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CITY CIVIL SERVICE COMMISSION

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DIRECTOR OF PERSONNEL

Thursday, August 18, 2016

Mr. Jordan Ehrich

Re: **Jordan Ehrich VS.
Department of Emergency Medical S
Docket Number: 8312**

Dear Mr. Ehrich:

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 - 8/18/2016 - 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, Sec.12(B) of the Louisiana Constitution. Further, 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: Jeffrey M. Elder
Elizabeth S. Robins
Jim Mullaly
file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

JORDAN EHRICH	
vs.	DOCKET NOs.: 8312
DEPARTMENT OF EMERGENCY MEDICAL SERVICES	

I. INTRODUCTION

Appellant, Jordan Ehrich, brings the instant appeal challenging a written reprimand issued to him by the New Orleans Department of Emergency Medical Services (hereinafter “EMS”). At all times relevant to the matter now before the Commission, Appellant was an EMT/Paramedic within EMS and had achieved permanent status as a classified employee.

II. FACTUAL BACKGROUND

Via letter dated June 11, 2014, EMS notified Appellant that he would receive a written reprimand for striking a parked vehicle while driving an EMS vehicle on or about December 2, 2013. (H.E. Exh. 1). The letter further alleged that the accident was “avoidable,” and Appellant was responsible for causing minor damage to both the EMS vehicle he was driving and the vehicle of a citizen. *Id.*

Carl Flores, Deputy Director of EMS testified that, in his capacity as Deputy Director, he supervised and directed the day-to-day operations of all aspects of EMS in the City. Mr. Flores was also responsible for making recommendations to the Director for disciplinary actions for EMS employees. (Tr. at 5:20-24). Mr. Flores was familiar with Appellant and testified that

J. Ehrich

No. 8312

Appellant served as EMS's ITI liaison and was an exceptional employee. (Tr. at 6:6-7). In addition to Appellant's ITI responsibilities, he also performed duties more typical to an EMT, namely, responding to citizen medical emergencies.

On December 2, 2013, Mr. Flores testified that he learned that Appellant had been involved in a traffic accident. Mr. Flores described the accident as "an at fault accident in non-response mode." (Tr. at 7:1-6). When an EMT is operating an emergency response vehicle without its lights and sirens operating, he/she is considered to be in "non-response" mode. (Tr. at 7:10-16). According to EMS, Appellant had been driving an EMS vehicle down a residential street and passed between two parked cars; he struck one of the vehicles and caused "minor damage." (H.E. Exh. 1).

At the time of the December 2nd incident, EMS had set up an Accident Review Board (hereinafter "ARB"). The ARB was responsible for conducting initial investigations into accidents involving EMS employees and provides those employees with an opportunity to provide their version of the events that led to the accident. (Tr. at 8:6-9:9). Pursuant to EMS protocol, Appellant appeared before the ARB and had a chance to tell his side of the story. On May 14, 2014, the ARB submitted a memorandum to Mr. Flores classifying Appellant's December 2nd accident as "preventable" and recommended that Appellant receive a letter of reprimand. (City Exh. 2).

The "penalty range" based on the ARB's included a written reprimand all the way up to a five-day suspension. Mr. Flores chose to issue a written reprimand as opposed to a suspension because Appellant's accident was a "minimum level accident" and Appellant was an "overall exceptional employee." (Tr. at 12:6-14). The Commission notes that Mr. Flores did not have

J. Ehrich

No. 8312

any first-hand knowledge of the events that led to the accident and relied upon the recommendation from the ARB.

Dr. Jeffery Elder also testified as part of EMS's case-in-chief. Dr. Elder is the Director of EMS and oversees the department and is the medical director for the City's emergency medical services. Dr. Elder identified the police report that the New Orleans Police Department ("NOPD") generated in connection with the December 2nd accident in evidence as City Exhibit 1. According to the police report, Appellant stated that he was attempting to "squeeze" between two vehicles when he lightly tapped one of the vehicles. (City Exh. 1). Dr. Elder followed the recommendation of the ARB and issued Appellant a written reprimand because, while it was a minor accident, a supervisor was taken out of the field for "a little while" to process the paperwork. (Tr. at 22:18-23:3). Thus, the efficient operation of EMS was adversely impacted by Appellant's actions.

Appellant took the stand in his own defense and testified that EMS policy regarding employee traffic accidents did not go into effect until January 1, 2014, one month after Appellant's accident. (Tr. at 27:3-11). And, while Appellant acknowledged that he was at fault for the accident on December 2nd, he alleged that the policy in place at the time of the accident did not contemplate an employee receiving discipline for a first offense. In support of his argument, Appellant introduced an EMS policy document. (App. Exh. 1). This policy contained the following paragraph:

All damage to city property, whether equipment used for patient care or vehicle, (sic) must be reported to the On Duty Supervisor, Directors of Logistics and Operations and Rescue/Supply personnel. Damage to a city vehicle requires a New Orleans Police report. Employees who are involved in two "at fault" accidents within three months will be remediated and mandated to retake defensive driving. If a third accident occurs within six months, the latter accident will be reported to the LA State DMV. **The On Duty Supervisor and Rescue/Supply personnel must be notified of each incident of the above**

J. Ehrich

No. 8312

mentioned immediately. An incident report (preferably email) must be sent to the Directors of Logistics and Operations within 24 hours of the incident.

App. Exh. 1 (emphasis in original).

Appellant asserts that this policy does not properly place an EMS employee on notice that an “at fault” accident will result in disciplinary action for a first offense. EMS asserts that the policy is silent with respect to discipline and that it has routinely disciplined employees for “at fault” accidents.

EMS called Dr. Elder as a rebuttal witness. On rebuttal, Dr. Elder testified that the ARB was set up in order to avoid situations where employees would receive differing levels of discipline for substantially the same accident. (Tr. at 35:1-6). Dr. Elder also pointed out that paragraphs 1 and 21 clearly inform employees that any failure to operate a vehicle in a safe and cautious manner “will result in progressive disciplinary action.” (App. Exh. 1).

EMS then introduced an email from Mr. Flores to EMS staff regarding a recent accident involving EMS personnel. (City Exh. 4). In this email, Mr. Flores informs the recipients of the email that employees involved in “at fault” accidents “will be met with swift appropriate action regardless of driving history.” *Id.* While this warning lacks specifics regarding the nature of the “swift appropriate action,” the Commission finds that this email put employees on notice that careless driving would result in some manner of discipline. Appellant was among the recipients of the email. *Id.*

III. LEGAL STANDARD

Employees in the classified service may only be disciplined for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that his/her discipline was issued 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

J. Ehrich

No. 8312

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

The Appointing Authority alleged that Appellant was responsible a minor traffic accident while driving an EMS vehicle on December 2, 2013. The record and testimony establish that Appellant was trying to navigate an opening between two parked cars on a narrow Mid-City street. This is a common experience many of us have, yet most of us do not have to operate a large emergency services vehicle while doing it. Appellant miscalculated the space he had and caused damage to a citizen’s car as well as to the EMS vehicle he was driving. While the misconduct was not purposeful, it still represents an error in judgment. The Commission finds that the Appointing Authority has established that Appellant engaged in the misconduct alleged in the June 11th disciplinary letter.

B. Impairment of Efficient Operation of Appointing Authority

When an EMS vehicle is involved in an accident, EMS dispatches a supervisor to the scene and that supervisor prepares a report and processes a drug screening mandated by civil service Rules. (Tr. v. 1 at 14:16-23, 22:18-23:2). Naturally, when a supervisor is responding to an EMS accident, he or she is not performing his or her primary duties. And, while the vehicle Appellant was driving only sustained minor damage, and there is no evidence in the record that it was out of service for any prolonged length or time, the Commission finds that the vehicle was unavailable to respond to emergencies for at least a few hours while the police and departmental reports were generated. Therefore, the Commission finds that the Appointing Authority has established that Appellant's actions impaired EMS's ability to efficiently deliver services to the citizens of New Orleans. While such an impairment may have lasted only a few hours, the type of service EMS provides is of an unpredictable and exigent nature where even a temporary lack of resources could compromise the health and safety of a citizen.

C. Discipline Commensurate with Offense

In conducting its analysis at this stage, the Commission must determine if the Appellant's letter of reprimand 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 976, 978 (citing *Staehle v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033). A written reprimand is the lowest level of discipline available to EMS. Mr. Flores testified that, in weighing the level of discipline to issue Appellant, he took into account Appellant's previously unblemished work record and the fact that Appellant was "an exceptional employee." (Tr. v. 1 at 12:6-14). Finally, the Commission finds that EMS communications to employees clearly established that any failure to operate EMS vehicles in a

J. Ehrich

No. 8312

safe and responsible manner would result in discipline. Therefore, we find that Appellant was properly on notice that even a minor traffic accident could result in discipline and that the written reprimand issued to Appellant was commensurate with his offence.

V. CONCLUSION

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

Judgment rendered this 18th day of August, 2016.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

Ronald P. McClain
RONALD P. McCLAIN, VICE-CHAIRMAN

8/2/16
DATE

TANIA TETLOW, COMMISSIONER
Cordelia D. Tullos
CORDELIA D. TULLOUS, COMMISSIONER

DATE
8/8/2016
DATE

J. Ehrich

No. 8312

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V. CONCLUSION

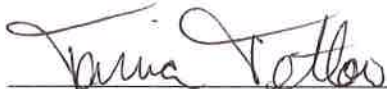
Based upon the foregoing, the Commission hereby DENIES Appellant's appeal.

Judgment rendered this 18 th day of August, 2016.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

RONALD P. McCLAIN, VICE-CHAIRMAN

DATE



TANIA TETLOW, COMMISSIONER

8/16/16

DATE

CORDELIA D. TULLOUS, COMMISSIONER

DATE