



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
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AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Wednesday, April 17, 2024

Mr. Donovan A. Livaccari
101 W. Robert E. Lee, Suite 402
New Orleans, LA 70124

Re: **Mark Mulla VS.
Department of Police
Docket Number: 9528**

Dear Mr. Livaccari:

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 - 4/17/2024 - 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: Anne E. Kirkpatrick
William R. H. Goforth
Jay Ginsberg
Mark Mulla

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**MARK MULLA,
Appellant**

Docket No. 9528

v.

**DEPARTMENT OF POLICE,
Appointing Authority**

DECISION

Appellant, Lieutenant Mark Mulla, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1, seeking relief from a letter of reprimand issued on November 9, 2023. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a Police Lieutenant. (Ex. HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on January 23, 2024. 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 February 13, 2024, and controlling Louisiana law.

For the reasons set forth below, Lt. Mulla's appeal is GRANTED.

I. FACTUAL BACKGROUND

The underlying facts are largely undisputed. Lt. Mulla is a 24-year veteran of the New Orleans Police Department. (Tr. at 28). In 2021, Lt. Mulla and his subordinate, Sgt. Hoffacker, had a discussion of using the Supervisor Feedback Logs to raise the morale of officers by recognizing individual officers for good job performance. (Tr. at 11, 18). In April of 2021, Sgt. Hoffacker used NOPD's Supervisor Feedback Logs to give positive reinforcement to officers

under his supervision. (Tr. at 10-11). Lt. Mulla described Sgt. Hoffacker as a “very creative person.” (Tr. at 19). Sgt. Hoffacker used humor in these logs, such as comparing officers to the Wu Tang Clan. (Tr. at 10, Ex. NOPD-1). Lt. Mulla approved these logs, although he admittedly failed to review the logs carefully. (Tr. at 9, 19). NOPD viewed Sgt. Hoffacker’s use of humor as unprofessional and issued a letter of reprimand to Lt. Mulla for approving the logs. (Ex. HE-1).

NOPD defines professionalism as follows: “Employees shall conduct themselves in a professional manner with the utmost concern for the dignity of the individual with whom they are interacting. Employees shall not unnecessarily inconvenience or demean any individual or otherwise act in a manner which brings discredit to the employee or the New Orleans Police Department.” (Ex. HE-1, Ex. NOPD-3).

Although NOPD began the investigation in May of 2021, no discipline was issued until November of 2023, over two years later. (Ex. HE-1).

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 disciplining 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).

NOPD has shown the occurrence of the complained-of activity. Lt. Mulla admittedly approved Supervisor Feedback Logs with humorous references.

NOPD has failed to carry its burden of proving the conduct complained of impaired the efficiency of NOPD. The undersigned Commissioners have reviewed the Supervisor Feedback Logs at issue, Exhibit NOPD-1. Although Sgt. Hoffacker's use of humor may be unconventional, the language he used is not offensive or insulting. As Lt. Mulla testified, Sgt. Hoffacker's Supervisor Feedback Logs did not inconvenience or demean any individual, and the logs did not bring discredit to any employee of the Department of Police. (Tr. at 28-29). Therefore, the logs did not violate NOPD's requirement of professionalism. The references in the logs are complimentary, and Sgt. Hoffacker's goal was to improve morale. (Tr. at 29). In fact, Lt. Mulla testified that Sgt. Hoffacker succeeded in improving morale on the platoon. (Tr. at 29).

The appeal is GRANTED. The letter of reprimand shall be removed from Lt. Mulla's employment record.

WRITER:

Mark C. Surprenant

Mark C. Surprenant (Apr 15, 2024 15:53 CDT)

MARK SURPRENANT, COMMISSIONER

CONCUR:

J H Korn

J H Korn (Apr 15, 2024 12:41 CDT)

JOHN KORN, VICE-CHAIRPERSON

Ruth White Davis

Ruth Davis (Apr 17, 2024 12:12 CDT)

RUTH DAVIS, COMMISSIONER