



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

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MAYOR

Wednesday, July 31, 2019

Mr. Eric Hessler  
PANO 2802 Tulane Avenue #102  
New Orleans, LA 70119

Re: **William Niemeck VS.  
Department of Emergency Medical  
Docket Number: 8840**

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 - 7/31/2019 - 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,

Doddie K. Smith  
Chief, Management Services Division

cc: Emily Nichols, M. D.  
David J. Patin, Jr.  
Brendan M. Greene  
William Niemeck

✓ file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

<p>WILLIAM NIEMECK, Appellant,</p> <p>vs.</p> <p>DEPARTMENT OF EMERGENCY MEDICAL SERVICES, Appointing Authority.</p>	<p>DOCKET No.: 8840</p>
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**I. INTRODUCTION**

Appellant, William Niemeck, 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 Department of Emergency Medical Services for City of New Orleans, (hereinafter “EMS” or “Appointing Authority) issued Appellant discipline in the form of a letter of reprimand. During the course of the hearing, Appellant alleged that EMS violated his due process rights in issuing an inaccurate letter of reprimand. Therefore, the Commission’s analysis first addresses Appellant’s procedural claims. For the reasons stated below, we find that the typographical error in the letter of reprimand EMS issued to Appellant did not violate Appellant’s due process rights.

At all times relevant to the instant appeal, Appellant served as a Captain for EMS and had permanent status as a classified employee. A referee appointed by the Commission presided over one day of hearing. 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 DENY the appeal and render the following judgment.

## II. FACTUAL BACKGROUND

### A. Alleged Misconduct

EMS issued Appellant a letter of reprimand based upon an allegation that Appellant addressed his supervisor, Deputy Chief Lynn Ramagos, in an “insolent” and unprofessional manner. (H.E. Exh. 1). In the letter of reprimand, EMS alleged that Appellant’s actions violated the EMS code of employee conduct as well as Policy #89 promulgated by the Chief Administrative Officer for the City of New Orleans. (H.E. Exh. 1). The date of appellant’s alleged misconduct, according to the letter of reprimand, was August 3, 2018. *Id.*

### B. Appellant’s Procedural challenge

During the course of the appeal hearing, it became apparent to the Parties and hearing examiner that the letter of reprimand contained a typographical error. The letter of reprimand referenced an August 3, 2018 meeting at which Appellant allegedly addressed a superior in an inappropriate and unprofessional manner. The August 3rd meeting referenced in the reprimand allegedly occurred in the “clinical office” and was attended by Appellant, Deputy Chief Ramagos, Captain Bret Niemeck and Lieutenant Dransfield. (H.E. Exh. 1). During the testimony, however, witnesses testified that no such meeting occurred on August 3rd. Instead, witnesses confirmed that the meeting referenced in the reprimand occurred on August 2, 2018. There was an August 3rd meeting, but it occurred in a different location and had different attendees.

Appellant claims that the error in the reprimand compromised his ability to prepare for the appeal hearing. The Commission recognizes that there may have been some confusion on the part of Appellant when reviewing the reprimand, but testimony established that such confusion was likely minor. Appellant recalled attending two meetings at which he discussed his dissatisfaction

with the EMS orientation program with Deputy Chief Ramagos. One of those meetings occurred in the EMS clinical office with Capt. Rikard and Lt. Dransfield.

Based upon the foregoing findings of fact and law, the Commission finds that EMS's typo did not impact Appellant's ability to prepare and present an adequate defense.

**C. August 2, 2018**

Appellant began his career with EMS in 1991 and during all times relevant to the instant appeal occupied the position of education coordinator. (Tr. at 114:18-25). As education coordinator, Appellant was responsible for planning the orientation sessions for new EMS employees. *Id.* Appellant cared deeply about this role and took his responsibilities very seriously. Appellant believed that his actions in the classroom translated to real impacts when recruits went into the field. *Id.* at 132:17-133:3.

Deputy Chief Ramagos was Appellant's direct supervisor and, according to Appellant, was responsible for facilitating trainings sessions by arranging the attendance of various instructors. The 2018 orientation session did not go according to Appellant's expectations and he was concerned that other supervisors, including Deputy Chief Ramagos, did not fully appreciate how poorly the sessions were going. Appellant attributed the disorganization of the orientation sessions to a lack of support he was receiving from Deputy Chief Ramagos. *Id.* at 117:25-118:6.

On August 1, 2018, Appellant attended a meeting with Deputy Chief Ramagos, Capt. Rikard and Lt. Dransfield. At the meeting, Appellant acknowledged he was irritated at the lack of support and sought to make his irritation known to those in attendance. *Id.* at 135:3-16. While Appellant denied "yelling or screaming" and further denied using profanity or cursing, both Deputy Chief Ramagos and Capt. Rikard testified that Appellant was loud and cursed. Deputy Chief Ramagos believed that the meeting ceased being productive once Appellant raised his voice

and began cursing, so he ended the meeting without reaching any resolution to the issues Appellant raised.

Deputy Chief Ramagos called a subsequent meeting on August 2nd in another attempt to address ongoing issues with the orientation. *Id.* at 78:11-20. According to Capt. Rikard and Deputy Chief Ramagos, Appellant again raised his voice and cursed. The August 2nd meeting occurred in a room referred to as the “clinical office” which was a shared office space between Capt. Rikard and Lt. Dransfield. Appellant denied that he used a raised voice during the August 2nd meeting. Appellant could not recall if he used profanity but did not believe he did so because he claimed he typically avoids using foul language. *Id.* at 126:6-24. Capt. Rikard and Deputy Chief Ramagos were unequivocal in their testimony regarding Appellant’s loud tone of voice – which they described as “yelling” or “screaming” – and were clear on Appellant’s use of profanity. *Id.* at 85:2-12, 20:12-21, 21:2-13.

Capt. Rikard was so disturbed by Appellant’s actions that he sent an email to EMS Director Dr. Emily Nichols about Appellant’s actions. In his email, Capt. Rikard alleged that Appellant had an “insubordinate attitude” and raised his voice in what Capt. Rikard viewed as a “threatening manner.” (EMS Exh. 2).

Deputy Chief Ramagos testified that he felt disrespected as a result of Appellant’s actions. (Tr. at 86:4-15).

### **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

EMS’s code of employee conduct requires employees to “conduct themselves in a professional manner with the utmost concern for the dignity of the individual with whom they are interacting.” (EMS Exh. 3). The code goes on to establish general rules of civility governing an employee’s interaction with co-workers and the public. *Id.*<sup>1</sup> EMS alleged that Appellant violated the EMS code of conduct when he addressed his direct supervisor, Deputy Chief Ramagos, in an unprofessional and disrespectful manner.

EMS presented two witnesses, Deputy Chief Ramagos and Capt. Rikard, who testified that Appellant used an aggressive and confrontational tone of voice when addressing Deputy Chief

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<sup>1</sup> EMS also alleged that Appellant’s conduct violated CAO Policy # 89(R), which also addresses employee conduct and professionalism. The Commission does not find a distinction between the two policies for the purpose of the instant appeal.

Ramagos during a meeting. They further alleged that Appellant used profanity during the same meeting.

Appellant denied using profanity but acknowledged that he was irritated about the lack of support he had received from Deputy Chief Ramagos in the course of orientation sessions for new EMS employee. Appellant presented as a passionate employee who cared deeply about his work. He did not, however, provide the Commission with any evidence suggesting why Deputy Chief Ramagos and Capt. Rikard would fabricate their account of the meeting. The Commission further finds it unlikely that Capt. Rikard would send a false account, via email, to the director of the City's health department (essentially his boss's boss) without any motive.

Bearing the above in mind, the Commission finds that Appellant did address Deputy Chief Ramagos in an unprofessional and inappropriate manner on August 2, 2018 and in doing so violated the EMS code of employee conduct.

#### **B. Impact on EMS's Efficient Operations**

Deputy Chief Ramagos and Dr. Nichols both testified as to the importance of the chain of command within a paramilitary entity like EMS. Respect for the chain of command fosters an ordered approach to potentially life threatening situations employees may face in the field. The Commission accepts this testimony and recognizes that a subordinate must address superior officers in a respectful and professional manner.

Appellant was earnest in his concerns about Deputy Chief Ramagos's lack of support. Yet the way in which his concerns manifested in his behavior was problematic for both Appellant and EMS. There was no thoughtful dialogue about the problem. The meeting devolved into an unproductive confrontation between a passionately disgruntled subordinate and the supervisor who was the source of the subordinate's ire.

As a result of the foregoing, we find that Appellant's conduct had an adverse impact on the efficient operations of EMS.

### **C. Was the Discipline Commensurate with Appellant's Offense**

In conducting its analysis, the Commission must determine if Appellant's discipline 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 letter of reprimand represents the lowest level of discipline available to appointing authorities to address misconduct perpetrated by employees. In the matter now before the Commission, Appellant's violation of the EMS code of conduct was disruptive, but did not rise to the level where a suspension without pay was warranted, especially in light of Appellant's apparently unblemished employment record. EMS issued a letter of reprimand in an attempt to redirect Appellant's conduct when interacting with superiors. This first attempt at intervention will hopefully succeed. Further disrespectful or unprofessional conduct will likely result in progressively more severe discipline.

Therefore, the Commission finds that a letter of reprimand was commensurate with Appellant's misconduct.

## **V. CONCLUSION**

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



W. Niemeck  
No. 8840

Judgment rendered this 31<sup>st</sup> day of July, 2019.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER

  
\_\_\_\_\_  
BRITTNEY RICHARDSON, COMMISSIONER

7-23-2019  
\_\_\_\_\_  
DATE

CONCUR

  
\_\_\_\_\_  
JOHN H. KORN, COMMISSIONER

7/29/19  
\_\_\_\_\_  
DATE

  
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MICHELLE D. CRAIG, CHAIRPERSON

7-29-2019  
\_\_\_\_\_  
DATE