



CITY OF NEW ORLEANS

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CITY CIVIL SERVICE COMMISSION
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DIRECTOR OF PERSONNEL

Tuesday, April 13, 2021

Mr. Javar K. Davidson
1465 N Broad St
New Orleans, LA 70119

Re: **Freud Alexandre VS.
Information Technology and
Docket Number: 8761**

Dear Mr. Davidson:

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 - 4/13/2021 - 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 shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,


Stacie Joseph
Management Services Division

cc: Kimberly LaGrue
Mary Katherine Taylor
Ramona D. Washington
Freud Alexandre

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

FREUD ALEXANDRE
Appellant

v.

Docket No. 8761

INFORMATION TECHNOLOGY AND INNOVATION
Appointing Authority

DECISION

Appellant, Freud Alexandre, 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 by the Department of Information Technology and Innovation (ITI) on January 11, 2018. (See Exhibit HE-1). At the time he was suspended, Appellant was employed as a Security Manager and had permanent status as a classified employee. A Hearing Examiner, appointed by the Commission, presided over a hearing held on June 26, 2018. At this hearing, both parties had an opportunity to call witnesses and present evidence. The Hearing Examiner provided the Commission with her advisory report dated February 13, 2020.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the June 26, 2018, hearing, all exhibits submitted at the hearing, the Hearing Examiner's report, and controlling Louisiana law. For the reasons set forth below, we DENY the appeal.

I. 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 Hearing Examiner's attached, very thorough February 13, 2020 report sets forth in detail the key factual testimony. Therefore, those facts will not be repeated in full at this time.

However, in key summary form, the Appellant admits that he knew of the ADP phishing attack as early as October 2017 (Tr. at 22). He knew that employees' payroll checks had been stolen because of the security breach. (Tr. at 23). On December 12, 2017, he received the task of reporting this attack to the FBI. (Tr. at 23). He knew of the importance of this task given the significant security risk which the City faced because of it. (Tr. at 32-33).

Despite the above, the evidence presented at the Hearing clearly indicated that the Appellant, although he may have made some verbal contact with the FBI before he was issued his January 11, 2018 one day suspension letter, his overall efforts in properly contacting the FBI regarding this dangerous attack as of January 9, 2018 fell woefully short of what was expected of him. (For example, see Tr. at 27 and 121).

Given the entire record presented, appellant's one day suspension was reasonable, appropriate, and commensurate with his breach of duty. Therefore, his appeal is denied.

This the 13th day of April, 2021

WRITER:

Mark C. Surprenant
Mark C. Surprenant (Mar 24, 2021 18:08 CDT)

MARK SURPRENANT, COMMISSIONER

CONCUR:

Brittney Richardson
Brittney Richardson (Apr 5, 2021 07:56 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

CJ Moore
CJ Moore (Apr 13, 2021 13:56 CDT)

CLIFTON J. MOORE, VICE-CHAIRPERSON

FREUD ALEXANDRE

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

**INFORMATION TECHNOLOGY
AND INNOVATION**

DOCKET NUMBER 8761

HEARING EXAMINER REPORT

This matter came before the Civil Service Commission on Tuesday, June 26, 2018 as an appeal by Fred Alexandre (hereinafter referred to as “Appellant”). Appellant is appealing a letter of suspension (dated January 11, 2018) from the Information and Technology and Innovation Department (hereinafter referred to as the “Appointing Authority”) suspending Appellant for allegedly breaching the City of New Orleans’ policy on standards of behavior (CAO Policy Memorandum Number 83 (R)) by failing to take security measures to protect city users against the ADP phishing scam and failure to report the ADP phishing scam through the appropriate federal channels. (*See* Hearing Examiner’s Exhibit Number 1). Specifically, on December 12, 2017, in an ADP phishing scam meeting convened by the Chief Information Officer (CIO), Appellant agreed to report the ADP phishing scam targeting city email users through the appropriate federal channels, FBI and/or State. However, on December 18, 2017, Appellant failed to provide a status of the federal reporting as requested by the CIO via email.

On January 3, 2018, in the ADP meeting convened by the CIO, Appellant reported that he had not yet reported the ADP phishing scam through the appropriate federal channels but had made a call for the information. On January 5, 2018, in the ADP meeting convened by the CIO, Appellant was directed to engage the city’s payroll manager, Michael Brenes, to get the information needed to complete the federal report. On January 9, 2018, Appellant informed the

deputy CIO that he was in training and had not yet engaged in the city's ADP managers to complete the federal report. *Id.* According to the letter of suspension, the dates of the alleged acts were December 12 and 18, 2017 and January 5, 9 and 13, 2018. *Id.* Appellant's suspension was without pay for one business day beginning Friday, January 12, 2018. Appellant returned to work on Monday, January 15, 2018. *Id.*

The Appointing Authority had three (3) witnesses to testify at the hearing; while Appellant had one (1) witness (himself) to testify. The Appointing Authority's first witness was the Appellant, Freud Alexandre.

FREUD ALEXANDRE TESTIMONY IN THE APPOINTING AUTHORITY'S CASE IN CHIEF:

Freud Alexandre (Appellant) is a security manager for the Department of Information Technology and Innovation with the City of New Orleans, employed in this position for eight (8) years. (Tr. 21: 24-25, Tr. 87:12-15). Appellant testified that his direct supervisor is Sara White, the deputy chief information officer; and he reports to Kimberly LaGrue, the chief information officer. (Tr. 22: 2-7). In October 2017, he became aware that there was an ADP phishing scam in which several city employees' payroll checks were stolen. (*Id.* at 8-1, Tr. 23: 7-9).

In mid-October, a meeting was held to discuss the ADP phishing scam. (Tr. 111: 9-14). Appellant testified that at the October meeting, he was not given any specific task to complete. (*Id.* at 16-25). Instead, Appellant stated that he provided recommendations which he acted on and offered guidance regarding the phishing matter. (*Id.* at 24-25, Tr. 112:1-3).

A second meeting was convened by the CIO on December 12, 2017 to discuss the ADP phishing scam. (Tr. 23:13-18). At said meeting, Appellant stated that he was tasked with contacting the FBI (*Id.* at 19-21, Tr. 112:4-8). According to Appellant, on December 13, 2017,

he contacted Special Agent Cory Harris of the FBI via telephone to report the ADP phishing scam. (Tr. 34:11-18, Tr. 38:17-19, Tr. 113:1-5). Agent Harris only responded to Appellant after Appellant forwarded an email to him regarding the ADP phishing scam. (Tr. 113:6-25). As a result of Agent Harris being out of the office, Agent Katherine Barclay responded to Appellant with several questions. *Id.* Appellant stated that he did not speak with Ms. Barclay but did receive the questions from her in a January 4, 2018 email, which he forwarded to the group and requested a discussion regarding the matter. (Tr. 115:9-25).

On December 18, 2017, Ms. LaGrue forwarded an email to Appellant asking how the FBI reporting process was going and if the city could get more support from the FBI. (Tr. 25: 14-2, Tr. 112:10-13, *See* Appointing Authority Exhibit Number 2). Appellant testified that he provided an update of his reporting to the FBI to his superiors via a verbal conversation; but did not send or forward an email. (Tr. 34: 18-25). Appellant stated that he received a December 18, 2017 email from Ms. LaGrue requesting a status of his report to the FBI of the phishing scam, to which he did not respond to the email; but, he had a verbal conversation in Ms. LaGrue's office regarding the status. (Tr. 27: 17-21). Appellant stated that he also had the verbal conversation with Kimberly LaGrue, Sara White and Matthew Rosov (director of operations). (Tr. 35: 1-12). Hence, according to Appellant, "everyone" was present when he responded to the December 18 email request. (*Id.* at 13-15). However, it is unclear as to the exact date that Appellant had a verbal conversation with his superiors. (Tr. 39:19-23). When questioned further, Appellant stated that his verbal communication to his superiors regarding the status of the FBI reporting was between December 12-18, 2017. *Id.* However, Appellant testified that he did not remember the date of the conversation. *Id.*

On January 3, 2018, another meeting was convened by the CIO to discuss the phishing scam. (Tr. 27:1-2). Appellant testified that he reported that he had not spoken to anyone at the FBI, but he did reach out to the FBI regarding the phishing scam. (*Id.* at 5-8). Appellant also testified that his contact with the FBI was via a phone call on December 13, 2017 and in writing via an email to Special Agent Cory Harris after the January 3, 2018 meeting. (*Id.* at 9-16). As such, Appellant testified that he reported the ADP scam to the appropriate federal channels. (Tr. 35: 21-24).

Appellant testified that he contacted the FBI in writing after the January 3, 2018 meeting, where he forwarded an email to Special Agent Harris requesting feedback and assistance regarding the ADP phishing scam. (Tr. 27: 22-25, Tr. 28:1-3, Tr. 44:1-4, *See* Appointing Authority Exhibit Number 3). In addition, after the January 3, 2018 meeting, Appellant testified that he contacted Agent Phil Constantine with the United States Department of Homeland Security via email and telephone regarding the phishing scam. (Tr. 28: 4-5; 12-24, Tr. 112:). On January 4, 2018, Special Agent Harris contacted Appellant and stated that he would have Special Agent Tim Lucas contact him. (Tr. 36: 4-6).

Appellant testified that at the January 5, 2018 meeting convened by the CIO regarding the ADP phishing scam, he did not engage the city's payroll manager, Michel Brenes, to obtain the information needed to complete the federal report. (Tr. 36: 7-15). According to Appellant, Kimberly LaGrue informed Appellant that she would be corresponding with Mr. Michael Brenes. (*Id.* at 19-22). Appellant stated that he was not told by Ms. LaGrue to "go ahead" and get the answers to the FBI questions. (Tr. 97:22-25. Tr. 98:1-3). According to Appellant, Ms. LaGrue, stated that she would follow up with Michael Brenes in the finance department regarding the FBI questions. (Tr. 98:4-7). Appellant testified that as the only person in security,

he could not complete the federal report because he needed to participate in an Electronic Resource Planning (ERP) seminar (the new procurement budget system). (Tr. 37: 1-7,17-19). Appellant stated that he was trying to do the best that he could because he was performing several tasks. (Tr. 36: 7-15, Tr. 37: 19-21). Hence, Appellant testified that he was advised by his superiors to attend the ERP training, which lead the Appellant to believe that he should be prioritizing the ERP training before doing any other work in the office or any other tasks that he was assigned. (Tr. 38:3-7).

On January 9, 2018, Ms. White via email requested a status of the federal investigation. (Tr. 29: 8-11, Tr. 30: 14-20, *See* Appointing Authority Exhibit Number 4). Appellant replied that he was in training (ERP training) and requested a time period for the task to be completed. (Tr. 31: 17-22, *See* Appointing Authority Exhibit Number 4). To which, Ms. White stated to Appellant that the phishing scam was “the most important thing we have on our plates right now This email was sent last week before you were in training. As security, I need you to stay on top of this and direct all resource as necessary to get whatever needs done correct.” (*Id.* at 23-25, Tr. 32: 1-4, *See* Appointing Authority Exhibit Number 4).

KIMBERLY LAGRUE:

Kimberly LaGrue is a twenty-two (22) year employee with the City of New Orleans, working on and off with the city during the twenty-two (22) years. (Tr. 44:18-20). At the time of the hearing, Ms. LaGrue was classified as the Interim Information Officer with the ITI Department. (*Id.* at 21-22). Prior to that she was the CIO. (*Id.* at 23-24). According to Ms. LaGrue’s testimony, she was responsible for overseeing the delivery of IT services to the City of New Orleans and direct the IT staff. (Tr. 45:1-2). Ms. LaGrue testified that she first learned of the ADP phishing scam in mid-October, when alerted by the mayor’s office. (Tr. 45:3-7). Once

her department learned of the phishing scam, steps were taken to review and block the email and an internal meeting was held (held on the date of IT's discovery of the scam in mid-October). (Tr. 45:16-25, Tr. 46:1-2). Appellant was one of the IT personnel presents at the meeting. (Tr. 46:3-5).

Ms. LaGrue testified that additional phishing scams were discovered in November and December of 2017. (Tr. 46:9-13). Appellant was aware of the November and December phishing scams. (*Id.* at 19-21). An additional meeting regarding the phishing attempts was held on December 12, 2017, which Appellant was present. (*Id.* at:22-25, Tr. 47:1-3). At the December 12 meeting, additional measures to prevent the phishing attacks were discussed. (Tr. 47:4-6). According to Ms. LaGrue's testimony, Appellant was tasked with reaching out to the FBI to request help regarding the phishing scam/attacks. (*Id.* at 7-13). On December 18, 2017, Ms. LaGrue testified that she reached out to Appellant via email requesting a status on his task with the FBI. (*Id.* at 20-25, Tr. 48:1-5, *See* Appointing Authority Exhibit Number 2). However, Appellant did not respond via email or verbally to her request. (Tr. 48:16-20). In addition, prior to the December 18 email from Ms. LaGrue, Appellant did not provide an update to Ms. LaGrue regarding the status of his contact with the FBI. (Tr. 48:6-8).

According to Ms. LaGrue, the next time there was a discussion regarding Appellant's assigned FBI task was at the January 3, 2018 meeting. (Tr. 48:21-22). Ms. LaGrue testified that she was surprised at Appellant's failure to follow-up. (*Id.* at 23-25). As of January 3, Ms. LaGrue testified that Appellant had not reached out to the FBI regarding the phishing attacks/scams. (Tr. 49:8-10). According to Ms. LaGrue, Appellant did not tell any member of his team that he was behind in reaching out to the FBI. (Tr. 52:1-4). Based upon the recommendation of Sara White, Ms. LaGrue disciplined Appellant for violation of the Rules of

Standards of Behavior Section (F) and the ITI norms, which provides standards for how ITI employees will work. (Tr. 49:11-14, 50:9-22, 51:9-15, *See* Appointing Authority Exhibit Number 5). Ms. LaGrue further testified that the Appellant's lack of response put the city at continual risk. (Tr. 53:13-15). Ms. LaGrue stated that although another employee was terminated regarding the ADP phishing scam, Appellant received a one-day suspension only. (Tr. 53:16-24).

Upon cross-examination, Ms. LaGrue testified that Appellant is the security manager and designated security person for all departments within City Hall. (Tr. 59:9-15). Again, Ms. LaGrue testified that on December 18, she did not recall having a conversation with the Appellant regarding his contact with the FBI. (Tr. 60:3-16). Appellant did not contact the FBI until January 3, 2018. (Tr. 61:2-4, *See* Appointing Authority Exhibit Number 3). Appellant proceeded to question Ms. LaGrue as to whether Appellant's assigned task was considered a project, without a deadline. (Tr. 62:5-8). However, Ms. LaGrue testified that Appellant's tasks were assigned in the execution of managing an incident. (Tr. 62:13-14). Ms. LaGrue stated that the task assigned to the Appellant would not be considered a project, but a tactical plan in response to an incident. (Tr. 63:15-20). According to Ms. LaGrue's testimony, a project is measurable, have deadlines and have outcomes. (*Id.* at 20-22). Tasks, on the other hand, have to be performed when an incident occurs. (*Id.* at 22-24). Appellant's assignment was a task and not part of a project, but an incident response. (Tr. 64:16-20). Therefore, Appellant's task did not have a deadline date; but the deadlines become immediate. (Tr. 64:18-23).

Ms. LaGrue continued to testify that the indication to Appellant that his assigned task was to be completed immediately was apparent through the meetings held, the follow-up meetings, the two meetings held in January, the conversations held during holidays, the tasks that

people were asked to perform after hours in response to the threats, and the continued ongoing work that had to be done highlighting how immediate actions needed to be. (Tr. 65:15-22). Therefore, Ms. LaGrue stated that Appellant's task of contacting the FBI needed to be performed immediately although no date was provided. (Tr. 67:5-15). Ms. LaGrue concluded her testimony by stating that Appellant was disciplined for failure to follow up with the FBI on December 12. (Tr. 67:21-25). Appellant did not contact the FBI until January 3, which such failure was a neglect of Appellant's duty. (Tr. 68:1-8).

SARA WHITE:

Sara White was employed with the City of New Orleans ITI department for two and a half (2 ½) years as the Deputy Chief Information Officer (Tr. 68:22-25, 69:4). She testified that she supervised the Appellant for two and a half (2 ½) years. (Tr. 69:21-22). Ms. White testified that Appellant was responsible for security of the city's systems and to report the risks as directed by the CIO. (Tr. 69: 23-25, Tr. 70:1-2). According to Ms. White, Appellant's task was to contact the FBI and to open a case with the FBI, which to Ms. White's knowledge he did not do. (Tr. 70:3-7). Ms. White testified she sent an email on January 9, 2018, asking if Appellant reached out to the FBI. (*Id.* at 8-10, *See* Appointing Authority Exhibit Number 4). Appellant's response to Ms. White's email was that he was in training and when did she want him to do this. (*Id.* at 18-22, *See* Appointing Authority Exhibit Number 4). According to Ms. White, as of January 9, Appellant did not reach out to the FBI. (Tr. 70:25, 71:1-2). In addition, Appellant had not yet filed any kind of report regarding his contact with the FBI. (Tr. 72:1-3, *See* Appointing Authority Exhibit 4). Ms. White advised Appellant that his task was literally the most important thing and as security Appellant needed to stay on top of this and direct all resources as necessary to get whatever needs done. (Tr. 71:3-9, *See* Appointing Authority Exhibit Number 4). Ms.

White testified that Appellant's failure to complete his job duties left the City of New Orleans in a continued state of risk. (*Id.* at 10-13).

Furthermore, Ms. White testified that the FBI forwarded questions to the Appellant that he was tasked to answer and forward back to the FBI. (Tr. 76:5-6, *See* Appointing Authority Exhibit Number 4 and Appellant Exhibit Number 1). However, said responses to the questions were forwarded by Ms. White to Michael Brenes after the Appellant was suspended. (Tr. 79:19-25, Tr. 80:1). Prior to January 4, 2018, email, Appellant was to obtain the answers for the FBI's questions and obtain additional information from Michael Brenes to answer the FBI questions, which Appellant did not complete. (Tr. 81:8-16).

FREUD ALEXANDRE (APPELLANT) TESTIMONY IN HIS CASE IN CHIEF:

Upon Appellant's case in chief, Appellant testified to the following:

1. That he was tasked with contacting the FBI regarding the ADP phishing scam (Tr. 87:16-18);
2. That the CIO in a meeting in her office stated that she was responsible for contacting the finance department because of a bad relationship between the two departments. (Tr. 88:24-25, Tr. 89:1-11, *See* Appellant Exhibit Number 1);
3. That he contacted the FBI via a phone call to Special Agent Cory Harris on December 13, 2017, the day after the December 12, 2017 meeting (Tr. 93:3-6);
4. That he subsequently followed up the phone call with the FBI via email on January 3, 2018 (Tr. 93:13-16, *See* Appointing Authority Exhibit Number 3);
5. That he received an email with questions from Special Agent Katherine Barclay, which he shared the questions with IT leadership to follow up with finance (Tr. 93:22-28, Tr. 94:1-3, *See* Appellant Exhibit Number 1);

6. That no deadline was given to him to complete the task (Tr. 95:11-13);
7. That he was never reprimanded prior to the January 11, 2018 letter or reprimand (Tr. 96:3-6);
8. That he did not receive a letter of reprimand or a fine in this matter. (Tr. 96:7-14).
The Appellant believed that two (2) steps (a fine or letter of reprimand) were bypassed and he was punished with suspension without pay. (*Id.* at 15-18, *See* Appellant Exhibit Number 2).
9. That he was in training for the ERP system and was advised that he needed to be at the training as the only employee in the security department. (Tr. 103:10-25, Tr. 104:1). Hence, he was unable to provide the answers to the FBI questions because he could not be in two places at one time. *Id.*

REBUTTAL WITNESS:

The Appointing Authority called Sara White as a rebuttal witness to testify to statements made by the Appellant during his case in chief, including statements or testimony by Appellant as to disciplinary actions against him. As the rebuttal witness, Sara White testified that Appellant was previously written up for failing to follow deadlines. (Tr. 119:9-12). According to Ms. White, Appellant was tasked with obtaining the answers to the questions from Michael Brenes at the January 5, 2018 meeting. (Tr. 121:9-14). Ms. White further testified that Appellant's failure to obtain the answers from Mr. Brenes was the reason why she had to obtain said answers. (Tr. 121:17-19). Appellant, instead, argued he was tasked with obtaining the answers to the FBI email on Friday, January 5, 2018. (Tr. 123:7-9). On Monday, January 8, 2018, he was in a required training. (Tr. 122:21-25). The email requesting the status of the responses to the FBI questions was forwarded by Ms. White on Tuesday, January 9, 2018. (*Id.* at

10-24). Appellant suggests via solicitation from Ms. White's testimony that he was in training at the time he was tasked with obtaining the responses to the FBI questions. (Tr. 123:1-14). In addition, Appellant suggests via the rebuttal testimony that he had started training before Ms. White sent an email regarding the status of the FBI questions. *Id.*

ANALYSIS:

The Appointing Authority has the burden of proving by a preponderance of the evidence the occurrence of the complained activity and that the conduct complained of impaired the efficiency of the public service in which the Appointing Authority is engaged. *Gast v. Department of Police*, 2013-0781 (La. App. 4th Cir. 3/13/14), 137 So. 3d 731, 733 (La. Ct. App. 2014) (*Cure v. Department of Police*, 2007-0166 (La. App.4th Cir 8/0/07), 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 Department*, 2014-0993 (La. App. 4th Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walter v. Department of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). The Appointing Authority has the burden of proof of establishing each element of this analysis.

I. The Occurrence of the Complained Activity

The Appointing Authority argues that Appellant's behavior and actions violated the rules of Policy Memorandum 83 (R) Standards and Behavior Section (F), which states in pertinent part "Each employee, because of the job assignment, has certain required duties and must assume certain responsibilities. Each employee has a job to do and must do that job. Failure to perform these duties or take these responsibilities is a neglect of duty". Furthermore, the Appointing

Authority argues that Appellant's behavior and actions violated ITI norms, which provides for how ITI employees will work.

The actions and behavior of Appellant complained of by the Appointing Authority is Appellant's failure to report the ADP phishing scam to the FBI as directed; failure to provide a status of the federal reporting when requested; failure to update the Appointing Authority of the status regarding the Federal reporting; failure to contact Michael Brenes to obtain additional information that was requested from the FBI and failure to provide responses to FBI questions. Based upon the evidence and testimony in this matter, this Hearing Examiner is of the belief that the occurrence of the complained activity did in fact happen.

II. Impact on the Appointing Authority's Efficient Operations

According to Appointing Authority, Appellant's behavior and actions and/or inactions affected the efficient operations of the Appointing Authority. The Appointing Authority argues that Appellant was tasked with contacting the FBI regarding an ADP phishing scam which infected the City of New Orleans computers. The Appointing Authority argued that Appellant failed to take the appropriate security measures to protect city users against the ADP phishing scam and failed to report the ADP phishing scam through the appropriate federal channels. Based upon the evidence and testimony presented, the Appellant did not timely contact the FBI regarding the ADP phishing scam. In addition, Appellant did not adequately follow up with the FBI once he attempted to contact the FBI. Last, Appellant did not adequately update his team members.

The Appointing Authority's witness, Kimberly LaGrue, testified that Appellant was tasked with contacting the FBI regarding the ADP phishing scam. When she requested an update via email on said task, Appellant did not respond. Therefore, Ms. LaGrue testified that

Appellant did not update her regarding the status of his contact with the FBI. In addition, Ms. LaGrue testified that Appellant failed to follow-up with the FBI and to update his team as to the results of his contact with the FBI.

The second witness for the Appointing Authority, Sara White testified that Appellant was responsible for security of the city's systems and to report risks as directed to the CIO. Ms. White sent Appellant an email on January 9, 2018 regarding an update with the FBI. According to Ms. White, as January 2018, Appellant had not reached out to the FBI. Appellant's failure to complete his job duties left the City of New Orleans in a continued state of risk.

Appellant failed to perform the job assigned to him as required under the City of New Orleans Standard Rules of Behavior. Appellant's actions resulted in Appellant failing to perform the duties requested of him, which is a neglect of duty. In addition, Appellant's actions placed the City of New Orleans at continued and grave risk from the ADP phishing scam. Although Appellant was tasked with contacting the federal authorities, the FBI and/State, on December 12, 2017, Appellant did not do so until January of 2018. Therefore, it is the opinion of this Hearing Examiner that the Appointing Authority sufficiently established that the behaviors, actions and inactions of the Appellant sufficiently impacted the efficient operation of the Appointing Authority by placing the City of New Orleans, its employees and departments at continued risk as a result of the ADP phishing scam.

III. Was the Discipline Commensurate with Appellant's Offense

The Commission has the authority to "hear and decide" disciplinary cases, which includes the authority to modify (reduce) as well as to reverse or affirm a penalty. La. Const. Art. X Sec. 12; *Pope v. New Orleans Police Department*, 903 So.2d 1 (La. App. 4th Cir. 2005). However, the authority to reduce a penalty can only be exercised if there is insufficient cause for

imposing the greater penalty. *Id.* Unless the Commission determined that there is insufficient cause for the Appointing Authority to impose the discipline, the penalty must stand. *Id.*

As a result of the Appellant's behavior, actions and inactions, Appellant was suspended without pay for one business day beginning Friday, January 12, 2018. He returned to work on Monday, January 15, 2018. Based upon the evidence and testimony in this matter, there is a lack of "sufficient cause" or reason to justify a decision contrary to that of the Appointing Authority's disciplinary action, which would overrule the disciplinary action imposed by the Appointing Authority. The City of New Orleans computer system was infiltrated by an ADP phishing scam. Said ADP phishing scam placed the City of New Orleans' computer and network system at grave risk of further potential harm and damage to the its computer system. There was a sense of urgency to resolve and prevent further risk to the city's system. As such, it was critical that Appellant follow up with the FBI and be persistent in his actions. In addition, it was critical that the Appellant provide follow-up information to his team as to the status of his contact and progress with FBI. Appellant failed to appropriately do so. As such, this Hearing Examiner did not find that the disciplinary course of action taken by the Appointing Authority to be unreasonable, unwarranted, unjustifiable or not commensurate with Appellant's offense. Appellant's behavior and actions did in fact violate of Policy Memorandum 83 (R) Standards and Behavior Section (F) and the ITI norms.

Therefore, it is this Hearing Examiner's decision that the discipline imposed on the Appellant was commensurate with the offense.

CONCLUSION:

For the foregoing reasons, it is the recommendation of this Hearing Examiner that the present appeal should be *DENIED*.

SUBMITTED: FEBRUARY 13, 2020

SUBMITTED BY: RAMONA D. WASHINGTON