate the allegations against Appellant; 1) use of a raised voice during an interaction with a supervisor, 2) refusal to remain seated after instruction from supervisor, 3) refusal to continue the counseling session, and 4) refusal to sign the counseling form provided by Lt. Thomas. *Id. at 52:18-22*. Appellant admits to engaging in each one of these behaviors.

Appellant admitted to being “very upset” prior to even sitting down with Lt. Thomas for the counseling session. Appellant also acknowledges that she disregarded an instruction from Lt. Thomas to remain seated during the session and then left the session without authorization from Lt. Thomas. While she claims that Lt. Thomas unfairly targeted her, she acknowledged violating the letter of the NOPD’s sick leave policy. Thus, it is clear that Lt. Thomas was well within her authority to conduct a counseling session.

Appellant, apparently recognizing that she was losing control of her emotions, made a choice to disregard instructions from her supervisor and remove herself from the counseling session. In doing so, Appellant may have avoided an even graver violation of NOPD policy, but her decision does not relieve her from responsibility for her underlying behavior.

Based upon the foregoing, the Commission finds that NOPD has sufficiently shown that Appellant’s actions during the counseling session were unprofessional, disrespectful, and a violation of NOPD Rule 3.

B. Impairment of Efficient Operation of Appointing Authority

The Commission recognizes that the chain of command within NOPD is vital for the effective and efficient operation of the Department. And, Supervisors within NOPD must

faithfully execute and enforce policies established by NOPD through the issuance of instructions and orders. The counseling session in which Appellant participated was part of NOPD's policy regarding the use of sick leave and documentation of prolonged absences. Appellant's confrontational approach to the session, and ultimate refusal to meaningfully participate in it, compromised Lt. Thomas's ability to effectively manage the administrative investigations section of PIB. Therefore, the Commission finds that NOPD has met its burden in establishing Appellant's misconduct had an adverse impact on NOPD's efficient operations.

C. Discipline Commensurate with Offense

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

Following the disciplinary hearing, Cmdr. Nolan recommended a two-day suspension for Sgt. Hunt. She based her recommendation on the level of disrespect Sgt. Hunt showed towards her supervisor and a perceived need to hold employees in the PIB department "to a higher standard." *Id.* 74:15-16.

The Commission agrees with Appellant that employees should have the freedom to respectfully and professionally voice objections or concerns to a supervisor. However, it is vital that such employees adhere to a certain standards of conduct when voicing such objections and concerns. Furthermore, once a supervisor issues a final decision, instruction or order, employees must faithfully carry out the instruction/order. NOPD has a clear interest in deterring willful

violations of policies or orders as well as any other conduct that compromises a supervisor's ability to manage those employees that he/she supervises.

Finally, we agree with Cmdr. Nolan that employees assigned to PIB must model professional behavior and strictly follow NOPD policies and rules as they are charged with investigating violations of those policies and rules. Furthermore, employees within PIB must fully appreciate that the rules and policies that apply to other NOPD personnel apply to them as well. While the Commission does not characterize this as a "higher standard," when employees in PIB violate the very rules they enforce, the integrity of the department is compromised. Therefore, we find that the two-day suspension NOPD issued to Appellant was commensurate with Appellant's misconduct.

V. CONCLUSION

Based upon the foregoing, the Commission hereby DENIES Appellant's appeal.

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Signatures appear on the following page.

Judgment rendered this 19 th day of December, 2016.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

Michelle D. Craig
MICHELLE D. CRAIG, CHAIRPERSON

12/8/2016
DATE

Joseph S. Clark
JOSEPH S. CLARK, COMMISSIONER

12-19-16
DATE

Ronald P. McClain
RONALD McCLAIN, VICE-CHAIRMAN

12-19-16
DATE