



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
SUITE 900 - 1340 POYDRAS ST.
NEW ORLEANS, LA 70112
(504)658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION
BRITTNEY RICHARDSON, CHAIRPERSON
CLIFTON J. MOORE JR., VICE-CHAIRPERSON
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MARK SURPRENANT
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AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Thursday, October 7, 2021

Mr. Eric Hessler
PANO 320 N. Carrollton Avenue #202
New Orleans, LA 70119

Re: **Roger Benson VS.
Department of Police
Docket Number: 9150**

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 - 10/7/2021 - 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,

A handwritten signature in blue ink that reads "Stacie Joseph".

Stacie Joseph
Management Services Division

cc: Shaun Ferguson
Renee E. Goudeau
Jay Ginsberg
Roger Benson

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**ROGER BENSON,
Appellant**

Docket No. 9150

v.

**DEPARTMENT OF POLICE,
Appointing Authority**

DECISION

Appellant, Roger Benson, 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 March 18, 2020 termination. (Ex. HE-1). At all relevant times, Appellant had permanent status as a Senior Police Officer. (Tr. at 77). A Hearing Examiner, appointed by the Commission, presided over a hearing on June 18, 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 November 17, 2020, and controlling Louisiana law.

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

I. FACTUAL BACKGROUND

The New Orleans Police Department terminated the employment of Officer Roger Benson on March 18, 2020, because of an incident on August 6, 2019, when Benson rear-ended a civilian vehicle at 1:30 AM with his take-home marked police vehicle. (Ex. HE-1). The officer who responded to the accident noted an open beer can in the police vehicle. (Ex. HE-1). The civilian vehicle suffered severe damage, and the civilian had to be taken to the hospital. (Ex. HE-1; Tr. at

9; Ex. NOPD-4). Benson suffered a broken jaw and was taken to Tulane Hospital. (Tr. at 74, 81). The breathalyzer exam of Benson at 4:01 AM was 0.146% and at 4:18 AM was 0.139%. (Ex. HE-1).

The parties stipulated that (1) Benson was intoxicated as reflected by the blood alcohol test; (2) Benson was responsible for the vehicle accident on August 6, 2019; and (3) there was an open container of alcohol in Benson's police vehicle at the time of the accident. (Tr. at 6). Benson's appeal addresses the penalty only. (Tr. at 6).

Deputy Superintendent Paul Noel testified that the presumptive penalty for driving while intoxicated in a police vehicle and off duty is an 80-day suspension (Level F Offense). (Tr. at 15; Ex. NOPD-2 at 6). If mitigating factors exist, the penalty may be reduced to 60 days. (Tr. at 16). If aggravating factors exist, the penalty may be increased up to termination. (Tr. at 16). Following a hearing, a Bureau Commander's Committee recommended termination. (Ex. NOPD-3). The Committee, in its Form 105, listed the following aggravating factors:

1. The accident caused extensive damage to the city-owned marked police vehicle as well as to a civilian vehicle.
2. The accident caused injury to the civilian resulting in them being transported to the hospital for treatment.

(Ex. NOPD-4). This document was signed by Chief Noel. (Ex. NOPD-4). Chief Noel also testified that Benson's level of intoxication was an aggravating factor. (Tr. at 12). Chief Noel explained that Benson's conduct impacts the public trust in the Department. (Tr. at 12). Specifically, in this situation, a member of the public believes someone driving a marked police vehicle is available to render aid in an emergency. (Tr. at 12). Chief Noel testified that the committee recommended termination because "the actions were so egregious and the police department was so impacted that we wanted to aggravate up to dismissal." (Tr. at 15).

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).

Benson admitted the occurrence of the complained-of activity, driving while intoxicated in a marked police vehicle. The undersigned Commissioners find that the conduct complained of impaired the efficiency of NOPD. An intoxicated police officer in a marked police vehicle who crashes into a civilian causing physical injury to the civilian impairs the public trust in NOPD.

The undersigned Commissioners further find that the penalty is commensurate with the infraction. NOPD has explained the presumptive penalty and the aggravating factors resulting in termination. The Commission is aware of Benson's successful recovery from alcoholism, including his participation in an inpatient program, his participation in an outpatient program, his participation in the Officer Assistance Program, and his regular attendance at Alcoholics Anonymous meetings and with a sponsor (Tr. at 66-67), but the Bureau Commander's Committee

considered this information when it recommended termination to the Superintendent. (Tr. at 14-15). Even if the Commission were inclined to reduce the penalty imposed by NOPD, the Commission may only reduce a penalty if NOPD has 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.

Therefore, the appeal is DENIED.

This the 7th day of October, 2021

WRITER:

Ruth White Davis
Ruth Davis (Jul 2, 2021 19:03 CDT)

RUTH DAVIS, COMMISSIONER

CONCUR:

CJ Moore
CJ MOORE (Oct 7, 2021 16:29 CDT)

CLIFTON J. MOORE, JR., VICE-CHAIRPERSON

J. H. Korn
J. H. Korn (Jul 12, 2021 10:21 CDT)

JOHN KORN, COMMISSIONER