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CITY CIVIL SERVICE COMMISSION

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Tuesday, January 10, 2017

Mr. Eric Hessler
PANO 2802 Tulane Avenue #101
New Orleans, LA 70119

Re: **Clarence Mitchell VS.
Department of Police
Docket Number: 8528**

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 - 1/10/2017 - 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 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: Michael S. Harrison
Elizabeth S. Robins
Brendan M. Greene
Clarence Mitchell

file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

CLARENCE MITCHELL vs. DEPARTMENT OF POLICE	DOCKET No.: 8528
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I. INTRODUCTION

Appellant, Clarence Mitchell, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1.¹ The Appointing Authority, the Police Department for City of New Orleans, (hereinafter “NOPD”) does not allege that the instant appeal is procedurally deficient. Similarly, Appellant conceded that NOPD’s investigation into Appellant’s alleged misconduct conformed to the procedural requirements established by Louisiana Revised Statute § 40:2531 and our Rules. Therefore, the Commission’s analysis will be limited to whether or not NOPD had sufficient cause to discipline Appellant. The undersigned Commissioners have reviewed the transcript of the October 12, 2016 appeal hearing, the Hearing Examiner’s report, and the exhibits accepted into the record by the hearing examiner. After reviewing such testimony and evidence, we render the following decision and judgment.

¹ Appellant, was a permanent, classified employee serving in the capacity as a Police Sergeant for the Sixth District at all times relevant to the instant appeal.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

The facts of this case will likely sound familiar to any citizen who has been involved in a fender bender within Orleans Parish. On Tuesday, July 7, 2015 at approximately 8:15 p.m., an automobile accident involving two vehicles occurred at the intersection of Drexel Drive and South Carrolton Avenue near the campus of Xavier University. (H.E. Exh. 1). Based upon the evidence supplied by NOPD, it does not appear that there were any serious injuries or property damage. Nevertheless, one of the drivers called NOPD at 8:19 p.m. to request the presence of an NOPD Officer. (NOPD Exh. 4). Over the course of the next four hours, the driver would call NOPD five more times. *Id.* Eventually, both drivers became frustrated with the wait and left the scene around midnight. Three weeks later, the caller submitted an online complaint via NOPD's web-based portal regarding the incident and initiated an investigation.

Louisiana Revised Statute 32:398 requires NOPD to investigate all accidents that result in "injury to or death of any person or property damage in excess of five hundred dollars." However, due to widely acknowledged staffing shortages, NOPD is stretched thin and must prioritize personnel deployment. The Commission recognizes that automobile accidents that do not involve serious injury, property damage, or suspected driver impairment are a lower priority than many other calls for service, including those involving violent crimes.²

² The Commission also recognizes that NOPD and the New Orleans City Council recently advocated for an amendment to R.S. 32:398 that would have required NOPD to investigate an accident under far more limited circumstances. Such circumstances would have included accidents that; a) result in death or injury, b) involve a driver who refuses to produce a license or proof of insurance, or c) a driver who appears intoxicated or otherwise under the influence of drugs or alcohol. (H.B. 417, 2016 Reg. Session).

To balance the constant demands on NOPD personnel with a citizen's right to receive regular updates regarding calls for service, NOPD developed a policy that governs calls "holding" in excess of sixty minutes:

The on duty district rank shall monitor the CAD system (if not available the MDT) for calls for service pending sixty minutes or more (FOB Policy #18:6). **If a call is holding sixty minutes or more, an on duty sergeant or the desk officer shall make contact with the complainant within a reasonable amount of time.**³ The officer shall place themselves under the pending incident # via the respective district's dispatcher. The officer shall then contact the complainant and state the following:

Hello, this is Officer ----- with the New Orleans Police Department. I am contacting you to advise you that your call is still on our list of pending calls. I would like to get an update on your situation in order to provide you with the best possible service we can deliver. Depending on the situation, I may be able to assist you with this call so that you do not have to continue to wait for an officer to respond to your location. May I ask whom I am speaking with?

The information I have regarding your call is (use the information from the printed text on the dispatcher's terminal)... Is that information correct?

Can you tell me about the present situation?

Follow up with specific questions related to the call.

Once a complainant is contacted by an officer and it is determined that the incident fits the criteria of a trace complaint, the complaint shall be dispatched to the desk officer. If the complaint does not fit the criteria of a trace complaint, the complaint shall be immediately forwarded back to the dispatcher to be dispatched. The complainant shall be informed by the contacting officer that a patrol unit will be responding to the call. Officers shall not close the call if it is sent back to the dispatcher to be dispatched. The officer shall notify the dispatcher via radio or telephone to dispatch the call or place the call back into pending status. The officer shall update the dispatcher in regards to the status of the complaint. Closing the call deletes the caller's information from the dispatch screen and may result in the call being lost and/or not being dispatched.

(FOP Policy 39 as articulated in H.E. Exh. 1)(emphasis added).

³ NOPD amended Policy 39 on or about September 23, 2015 by adding phrase "within a reasonable amount of time."

However, the iteration of FOB Policy 39 introduced by NOPD indicates an implementation date of September 23, 2015, two-and-a-half months after Sgt. Mitchell's alleged misconduct. (NOPD Exh. 5). Lt. Williams explained that a nearly identical policy was in place prior to September 23rd and that the only difference between the revised policy and the one in place at the time of the alleged incident was the phrase "within a reasonable amount of time." Tr. at 22:24-23:5. The prior policy required either the on-duty Sergeant or desk officer to make a return call after a call had been waiting for sixty (60) minutes as opposed to within "a reasonable amount of time."⁴

B. NOPD's Investigation

Lieutenant Jonette Williams conducted the initial investigation into the complaint referenced above. At the time of her investigation, Lt. Williams was new to her position as a platoon lieutenant responsible for the overall management of personnel assigned to the second watch. (Tr. at 10:3-8). Lt. Williams first reviewed the CAD⁵ data in connection with the call in question and found that, after the initial call, the complainant called NOPD five times between 8:30 p.m. and 11:15 p.m. to inquire as to the status of her call. (NOPD Exh. 4). It was not until 1:12 a.m. on Wednesday, July 8, 2015 that the complainant received a call back. *Id.*

As part of her investigation, Lt. Williams determined that the two Sergeants on duty at the Sixth District on the night of July 7th were Appellant and Sergeant Kermansheiah Perkins. (NOPD Exh. 4). Appellant's shift would have ended around 11:00 p.m. on July 7, 2016; prior to the

⁴ Appellant focused on the portion of Lt. Williams's report in which she raises concerns regarding the possibility that various districts would interpret FOB Policy 39 differently thus resulting in inconsistent application and discipline. While interesting, Lt. Williams's concerns regarding FOB Policy 39 are irrelevant to the instant litigation as they pertain to the phrase "reasonable amount of time" contained in the revised policy that did not apply to Appellant on July 7, 2015.

⁵ Computer Aided Dispatch

conclusion of his shift, Appellant was responsible for submitting all mandated paperwork and ensuring that the officers whom he supervised turned in all required materials. (Tr. at 44:4-11, 45:2-17). During the course of his shift, Appellant was also responsible for responding to calls holding for longer than sixty minutes unless he had delegated that duty to the desk officer. *Id.* 46:1-18. Appellant told Lt. Williams that he could not recall if he had in fact delegated such a duty to the desk officer but claimed to have been deluged with paperwork as well as other calls for service. *Id.* at 46:24-47:1, 20:18-24.

The testimony of Lt. Williams and Commander Ronnie Stevens supports Appellant's assertions that there were enormous demands on all personnel. *Id.* at 36:15-20, 73:15-74:18. Nevertheless, Cmdr. Stevens, who presided over Appellant's disciplinary hearing, stated that Appellant need only have taken one or two minor steps in order to comply with FOB Policy 39. A policy, Cmdr. Stevens, observed, that was intended to reassure the citizen that "the police still care about them, want to take care of their incident and to explain to them why or when [the police] may be coming, why we haven't come as of yet and when we may be able to get there." *Id.* at 93:21-25.

At the conclusion of the investigation and disciplinary hearing, NOPD issued Sgt. Mitchell a letter of reprimand based upon an alleged violation of NOPD Rule 4, Paragraph 2. (H.E. Exh.

1). The relevant portion of NOPD Rule 4, Paragraph 2 reads as follows:

An employee shall professionally, promptly, and fully abide by or execute instructions issued from any authoritative source, including any order relayed from a superior by an employee of the same or lesser rank. If the instructions are reasonably believed to be in conflict with the Rules, Policies and Procedures of the Department or other issued instructions, this fact shall respectfully be made known to the issuing authority. If the issuing authority elects to insist upon execution of the instructions which are reasonably believed to be in conflict with Department Rules, Policies, and Procedures, the employee receiving the instructions shall have the right to request and is entitled to receive, IMMEDIATELY, said instructions in writing, except in cases of emergency as determined by the supervisor. The issuing

authority shall be held responsible should any conflict materialize; however, no instructions shall be issued or executed which are in violation of law.

Id. NOPD takes the position that its rules, policies and procedures constitute “orders from an authoritative source.” Such policies include FOB Policy 39.

III. LEGAL STANDARD

An appointing authority may only discipline a permanent classified employee if there exists sufficient cause for such discipline. La. Con. Art. X, § 8(A). If an employee believes that his/her discipline is not supported by sufficient cause, he/she may bring an appeal before this Commission.

Id. It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, an 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 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 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 Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). Thus, the analysis has three distinct steps with the appointing authority bearing the burden of proof at each step.

IV. ANALYSIS

A. Occurrence of the Complained of Activities

At the time of Appellant’s alleged misconduct, FOB Policy 39 required that, “[i]f a call is holding sixty minutes or more, an on duty sergeant or the desk officer shall make contact with the

complainant....” On July 7, 2015, a call was holding well in excess of the sixty-minute trigger period, but no one in the Sixth District returned the call until after 1:00 a.m. on July 8th. Appellant was one of two on duty sergeants on the evening of July 7, 2015 when a call for service was holding in excess of sixty minutes. While the Commission acknowledges that there were other pressing matters demanding Appellant’s attention, he could have delegated the responsibility of following up on holding calls to the desk officer. NOPD has established, by a preponderance of the evidence, that Appellant made no such delegation. Therefore, we find that NOPD has established the Appellant violated FOB Policy 39 and NOPD Rule 4, Paragraph 2.

B. Impairment of Efficient Operation of Appointing Authority

While every call is important to NOPD, its staffing challenges mandate that supervisors triage the allocation of Department resources. Much to NOPD’s credit, it has recognized that prompt communication can go a long way in addressing concerns over long wait times. Appellant’s failure to call the complainant after she had been on hold for more than one hour, combined with his failure to delegate such a task, impaired NOPD’s ability to put into practice a policy designed to promote communication with citizens. It further had the likely effect of suggesting to the complainant that NOPD viewed her request for service as unimportant or insignificant.

Based on the foregoing, the Commission finds that NOPD has met its burden in establishing that Appellant’s misconduct had an adverse impact on NOPD efficient operations.

C. Discipline Commensurate with Offense

In conducting its analysis, the Commission must determine if the Appellant’s suspension was “commensurate with the dereliction;” otherwise, the discipline would be “arbitrary and capricious.” *Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d

C. Mitchell
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976, 978 (citing *Staehe v. Dept. of Police*, 98–0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

The goal of FOB Policy 39 is “to provide the public with the best police service possible. In order to achieve this goal, officers must engage with the public.” Through the adoption of this policy NOPD has clearly placed an emphasis on customer service and has an interest in deterring acts or omissions that compromise that service. Cmdr. Stevens testified that NOPD’s “penalty matrix” provided for discipline up to a three-day suspension for a violation of FOB Policy 39. That NOPD chose to proceed with a letter of reprimand speaks to Sgt. Mitchell’s long and dedicated service as well as his excellent performance. Through the testimony of both Lt. Williams and Cmdr. Stevens, it appears that NOPD did not reach its decision lightly and took into account relevant factors. The Commission notes that a letter of reprimand is the lowest level of discipline a classified employee can receive.

Based upon the above, the Commission finds that the letter of reprimand NOPD issued to Appellant was commensurate with his misconduct.

V. CONCLUSION

Based upon the foregoing, the Commission hereby DENIES Appellant’s appeal.

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Signatures appear on the following page.

C. Mitchell
No. 8528

Judgment rendered this 9th day of January, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

MDC
MICHELLE D. CRAIG, CHAIRPERSON

1/9/2017
DATE

Joseph S. Clark
JOSEPH S. CLARK, COMMISSIONER

1-9-2017
DATE

Ronald P. McClain
RONALD McCLAIN, VICE-CHAIRMAN

1-9-2017
DATE