



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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Tuesday, May 24, 2022

Mr. Keith Sanchez
3925 N. I-10 Service Road W., Suite 212
Metairie, LA 70002

Re: **Kim Lewis-Williams VS.
Department of Police
Docket Number: 9320**

Dear Mr. Sanchez:

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 - 5/24/2022 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Amoco Building, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,

A handwritten signature in blue ink, appearing to read "Stacie Joseph".

Stacie Joseph
Management Services Division

cc: Shaun Ferguson
William R. H. Goforth
Jay Ginsberg

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**KIM LEWIS-WILLIAMS,
Appellant**

Docket No. 9320

v.

**DEPARTMENT OF POLICE,
Appointing Authority**

DECISION

Appellant, Lieutenant Kim Lewis-Williams, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from the 11-day suspension imposed by NOPD on November 7, 2021. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a Police Lieutenant. (Tr. at 8; Ex. HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on February 8, 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 post-hearing briefs of the parties, the Hearing Examiner's report dated May 11, 2022, and controlling Louisiana law.

For the reasons set forth below, Lt. Lewis-Williams' appeal is DENIED.

I. FACTUAL BACKGROUND

In September of 2020, Lt. Lewis-Williams supervised the Crime Lab, including a civilian employee named Karl Von Derhaar. (Tr. at 8). Lt. Lewis-Williams had 16 years of experience as a police lieutenant at that time. (Tr. at 8). Lt. Lewis-Williams had contacted the compliance department about drug testing the drug chemistry employees because of the employees' access to

drugs. (Tr. at 16). On September 3, 2020, Captain Hargrove, Lt. Lewis-Williams' superior at the Crime Lab, instructed Lt. Lewis-Williams and Sgt. Stalbert to go to Von Derhaar's residence to do a wellness check. (Tr. at 9-10, 123). Captain Hargrove testified he ordered the wellness check "just to make sure [Von Derhaar] was ok." (Tr. at 123). Von Derhaar had previously been in contact with Sgt. Stalbert and had asked for time off from work, but then Von Derhaar failed to meet Sgt. Stalbert to complete the paperwork for the leave. (Tr. at 124). Sgt. Stalbert had tried to contact Von Derhaar by going to Von Derhaar's residence on more than one occasion, including the previous day. (Tr. at 124). NOPD had lost all contact with Von Derhaar. (Tr. at 10). Lt. Lewis-Williams testified she believed Von Derhaar might be suicidal. (Tr. at 70).

According to Lt. Lewis-Williams, Captain Hargrove informed her he and Sgt. Stalbert had been "talking to PIB" about Von Derhaar and instructed her to contact Lt. Watson with the Public Integrity Bureau after she made contact with Von Derhaar. (Tr. at 10-11). Captain Hargrove testified that he gave Lt. Lewis-Williams no instruction to call PIB. (Tr. at 10-11, 125). Captain Hargrove also testified that he did not have enough information to warrant drug testing Von Derhaar. (Tr. at 126).

Lt. Lewis-Williams, Sgt. Stalbert, and an on-duty officer went to Von Derhaar's residence. (Tr. at 20; Ex. HE-1). The on-duty officer activated his body-worn camera, which was entered into evidence as Exhibit NOPD-4. Lt. Lewis-Williams was the commanding officer on the scene. (Tr. at 31). Sgt. Stalbert had asked the manager of the apartment complex for assistance with accessing Von Derhaar's residence. (Tr. at 20; Ex. HE-1). The apartment manager went with the officers to Von Derhaar's apartment, and Von Derhaar failed to answer the door when the manager knocked. (Ex. HE-1; Ex. NOPD-4). When the apartment manager placed the key in the lock, Von Derhaar

answered the door to his residence. (Ex. HE-1; Ex. NOPD-4). The BWC reflects that Von Derhaar stated, "I actually don't want to talk to you right now." (Tr. at 45; Ex. NOPD-4 at 5:48).

After she saw Von Derhaar, Lt. Lewis-Williams walked away and called Lt. Watson. (Tr. at 21, 46-47). Lt. Lewis-Williams testified that Lt. Watson told her to take Von Derhaar to PIB for a drug test. (Tr. at 21). While Lt. Lewis-Williams was absent, Sgt. Stalbert went into Von Derhaar's residence, against the explicit wishes of Von Derhaar. (Tr. at 48; Ex. NOPD-4; Ex. HE-1). The video reflects that Sgt. Stalbert stated, "And we're coming in." (Ex. NOPD-4 at 6:34). Von Derhaar placed a phone call, and the video reflects that Von Derhaar informed the person on the call that the officers had entered his residence without his permission. (Ex. NOPD-4 at 6:43). According to Lt. Lewis-Williams, Sgt. Stalbert was going through the steps for interaction with a mental patient. (Tr. at 65-66). Sgt. Stalbert informed Von Derhaar that he was not under arrest. (Ex. NOPD-4 at 10:42).

When she returned, Von Derhaar asked if he could go back in his residence. (Ex. NPD-4 at 11:55). Lt. Lewis-Williams told Von Derhaar that "this is probably going to cause some issues for you, Karl, if you don't cooperate with PIB." (Ex. NOPD-4 at 12:00). Lt. Lewis-Williams then placed a call to Lt. Watson on speakerphone, and the on-duty officer's body-worn camera footage reflects that Lt. Watson stated that Lt. Lewis-Williams should put Von Derhaar on the clock and inform him that he's being ordered to PIB. (Tr. at 24; Ex. NOPD-4 at 12:15). Lt. Lewis-Williams informed Von Derhaar that he was being ordered. (Tr. at 27; Ex. NOPD-4 at 12:26). In Lt. Lewis-Williams' presence, Sgt. Stalbert stated to Von Derhaar that he was being ordered by PIB to report to work for a drug test. (Ex. NOPD-4 at 12:26). Von Derhaar asked if he could have his phone, and Lt. Lewis-Williams told him he could not have the phone. (Tr. at 54; Ex. NOPD-4 at 14:26). The uniformed police officers walked Von Derhaar to a police vehicle. (Ex. NOPD-4 at 14:50).

Lt. Lewis-Williams then informed Von Derhaar that he had to be searched to ride in the police vehicle. (Tr. at 54-55; Ex. NOPD-4 at 18:00). Lt. Lewis-Williams admitted she gave Von Derhaar no other option other than riding in the police vehicle. (Tr. at 54). The on-duty officer searched Von Derhaar before placing him in the back of the police vehicle. (Ex. NOPD-4 at 18:13). Lt. Lewis-Williams then informed Von Derhaar that “as a courtesy, we’re not going to put handcuffs on you.” (Ex. NOPD-4 at 18:59). After his significant other obtained the cell phone and gave it to the officers, the on-duty officer placed Von Derhaar’s cell phone in the front seat of the police vehicle. (Tr. at 55; Ex. NOPD-4 at 19:57).

Ultimately, Von Derhaar refused the drug test and resigned. (Tr. at 132).

Lt. Watson testified that he had a conversation before September 3, 2020, with Sgt. Stalbert in PIB Captain Sabrina Richardson’s office about Sgt. Stalbert’s concern that Von Derhaar was using drugs because of the access to drugs in the Crime Lab and Von Derhaar’s erratic behavior. (Tr. at 78, 234). Lt. Watson testified he advised Sgt. Stalbert to complete a form 105, request the approval of the Captain of the Crime Lab, the Bureau Chief of the Crime Lab, and the Deputy Superintendent to perform a reasonable suspicion drug test. (Tr. at 81). Lt. Watson testified that when Lt. Lewis-Williams called him, she said she wanted to take Von Derhaar to be drug tested. (Tr. at 88).

Lt. Hudson Cutno, who investigated the complaint against Lt. Lewis-Williams, testified that he concluded that the wellness check was a pretext for a drug test. (Tr. at 148). Lt. Cutno recommended sustaining the Abuse of Position allegation because Lt. Lewis-Williams, the highest-ranking officer on the scene, should not have put Von Derhaar in a police car for a drug test over his objections. (Tr. at 153). Deputy Superintendent Christopher Goodly explained that Lt. Lewis-Williams and the other officers were “operating under their police power status” instead

of as an employer after Von Derhaar said he did not want to cooperate. (Tr. at 194). According to Chief Goodly, if Lt. Lewis-Williams and the other officers had not been police officers, “then that guy would not have cooperated whatsoever.” (Tr. at 196). Lt. Cutno also recommended sustaining the charge of Neglect of Duty because Lt. Lewis-Williams failed to follow policy to drug test an employee for reasonable suspicion. (Tr. at 149-50).

II. ANALYSIS

The Appellant argues in her post-hearing brief that the investigation of this matter was not timely under the Police Officer Bill of Rights, La. R.S. 40:2531. At the time of this investigation, the Police Officer Bill of Rights required NOPD to complete an investigation within 60 days, although the Civil Service Commission may grant one extension of an additional 60 days for good cause. La. R.S. 40:2531(B)(7). “It is well established that the appointing authority begins its investigation under La. R.S. 40:2531(B)(7) on the date it initiates the DI-1 form.” *Dupree v. New Orleans Police Dep’t*, 2021-0134 (La. App. 4 Cir. 10/27/21), 331 So. 3d 385. NOPD initiated the DI-1 form on December 15, 2020. (Ex. NOPD-5). Then, NOPD timely requested a 60-day extension to complete the investigation. The hearing officer for the Civil Service Commission granted this request on January 5, 2021. (Ex. NOPD-6). Therefore, the deadline for NOPD to complete the investigation was 120 days from December 15, 2020, or April 14, 2021. “The completion of the investigation is defined by statute as occurring ‘upon notice to the police employee or law enforcement officer under investigation of a pre-disciplinary hearing or a determination of an unfounded or unsustained complaint.’ La. R.S. 40:2531(B)(7). *Abbott v. New Orleans Police Dep’t*, 2014-0993 (La. App. 4 Cir. 2/11/15), 165 So. 3d 191, 203. NOPD issued the Notice to the Accused on April 13, 2021, informing Appellant in writing of the sustained violations and the pre-disciplinary hearing scheduled for May 5, 2021, completing the

investigation under La. R.S. 40:2531(B)(7). (Ex. NOPD-9). Therefore, NOPD complied with the timeliness requirements of the Police Officer Bill of Rights.

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. Lt. Lewis-Williams failed to follow the drug testing policy, engaging in neglect of duty. Lt. Lewis-Williams also abused her position when she forced an off-duty civilian employee into a police car over his objection in order to subject the employee to drug testing. Even if Lt. Watson in PIB advised Lt. Lewis-Williams to inform Von Derhaar he was ordered to report to PIB for a drug test, as a lieutenant with 16 years of experience, Lt. Lewis-Williams should have known that she was abusing her police power to transport Von Derhaar to PIB for a drug test. Lt. Lewis-Williams' conduct impaired the efficient operation of NOPD. NOPD's treatment of Von

Derhaar received media attention and Lt. Lewis-Williams' abuse of position, in particular, affected the legitimacy of police authority and the public confidence in officers. (Tr. at 212-13).

The discipline is commensurate with the dereliction. NOPD imposed the presumptive penalty under the penalty matrix for the violations of the neglect of duty and abuse of position rules. (Tr. at 212).

This the 24th day of May, 2022

WRITER:

J H Korn
J H Korn (May 24, 2022 10:35 CDT)

JOHN KORN, VICE-CHAIRPERSON

CONCUR:

Brittney Richardson
Brittney Richardson (May 23, 2022 19:42 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

Mark C. Surprenant
Mark C. Surprenant (May 23, 2022 18:35 EDT)

MARK SURPRENANT, COMMISSIONER