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DIRECTOR OF PERSONNEL

Monday, July 17, 2017

Mr. Carlos Metoyer

Re: **Carlos Metoyer VS.
New Orleans Aviation Board
Docket Number: 8657**

Dear Mr. Metoyer:

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 - 7/17/2017 - 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, 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,

A handwritten signature in blue ink that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Mark Reis, Interim
Alexa L. R. Strong
Jay Ginsberg
file

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

CARLOS METOYER vs. NEW ORLEANS AVIATION BOARD	DOCKET No.: 8657
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I. INTRODUCTION

Appellant, Carlos Metoyer, 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 Aviation Board for the City of New Orleans, (hereinafter “Appointing Authority”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the Appointing Authority disciplined Appellant for sufficient cause. At all times relevant to the instant appeal, Appellant served as an Airport Maintenance Manager within the Appointing Authority and had permanent status as a classified employee.

On April 19, 2017, a hearing examiner appointed by the Commission presided over an appeal hearing. 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 render the following judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

The Appointing Authority issued Appellant a letter of reprimand after substantiating an allegation that Appellant had failed to diligently execute his responsibilities as a supervisor. Specifically, the Appointing Authority alleged that Appellant learned of inappropriate and unprofessional behavior perpetrated by one of his subordinates, but failed to take appropriate corrective action. (H.E. Exh. 1).

B. November 21, 2016

During all times relevant to the instant matter, Appellant served as an Airport Maintenance Manager. In his capacity as a manager within the Appointing Authority, Appellant supervised at least four employees. (A.A. Exh. 4). Gilbert Clark, an Airport Senior Service Agent, reported directly to Appellant and two Airport Maintenance Supervisors – Ramon Reece and Rachell Hampton – reported directly to Mr. Clark. *Id.* Additionally, one Airport Equipment Operator – Roy Denson – reported to Mr. Reece as of November 21, 2016.

On November 21, 2016, an employee within the maintenance department had called in sick necessitating a reallocation of his workload. (A.A. Exh. 1). Ms. Hampton notified Mr. Denson of his work assignment to which Mr. Denson allegedly replied, “I know my job. You’re not supposed to tell me nothing. It’s in writing so get the fuck out of my face.” *Id.* Shortly thereafter, Ms. Hampton sent an email to Mr. Clark with a copy to Appellant and Rolena Williams regarding the incident. *Id.*

At some point on November 21, 2016, Appellant received Ms. Hampton’s email and asked Mr. Clark to “check into it and find out what had happened.” (Tr. at 12:8-16). On November 23, 2016, Ms. Hampton submitted a grievance to Mr. Clark related to the November 21st incident and

requested a meeting with the Human Resources department in order to determine how the Appointing Authority would respond to Mr. Denson's alleged misconduct. (A.A. Exh. 2). Mr. Clark responded to Ms. Hampton's grievance on December 1, 2016 indicating that he had scheduled a meeting with the Appointing Authority's human resource department. *Id.* Mr. Clark also claimed that he spoke to Mr. Reece and asked him to inform Mr. Denson that his alleged misconduct was "unacceptable in the work place." *Id.*

On December 2, 2016, Ms. Hampton requested that her grievance proceed to the next level supervisor. In her statement, Ms. Hampton explained that the reason for the escalation was her concern that Mr. Clark's approach to Mr. Denson's alleged misconduct was not commensurate with the seriousness of the situation. *Id.* Ms. Hampton further stated that, "I feel my life is in danger based on the way [Mr. Denson] interacts with me. *Id.*

Appellant responded to Ms. Hampton's request for escalation on December 2nd. *Id.* In that response, Appellant indicated that, due to personal and professional difficulties between himself and Mr. Denson, he was not the appropriate person to intervene and/or respond to Ms. Hampton's grievance. *Id.* During his testimony, Appellant elaborated on the difficulties he had with Mr. Denson. Specifically, Appellant recounted several incidents when Mr. Denson had made threats to Appellant's personal safety. (Tr. at 16:16-17:5). Appellant further stated that he was aware of numerous other incidents during which Mr. Denson had engaged in wildly inappropriate and threatening conduct. *Id.* at 18:5-19:4. Ultimately, Appellant escalated the matter to the next-level manager, which in this case was the Human Resource department of the Appointing Authority. *Id.* at 20:4-7.

During the grievance process, Appellant spoke with Mr. Clark and confirmed that Mr. Clark had spoken with Mr. Denson regarding Mr. Denson's alleged misconduct. *Id.* 22:12-22.

However, beyond confirming that Mr. Clark had spoken with Mr. Denson, Appellant took no action other than to advance Ms. Hampton's grievance to the next step. While he did not issue any discipline to Mr. Denson, Appellant testified that he believed the totality of Mr. Denson's actions warranted some type of intervention by the Appointing Authority.

Walter Krygowski, the Chief Operations Officer for the Appointing Authority, testified that he first became aware of incident between Ms. Hampton and Mr. Denson upon receiving the grievance form escalated by Appellant. *Id.* at 30:19-31:6. After reviewing the grievance, Mr. Krygowski conducted what he described as "a much larger investigation" into Mr. Denson's actions, including interviewing all of the employees involved. *Id.* at 31:7-15. Through these interviews, Mr. Krygowski discovered that Mr. Clark and Mr. Reece had simply spoken to Mr. Denson regarding the incident and had not taken any further steps towards discipline. *Id.* at 32:8-16. The lack of any formal discipline deeply concerned Mr. Krygowski given Mr. Denson's past misconduct. *Id.* at 32:21-25.

Mr. Krygowski testified that, due to Appellant's role as manager, he was responsible for the conduct of the employees working under him. Appellant's failure to take any affirmative steps to address Mr. Denson's behavior other than to make informal requests that Mr. Clark and Mr. Reece speak with Mr. Denson constituted a lack of proper supervision.

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 Activities

Appellant claimed that he did not take any action to discipline Mr. Denson because Mr. Denson had issued threats to Appellant in the past. Frankly, it appears that Appellant, and several other employees with the Appointing Authority, were scared of Mr. Denson – apparently for good reason. The frequency and magnitude of Mr. Denson’s misconduct, if substantiated, warranted a substantial level of discipline and immediate intervention. As the Manager of Airport Services, Appellant should have taken all necessary immediate steps to address Mr. Denson’s alleged misconduct. And, if he did not feel comfortable addressing the matter directly, he should have reached out to his supervisor and conveyed the relevant facts as soon as he became aware of them. Instead, Mr. Krygowski did not learn of Mr. Denson’s misconduct until receiving Ms. Hampton’s grievance approximately two weeks after the incident.

As a result of the foregoing, the Commission finds that the Appointing Authority has established that Appellant failed to competently execute his responsibilities as Airport Services Manager.

B. Impact on the Appointing Authority's Efficient Operations

Due to Appellant's failure to immediately address Mr. Denson's inappropriate conduct, the Appointing Authority was effectively unable to enforce reasonable expectations for employee behavior. It is clear that Ms. Hampton felt threatened by Mr. Denson's conduct and there is no dispute that Mr. Denson's actions were unprofessional and aggressive. Yet the only feedback Mr. Denson received was an informal verbal request from Mr. Clark in which Mr. Clark essentially told Mr. Denson to "knock it off." Given that earlier warnings and reprimands had little, if any, effect on Mr. Denson's behavior, Appellant's choice of intervention amounted to no intervention at all. When a supervisor fails to hold subordinate accountable for misconduct, he/she enables further and more severe misconduct. This in turn has a negative impact on other employees and, eventually, the efficient operations of the supervisor's department/division.

Bearing the above in mind, the Commission finds that Appellant's failure to adequately supervise Mr. Denson had a negative impact on the efficient operations of the Appointing Authority.

C. Was the Discipline Commensurate with Appellant's Offense

The Commission must independently decide, based upon the facts presented in each appeal, whether the punishment imposed by an appointing authority was commensurate with the offense. *Cornelius v. Dep't of Police*, 2007-1257 (La.App. 4 Cir. 3/19/08, 6), 981 So.2d 720, 724. In the matter now before the Commission, the question is whether or not a letter of reprimand is "commensurate" with Appellant's failure to supervise Mr. Denson, otherwise, the discipline would

be “arbitrary and capricious.” *See 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).

A letter of reprimand represents a minor form of discipline. Appellant contested the issuance of the reprimand on the grounds that he felt he was not the appropriate person to speak with or interact with Mr. Denson due to prior threatening behavior perpetrated by Mr. Denson. However, even if Mr. Denson’s prior misconduct relieved Appellant from the responsibility of administering discipline or intervening directly – a conclusion the Commission does not make here – Appellant should have taken steps to ensure that his supervisors understood the severity of the matter. As it stood, Mr. Denson continued working for several weeks before receiving any consequences for his wildly unprofessional behavior. The delay compromised the Appointing Authority’s ability to manage the conduct and expectations of its employees.

Based upon the foregoing, the Commission finds that a letter of reprimand 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.

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SIGNATURES APPEAR ON THE FOLLOWING PAGE.

C. Metoyer
No. 8657

Judgment rendered this 17th day of July, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION



RONALD P. McCLAIN, VICE-CHAIRMAN

6/26/17

DATE



STEPHEN CAPUTO, COMMISSIONER

7-17-17

DATE



JOSEPH S. CLARK, COMMISSIONER

6-26-17

DATE