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

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Friday, January 14, 2022

Ms. Stephanie Dovalina
700 Camp St., Ste 105
New Orleans, LA 70119

Re: **Kristen Morales VS.**
Office of Inspector General
Docket Number: 9234

Dear Ms. Dovalina:

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 - 1/14/2022 - 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,

Doddie K. Smith

Doddie K. Smith
Chief, Management Services Division

cc: Edward Michel, Interim
Sarah Voorhies Myers
Jay Ginsberg
Kristen Morales

file

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AMY TREPAGNIER
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Friday, January 14, 2022

Ms. Stephanie Dovalina
700 Camp St., Ste 105
New Orleans, LA 70119

Re: **Kristen Morales VS.**
Office of Inspector General
Docket Number: 9240

Dear Ms. Dovalina:

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 - 1/14/2022 - 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,

Doddie K. Smith

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Chief, Management Services Division

cc: Edward Michel, Interim
Sarah Voorhies Myers
Jay Ginsberg
Kristen Morales

file

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

KRISTEN MORALES,
Appellant

v. **Docket Nos. 9234 & 9240**

CITY OF NEW ORLEANS OFFICE OF INSPECTOR GENERAL
Appointing Authority

DECISION

As indicated in the attached Hearing Examiner's extremely thorough and excellently written December 17, 2021 Report, Kristen Morales ("Appellant") was employed by the Office of Inspector General ("Appointing Authority" or "OIG") as an Investigator IV with permanent status. The Appointing Authority placed the Appellant on emergency suspension on December 15, 2020, and terminated her employment by letter dated January 12, 2021. (Ex. HE-1).

In addition to reviewing the above referenced Hearing Examiner's December 17, 2021 Report, the undersigned Commissioners have reviewed the entire record in this matter, including the transcripts and exhibits regarding the hearing which took place before the Hearing Examiner on April 21, 2021; June 16, 2021; and June 21, 2021. At the hearing, both parties had a full and fair opportunity to present any and all evidence for this Commission's consideration. After careful review and consideration of the entire record analyzed in light of applicable, controlling Louisiana law, the undersigned Commissioners

fully adopt as their own the advisory recommendations as set forth by the Hearing Examiner in his December 17, 2021 Report. For the reasons set forth below and in the attached December 17, 2021 Report, the appellant's appeal is DENIED.

More specifically, although the January 12, 2021 termination letter references multiple alleged policy violations, the Appointing Authority candidly admitted at the hearing on June 21, 2021, that the decision to terminate the Appellant was primarily based on the Appellant improperly, without authorization, giving an OIG iPhone to a private individual (Reginald Fournier) and then trying to justify that gift by wrongfully claiming that she had permission to do so from her supervisor (Howard Schwartz). (Tr. Vol.II, pp 60-61). Thus, the undersigned Commissioners have particularly focused on this issue involving the iPhone in analyzing whether the suspension and ultimate termination were warranted.

The undersigned Commissioners agree with the Hearing Examiner that the appellant's actions in regard to the iPhone, especially her lack of candor in wrongfully claiming she had permission to give it to Fournier when there is absolutely no evidence to support that assertion, justified the suspension and termination. Howard Schwartz, called as a witness by the Appellant, specifically testified that he would not have authorized the Appellant to give an OIG cell phone to a private person. (Tr. Vol II, page 440). As stated by the Hearing Examiner on page 12 of his Report: "As previously held, complete candor is an essential requirement of the {Appellant's} position." OIG Investigator Michael Centola testified at the hearing that the Appellant's lack of candor would call into question her ability "to testify in any hearing." (Tr.Vol II, page 60).

It is well-settled that, in an appeal such as this 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 suspending and 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 entire record in this case presently before the Commission clearly shows that that the OIG has carried its burden of proving the occurrence of the Appellant's wrongful activity and that her conduct impairs the efficiency of the public service in which the OIG is engaged. The imposed penalties of suspension and termination were commensurate with the offenses proven to have been committed by the Appellant, a classified employee.

As to each and all of the remaining allegations against the Appellant as set forth in the above referred to January 12, 2021 letter sent to the Appellant, the undersigned Commissioners fully agree with all of the recommendations made by the Hearing Examiner. Thus, the undersigned Commissioners refer the parties to the December 17, 2021 Report of the Hearing Examiner as we

adopt as our own each and every recommendation made therein by the Hearing Examiner. We see no reason to repeat therein what is clearly set forth in that December 17, 2021 Report.

In conclusion, the Appellant's appeal is DENIED.

This is the 14th day of January 2022.

WRITER:

Mark C. Surprenant
MARK SURPRENANT, COMMISSIONER

CONCUR:

Brittney Richardson
BRITTNEY RICHARDSON, CHARPERSON

Ruth White Davis
RUTH DAVIS, COMMISSIONER

Signature: Mark C. Surprenant
Mark C. Surprenant (Jan 13, 2022 13:53 CST)

Signature: Ruth White Davis
Ruth Davis (Jan 13, 2022 22:01 CST)

Signature: Brittney Richardson
Brittney Richardson (Jan 13, 2022 22:26 CST)

KRISTEN MORALES	**CIVIL SERVICE COMMISSION**
VERSUS	**CITY OF NEW ORLEANS**
OFFICE OF INSPECTOR GENERAL	**NO. 9234 & 9240**

REPORT OF THE HEARING EXAMINER

INTRODUCTION

Kristen Morales ("Appellant") was employed by the Office of Inspector General ("Appointing Authority" or "OIG") as an Investigator IV with permanent status. The Appointing Authority placed the Appellant on emergency suspension on December 15, 2020, and terminated her employment by letter dated January 12, 2021. (H.E. Exh. 1). While the termination letter references multiple policy violations, the Appointing Authority candidly admitted that the decision to terminate the Appellant was based on the first listed reason found in the termination letter as follows:

> (I) Giving an iPhone, which was purchased and owned by the Office of Inspector General (OIG), to a private individual who had no official connection to the OIG nor the City of New Orleans, which violates Policy Memorandum 60(R)and Louisiana.

Ed Michel, the Interim Inspector General, testified that he received advice from a staff member of the Department of Civil Service to document in the termination letter every incident he could uncover, regardless of whether those other incidents were the basis for disciplinary action. (Tr. Vol. II at 347 – 349; 417 – 418). As a consequence, the termination letter is a bloated eleven-page document containing seven separate alleged policy violations, which

unfortunately resulted in a voluminous hearing transcript containing needless repetitive details. Because the Appointing Authority chose to provide evidence regarding all seven allegations, this report will address all of them, even though some are without merit and others are arguably irrelevant based upon the Appointing Authority's candid admissions.

ALLEGATIONS

I. iPhone

A. Facts and Testimony

1. Undisputed Facts

Certain facts are not in dispute. The Appellant does not deny giving an iPhone 4 belonging to the OIG to an individual named Reginald Fournier. Fournier was employed as a cafeteria worker in the Federal Reserve Bank ("FRB") building where the OIG is located. The Appointing Authority determined that the Appellant lacked candor when questioned regarding the iPhone, which caused the Appointing Authority to lose trust in her ability to effectively perform the duties of an OIG investigator. (Tr. Vol. II, at 302 – 303; 312 – 316; 347 – 348).

The Appellant gave Fournier the iPhone towards the end of 2015. (Tr. Vol. II, at 22). At the time she gave Fournier the iPhone, it was at least four years old and not in use by the OIG. (Tr. Vol. II, at 21; A.A. Exh. 13). The Appointing Authority learned and confirmed that the Appellant gave Fournier the iPhone on or around October 22, 2020, after Bobbie Jones, IT Security Specialist,

reported the information to him. (Tr. Vol. II, at 207 – 210; Morales Exh. 12). On or around November 16, 2020, OIG Investigator Terrance Barrett met with Fournier and took custody of the iPhone, which he confirmed upon inspection was OIG property. (Tr. Vol. II, at 142 – 146; Morales Exh. 13). On December 1, 2020, Larry Centola, Chief of Investigation, called the Appellant into his office without advanced notice to discuss the iPhone, and to inform her for the first time that she was under investigation. (Tr. Vol. II, at 23 – 24; A.A. Exh. 18). While the Appellant admitted giving Fournier the iPhone, she denied that she did so without permission from her then supervisor Howard Schwartz. (Tr. Vol. II at 27 – 28; A.A. Exh. 18). On January 7, 2021, the Appointing Authority conducted a pre-termination hearing after the Appellant's employment was terminated.

2. Larry Centola

Larry Centola testified that he oversaw the initial investigation regarding the missing iPhone. (TR. Vol. II, at 10 – 11). Centola stated that Bobbie Jones informed him that one of the FRB employees, Reginald Fournier, was inquiring about obtaining a charger for an iPhone provided to him by the Appellant. Because the OIG's inventory list reflected missing iPhones, he reported what he had learned from Jones to Interim Inspector General Ed Michel. At that time, a decision was made to contact Fournier to ascertain if the iPhone provided to him by the Appellant was one of the iPhones missing from the OIG. (Tr. Vol. II, at 12 – 13).

Mr. Michel delegated the task to his subordinate, Terry Barrett. Barrett interviewed Fournier and took possession of the iPhone once it was determined that it was one of the iPhones missing from the list created by Ms. Jones. (Tr. Vol. II, at 17 -18; A.A. Exh. 12). He further testified that the investigation uncovered no documents evidencing approval to donate the iPhone to Fournier. He then reported his findings to Michel. (Tr. Vol. II, at 18 – 23).

Centola interviewed the Appellant on December 1, 2020 without notice or an opportunity to prepare. Barrett was also present along with investigator Larry Douglas. Barrett took notes while Centola asked questions. Centola testified that the Appellant did not deny giving Fournier the iPhone, but could not recall whether it was an OIG phone or her personal phone. The Appellant told him that if she had given Fournier an OIG phone, she would have done so with the approval of her supervisor Howard Schwartz and that she would have documented his approval. (Tr. Vol. II, at 27 – 28). After the interview, Schwartz was contacted and stated he did not and would not have permitted the Appellant to give an OIG iPhone to Fournier. (Tr. Vol. II, at 31).

Centola testified that he reported to Michel that the Appellant was unable to provide a clear and concise narrative regarding the iPhone, that her answers lacked candor, and that her assertions regarding authorization were not supported by any other evidence. (Tr. Vol. II, at 42 – 46).

3. Bobby Jones

Bobbie Jones, IT Security Specialist testified that she was responsible for maintaining the OIG's inventory of technological equipment including cellular phones. Prior to her arrival, the Appellant was the custodian of inventory. Upon Jones' arrival in September of 2017, she began collecting IT equipment and creating inventory lists, including unaccounted for devices. (Tr. Vol. II, at 196 – 205; A.A. Exh. 12).

Jones testified that while dining in the FRB cafeteria in the fall of 2020, Darrell Turner, an FRB cafeteria worker, approached her and asked whether she had a charger for the phone that the Appellant had previously given to Reggie Fournier. She stated that a few weeks later Fournier spoke to her in the cafeteria and told her he did not need a charger and that he had gotten a new phone. (Tr. Vol. II, at 208 -209). She reported the conversations to Mr. Centola, who informed Mr. Michel. Ms. Jones acknowledged that iPhones such as the one at issue were surplus and no longer used by the OIG. If the office no longer needed the property, the OIG could give it to the Office of Property Management for recycling. (Tr. Vol. II, at 217 -219).

4. Ed Michel

Ed Michel testified that he has been the Interim Inspector General beginning November 1, 2020 following the resignation of his predecessor, Derry Harper. It was his decision to terminate the Appellant's employment based upon the investigation of the missing iPhone. He first learned of Ms. Jones

conversations with the FRB employees Turner and Fournier at the end of October 2020. She advised him that two FRB cafeteria workers approached her regarding an iPhone charger for a phone provided to Fournier by the Appellant. Following receiving this information from Ms. Jones, he instructed Mr. Centola to conduct an investigation. Once Centola determined that the Appellant had given an iPhone 4 to Fournier, he interviewed the Appellant. (Tr. Vol. II, at 295 – 299).

Michel did not participate in the interview, but was informed of the information gathered. Specifically, the Appellant admitted giving Fournier the iPhone, but maintained that she informed Howard Schwartz from whom she received permission, which would have been in written form. Once Schwartz was contacted and discredited the Appellant's explanation, he placed her on emergency suspension and scheduled a pre-termination hearing. (Tr. Vol. II, at 300 – 306).

After the pre-termination hearing, Michel determined that the Appellant violated CAO policy memorandum No. 60 (R), which states that employees shall not loan or give City devices to any other person. (Tr. Vol. II, at 307 – 309). He further determined that termination was the appropriate disciplinary action, characterizing the Appellant's conduct as "egregious". He stated that the Appellant lacked candor, falsely claimed that she had permission to give the phone to a private citizen, and was guilty of theft. (Tr. Vol. II, at 310 – 313, 347 – 348). Michel emphasized that the Appellant's lack of candor was an important

factor due to the nature of the work performed by his office. Because his office investigates malfeasance within City government, his employees must be beyond reproach because their findings can result in criminal prosecutions where they are often called as witnesses. (Tr. Vol. II, at 351- 352, 373 - 383).

5. Howard Schwartz

The Appellant offered the testimony of Howard Schwartz who was employed by the OIG for seven and a half years and was the Appellant's direct supervisor at the time she gave the iPhone to Fournier. He testified that he was contacted by William Bonney regarding whether he authorized the Appellant to donate an OIG iPhone to a private citizen. He had no recollection of the donation of any cell phones. While he testified that it was not in the Appellant's character to give away OIG property without permission, he also testified that he would never have authorized the Appellant to give a phone to a private person. (Tr. Vol. II, at 428 – 432, 437 – 440). (Tr. Vol. II, at 441 -442).

6. Reginal Fournier and Darrell Turner

The Appellant also called Reginald Fournier and Darrell Turner as witnesses. While their testimony did not contradict the Appointing Authority's determination that the Appellant gave OIG property to Fournier, both witnesses stated that they never spoke to Jones about a charger for the iPhone 4 or shared any information with her that would cause her to learn that the Appellant had given Fournier a phone. (Tr. Vol. II, at 280 – 281, 286).

7. Derry Harper

Derry Harper was the Inspector General from December of 2017 until October 30, 2020. He testified that he was unaware of any serious concerns about missing cell phones and that no issues concerning missing cell phones were ever brought to his attention. (Tr. Vol. II, at 448 – 454). While Mr. Harper did not have any information regarding the iPhone issue, he provided relevant insights regarding the Appellant's performance and personality. He described the Appellant as "a candid person, but not always complete in letting the office know her issues". He stated that she never misrepresented anything to him. He described her as an excellent investigator – "the best he had". But regarding her relationships with her co-workers, he stated that the Appellant tended to overreact to workplace situations because of either a lack of maturity or an inability to control her emotions. He stated that she had issues with professionalism and properly comporting herself, which caused individual tension between herself and other employees. (Tr. Vol. II, at 457 -459).

8. Appellant Kristen Morales

The Appellant testified that when questioned she answered truthfully that she gave an iPhone to Fournier. However, she contends that she was ambushed by Centola when he called her into his office without notice to discuss something that occurred at least four years prior. She testified that the phone had no value and was of no use to the agency because it was "contaminated". She defended her reaction to the questioning by stating that

the questions asked were vague and she responded to questions by asking questions of her own to assure an accurate response. She stated that she was not intentionally evasive, but not she was not prepared to answer questions regarding what she considered small matters that she had forgotten. (Tr. Vol. II, at 475 -479).

The Appellant contended that she would have sought Schwartz' permission and that she would have documented his permission. However, she does not know what happened to the documented authorization, speculating that the documentation was destroyed by Jones or other co-workers in an effort to cause her termination. She further testified that she would have consulted with OIG General Counsel Suzanne Wisdom regarding proper language for the authorization. (Tr. Vol. II, at 479 – 488).

On cross-examination, the Appellant acknowledged that she gave Fournier the phone, which was the property of the OIG. She testified that, because the OIG determines what happens to its property regardless of its value, it would have been inappropriate for her to give away the phone without authorization. She admitted that Schwartz did not recall giving permission to her and that, when interviewed, Wisdom denied giving permission or preparing a document giving permission for her to give a phone to a private citizen. She stated that they just did not remember every minor activity that occurred in the office. She also acknowledged that there was no evidence that cell phones had ever been donated to private citizens.

Finally, in her testimony, the Appellant embellished the explanation that she provided during her pre-termination hearing by stating that she sought permission to give away the phone because it was contaminated. When confronted during cross-examination, she stated that she remembered additional circumstances after final disciplinary action was taken. (Tr. Vol. II, at 576 – 584).

B. Analysis of Facts and Law

The Appointing Authority has established by a preponderance of evidence that the Appellant violated CAO policy memorandum No. 60 (R), by unilaterally deciding to give an iPhone 4 to a private citizen, notwithstanding the fact that the phone had no value and was of no use to the OIG. While it seems heavy handed to go to such lengths to investigate such a minor infraction, and it is apparent that the new leadership wanted the Appellant removed because of interpersonal relationships that existed within the office, the Appellant gave the Appointing Authority the rope it needed to hang her when she failed to admit her error in judgment, instead falsely claiming that she was given permission to donate the phone to Mr. Fournier. Her contention that she acted with authorization was simply not credible considering that the Appellant's claims were impeached by the testimony of Mr. Schwarz and the statement provided by Ms. Wisdom.

This matter is another example of where the coverup is worse than the crime. A similar case involving the same Appointing Authority came before the

Commission in *Boudreaux v. Office of Inspector General*, Case No. 7961 (2013), *affirmed Boudreaux v. Office of Inspector General*, 2013-1366, (La. 4 Cir 3/12/14),137 So.3d 695. The appeal there involved an investigation concerning the location and circumstances of the Appellant purchasing shrimp for an office party. Rather than admit that the shrimp were given to her as appreciation for purchasing a large quantity of crawfish, she misrepresented to the Appointing Authority that the shrimp were purchased from a different business. In reaching its conclusion, the Commission accepted the reasoning of the Appointing Authority's investigator Howard Schwartz stating:

> Mr. Schwartz concluded that the Appellant was untruthful when she initially informed him that she bought the shrimp at Rouses and she compounded her dishonesty by concocting an explanation that she actually bought the shrimp at Castnet's. He stated that had the Appellant acknowledged that she received the shrimp as a gratuity from Kjean's, he would have instructed her to pay for the shrimp to remedy the indiscretion. Instead, because she was less than candid, he no longer could trust her to perform the duties of an investigator.

Based upon the evidence, the Commission concluded that:

> The Appointing Authority has established by a preponderance of evidence that the Appellant obscured how she obtained shrimp for an office party to avoid admitting that she violated internal rules regarding the acceptance of gratuities from third parties. Because of the nature of the position held by the Appellant, we agree that complete candor is an essential requirement of the position.
>
> While it may seem harsh to terminate an otherwise capable employee for a minor indiscretion, we cannot say that the Appointing Authority abused its discretion.

As in *Boudreaux*, the Appellant attempted to avoid admitting that she engaged in a minor indiscretion that violated internal rules. In this case, CAO policy memorandum No. 60 (R). As previously held, complete candor is an essential requirement of the position. As such, the Appointing Authority acted within its discretion when it terminated the Appellant.

II. Violation of Covid Protocols by Invading the personal space of William Bonney

A. Facts and Testimony

1. Undisputed Facts

As reflected in the disciplinary letter, on November 6, 2020, Deputy Inspector General William Bonny was in the OIG copy room making copies of documents. The Appellant entered the copy room to use the equipment. Bonny left the room while the Appellant was present. Once the Appellant left, Bonny returned to complete his task. The Appellant returned to the copy room to complete her task. An argument ensued regarding the Appellant presence in the room, which ended when the Appellant left.

2. William Bonney

William Bonney testified that he was alone in the copying room making copies when the Appellant entered the room and stood next to him. Apparently, without saying anything, Bonney left the room and remained outside until the Appellant left. Bonney returned to his task and the Appellant entered the room again. Bonney testified that he had to tell the Appellant that

she was standing too close and to leave the room twice. (Tr. Vol. I, at 44 – 48). Bonney confirmed that he was copying a large number of documents that required time and he acknowledged that he did not notify anyone in the office that he needed to use the copy room for an extended period. (Tr. Vol. I, and 159 – 161).

3. Ed Michel

Ed Michel testified that he became aware of the incident after the Appellant filed a grievance regarding her exchange with Bonney, complaining that he raised his voice towards her when she reentered the copy room. Based upon his investigation of the incident, he determined that there was insufficient evidence to determine whether Bonney raised his voice, but concluded that the Appellant invaded Bonney's space based solely upon Bonney's uncorroborated statement. While Michel emphasized the importance of adhering to the pandemic protocol, which required employees to remain 6 feet away from each other while in the work place, there was no directive limiting the copy room to one person at a time. (Tr. Vol. II, at 322 – 324, 387 - 392).

4. Kristen Morales

The Appellant testified that she entered the copy room to print a report regarding an investigation. When she entered the first time, Bonney never asked her to leave and never mentioned COVID. She noted that they were both wearing masks. She stated that it was customary for employees to inform each other when they were using the copy room for a large job, which did not occur

in the instant case. The Appellant testified that when she reentered the copy room to complete her task, Bonney addressed her in an aggressive manner telling her that she had to leave. She stated that Bonney's demeaner upset her and that after leaving the copy room, she returned to her desk and immediately sent an email to Michel informing him of the incident and then filed a grievance. She contends that this charge was retaliation against her for filing a grievance concerning the same incident. (Tr. Vol. II, at 528 – 532).

B. Analysis of Facts and Law

The Appointing Authority has failed to establish that the Appellant engaged in misconduct or that the incident justified termination. Mr. Bonney may have been upset because he thought that the Appellant was standing too close to him, and the Appellant may have taken his reaction to her entering the room as an aggressive overreaction to her merely trying to do her job. The Appointing Authority should have counseled both parties and instructed them to learn to work with each other rather than making mountains out of mole hills.

III. Accepting a Gift for Personal Benefit

A. Facts and Testimony

It is uncontested that the Appellant attended the Heisman Trophy ceremony on December 14, 2019. She flew to the ceremony on a privately rented jet with her friend, Patty Spurlock. It is uncontested that at the time of the trip Derry Harper was the Inspector General, and was aware that the Appellant accepted a trip on a private jet provided by Ms. Spurlock. He testified that he

saw no issue or reason to investigate the matter. (Tr. Vol. II, at 460 -463).

Approximately a year later, shortly after becoming the Interim Inspector General, Ed Michel asked Mike Centola to question the Appellant about the trip during the investigation of the iPhone. She admitted accepting Ms. Spurlock's invitation to fly to the Heisman Trophy ceremony on a private jet provided by Ms. Spurlock. At the time of questioning, the Appellant could only offer Ms. Spurlock's first name – Patty. She informed Centola she could provide the last name if she could retrieve her phone. Later that day, after retrieving her phone, she provided Centola with Ms. Spurlock's full name. Tr. Vol. II, at 36 – 41, 49 – 52, 448 -449).

It is uncontested that the Appointing Authority found no evidence that Ms. Spurlock had any business connections with the City, that she was seeking to conduct business with the City, that she was seeking influence over the passage of state of local legislation, that she was conducting operations or activities that are regulated by the OIG, or that she had a substantial economic interest in any activities regulated by the OIG.

Michel testified that he investigated the acceptance of the plane ride to determine whether the Appellant violated of *CAO Policy Memorandum 84(R)(q)*, which provides that "an employee shall not accept or solicit a valuable gift from any person, business, or organization for personal benefit..." He testified that it did not matter whether the individual has an affiliation with

the City of New Orleans or whether there was a real or perceived conflict of interest. He further testified that he found that the Appellant answered all other questions regarding the trip truthfully, but found that she lacked candor because she could not remember Ms. Spurlock's last name until a few hours after Mr. Centola asked the question. (Tr. Vol. II, at 331 – 336; A.A. Exh. 13).

The Appellant testified that when confronted by Centola, she denied that she violating internal rules. The Appellant referenced *OIG Rules of Employee Conduct III. Conflicts of Interest, (A)(3)*, which references accepting gifts where the person or entity would present a conflict of interest real or potential. She explained that her friend Patty rented a plane for the Heisman ceremony and invited her to come along. They have fun together and know each other from Saints games where their seats are close to each other. She stated that she was aware of the OIG's conflicts of interest rule and accepted the ride knowing that her friend had no association with the City or the OIG. (Tr. Vol. II, at 536 – 545; Morales Exh. 19).

B. Analysis of Facts and Law

The Appointing Authority has failed to establish that the Appellant engaged in misconduct or that the incident justified termination. The Appointing Authority's reliance on *CAO Policy Memorandum 84(R)(q)* is based upon an overly broad and superficial analysis of policy and law. Both the Louisiana Code of Ethics and the OIG's internal rules focus on real or perceived

conflicts of interest. A review of the facts and law confirm that neither existed here. OIG policy states that there is a violation where there is a conflict of interest.

Regarding the *Louisiana Code of Ethics*, the Louisiana Supreme Court has long held that the primary objective of the Ethics Code is to prevent not only the actuality of conflicts of interest, but also to prevent the occurrence of those situations that tend to create a perception of conflicts of interest. *In re Beychok, 495 So.2d 1278, 1281 (La. 1986)*. According to the Court, "a conflict of interest is a situation that would require an official to serve two masters, presenting a potential, rather than an actuality, of wrongdoing". *Glazer v. Commission on Ethics for Public Employees,* 431 So.2d 752, 756 (La.1983).

Mr. Michel also testified that he was aware of and relied upon the *Boudreaux* case when making his determination because the facts giving rise to the case arose in his office. His reliance on the case is based upon an erroneous interpretation of the facts and the conclusions drawn by the Court. First, Ms. Boudreaux was acting in her official capacity when she purchased the shrimp because it was purchased for her office. The extra shrimp were given as a gratuity because of Ms. Boudreaux's status as an investigator. Her actions created the perception of a conflict of interest that would have resulted in a minor infraction but for the fact that she lied about it when questioned. She was

not terminated for violating the policy, but for trying to avoid responsibility. As stated in *Boudreaux*:

> Our review of the record reveals that the hearing officer and the Commission found that a reasonable basis existed to question Boudreaux's truthfulness and find that her lack of candor sufficiently impaired her ability to perform her duties as an investigator in the Inspector General's office. Though Boudreaux urges a different, and conceivably plausible reason for her actions, such is not sufficient to warrant overturning the rulings of the hearing officer and Commission.

Boudreaux at 697.

In the instant case, the Appellant was not in any manner acting in her official capacity when she accepted her friend's invitation to fly with her to the Heisman Trophy ceremony. There was no real or perceptible conflict of interest. Further, the Appellant's momentary lapse regarding Ms. Spurlock's last name was not lying, and the Appointing Authority's logic regarding the Appellant's lack of candor is nothing more than a disingenuous attempt to find additional fault.

It was improper for the Interim Inspector General to dredge up a past incident that was previously addressed and disposed of by his predecessor. Mr. Harper correctly found no fault in the Appellant's activities. There was no conflict, no violation of OIG policy or state law, and no lack of candor regarding the circumstances of the Appellant's plane ride to the Heisman Trophy ceremony.

IV. Failure to Adhere to the City Domicile Requirements

A. Facts and Testimony

The Appointing Authority's determination that the Appellant violated the City Domicile Ordinance is based upon the Appellant's submission of a *Declaration of Domicile (Form B)*, which informed the Appointing Authority that she was domiciled at 49 Antiqua Dr., Apt B, Kenner, Louisiana 70065. (Tr. Vol. I, at 141, Vol. II, at 106 -107, 338 - 345, 405; A.A. Exh. 6). In the disciplinary letter, the Appointing Authority stated to the Appellant:

> As you know, you submitted Form A, Employee Statement of Receipt Domiciliary Requirement and Form B, Declaration to former IG, Derry Harper, for his signature on September 11, 2020. On Form B you listed your new home address as 49 Antiqua Drive, Kenner LA 70065. However, because you have resided in Orleans Parish after January 1 2013, by claiming that you are domiciled in Kenner, LA you are in violation of the City Domicile Ordinance because your previous exemption no longer applies. The OIG also has a domestic return receipt from the United States Post Office concerning a certified letter that was delivered to you on October 17, 2020 at 49 Antigua Drive, Kenner LA 70065 which is additional proof that you reside at 49 Antigua Drive, Kenner, LA 70065.

(H.E. Exh. 1. p. 7).

Michael Centola conducted the investigation and testified that he relied exclusively on the Appellant's signature on the *Declaration of Domicile (Form B)*, which he deemed an admission that her domicile was Kenner, LA and consequently sufficient evidence that she was in violation of the City Domicile Ordinance. (Tr. 106 – 107).

Ed Michel testified that because Ms. Morales admitted on the September 11th form that she moved her domicile to Kenner on July 4th without an exemption, she was not in compliance with the City's domicile requirements, and that policy required a penalty "up to and including termination". (Tr. Vol. II, at 345).

On cross-examination, Michel stated he was aware that the Appellant was quarantining with her boyfriend in July at his residence in Kenner, LA. because she had Covid. He acknowledged that the Appellant was not instructed to leave the Kenner residence nor that she was in violation of the ordinance by choosing to quarantine outside of Orleans Parish. (Tr. Vol. II, at 405). Michel testified that the Appellant never requested an exemption to the ordinance. However, when questioned in December, she maintained that her domicile was her apartment in Orleans Parish. He also acknowledged that he disregarded the evidence of domicile provided by the Appellant, which included her utility bills, a letter from her landlord verifying her domicile, live camera footage of her apartment, and a copy of her lease that was set to expire at the end of January 2021. He maintained that termination was justified based upon the Notification of Domicile form, which he perceived as an admission by the Appellant rather than a request. He reached this conclusion even though the form contained a signature line for the Appointing Authority indicating approval of the Form and acceptance of the request. The OIG never approved or disapproved the Form, and never gave the Appellant the option of

retaining her domicile in Orleans Parish to avoid disciplinary action. (Tr. Vol. II, at 405 – 406; Morales Exh. 6 and 8).

The Appellant testified that when Centola asked her where she lived, she responded that she lived at 300 Jules Street in Orleans Parish. She provided supporting evidence to both Centola and Michel insisting that she had not changed her domicile. (Tr. Vol. II, at 498 – 500; Morales Exh. 6). She explained that she was seeking permission to change her domicile after two months of quarantine in Jefferson Parish. However, the Appellant stated that she never acted upon her request because the OIG never informed her of its decision regarding the request. She testified that she returned to her home on Jules Street once she recovered from her illness and it was safe to venture out. She testified that she did not see any harm in asking for a change in domicile and that she always intended to remain in Orleans Parish if it was a requirement of her continued employment. (Tr. Vol. II, at 546 – 553).

B. Analysis of Facts and Law

Terminations based upon violations of the domicile ordinance have previously come before the Commission on appeal. In *Aldor v. New Orleans Fire Department*, 2001-0439 (La. App. 4 Cir. 11/21/01), 803 So.2d 112, the Court affirmed the Commission's ruling that the Appointing Authority terminated Aldor for cause based upon the Commission's determination that Aldor's arrangement with an Orleans Parish resident to use his address for domicile

purposes "was a residence of convenience, established in order to circumvent the Domicile Ordinance". *Id.* at 119.

However, in *Danforth v. Department of Public Works*, 2002-0529 (La. App. 4 Cir. 5/14/03), the Court distinguished *Aldor* in a circumstance where it was determined that Danforth temporarily moved to Jefferson Parish because of a dispute regarding possession of marital property located in Orleans Parish where he was previously domiciled. Upon receiving notification by the Appointing Authority that he was in violation, Danforth returned to Orleans Parish in order to comply with the Domicile Ordinance. Nevertheless, the Appointing Authority terminated Danforth's employment. The Court affirmed the Commission's finding that the penalty was not commensurate with the violation stating:

> Mr. Danforth agrees that continued employment falls within the purview of the Domicile Ordinance; however, he argues that mandatory termination is only applicable when the employee refuses to change his living arrangements once notified of the Appointing Authority's objection. Mr. Danforth argues that there is no indication that Mr. Aldor attempted to remedy his domicile situation once notified of the potential violation; however, Mr. Danforth immediately rectified his domicile situation upon notification that he was in violation of the Domicile Ordinance and prior to his termination. We agree...
>
> The entire panel agrees that a violation of the Domicile Ordinance is a sufficient basis for dismissal; however, termination is not mandatory. The language "other disciplinary actions" further indicates that alternative penalties are permissive. Therefore, the Commission's finding that the penalty was not commensurate with the infraction is neither arbitrary nor capricious. Further, in light of the particular circumstances of this case that Mr. Danforth did not intend to abandon his Glenmeade Court domicile, and upon

> notification of his potential violation, he established a New Orleans domicile prior to his termination.

Id. at 653.

The instant case is analogous to *Danforth*. The Appellant left Orleans Parish due to circumstances beyond her control. She credibly testified that she was spending all of her time in Jefferson Parish while she was quarantined, and that she never intended to leave Orleans Parish if it meant losing her job. Clearly, Form B is not just notification of a change in domicile because the notification requires approval. The Appellant reasonably perceived the submission of the form as a request for permission to change her domicile. Rather than deny the request, the Appointing Authority ignored it and chose to use it as additional justification for removing the Appellant from her position.

The Appointing Authority acted arbitrarily and abused its discretion. The Appellant's submission of a form does not justify disciplinary action without evidence of an intent to circumvent the ordinance and a refusal to comply once placed on notice.

V. Failure to Follow Instructions / Insubordination

A. Undisputed Facts

In the termination letter, the Appointing Authority informed the Appellant that she violated internal policy by failing to follow certain instructions concerning confidential internal communications and proper email etiquette. Specifically, the termination letter stated:

> ...Regardless of that instruction [to follow proper email etiquette], you have persisted in sending emails containing information related to internal OIG investigations and other matters to the City Attorney and Chief Administrative Officer, specifically sending emails on December 1, 2020 at 5:51 pm and multiple emails on December 3, 2020 at 9:51 am, 10:05 am, 3:44 pm, and 3:57 pm. These emails were sent even though the Interim IG instructed you to refrain from doing so just one day prior on December 2, 2020 and confirmed that directive in writing on December 3, 2020.

(H.E. Exh. 1 at page 8).

The facts upon which the Appointing Authority bases this violation are irrefutable. The email communications were between the Appellant and Ed Michel beginning shortly after the Appellant's interview by Michael Centola regarding the OIG's investigation of the Appellant for various internal violations of policy. The Appellant copied Gilbert Montano, Chief Administrative Officer, and Sunni LeBeouf, City Attorney, in the emails. In response, Michel admonished the Appellant for including parties outside of the OIG in emails, which mentioned the Appellant's involvement in the OIG's criminal investigation of the Hard Rock Hotel. The Appellant persisted after receiving the instruction from Michel. (A.A. Exh. 22).

C. Testimony

1. Michael Centola

Michael Centola was also copied in the emails. He testified that while the Appellant was within her rights to include Mr. Montano in emails regarding internal grievances, she violated policy by referencing specific investigations

that the OIG was conducting. He noted that the Appellant continued to repeat this violation even after she was instructed to cease. He stated that making such references to parties outside of the OIG potentially compromised the integrity of the investigation. (Tr. Vol. II, at 46 – 48).

2. Ed Michel

Ed Michel testified as a fact witness regarding his email communications and as the final decision maker regarding disciplinary action. He testified that he sent the original email, which was his response to the Appellant's most recent grievance concerning the above discussed encounter between the Appellant and William Bonney in the copy room. He stated that the Appellant violated internal policy when she responded to his email and included information relative to an ongoing criminal investigation that the OIG was conducting upon which she copied individuals outside of the OIG. Specifically, in her December 2, 2020 response, she copied Gilbert Montano, CAO, Sunny LeBeouf, City Atty., and Renee Hollins, Asst. CAO. In the email response, the Appellant stated:

> You had Centola and staff surprise me to conduct an Administrative Investigation on me, taking away from the [Hard Rock Hotel investigation] which you have delayed multiple times (this was my purpose for being in the office yesterday). You said in your email below that you wanted me to focus on my investigation, but that seems very disingenuous, especially after yesterday's events.[1]

[1] A.A. Exhibit 22 is a redacted version of the email communication. Testimony confirms that the redated portion was "Hard Rock Hotel investigation."

Michel testified that he immediately responded to the Appellant's email informing her that:

> You have been previously instructed in writing and verbally to refrain from discussing as well as originating and sending emails concerning OIG internal matters to those outside of the OIG. Yet, again, you sent another email yesterday discussing internal investigative activities, in direct violation of previous instructions.

The following day, the Appellant sent another email to Centola titled "Incorrect Address – Domicile Paperwork" in which she voiced her displeasure with the Appointing Authority's investigation, characterizing it as retaliatory. She concluded her email by stating, "I am requesting that you allow me to start working and dedicating my time to the Hard Rock investigation". Again, she copied Montano. Again, Michel admonished her by stating in his email response, "Note: you have sent another email to CAO Montano concerning internal matters which I have instructed you to refrain from doing so yesterday." Subsequent emails sent by the Appellant to Michel continued to copy Montano and republished her prior comments as part of the email chain.

(A.A. Exh. 22).

Michel considered the Appellant's disregard of his instruction as insubordination, explaining that, while the Appellant was free to copy Montano and other City officials regarding her grievance, it was completely unnecessary and inappropriate for her to reference OIG criminal investigations within her communciations. (Tr. Vol. II, at 316 – 322). Michel further explained that, while it

may have been known by City officials that the Appellant was involved in the Hard Rock Hotel investigation, it did not give her license to disregard his instructions to cease sending emails that included parties outside of the OIG. (Tr. Vol II, at 410 – 413).

3. Kristen Morales

The Appellant stated that her emails concerned either her grievance or the Appointing Authority's internal investigation against her. She contends that her references to the Hard Rock Hotel investigation did not impact the OIG because her involvement was known to all email recipients and therefore did not reveal any confidential information. She testified that she did not intentionally disobey Michel's instruction because she did not understand the written instructions contained in the emails. As reflected in the email chain, the Appellant contended that the action was taken by Michel in retaliation for engaging in protected activity, including filing a grievance and an EEOC charge. (Tr. Vol. II, at 554 -558).

D. Analysis of Facts and Law

The Appointing Authority has established that the Appellant referenced an ongoing OIG investigation in emails that were sent to City officials whose employees were the subject of the investigation. The Appellant's emails were disrespectful towards Mr. Michel and conveyed to outside third parties that an investigation of a highly publicized matter was being neglected because of

office politics. After receiving instructions to cease copying City officials regarding such matters, the Appellant continued doing so.

The Appellant appears to have believed that she could imbed insubordinate comments into otherwise protected communciations without consequences. However, protection against retaliation does not apply to the comments for which the Appellant was disciplined. Stated another way, the Appellant cannot use her grievance or her filing of an EEOC charge as a shield against separate acts of misconduct. See *East v. Office of Inspector General*, 2011-0572 (La. App. 4 Cir. 2/29/12), 87 So.3d 925. In *East*, the Court affirmed the Commission's determination that the Appellants' acts of insubordination constituted unprotected activity, justifying disciplinary action by the Appointing Authority. *Id.* at 929.

The Appointing Authority did not provide any testimony regarding an appropriate penalty for this charge and, because the Appointing Authority acknowledged that it terminated the Appellant solely because of a separate act of misconduct, it cannot be determined whether there is some penalty that is commensurate with the violation. If called upon to opine, a suspension would be commensurate with the violation.

VI. Retaliation

Mr. Michel testified that the Appellant filed repetitive unfounded claims, which he considered a pattern and practice calculated to disrupt the office. (Tr. Vol. II, at 420 – 421). However, he provided no testimony supporting his

conclusion. Therefore, the Appointing Authority has failed to establish that the Appellant's exercise of her right to utilize the City's internal grievance procedure was an act of misconduct that justified disciplinary action.

CONCLUSION

As discussed above, the Appointing Authority has established that the Appellant lacked candor when questioned regarding the unauthorized donation of OIG property. While a lesser penalty would have been appropriate considering the lack of value and the unimportance of the iPhone to the OIG's mission, it cannot be said that the Appointing Authority abused its discretion or act arbitrarily by terminating the Appellant. Based upon the foregoing, the appeal should be **DENIED**.

December 17, 2021
DATE

s/ Jay Ginsberg
HEARING EXAMINER