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# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

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Friday, February 24, 2017

Mr. Eric Hessler  
PANO 2802 Tulane Avenue #101  
New Orleans, LA 70119

Re: **Sean Carrigan VS.  
Department of Police  
Docket Number: 8463**

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 - 2/24/2017 - 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, 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  
Sean Carrigan

file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

SEAN CARRIGAN  vs.  DEPARTMENT OF POLICE	DOCKET No.: 8463
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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. Neither the Appointing Authority, the Police Department for City of New Orleans (hereinafter “NOPD”), nor Appellant alleges that any aspect of the appeal or investigation was procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the NOPD disciplined Appellant for sufficient cause.

**II. FACTUAL BACKGROUND**

**A. Alleged Misconduct**

Appellant, Sean Carrigan, was a permanent, classified employee serving in the capacity as Police Officer at all times relevant to the instant appeal. The Appointing Authority, the New Orleans Police Department (hereinafter “NOPD” or “Appointing Authority”) issued Officer Carrigan a letter of reprimand and suspended him for one day in connection with two alleged violations of NOPD Rule 4, paragraph 2: Instructions for an Authoritative Source. These alleged violations occurred on May 2, 2014 when Appellant responded to a car accident.

The relevant portion of NOPD Rule 4, Paragraph 2 reads as follows:

An employee shall professionally, promptly, and fully abide by or execute instructions issued from any authoritative source, including any order relayed from

a superior by an employee of the same or lesser rank. If the instructions are reasonably believed to be in conflict with the Rules, Policies and Procedures of the Department or other issued instructions, this fact shall respectfully be made known to the issuing authority. If the issuing authority elects to insist upon execution of the instructions which are reasonably believed to be in conflict with Department Rules, Policies, and Procedures, the employee receiving the instructions shall have the right to request and is entitled to receive, IMMEDIATELY, said instructions in writing, except in cases of emergency as determined by the supervisor. The issuing authority shall be held responsible should any conflict materialize; however, no instructions shall be issued or executed which are in violation of law.

*Id.* NOPD takes the position that its rules, policies and procedures constitute “orders from an authoritative source.” Such policies include NOPD Policy 502.5.1 pertaining to an Officer’s responsibilities when investigating a car crash. The following portion of Policy 502.5.1 is relevant to the instant appeal:

(b) Officers investigating a reportable traffic crash shall instruct each involved driver to report the following using an Auto Accident Driver Information Exchange form to any party who suffered injury or property damage resulting from the crash:

1. The name and address of the owner and the driver of the vehicle.
2. The license number of the vehicle.
3. The name of the insurance company for the vehicle.
4. The name, address and telephone number of the insurance agent.

(c) Officers shall indicate on the report that each involved driver was given instructions for providing information to any party suffering injury or damage and whether the investigation was made at the scene of the accident or by subsequent investigation and interviews.

*Id.* NOPD issued Appellant a letter of reprimand for allegedly failing to provide each driver involved in a car crash on May 2, 2014 with an “auto accident driver information exchange form” and for failing to instruct each driver to provide the other with pertinent information regarding insurance. *Id.*

NOPD based its one-day suspension of Appellant upon Appellant’s alleged failure to activate his Body-Worn Camera (hereinafter “BWC”) when he responded to the May 2nd accident.

*Id.* This failure allegedly violated NOPD Policy 447.3 which requires an Officer to activate his/her BWC during all calls for service. *Id.*

### **B. NOPD's Investigation**

On May 2, 2014, Appellant was driving in an NOPD vehicle on the West Bank when he was flagged down by a female motorist. The female motorist (hereinafter "Driver #1") alleged that she had been the victim of a hit and run accident. When Appellant asked her if she knew where the other car went, she gestured across the street to an apartment complex. *Id.* at 14:5-15. Appellant proceeded across the street where he spoke with the other driver (hereinafter "Driver #2" or "Complainant"). When confronted by Appellant, Driver #2 claimed that he left the scene in order to retrieve insurance information and registration for the vehicle he was driving from his girlfriend who owned the car and lived in the apartment complex. *Id.* at 55:22-56:9. While Appellant did not find that Driver #2 had engaged in a hit-and-run, he did cite the Driver #2 for an unspecified traffic violation based upon a witness statement. *Id.* at 56:9-19.

NOPD initiated its investigation into Appellant's alleged misconduct upon receiving a complaint Driver #2 a few days later. (Tr. 12:17-23). In his complaint, Driver #2 alleged that Appellant had been unprofessional and failed to provide the Complainant with the other driver's insurance information. *Id.* at 12:17-13:1.

Sergeant Augustine Yates interviewed the Complainant as part of NOPD's investigation into the allegations against Appellant. Sgt. Yates believed that the Complainant was very upset about being issued a citation, but that there was ample cause for Appellant to have issued the citation. *Id.* at 30:20-24. Therefore, Sgt. Yates did not find that Appellant had acted in an unprofessional manner.

However, Sgt. Yates did find that Appellant failed to provide the Complainant with the insurance information from Driver #1. In Sgt. Yates's opinion, this failure constituted a violation of NOPD Policy 502.5.1. *Id.* at 16:3-11. Yet, on cross-examination, Sgt. Yates acknowledged that Policy 502.5.1 does not require that an Officer provide drivers involved in a car accident with relevant insurance information. Rather, the policy only requires that an Officer "instruct" the drivers to exchange information. *Id.* at 23:5-14. Apparently, Sgt. Yates assumed that, since the Complainant did not have the insurance information, Appellant had failed to provide the drivers with the accident forms and instructions referenced in Policy 502.5.1.

In fact, Appellant admitted that he did not provide the drivers with the accident form discussed in Sgt. Yates's testimony. However, the reason Appellant did not distribute this form was because NOPD had not made the form readily available. *Id.* at 67:20-69:16. Instead, Appellant testified that he provided each individual with an "item slip" and asked that they use the item slip to exchange information. *Id.* at 54:3-9. And, in the report Officer Carrigan generated as a result of the accident, he represented that he instructed both drivers to exchange insurance information. *Id.* at 40:13-41:11.

During the course of his investigation, Sgt. Yates attempted to view BWC footage captured by Appellant during his interaction with the two drivers and witness on May 2, 2014. However, Sgt. Yates was unable to locate any file or record of footage from Appellant's BWC recorded during Appellant's response to the accident. Appellant testified that he did activate his BWC but claims that there was either a hardware or software error when he attempted to upload the video to NOPD's cloud-based storage system.<sup>1</sup>

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<sup>1</sup> Appellant acknowledged that NOPD Policy 447.3 required him to activate his BWC when responding to a car accident, like the one on May 2nd.

### 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. *Violation of NOPD Policy 502.5.1 (Accident Report)*

NOPD readily acknowledges that Policy 502.5.1 does not mandate that Officers provide drivers involved in car accidents with pertinent insurance information. Thus, in order for NOPD to meet its burden with respect to this allegation, it must establish that Appellant failed to issue

Driver #1 and #2 the appropriate paperwork or failed to instruct them to exchange insurance information.

While Appellant did not issue the exact form mentioned in Policy 502.5.1, his failure was due to the unavailability of the form itself rather than any lapse on Appellant's part. And, the form that Appellant did issue appears to be the functional equivalent of the auto accident driver form.

Furthermore, Appellant claims that he did instruct Driver #1 and #2 to exchange information during the course of his response to the May 2nd accident. He also completed an accident report in which he represented that he had issued such an instruction to the drivers. NOPD did not present any testimony to rebut Appellant's account. Instead, it relies upon Driver #2's claim that Driver #1 never produced insurance information. This is hearsay and circumstantial evidence that does not overcome Appellant's testimony to the contrary. The Commission finds that NPOD has failed to establish that Appellant violated Policy 502.5.1.

## ***2. Violation of NOPD Policy 447.3 (BWC)<sup>2</sup>***

The Commission finds that; 1) NOPD's BWC policy applied to the May 2, 2014 traffic accident to which Officer Carrigan responded, and 2) there is no BWC footage of Appellant's interactions with witnesses, citizens and subjects in connection with the traffic accident.

Appellant claims that he pressed the proper buttons to activate his BWC and successfully labeled the video. However, he was unable to account for the missing video other than to allege that the uploading process resulted in the video's disappearance. Sgt. Yates could find no evidence of a hardware or software malfunction during the course of his investigation. And, Appellant's

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<sup>2</sup> The Commission recognizes that, in the documents submitted by NOPD in the course of the hearing and accepted into the record by the hearing examiner, there is no indication as to when the investigation into Appellant's alleged violation of NOPD Policy 447.3 began or ended. However, Appellant explicitly waived any claim that NOPD's investigation violated La. Rev. Stat. § 40:2531. (Tr. at 21:25-22:4).

successful upload of videos he recorded immediately before and after the traffic accident suggests that his BWC was working properly.

While Appellant's violation of NOPD's BWC appears to be completely unintentional, there is no requirement in the policy that an Officer intentionally fail to activate his BWC in order to be in violation. Based upon the record before us, we find that NOPD has established that Appellant failed to activate his BWC in connection with the May 2, 2014 car accident.

### **B. Impairment of Efficient Operation of Appointing Authority**

Often, footage from body-worn cameras provide exonerating evidence to Officers accused of misconduct. These cameras also provide a degree of transparency and accountability that New Orleans citizens demand and deserve. In the matter now before the Commission, had Appellant complied with Policy 447.3 and activated his BWC, NOPD likely would have had dispositive evidence regarding the allegations made by the Complainant. Because he did not, NOPD had to rely upon less reliable forms of evidence, including an account of the incident from an individual clearly upset at Appellant for issuing a citation.

For good reason, NOPD has committed to the use of BWC and provided all Officers with training and notice regarding such use. Therefore, we find that Appellant's failure to adhere to the BWC Policy had an adverse effect 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 *Staehle v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).



NOPD suspended Appellant one day for his violation of the BWC. (H.E. Exh. 1). Assistant Superintendent Robert Bardy testified that, pursuant to the consent decree reached between the City of New Orleans and the U.S. Department of Justice, NOPD agreed to adopt a strict BWC policy. And, it is NOPD's position that a letter of reprimand would not serve as a sufficient deterrent when it comes to encouraging compliance among the rank and file Officers. (Tr. at 45:1-8). Asst. Supt. Bardy also testified that NOPD's penalty matrix provides for up to a three-day suspension for first-time violations of the BWC Policy. *Id.* at 43:14-25. While the Commission is not bound by penalty matrices developed by appointing authorities, such matrices provide a degree of transparency regarding the issuance of discipline.

While the undersigned Commissioners recognize that NOPD had a variety of corrective actions available to address Appellant's misconduct, we do not find that the issuance of a one-day suspension is so severe as to constitute an arbitrary or capricious action. Therefore, we hold that NOPD has met its burden in showing that Appellant's discipline was commensurate with his offense.

## V. CONCLUSION

Based upon the foregoing, the Commission hereby DENIES IN PART and GRANTS IN PART Appellant's appeal. The Commission shall not disturb the one-day suspension NOPD issued to Appellant for his violation of NOPD's BWC policy. However, NOPD shall rescind the letter of reprimand referenced in the disciplinary notice identified in the record as "Hearing Examiner Exhibit 1." Furthermore, the Department of Civil Service shall expunge any record or reference to the letter of reprimand from Appellant's personnel file.

Judgment rendered this 4th day of February, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

Ronald P. McClain  
RONALD P. McCLAIN, VICE-CHAIRMAN

2-21-17  
DATE

Joseph S. Clark  
JOSEPH S. CLARK, COMMISSIONER

2-24-17  
DATE

Tania Tetlow  
TANIA TETLOW, COMMISSIONER

2-22-17  
DATE