



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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DIRECTOR OF PERSONNEL

Thursday, June 17, 2021

Mr. Eric Hessler
PANO 2802 Tulane Avenue #102
New Orleans, LA 70119

Re: **Justin Orlansky VS.
Department of Police
Docket Number: 9195**

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 - 6/17/2021 - 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,

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

Doddie K. Smith
Chief, Management Services Division

cc: Shaun Ferguson
Darren Tyus
Jay Ginsberg
Justin Orlansky

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**JUSTIN ORLANSKY,
Appellant**

Docket No. 9195

**v.
DEPARTMENT OF POLICE,
Appointing Authority**

DECISION

Appellant, Justin Orlansky, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his one-day suspension imposed the week of August 9, 2020. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a police officer. (Tr. at 143). A Hearing Examiner, appointed by the Commission, presided over a hearing on October 20, 2020. At this hearing, both parties had an opportunity to call witnesses and present evidence.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the hearing, all exhibits submitted at the hearing, the Hearing Examiner's report dated January 31, 2021, and controlling Louisiana law.

For the reasons set forth below, Orlansky's appeal is DENIED.

I. FACTUAL BACKGROUND

On August 31, 2018, Officer Justin Orlansky responded to a call at the Sewerage & Water Board about a fight between two employees in the basement. (Tr. at 48; Ex. NOPD-2). Officer Orlansky activated his body-worn camera (BWC), documenting his conversations with the complainant, the other employee involved in the fight, and a supervisor. (Tr. at 49). According to the information provided to Officer Orlansky, a verbal disagreement escalated to a physical confrontation with an employee punching the complainant and the complainant tackling the

employee, before the fight was broken up. (Tr. at 50). Officer Orlansky told the complainant that if Officer Orlansky handled the complaint as a simple battery, both parties to the fight would be issued a summons for disturbing the peace. (Tr. at 12). Neither the complainant nor the employee who struck the complainant wanted to be issued a summons. (Tr. at 27). Neither party wished to pursue pressing criminal charges. (Tr. at 45-46). Officer Orlansky classified the matter as a disturbance, which was inconsistent with NOPD policies. (Tr. at 14). The incident should have been classified as a simple battery. (Tr. at 11). Officer Orlansky failed to write a report because of the classification as a disturbance. (Tr. at 14).

The relevant NOPD policies provide as follows:

RULE 4: PERFORMANCE OF DUTY

Paragraph 4: Neglect of Duty

- (c) The following acts or omissions to act, although not exhaustive, are considered neglect of duty:
4. Failing to make a written report when such is indicated.

CHAPTER 82.1, REPORT PREPARATION

Required Reporting

12. When in response to a call for service, or as a result of self-initiated activity, a member becomes aware of any activity where a crime has occurred, the member is required to document the activity.

13. The fact that a victim does not desire prosecution is not an exception to documentation.

(Ex. HE-1 at 2; Tr. at 16).

NOPD issued a one-day suspension to Officer Orlansky, the presumptive discipline for violation. (Ex. HE-1; Tr. at 37).

II. ANALYSIS

It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, the 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 (quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094). The Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance of evidence that it had good or lawful cause for terminating the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d 106 (La. 1984).

The Commission finds that NOPD has carried its burden of showing the occurrence of the complained-of activity. NOPD offered evidence that Officer Orlansky incorrectly classified a simple battery as a disturbance and failed to write a report, in violation of NOPD policies. NOPD also carried its burden of showing that this conduct impaired the efficiency of NOPD, as misclassifying crimes erodes the public trust. (Tr. at 36).

As a one-day suspension was the presumptive penalty for the violation, the Commission finds that the discipline was commensurate with the dereliction. The Commission may only reduce a penalty if NOPD had shown insufficient cause for the discipline:

“The authority to reduce a penalty can only be exercised if there is insufficient cause.” *Whitaker [v. New Orleans Police Dep't]*, 03–0512 at p. 4, 863 So.2d at 575 (citing *Branighan v. Dep't of Police*, 362 So.2d 1221, 1223 (La.App. 4 Cir.1978)).

Further, a legal basis for any change in a disciplinary action can only be that sufficient cause for the action was not shown by the appointing authority. *Branighan*, 362 So.2d at 1221. The Commission may not merely substitute its judgment for the appointing authority's judgment. *Whitaker*, 03-0512 at p. 5, 863 So.2d at 576.

Regis v. Dep't of Police, 2012-1043 (La. App. 4 Cir. 12/12/12), 107 So. 3d 790, 793.

The appeal is DENIED.

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This the 17th day of June, 2021

WRITER:

J H Korn
J H Korn (Jun 17, 2021 10:10 CDT)

JOHN KORN, COMMISSIONER

CONCUR:

Bhel
Brittney Richardson (Jun 13, 2021 13:57 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

Ruth White Davis
Ruth Davis (Jun 10, 2021 14:00 CDT)

RUTH WHITE DAVIS, COMMISSIONER