



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

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MITCHELL J. LANDRIEU
MAYOR

Thursday, August 24, 2017

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Mr. Quentin Doughty

Re: **Quentin Doughty VS.
Sewerage & Water Board
Docket Number: 8516**

Dear Mr. Doughty:

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 - 8/24/2017 - 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, Sec.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: Cedric S. Grant
James E. Thompson, III
Jay Ginsberg
file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

QUENTIN DOUGHTY vs. SEWERAGE & WATER BOARD	DOCKET No.: 8516
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I. INTRODUCTION

Appellant, Quentin Doughty, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Sewerage and Water Board for the City of New Orleans, (hereinafter the “S&WB”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the S&WB disciplined Appellant for sufficient cause. At all times relevant to the instant appeal, Appellant served as a Laborer for the S&WB and had permanent status as a classified employee.

On Wednesday, April 12, 2017 a hearing examiner appointed by the Commission convened an appeal hearing related to the above-captioned matter. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the hearing examiner’s report. Based upon our review, we render the following judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

The S&WB terminated Appellant effective March 14, 2016. (H.E. Exh. 1). The reason for Appellant's termination was his alleged violation of the S&WB's Workplace Harassment Policy (hereinafter "Policy 87"), as well as the S&WB's Zero Tolerance Policy regarding workplace violence. *Id.*

According to Policy 87, the S&WB endeavors to:

[M]aintain a working environment free of harassment or discrimination of any type including that which may relate in any way to an individual's race, color, gender, sexual orientation, age, religion, national origin, disability, or any other protected status. Accordingly, the [S&WB] will not tolerate any offensive, intimidating or hostile conduct. Employee behavior should always be above reproach. All employees must use mature judgment and maintain the highest standards of performance and personal conduct at all times. Some examples of prohibited conduct are.... ***Fighting, assaulting, or injuring another person....***

(S&WB Exh. 3)(emphasis added).

Similarly, the S&WB's Zero Tolerance Policy regarding workplace violence provides that any "acts or threats of violence by anyone at this facility will not be tolerated," "verbal, physical or visual intimidation or harassment by anyone will not be tolerated," and "violations of this policy may lead to disciplinary or legal action." *Id.*

According to the S&WB, Appellant violated Policy 87 and the Zero Tolerance Policy when he engaged a co-worker, Emile Gilbert, in a verbal altercation on December 18, 2015 at a S&WB job site. (H.E. Exh. 1). When Mr. Gilbert attempted to deescalate the situation by withdrawing to another location at the job site Appellant allegedly struck Mr. Gilbert in the face with his fist. The blow from Appellant caused Mr. Gilbert to strike the ground. *Id.* And, while Mr. Gilbert was still on the ground, Appellant allegedly struck Mr. Gilbert on the back of the head and kicked Mr.

Gilbert in the right side of the face. *Id.* Appellant timely appealed his dismissal and contests the allegations contained in the disciplinary letter. Appellant represented himself at the appeal hearing.

B. December 18, 2015

Not surprisingly, the Parties have vastly different accounts of what occurred on December 18, 2015. However, as a preliminary matter there is no dispute that, on December 18th, several S&WB employees were engaged in overtime work associated with repairs to the 7100 block of Foch Street in the Lakeview area of New Orleans. (H.E. Exh. 1; Tr. 9:10-20). The Parties also agree that Appellant and Mr. Gilbert were among the S&WB employees assigned to the overtime work at Foch Street on the 18th. From there, the accounts diverge.

1. Emile Gilbert's Account

Mr. Gilbert served in the capacity of a Networks Maintenance Technician I at all times relevant to the instant appeal. He claims that on December 18, 2015 a supervisor approached him and offered some overtime work. (Tr. at 9:10-13). The overtime work in question involved working with asphalt at a S&WB work site. *Id.* 13-16. Mr. Gilbert stated that he rode with Appellant and the job foreman, Ms. Terry Flowers, to the job site; once the truck carrying the asphalt arrived, he left the company of Appellant and Ms. Flowers and began working. *Id.* at 14-18.

Mr. Gilbert claimed that the work proceeded normally for several hours and everyone at the site broke for lunch around noon. At approximately 12:30-12:45 p.m., the S&WB employees returned from lunch and Mr. Gilbert observed Appellant “slinging a shovel around one of the S&WB trucks.” *Id.* at 9:23-25. Mr. Gilbert claimed to be curious about Appellant’s behavior and asked another crew member what was wrong with Appellant. The other crew member responded

that “nothing” was wrong with Appellant. Mr. Gilbert then proceeded to return to work around the asphalt truck. *Id.* at 10:19-11:2.

However, Mr. Gilbert testified that, as soon as he began working, Appellant approached him and shoved him. *Id.* at 11:2-6. Mr. Gilbert claims that he backed away from Appellant after being shoved and attempted to resume working. *Id.* at 11:7-10. According to Mr. Gilbert, Appellant then started threatening to break Mr. Gilbert’s jaw and Mr. Gilbert tried to ignore Appellant and “backed up.” *Id.* at 11:10-17. Mr. Gilbert then began to “have words” with Appellant. Mr. Gilbert testified that the “whole entire crew” was present, including Ms. Flowers, but no one intervened. *Id.* at 11:18-25. Mr. Gilbert again tried to remove himself from the situation by walking away from Appellant. At one point the two men were on opposite sides of the street with the foreman, Ms. Flowers, allegedly standing in between them. *Id.* at 12:6-21.

According to Mr. Gilbert, the next thing he remembered was waking up with Appellant on top of him. *Id.* at 12:20-22. Mr. Gilbert asserted that Appellant had kicked and punched him in the head causing him to fall to the ground. *Id.* at 12:22-25. While on the ground, Mr. Gilbert claimed that he sustained several additional blows from Appellant. Finally, Mr. Gilbert was able to grab Appellant’s feet and pull himself upright. *Id.* at 12:25-13:2. Once he was able to right himself, Mr. Gilbert “ran around the grass” to escape Appellant. *Id.* at 13:3-5. Mr. Gilbert stated that, prior to this incident, he and Appellant had not been engaged in any manner of altercation or dispute. *Id.* at 39:1-9.

After the physical altercation, Mr. Gilbert spoke with Ms. Flowers and notified her that the Appellant had just “assaulted” him. *Id.* at 13:5-17. Mr. Gilbert also claimed that several of the witnesses were “confused” about Appellant’s actions. Mr. Gilbert next testified that, as he began to get his bearings, he noticed that Appellant had picked up several of Mr. Gilbert’s belongings,

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including a hat. Appellant then allegedly placed Mr. Gilbert's hat on his head. *Id.* at 14:20-23. When Mr. Gilbert requested that Appellant return his hat, Ms. Flowers was allegedly present and directed Appellant to return the hat as well as Mr. Gilbert's other belongings. *Id.* at 14:23-15:2. Appellant complied with Ms. Flowers's directions.

After returning Mr. Gilbert's belongings, Appellant allegedly got into a S&WB vehicle with Ms. Flowers and left the job site. *Id.* at 15:5-8. Mr. Gilbert continued working after the physical altercation and returned to the S&WB's 2900 People's Avenue facility at approximately 11:30 p.m. *Id.* at 26:22-27:4. Mr. Gilbert's next scheduled work day was Monday, December 22, 2015. He reported as scheduled and worked his whole shift. *Id.* at 28:3-16. He did the same on Tuesday, December 23, 2015. *Id.* at 28:18-21. After working two days, Mr. Gilbert claims that he went to the hospital due to the injuries he sustained on the 18th. *Id.* at 34:24-35:1. He then returned to the hospital two days later because of swelling in his leg. *Id.* at 35:2-4. Mr. Gilbert asserted that a piece of glass became embedded in his knee during his confrontation with Appellant and eventually caused an infection that required additional hospitalization. *Id.* at 16:9-13, 17:1-4, 18:22-19:5. Due to the injuries Mr. Gilbert allegedly sustained from the physical interaction with Appellant, he missed "a couple of months" of work. *Id.* at 18:13-14.

On cross-examination, Mr. Gilbert claimed that he reported the incident but that Appellant's "people pushed it under the table" and did not report it because "it was a 'lil (sic) coup between them and nobody wanted to say what had happened so I reported it instantaneous." *Id.* at 41:17-21. Then, on re-direct examination, Mr. Gilbert testified that he assumed his supervisors were processing the incident because he spoke to his supervisor about it and someone at the S&WB took his statement. *Id.* at 48:18-49:1. The supervisor Mr. Gilbert reported the incident to was Joseph Clark. *Id.* at 49:3-15. In fact, it was Mr. Gilbert's understanding that Mr. Clark had

initiated an investigation and was taking statements from “everybody else.” *Id.* at 49:17-25. Mr. Gilbert recalled providing a statement to Sergeant Ricky Blanchard of the New Orleans Police Department.

2. Appellant’s Account

Appellant testified that he knew Mr. Gilbert through seeing him at the S&WB’s Peoples Avenue facility. (Tr. at 106:8-107:2). However, prior to December 18, 2015 he had not had any direct interactions with Mr. Gilbert.

Appellant claims that, on December 18th Mr. Gilbert reported to the overtime assignment “all pumped up” and “disrespecting everything on the crew, talking loud, cursing, you know, and carrying on, whatever.” *Id.* at 110:8-16. However, Appellant denies that he “put his hands” on Mr. Gilbert. *Id.* at 110:12-13. Appellant further testified that he completed his work at the job site and left with his supervisor. *Id.* at 113:10-25.

Between the date of the alleged physical altercation and January 6, 2016, Appellant claims that he reported to work at the S&WB as he normally did and worked his complete shifts. At some point after Mr. Gilbert spoke with Sgt. Blanchard, the S&WB placed Appellant on an emergency suspension while it investigated the allegations. Appellant alleges that he observed Mr. Williams and Sgt. Blanchard interviewing other members of the work crew that worked the job site on December 18, 2015. Appellant speculated that Mr. Gilbert was trying to get Appellant off of the overtime work crew, but did not provide any details as to the source of this speculation.

C. January 22, 2016 Police Report

On or about January 6, 2016, Sergeant Ricky Blanchard with the New Orleans Police Department was working a paid detail at the S&WB’s 2900 Peoples Avenue Facility. (S&WB Exh. 1). During the course of his paid detail, Sgt. Blanchard spoke to Mr. Gilbert who recounted

his version of the December 18th incident. *Id.* As a result of his conversation with Mr. Gilbert, Sgt. Blanchard prepared a police report and issued a summons for Appellant. *Id.*

Sgt. Blanchard's report summarized his interviews with Mr. Gilbert, Ms. Flowers and Appellant. *Id.* The account that Mr. Gilbert provided to Sgt. Blanchard was relatively consistent with the testimony he provided during the course of the instant appeal hearing. *See id.* Specifically, Mr. Gilbert asserted that he and Appellant became involved in a verbal altercation. *Id.* When Mr. Gilbert attempted to remove himself from Appellant's vicinity, Appellant approached Mr. Gilbert from behind and struck Mr. Gilbert on the right side of his face (and right eye). The blow from Appellant caused Mr. Gilbert to fall to the ground. In falling, Mr. Gilbert injured both his left elbow and left knee. The blow and fall rendered Mr. Gilbert semi-unconscious and Appellant continued to strike Mr. Gilbert in the back of the head and kick him on the right side of his face. *Id.* Sgt. Blanchard observed that Mr. Gilbert's right eye was still slightly swollen and had a small scratch under it which Sgt. Blanchard opines was "consistent with being scratched/poked with a thumb nail." *Id.* Sgt. Blanchard also wrote that Mr. Gilbert's elbow appeared swollen and his right knee was "extremely swollen." *Id.*

Eventually, Mr. Gilbert told Sgt. Blanchard that he was able to grab Appellant's foot which gave him the chance to regain his footing. Upon standing, Mr. Gilbert observed that Appellant was wearing Mr. Gilbert's hat, which had fallen off during the course of the altercation. *Id.* When Mr. Gilbert requested that Appellant return his hat, Appellant refused and taunted Mr. Gilbert. Finally, Mr. Gilbert told Sgt. Blanchard that Ms. Flowers had witnessed the entire incident and retrieved Mr. Gilbert's hat from Appellant. *Id.*

Sgt. Blanchard next interviewed Ms. Flowers regarding Mr. Gilbert's allegations. *Id.* Ms. Flowers denied witnessing any "fight/altercation" between Mr. Gilbert and Appellant. *Id.*

Furthermore, Ms. Flowers *specifically denied* that she retrieved Mr. Gilbert's hat from Appellant and returned it to Mr. Gilbert following the alleged altercation. *Id.*

Finally, Sgt. Blanchard interviewed Appellant as part of his investigation into Mr. Gilbert's allegations. *Id.* Appellant denied being in any manner of fight or altercation with Mr. Gilbert on December 18th. *Id.*

D. S&WB's Investigation

The inter-office memorandum regarding the incident was prepared by Ms. Shena Walker and sent to Mr. Joseph Becker, the S&WB's General Superintendent and is dated February 10, 2016. (S&WB Exh. 2). Based upon a review of the memo, it appears that the S&WB relied almost entirely upon Sgt. Blanchard's police report as opposed to conducting its own investigation. *See id.* Large portions of the memo are simply lifted from the police report, including parentheticals. (See S&WB Exhs. 1, 2).¹ Contrary to Mr. Gilbert's claim that the S&WB had conducted an extensive internal investigation during which witnesses provided statements, there is no indication in the record that any S&WB employee collected statements.²

According to Ms. Walker, her role within the S&WB is to conduct pre-disciplinary and pre-termination hearings. (Tr. at 53:11-21). Through the course of such hearings, Ms. Walker allows the supervisor to "explain what took place" and then the employee accused of misconduct would have a chance to present his/her side of the story. *Id.* Ms. Walker stated that, prior to any hearing taking place, "an investigation takes place first" to determine if a hearing is warranted. *Id.* at 55:6-10. In the matter now before the Commission, Ms. Walker testified that she and Eddie

¹ The hearing examiner allowed the inter-office memorandum in evidence as "S&WB Exhibit 2" into evidence as a reflection of the S&WB's investigation rather than the truth of any matter asserted therein.

² While stopping short of outright counseling, the hearing examiner asked the S&WB pointed questions regarding its burden of proof and the identity of witnesses who appear to have been involved in the investigation and altercation but who were not present to provide testimony.

Williams conducted an investigation. *Id.* at 55:18-56:22. Ms. Walker also claimed that Mr. Clark “gathered the evidence” and “maybe several witnesses were talked to about the incident.” *Id.* at 57:5-15, 58:19-20. Ms. Walker did not explain why none of the statements or findings from the internal investigation made it into her memo. This is especially troubling since the only witness to this incident identified in the police report directly contradicts Mr. Gilbert’s account.

On February 4, 2016, the S&WB conducted a pre-termination hearing regarding the allegations against Appellant. Appellant did not appear at the hearing and did not request a continuance. And, because Appellant failed to appear at the pre-termination hearing, he lost his opportunity to present his side of the December 18th incident. *Id.* at 65:20-24.

Ms. Walker testified that she arranged for notice of the pre-termination hearing to be delivered to Appellant via certified and regular mail. *Id.* at 66:9-14. The notice itself is dated January 26, 2016. (S&WB Exh. 2). In response to a question by the hearing examiner, Ms. Walker acknowledged that she could not confirm whether or not she received any indication that the notice had been delivered. (Tr. at 67:2-13). It is not clear from the record which address the S&WB sent the hearing notice to.

The S&WB introduced three envelopes addressed to Appellant at :
New Orleans, LA 70119. (S&WB Exh. 6). These correspondence are post-marked February 17, 2016 and apparently contained notice of Appellant’s termination and a ten-day suspension for an unrelated disciplinary infraction. *Id.* Appellant acknowledged that he had been living at the : address for approximately six years. However, the letters themselves are addressed to Appellant at : , New Orleans, LA 70126. Thus, it is clear that the S&WB had some record of Appellant’s address change. Yet, it is not clear from the record why the S&WB

would address the correspondence itself to Appellant's former address, but actually send the correspondence to the address.

Appellant claimed that he had not resided at the address for at least six years. (Tr. at 99:24-100:11). According to Appellant, he moved from the address to several years prior to the incident in question and notified the S&WB of his change in address. *Id.* at 102:12-20. Appellant claims that he learned of his suspension and subsequent termination through "return slips" from the post office almost one month after the S&WB had sent the letters. Appellant also testified that a supervisor had hand delivered earlier hearing notices, but neglected to do so in connection with the alleged battery that occurred on December 18th. *Id.* at 118:15-22.

Finally, there was no testimony or evidence showing that Mr. Clark or Ms. Flowers were disciplined for failing to report the violent interaction allegedly perpetrated by Appellant. And the S&WB did not introduce any witness statements other than those contained in Sgt. Blanchard's police report.

III. LEGAL STANDARD

An appointing authority may discipline an employee with permanent status in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that an appointing authority issued discipline without 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

Based upon the record before us, it appears that the full extent of the S&WB’s investigation into the matter consisted of a review of Sgt. Blanchard’s police report. On cross-examination, Appellant acknowledged that he did not call any witnesses to support his version of events. However, the only witness who testified in support of the S&WB’s version was Mr. Gilbert. And, Mr. Gilbert’s account is contradicted not only by Appellant’s testimony, but by the account Ms. Flowers gave Sgt. Blanchard.³

The Commission notes that the S&WB did not introduce any evidence to suggest that Ms. Flowers faced discipline for failing to report what allegedly was a bloody and violent encounter between two S&WB employees whom she supervised. Such a failure appears to have violated the

³ The hearing examiner did not admit Sgt. Blanchard’s police report into the record for the truth of the matters asserted therein. And, while hearsay evidence is admissible in appeal hearings, the Commission must determine if such evidence is “competent” or “of the type a reasonable person would rely upon.” *Taylor v. New Orleans Police Dep't*, 2000-1992 (La.App. 4 Cir. 12/12/01, 5); 804 So.2d 769, 773, *writ not considered*, 2002-0139 (La. 3/22/02); 811 So.2d 935. Here, Sgt. Blanchard’s police report constitutes hearsay since such reports do not fall under the public records and report exception to hearsay under Louisiana Law. (Louisiana Code of Evidence art. 803(8)(b)(i)). The Commission acknowledges that the statement of Ms. Flowers reflected in the police report constitutes “double hearsay.” Nevertheless, Ms. Flowers’s statements begs the question, why did the S&WB’s internal investigation fail to address the contradiction apparent in the report.

S&WB's Workplace Harassment Policy with respect to the responsibilities of supervisors.

(S&WB Exh. 3). Specifically, the policy requires that:

All supervisors and managers are to be alert to the possible presence of harassment or discrimination in the workplace and to promptly notify the EEO Officer of the following:

1. Any employee complaint of harassment; or
2. Any information which indicates an occurrence of workplace harassment as defined by this policy.

In either instance, the supervisor must report any such complaint or suspected occurrence to the EEO Officer before taking further action.

Id. (emphasis in original) As noted earlier, "fighting, assaulting or injuring another person" are prohibited by the S&WB's policy and serve as examples of harassment.

As the foreman, S&WB Policy required Ms. Flowers to "promptly" report the fight between Appellant and Mr. Gilbert or face discipline up to and including termination. As far as the Commission can determine, the S&WB took no action against Ms. Flowers and did not allege that she violated the harassment policy by failing to report Appellant's actions. The lack of any report or communication from Ms. Flowers regarding the alleged physical altercation, as well as the S&WB's decision not to discipline Ms. Flowers for the omission, tend to support Appellant's version of events.

The same is true for the Zone Manager, Joseph Clark. According to Mr. Gilbert, he spoke with Mr. Clark about the physical altercation with Appellant on December 18th. However, there is no indication that Mr. Clark or any other S&WB employee took any action as a result of this alleged conversation. Other than the police report, there are no witness statements and no internal documentation regarding Mr. Gilbert's claims. Based upon S&WB policy, Mr. Clark would have faced serious discipline for failing to report Mr. Gilbert's allegations against Appellant.

The record would have greatly benefitted from Ms. Flowers's and Mr. Clark's in-person testimony as well as the testimony of the numerous crew members who allegedly witnessed the physical altercation between Mr. Gilbert and Appellant. Counsel for the S&WB engaged Appellant, who was *pro se*, in the following line of questioning:

Q: So you have no witnesses who can support your version of the facts?

A: The witnesses, the people that was (sic) out there.

Q: There is not a single person who is here today to support your version of the facts?

A: No.

Tr. at 121:25-122:6. And while this may have been the case, the S&WB found itself *in the exact same situation*. The only individual to testify in support of the S&WB's version of events was Mr. Gilbert. And, while the injuries observed by Sgt. Blanchard support Mr. Gilbert's testimony, Ms. Flowers's flat denials of witnessing the fight or returning Mr. Gilbert's hat cut the other way. The Commission does not suggest that an appointing authority bears an elevated standard of proof. And the testimony of one eye witness to alleged misconduct, even when contradicted by an appellant, may serve as sufficient evidence to sustain the allegation. However, in the matter now before us, the S&WB's own exhibits raise serious concerns regarding the credibility of its only witness and there was a conspicuous lack of investigatory follow up.

If Appellant bore the burden of proof in the matter now before us, his failure to call any witnesses to tip the scale in his favor may have been fatal to his case. Yet, since it is the S&WB who bears the burden of proof, its failure to produce any witnesses other than Mr. Gilbert severely undercut its presentation.

We find that the lack of any sign of an internal investigation on the part of the S&WB to be conspicuous in its absence. The inter-office memorandum authored by Shena Walker to

General Superintendent Joseph Becker does not reference an internal investigation or any statements supplied by eye witnesses to S&WB investigators. Instead, the memorandum relies entirely upon statements collected by Sgt. Blanchard on January 6, 2016 and repeats several phrases from the report verbatim.

Due to the contested nature of Mr. Gilbert's account, the Commission is further troubled by the fact that the S&WB did not attempt to introduce medical records associated with Mr. Gilbert's alleged visit to the hospital on December 23, 2015 and subsequent hospitalizations. Presumably, there would be some records available to support Mr. Gilbert's claim that he suffered substantial injuries including a severe infection due to an embedded piece of glass. While these records were certainly subject to privacy protections, the S&WB could have asked Mr. Gilbert to waive those protections in the interest of prosecuting Appellant. The Commission has accepted heavily redacted medical records as part of appeal hearings in the past.

Ultimately, Mr. Gilbert's version of events requires the Commission to find that Appellant engaged in an unprovoked attack that severely injured a co-worker. And, not only did the foreman responsible for the work site not intervene, she took no action to report the incident and denied even witnessing the alleged altercation when questioned about it by an NOPD officer. Further, according to both Mr. Gilbert and Appellant, there were close to a dozen witnesses to this event, and, while the S&WB claims to have interviewed all of these witnesses as part of its investigation, no witness statements were part of the record nor was there any testimony regarding what the alleged eye witnesses said. To the contrary, Ms. Walker, who was responsible for drafting the memorandum summarizing the investigation and alleged misconduct made no mention of any employee interviews and borrowed heavily from Sgt. Blanchard's narrative.

Finally, the S&WB obviously considered Appellant to be a threat to other S&WB employees and removed him from his assignment after Mr. Gilbert completed a police report. Yet, despite exposing other S&WB employees to an unstable and violent co-worker, the S&WB took no action against Ms. Flowers and Mr. Clark who allegedly knew about the incident but failed to report it. Mr. Clark and Ms. Flowers's apparent failure to notify the S&WB about the incident constitutes a clear violation of the S&WB's policy regarding violent incidents.

The Commission agrees with the Hearing Examiner that the lack of rigor in the S&WB's investigation into the underlying misconduct does not match the usual level of detail we have come to expect. Yet, due to the conflicting testimony and evidence, the Commission must rely upon the hearing examiner to make a determination of credibility. Ultimately, the hearing examiner did not find Mr. Gilbert to be a credible witness.

As a result of the foregoing, the undersigned Commissioners find that the S&WB has failed to establish that Appellant engaged in the alleged misconduct.

B. Notice of Pre-Termination Hearing

Pursuant to Civil Service Rule IX, § 1.2⁴ and United States Supreme Court's holding in *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 544, 105 S.Ct. 1487, 1494, 84 L.Ed.2d 494 (1985), the Louisiana Court of Appeal for the Fourth Circuit has concluded that "an employee is entitled to advance notice of the charges and evidence against him prior to his pre-termination hearing." *Williams v. Sewerage & Water Bd.*, 2004-0025 (La.App. 4 Cir. 5/19/04, 7-8), 876 So.2d 117, 122; *see also Regis v. Dep't of Police*, 2016-0821 (La.App. 4 Cir. 5/24/17, 18)(appointing authority failed to provide terminated employee with adequate notice of allegations against her).

⁴ "In every case of termination of employment of a regular employee, the appointing authority shall conduct a pre-termination hearing as required by law and shall notify the employee of the disciplinary action being recommended prior to taking the action."

In *Williams*, an employee subject to termination from the S&WB claimed that he did not receive notice of the pre-termination hearing until after the hearing itself. *Id.* To remedy the situation, the S&WB offered the employee a second hearing, which the employee declined. Because the S&WB remedied the alleged deficiency neither the Commission nor the Fourth Circuit found a *Loudermill* issue. *Id.*

In the matter now before us, Appellant claims that he did not receive notice of his pre-termination hearing until after the S&WB terminated his employment. Ms. Walker testified that she was responsible for preparing the pre-termination hearing notice and sending it to Appellant's address of record. However, there is a dispute as to what was Appellant's address of record. The S&WB appears to have two addresses for Appellant and produced evidence that it sent the termination notice itself to Appellant's [redacted] address. However, it was unable to produce proof that it sent the pre-termination notice to the [redacted] address as opposed to the [redacted] address.

The confusion regarding Appellant's address and the S&WB's failure to produce evidence establishing that Appellant received notice of the pre-termination hearing lends credibility to Appellant's claim that he never received notice of the pre-termination hearing. In the past, the S&WB has kept fastidious records regarding communications to employees facing discipline, including documents that confirm the transmission and delivery of essential correspondence. The lapse in its record keeping in the matter now before us is uncharacteristic. Nevertheless, we find that Appellant did not receive adequate notice of the pre-termination hearing in violation of the Commission's Rules and Fourth Circuit precedent.

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby GRANTS Appellant's appeal.

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Q. Doughty
No. 8516

Judgment rendered this 24th day of August, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

Michelle D. Craig
MICHELLE D. CRAIG, CHAIRPERSON

8/21/2017
DATE

Tania Tetlow
TANIA TETLOW, COMMISSIONER

8/21/17
DATE

Ronald P. McClain
RONALD McCLAIN, VICE-CHAIRMAN

8/18/17
DATE