



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON  
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MAYOR

Wednesday, August 26, 2020

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

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

Re: **Ryne Schuler VS.**  
**Department of Police**  
**Docket Number: 8877**

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 - 8/26/2020 - 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,

  
Doddie K. Smith  
Chief, Management Services Division

cc: Shaun Ferguson  
Erica A. Therio  
Jay Ginsberg  
Ryne Schuler

file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

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RYNE SCHULER,  
Appellant

vs.

DOCKET NO. 8877

DEPARTMENT OF POLICE,  
Appointing Authority

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**APPELLANT'S APPEAL IS GRANTED IN PART AND DENIED IN PART**

**I. INTRODUCTION**

Appellant, Ryne Schuler, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission's Rule II, §4.1, asking this Commission to find that the Department of Police (hereinafter "Appointing Authority") did not have sufficient cause to discipline him. At all times relevant to the instant appeal, Appellant served as a Police Officer and had permanent status as a classified employee.

By letter dated December 6, 2018, the Appointing Authority notified the Appellant of its decision to suspend him for a total of eighty (80) working days for multiple violations arising from a single vehicle accident occurring in Jefferson Parish on December 10, 2018. (Hearing Exhibit 1). The violations were: Adherence to Law for the Appellant's alleged violation of La. R.S. 14:100 – Hit-and-Run (45 day suspension); Professional Conduct for Use of Alcohol Off-Duty (5 day suspension); and Restricted Activities, Criminal Proceedings against Member, for the Appellant's failure to notify his immediate supervisor or a member of the Public Integrity Bureau after receiving a traffic citation arising from his involvement in an automobile accident (30 days). The Appellant disputes the facts upon which the Appointing Authority draws its conclusions and raises legal

issues concerning the timeliness of the investigation and the reliability of hearsay evidence utilized by the Appointing Authority in taking disciplinary action.

A hearing examiner, appointed by the Commission, presided over a hearing held on January 31, 2019, during which both Parties had an opportunity to call witnesses and present evidence. The Hearing Examiner 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, the post-hearing Briefs submitted by both parties, as well as the Hearing Examiner's report. Based upon our review, we DENY IN PART AND GRANT IN PART the appeal and render the following judgment.

## **II. PRELIMINARY MATTERS**

At his appeal hearing, the Appellant raised several legal issues. First, the Appellant contends that his Appeal should be granted because the Appointing Authority failed to complete its investigation within sixty days. Second, the Appellant contends that the hearsay evidence relied upon by the Appointing Authority was not competent evidence. Third, the Appellant contends that necessary elements of the sustained violations were not established.

Factually, the investigation and disciplinary action arose from a one vehicle accident that occurred in Jefferson Parish on December 10, 2017. The Appellant received traffic citations and an accident report was authored by a Jefferson Parish Deputy Sheriff. (Hearing Exhibit 5). The Appellant was required to report his involvement in the accident to his supervisor or the Public Integrity Bureau, which he admittedly failed to do.

On December 21, 2017, the Appellant's ex-wife reported the accident to the Public Integrity Bureau and on January 3, 2018, the Public Integrity Bureau initiated an investigation by

preparing a form document entitled “Initiation of a Formal Disciplinary Investigation.” (Hearing Exhibit 1). The investigation concluded 175 days later with the preparation and service of the “Notice to the Accused of the Completed Investigation and Notice of Pre-Disciplinary Hearing” on June 27, 2018. (Hearing Exhibit 3).

No factual witnesses testified at the January 31, 2019 hearing. The Public Integrity Bureau investigator did not testify and there is no evidence that the investigator interviewed anyone except the Appellant. The Appointing Authority’s only witness was Deputy Superintendent Paul Noel, who testified that he reviewed the investigative file as part of his preparation for conducting the pre-disciplinary hearing. He questioned the Appellant, who only confirmed that he was involved in the accident, and then recommended the penalty based upon the penalty matrix used by the Appointing Authority.

In essence, the entire case is essentially based upon the information contained in the accident report prepared by the Jefferson Parish Sheriff’s Department and the Appellant’s acknowledgement that, on May 24, 2018, he paid a fine of \$174.75 to the First Parish Court of Jefferson Parish, Division B for Failure to Report an Accident.

At the Hearing Examiner’s direction, both parties provided a legal Brief in support of their arguments following the hearing

### **III. LEGAL STANDARD**

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer except for cause expressed in writing. LSA Const. Art. X, sect. 8(A); *Walters v. Department of Police of New Orleans*, 454 So. 2d 106 (La. 1984). The employee may appeal from such a disciplinary action to the city civil service commission.

The burden on appeal, as to the factual basis for the disciplinary action, is on the appointing authority. *Id.*; *Goins v. Department of Police*, 570 So 2d 93 (La. App. 4th Cir. 1990).

The civil service commission has a duty to decide independently, from the facts presented, whether the appointing authority has good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. *Walters, v. Department of Police of New Orleans, supra*. Legal cause exists whenever the employee's conduct impairs the efficiency of the public service in which the employee is engaged. *Cittadino v. Department of Police*, 558 So. 2d 1311 (La. App. 4th Cir. 1990). The appointing authority has the burden of proving by a preponderance of the evidence that the complained of activity occurred and that the conduct complained of impaired the efficiency of the public service. *Id.* The appointing authority must also prove the actions complained of bear a real and substantial relationship to the efficient operation of the public service. *Id.* While these facts must be clearly established, they need not be established beyond a reasonable doubt. *Id.*

#### IV. LEGAL ISSUES AND ANALYSIS

##### A. The admissibility of the December 10, 2017 Jefferson Parish Sheriff Department's Accident Report:

The Appellant contends that the Appointing Authority's conclusions are essentially based upon the accident report prepared by a Jefferson Parish Deputy Sheriff on the day of the accident, who was neither interviewed during the investigation nor called to testify during the appeal hearing. In his post hearing Brief, the Appellant provides an extensive argument as to why the report was hearsay and should not have been admitted into evidence at the hearing.

However, what the Appellant fails to address to any extent is the most important fact that, when the Appointing Authority offered the accident report into evidence as Exhibit 5 at the

hearing, Appellant's counsel indicated that he had no objection to its admissibility and the Hearing Examiner thus admitted it into evidence. (See page 22, lines 11-16 from the hearing transcript.) It is now too late for the Appellant to object to its admissibility. The time for that objection was at the hearing, but no timely objection of any kind was ever made by the Appellant.

**B. Application of La. R.S. 40:2531 (Sixty Day Rule):**

The Appellant contends that the Appointing Authority failed to meet the minimum standards established in La. R.S. 40:2531(b)(7) by exceeding the sixty days allowed to conduct an administrative investigation and, as a consequence, La. R.S. 40:2531(C) requires the discipline be declared an absolute nullity. Conversely, the Appointing Authority argues that the matter was under criminal investigation by the Jefferson Parish Sheriff's Office and the running of the sixty days was tolled until May 24, 2018, when the investigation concluded in the First Parish Court of Jefferson Parish with the Appellant paying a fine for failure to report an accident.

The Appointing Authority correctly indicates on page 1 of its post-hearing Brief: "The well-established jurisprudence of the Louisiana Supreme Court and the Fourth Circuit Court of Appeal hold that the normal sixty-day time delay for completing a misconduct investigation does not apply to investigations involving allegations of criminal activity."

The Jefferson Parish Sheriff Department's accident report (Exhibit 5), admitted into evidence without objection, clearly indicates potential criminal violations by the Appellant in connection with his accident. The Commission agrees with the Appointing Authority that the running of the sixty days was tolled until Jefferson Parish concluded its criminal investigation with the resolution of all matters on May 24, 2018. Thus, the Appointing Authority timely concluded its investigation when it did on June 27, 2018.

**C. Were the necessary elements of the sustained violations established by a preponderance of the evidence?**

**1. Hit-and-Run Driving (45 Day Suspension)**

In *State v. Williams*, the Louisiana Supreme Court held “LSA-R.S. 14:100, the statute under which the defendant was convicted, defines “hit-and-run driving” as “(the intentional failure of the driver of a vehicle involved in or causing any accident, to stop such vehicle at the scene of the accident, to give his identity, **and** to render reasonable aid.” (Emphasis added by the Court). *State v. Williams*, 2003-3514 (La. 12/13/04), 893 So. 2d 7, 12. In the instant case, the elements of this statute were not met in that the Appellant did not fail to stop his vehicle at the scene of the accident and there was no failure to render reasonable aid

As a result, the Commission finds that the Appointing Authority has failed to establish a violation of its internal rule regarding Hit-and-Run Driving by a preponderance of evidence because all of the elements of a hit-and-run violation were not established. Therefore, the Commission GRANTS Appellant’s Appeal on this matter and determines that it was improper for the Appointing Authority to have issued a 45 day suspension for this alleged offense. That 45 day suspension should be rescinded.

**2. Use of Alcohol While Off Duty (5 Day Suspension)**

Regarding the “use of alcohol while off duty” charge, as noted above, the accident report was admitted into evidence without objection. The information contained therein from the investigating officer indicates that the Appellant appeared to the investigating officer to have been under the influence of alcohol at the time when he saw him shortly after the accident. The Commission finds that the Appointing Authority has carried its burden of proof on this issue. Thus,

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the Commission DENIES the Appellant's appeal of his 5 day suspension issued in connection therewith.

### **3. Criminal Proceedings Against Member (30 Day Suspension)**

The Appellant acknowledges that on May 24, 2018, he was a defendant in Jefferson Parish Traffic Court as a consequence of the accident and that he paid a fine of \$174.75 to Jefferson Parish for Failure to Report an Accident. The Appellant was required to report his involvement in the accident to his supervisor or the Public Integrity Bureau, which he failed to do.

On this issue, the Commission finds that the Appointing Authority has met its burden of proof regarding the Appellant's failure to report the traffic accident and the issuance of a citation by the Jefferson Parish Sheriff's Department. The Commission therefore DENIES Appellant's appeal regarding the 30 day suspension issued in connection therewith.

## **V. CONCLUSION**

As a result of the above findings of fact and law, the Commission hereby GRANTS the Appellant's appeal regarding his 45 day suspension and DENIES the appeal relative to the 5 day and 30 day suspensions. The Appointing Authority is ordered to return to the Appellant 45 days of back pay with all emoluments of employment.

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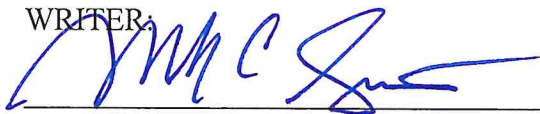


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Judgment rendered this 26<sup>th</sup> day of August, 2020.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER:



MARK SURPRENANT, COMMISSIONER

8-3-2020

DATE

CONCUR:



MICHELLE CRAIG, CHAIRPERSON

8-19-2020

DATE


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**DISSENT**

The New Orleans Police Department failed to conduct its administrative investigation within 60 days, as required by La. R.S. 40:2531(B)(7), making the discipline imposed an absolute nullity under La. R.S. 40:2531(C). NOPD claims the 60-day period should be tolled because of a criminal investigation, but absent from the record is any evidence of a criminal investigation by the Jefferson Parish Sheriff's Office following the citation on December 10, 2017. Therefore, this exception to the 60-day time period does not apply. *Kendrick v. Dept. of Police*, 2016-0037 (La. App. 4 Cir. 6/1/16), 183 So. 2d 1277, 1289.

In addition, the police report entered into evidence as NOPD-5 is hearsay without any witness to authenticate the document. *See* Tr. at 54. Although the evidentiary rules are relaxed in administrative hearings, I would find this document inadmissible.

  
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CLIFTON MOORE, JR., COMMISSIONER

  
\_\_\_\_\_  
DATE