



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
JOHN H. KORN, VICE-CHAIRPERSON
CLIFTON J. MOORE, JR.
MARK SURPRENANT
RUTH WHITE DAVIS

Thursday, May 26, 2022

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

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

Re: **Daniel McMullen VS.**
Department of Police
Docket Number: 9334

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 - 5/26/2022 - 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,

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

Doddie K. Smith
Chief, Management Services Division

cc: Shaun Ferguson
Elizabeth S. Robins
Jay Ginsberg
Daniel McMullen

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**DANIEL McMULLEN,
Appellant**

Docket No. 9334

v.

**DEPARTMENT OF POLICE,
Appointing Authority**

DECISION

Appellant, Sergeant Daniel McMullen, 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 November 18, 2021, termination. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a Police Sergeant. (Tr. at 8-9; Ex. HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on February 2, 2022. 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 March 27, 2022, and controlling Louisiana law.

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

I. FACTUAL BACKGROUND

On November 15, 2020, Sgt. McMullen worked his normal shift in the Eighth District. (Tr. at 9). Then, Sgt. McMullen worked a paid detail in uniform for the Downtown Development District. (Tr. at 9-10). Sgt. McMullen returned to the Eighth District station to complete paperwork until about midnight or 12:30 AM. (Tr. at 10). Sgt. McMullen then went to a friend's restaurant, Rockin' Sake, which had closed for the night. (Tr. at 11). Sgt. McMullen had two shots of whiskey

at the restaurant. (Tr. at 11). Sgt. McMullen then drove his take-home police unit toward his home. (Tr. at 13). On the way home, at about 2:00 AM, on November 16, 2020, Sgt. McMullen was in a vehicle accident. (Tr. at 12). Sgt. McMullen rear-ended another vehicle in the middle lane of I-10 West near mile marker 232. (Ex. HE-1). Sgt. McMullen flipped the departmental vehicle, causing substantial damage. (Tr. at 122; Exs. NOPD-1, NOPD-2). Both Sgt. McMullen and the civilian driver of the other vehicle sustained injuries. (Tr. at 120).

Sgt. McMullen was transported to University Medical Center for treatment of his injuries. (Tr. at 19). At UMC, Sgt. McMullen's breathalyzer test for alcohol at 4:49 AM was .093 blood alcohol concentration. (Tr. at 22-23, 79-80; Ex. NOPD-4). At 5:08 AM, the confirmation test registered .141 blood alcohol concentration. (Tr. at 79-80; Ex. NOPD-4).

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 suspending 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 Appointing Authority has carried its burden of showing that the complained-of conduct occurred. Sgt. McMullen drove his take-home police vehicle while under the influence of alcohol. (Tr. at 11-13; Ex. NOPD-4). Sgt. McMullen's conduct impaired the efficient operation of the New Orleans Police Department. As Chief Deputy Superintendent Christopher Goodly testified, Sgt. McMullen's behavior affected the public's trust in NOPD, as officers should abide by the law. (Tr. at 123).

The discipline is commensurate with the dereliction. The presumed penalty under NOPD's disciplinary matrix for an officer driving under the influence of alcohol is an 80-day suspension. (Tr. at 119). Deputy Superintendent Goodly testified that NOPD aggravated the penalty because Sgt. McMullen's conduct resulted in a motor vehicle accident with injuries. (Tr. at 120). Sgt. McMullen flipped the departmental vehicle, causing substantial damage. (Tr. at 122; Ex. NOPD-1). Sgt. McMullen also caused bodily harm to a civilian. (Tr. at 122). NOPD weighed the mitigating factor of Sgt. McMullen's 30 years of service, but NOPD determined that the aggravating factors outweighed the mitigating factors. (Tr. at 132, 137).

Sgt. McMullen's appeal is DENIED.

This the 26th day of May, 2022

WRITER:


Ruth Davis (May 26, 2022 14:41 CDT)

RUTH DAVIS, COMMISSIONER

CONCUR:


Brittney Richardson (May 24, 2022 11:43 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

Mark C. Surprenant
Mark C. Surprenant (May 24, 2022 16:24 EDT)

MARK SURPRENANT, COMMISSIONER