



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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Tuesday, January 9, 2018

Mr. Donovan A. Livaccari  
101 W. Robert E. Lee, Suite 402  
New Orleans, LA 70124

Re: **Quinetta Rivet VS.  
Department of Police  
Docket Number: 8431**

Dear Mr Livaccari:

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 - 1/9/2018 - 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,

A handwritten signature in blue ink that reads "Doddie K. Smith".

Doddie K. Smith  
Chief, Management Services Division

cc: Michael S. Harrison  
Corwin St. Raymond  
Jim Mullaly  
Quinetta Rivet

**CIVIL SERVICE COMMISSION**

**CITY OF NEW ORLEANS**

QUINETTA RIVET vs. DEPARTMENT OF POLICE	DOCKET No.: 8431
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**I. INTRODUCTION**

Appellant, Quinetta Rivet, 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 Police Department for City of New Orleans, (hereinafter “NOPD”) does not allege that the instant appeal is procedurally deficient. Appellant contends that NOPD violated her due process rights in issuing a disciplinary notice with inaccurate information. Appellant further objected to any testimony and evidence that pertained to matters outside of the date listed in the disciplinary notice.

As explained in more detail below, the Commission finds that the disciplinary notice did contain a typographical error regarding the date of Appellant’s alleged misconduct. Yet, in making this finding, we do not conclude that the error compromised Appellant’s ability to respond to the allegations against her or prepare an adequate defense. Therefore, the Commission will consider the merits of the case before us and determine whether or not NOPD disciplined Appellant for sufficient cause. At all times relevant to the instant appeal, Appellant served as a Police Technician for NOPD and had permanent status as a classified employee.

A hearing examiner appointed by the Commission presided over three days<sup>1</sup> of 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 & PROCEDURAL BACKGROUND**

### **A. Appellant's Procedural Challenge**

Appellant alleges that NOPD violated her due process rights when it pursued discipline against her that was outside of the scope of charges established in the disciplinary hearing notice in evidence as "Hearing Examiner Exhibit 1." In an earlier motion before this Commission, Appellant moved for summary disposition and alleged that the notice of discipline did not sufficiently describe the cause that justified the discipline. The Commission denied Appellant's motion and found that, "Appellant has been appraised of the actions that may be addressed during the appeal hearing as well as the specific NOPD rules she allegedly violated. With this information, Appellant will be able to adequately prepare a case challenging her discipline."

Appellant relies upon the Commission's earlier decision in arguing that any conduct that did not occur on April 29, 2015 – the date cited in Appellant's original disciplinary notice – is beyond the scope of the discipline notice and should be excluded. Appellant's argument is too clever by half. The key to the Commission's holding was that NOPD would be limited to the "conduct" specified in the letter in presenting its case before a hearing examiner. Whether the alleged conduct occurred on April 17th or April 29th is of little moment. The conduct at issue was Appellant's departure from work without authorization. Appellant cannot, with a straight face,

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<sup>1</sup> July 28, 2016, July 20, 2017, and August 8, 2017. During the July 28, 2016 hearing, the Parties requested a continuance in an attempt to reach an amicable settlement. And, as will become evident later in this opinion, NOPD used the intervening time to attempt to remedy the typo referenced earlier.

claim that she was unaware what conduct NOPD would address at the appeal hearing. The disciplinary letter describes Appellant's alleged misconduct in sufficient detail. Therefore, the Commission finds that Appellant was not prejudiced by the hearing examiner's allowance of testimony and revised notice that identified the date of Appellant's alleged misconduct as April 17, 2015.

In reaching this decision, we do not condone the actions of either party in spending so much time and effort focused on this technicality. NOPD should have immediately taken steps to remedy the obvious typographical error. The fact that this matter sat idle for more than a year while the Parties allegedly worked to come to an amicable settlement compromised the quality of the testimony. In the future, the Commission encourages litigants to carefully review all correspondence and documents related to discipline. This is especially true when someone's career is at stake.

#### **B. Alleged Misconduct**

NOPD issued Appellant three separate three-day suspensions and ultimately terminated Appellant after substantiating four allegations of misconduct. The substantiated allegations of misconduct and corresponding level of discipline are reproduced below:

- **Rule 4, Paragraph 4(c)(6) - Three-day Suspension:** The following omissions to act, although not exhaustive, are considered neglect of duty ... Failing to comply with instructions, oral or written, from any authoritative source.
- **Rule 4, Paragraph 3 - Three-day Suspension:** Employees shall not read, play games, watch television/movies, or otherwise engage in entertainment while on duty, except as may be required in the performance of duty, or by authority of their respective Bureau Chief. They shall not engage in activities or personal business which would cause them to neglect or be inattentive to duty.
- **Rule 3, Paragraph 1 - Three-day Suspension:** Employees shall conduct themselves in a professional manner with the utmost concerns for the dignity of the individual with whom they are interacting. Employees shall not unnecessarily inconvenience or demean any

individual or otherwise act in a manner which brings discredit to the employee or the New Orleans Police Department.

- **Rule 2, Paragraph 3 - Termination:** Employees are required to be honest and truthful at all times in their spoken, written, or electronic communications. Truthfulness shall apply when an employee makes a materially false statement with the intent to deceive. A statement is material when, irrespective of its admissibility under the rules of evidence, it could have affected the course or outcome of an investigation or an official proceeding, whether under oath or not, in all matters and official investigations relating to the scope of their employment and operation of the Department, as follows:
  - (a) employees shall truthfully state the facts in any oral, written, or electronic communication;
  - (b) employees shall not willfully or negligently make any false, misleading, or incorrect oral, written or electronic communication;
  - (c) employees shall not willfully or negligently without relevant information of which they have knowledge, from any oral, written, or electronic communication;

Employees shall truthfully answer all questions directed to them on the order of the Superintendent of Police, the Superintendent's designee, a superior officer, or any judicial, departmental, or other official investigative body.

(H.E. Exh. 1)

NOPD alleged that Appellant violated the above-cited rules in connection with an incident that occurred on April 17, 2015. (NOPD Exh. 1). NOPD alleged that, on the 17th, Appellant sought permission from her direct supervisor to leave work and return to her home in LaPlace, Louisiana to meet "repairmen." *Id.* When Appellant's supervisor allegedly denied Appellant's request, she left anyway. Upon returning to her assignment, Appellant confided to a co-worker that she understood that her supervisor had denied her permission to leave, but left anyway. Then, when NOPD investigated Appellant's misconduct, Appellant allegedly changed her story and claimed that she had misunderstood her supervisor's response and thought he had given her permission to go.

**C. April 17, 2015**

At all times relevant to the instant matter, Appellant worked as a Police Technician in NOPD's "Child Abuse Unit." (Tr. v. 2 at 12:10-11, 13:15-19). At the time of her termination, Appellant had been employed by NOPD in various capacities for nineteen years and had no prior discipline. (Tr. v. 3 at 16:12-17, 25:12-17). As a Police Technician within the Child Abuse Unit, Appellant was responsible for answering calls from residents and coordinating responses to those calls with personnel in the field. Her supervisor at the time was Sergeant Arnold Williams. (Tr. v. 2 at 14:2-4).

Appellant arrived (on time) for the start of her shift on April 17, 2017. *Id.* at 14:8-17. Soon after arriving to work, Appellant testified that she received a phone call from individual(s) indicating that her presence was required at her residence in LaPlace, Louisiana. Appellant stated that she was in the midst of several personal crises at the time, not the least of which was attempting to coordinate repair work at her home after severe damage caused by an early-Spring storm. *Id.* at 14:21-15:23. In addition to the damage to her home, Appellant told the hearing examiner that she was struggling with the birth to a child and a divorce. (Tr. v. 3 at 26:8-16).

After receiving the call, Appellant asked Sgt. Williams for permission to leave. During her direct-examination, Appellant acknowledged that Sgt. Williams appeared to be "aggravated" and dismissive. (Tr. v. 3 at 27:2-5). But, according to Appellant, Sgt. Williams eventually told her to "go, go." (Tr. v. 2 at 17:2-7). Appellant then left the office and proceeded to travel in her car towards LaPlace. Appellant admitted that she possibly misunderstood Sgt. Williams's response but was adamant that she believed he had told her to "go, go." *Id.* at 32:24-33:12.

While on route to her home, Appellant received a call on her cell phone from Sgt. Williams.<sup>2</sup> Sgt. Williams testified that he called Appellant after discovering that she was not at her desk and was not responding to incoming calls from residents and NOPD personnel. The first thing Sgt. Williams asked Appellant was where she was. Appellant informed him that she was on her way to her home in LaPlace. Clearly aggravated at the situation, Sgt. Williams informed Appellant that she did not have authorization to leave work and that there was no one available to cover calls that came into the unit during her absence. (Tr. v. 2 at 21:1-12). According to Sgt. Williams, Appellant told him that she was going to “do what [she] had to do” because she was experiencing an emergency. *Id.* at 21:13-14. Appellant was gone for approximately three hours. *Id.* at 22:1-5.

When she returned to work, Appellant learned that Sgt. Williams intended to initiate a disciplinary investigation regarding her departure. Upset, Appellant sought out someone in whom she could confide. Sergeant Randi Gant was that someone. According to Sgt. Gant, Appellant visited her office on the afternoon of April 17, 2015 and appeared distraught. *Id.* at 43:11-13. Appellant proceeded to tell Sgt. Gant about her personal emergency and her interactions with Sgt. Williams. Sgt. Gant claimed that Appellant admitted to leaving the office despite being informed by Sgt. Williams that she did not have permission to leave. *Id.* at 45:16-46:8.

Sergeant Trinell Franklin was responsible for conducting and administrative investigation into Appellant’s alleged misconduct. In the course of the investigation, Sgt. Franklin interviewed several individuals, including Sgt. Williams, Sgt. Gant and Appellant. Sgt. Williams was adamant that he had denied Appellant permission to leave on the 17th. And Sgt. Gant provided Sgt. Trinell

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<sup>2</sup> Importantly, neither party disputes the fact that Sgt. Williams called Appellant on her cell phone while Appellant was on route to her residence in LaPlace.



with a statement very similar to her testimony. *Id.* at 27:17-23:2, 29:3-12. In Appellant's statement to Sgt. Trinell, she claimed that Sgt. Williams had initially given her permission to leave. Sgt. Trinell determined that Appellant's claim was purposefully untruthful given Sgt. Gant's recollection of her conversation with Appellant.

Deputy Superintendent of Investigation and Support, Rannie Mushatt presided over Appellant's pre-termination hearing. During the hearing, Mushatt gave Appellant an opportunity to respond to the allegations against her. Appellant repeated her claim that Sgt. Williams had initially given her permission to leave the office on the 17th. Mushatt did not find this claim to be credible given the statements provided by Sgt. Williams and Sgt. Gant. It was Sgt. Gant's statement that served as the primary foundation for Mushatt's determination that Appellant had knowingly provided both himself and Sgt. Trinell with false information.

### **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

There is little factual dispute with respect to the events of April 17, 2017. The record establishes that Appellant left work on the 17th without authorization in order to address some manner of incident at her residence in LaPlace. She was gone for approximately three hours and during that time, only Sgt. Williams, who was not officially on duty, was available to respond to calls coming into NOPD’s Child Abuse Unit. Appellant’s defense depends entirely upon the Commission crediting her claim that she believed that Sgt. Williams had initially given her permission to leave. Unfortunately for Appellant, we do not.

There are several elements of Appellant’s account that tend to undermine her credibility. First, Sgt. Williams was adamant that he denied Appellant permission to return to her home. He explained that the Unit was already understaffed and Appellant’s departure would have compromised the Unit’s ability to respond to calls. When Sgt. Williams discovered that Appellant had left the office without authorization, he immediately attempted to contact her. On the third attempt, he was able to reach her and find out where she was.irate, Sgt. Williams reiterated that Appellant did not have authorization to go to which Appellant replied “Well, I’m doing what I have to do. It’s an emergency.” (Tr. v. 2 at 21:7-14). According to Appellant, Sgt. Williams called her and said, “you think you can do what you want?” to which she replied, “Sarge, what do you

mean by that.” (Tr. v. 3 at 27:10-16). The Hearing Examiner did not find Appellant’s account credible and neither do the undersigned Commissioners.

We agree with the Hearing Examiner that Appellant’s testimony is self-serving and lacking in several important details and explanations. First among these deficiencies is an explanation as to why Appellant simply did not return to her post after receiving the call from Sgt. Williams. Instead, Appellant made the choice to continue on to her home in LaPlace and was gone for three hours. This behavior is consistent with Sgt. Williams’s claim that Appellant told him that she was going to do “what she needed to do.”

Sgt. Gant’s testimony further supported NOPD’s version of events. According to Sgt. Gant, Appellant acknowledged that Sgt. Williams had denied her permission to take an early lunch in order to meet a repairman. Appellant then allegedly stated that she left anyway and was upset that Sgt. Williams had chosen to pursue discipline. Appellant denied that she ever admitted to Sgt. Gant that she was fully aware that she did not have permission to leave the office on the 17th. The wildly different accounts of this conversation give the undersigned Commissioners significant pause. We note that there is nothing in the record to suggest that Sgt. Gant had reason to alter or fabricate her account. Alternatively, Appellant has a very powerful motive to portray her conversation with Sgt. Gant in a light most favorable to her defense. Ultimately, the hearing examiner did not find Appellant to be a credible witness and the Commission defers to this assessment.

As a result of the foregoing, the Commission finds that Appellant understood that she did not have permission to leave her post, but did so anyway because she felt her personal emergency took precedent over her professional responsibilities. It was not until Appellant returned to work

and discovered that Sgt. Williams intended to pursue discipline for her unauthorized departure that Appellant fabricated an excuse.

The Commission finds that NOPD has established that Appellant engaged in the misconduct alleged in the disciplinary notice marked as “NOPD Exhibit 1.”

#### **B. Impact on NOPD’s Efficient Operations**

There were two undeniable, negative impacts on the Child Abuse Unit’s efficient operations caused by Appellant’s unauthorized departure. First, as a Police Technician, Appellant’s primary responsibility was to field calls and inquiries made by NOPD personnel and residents. By leaving her post, Appellant compromised the Unit’s ability to respond to such calls and inquiries. Second, by disregarding Sgt. Williams’s instructions, Appellant undermined the chain of command, which is especially damaging in a paramilitary organization like NOPD.

Finally, Appellant’s purposeful attempt to mislead investigators and obfuscate the truth behind her departure on April 17, 2015 represents an unacceptable breach of trust. NOPD rightfully expects a high degree of integrity from its employees. This is true of both commissioned officers and support personnel. Very often, even administrative personnel deal with deadly serious scenarios that have implications on the well-being of others. Fellow NOPD employees and the general public must place a great deal of trust in the NOPD, and NOPD in turn must demand a high level of integrity from its personnel. Appellant failed to demonstrate this integrity during the course of NOPD’s investigation into her underlying misconduct.

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

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

In conducting its analysis, the Commission must determine if 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 976, 978 (citing *Staehle v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

In prior cases before the Commission, NOPD has represented that, a substantiated allegation of untruthfulness against an Officer renders such an Officer "unemployable." In support of this assertion, NOPD relies upon *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972) and *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). In *Brady*, the U.S. Supreme Court held that the prosecution's suppression of evidence favorable to an accused violates the accused's due process rights when such evidence is "material either to guilt or to punishment." 373 U.S. at 87. Following *Brady*, the Court held in *Giglio* that, "[w]hen the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting credibility falls within [the rule established by Brady]." 405 U.S. at 154 (internal citations omitted).

NOPD's well-founded concern is that courts would view any substantiated allegations of misconduct against an Officer involving truthfulness or lying as directly affecting an Officer's credibility. Thus, Supreme Court precedent would compel prosecutors to disclose such misconduct to criminal defendants in any matter in which the Officer in question was involved. Upon such a disclosure, any competent defense counsel would likely use such information to undermine the credibility of the Officer and call into question the integrity of the criminal investigation.

Appellant argues that, as a civilian employee who is not involved in criminal investigations, a substantiated allegation of untruthfulness does not carry the same impact. The Commission appreciates the distinction Appellant seeks to draw, but finds that NOPD has the responsibility to demand that all of its employees conduct themselves according to the highest levels of integrity. Even administrative and ministerial tasks within NOPD's operations involve (or have the potential to involve) criminal investigations. NOPD's mission is to provide safety and security to the residents of New Orleans, and to do so ethically and in a way that promotes community. It cannot accomplish this mission if the residents do not trust NOPD personnel. Finally, the undersigned Commissioners have adopted the hearing examiner's finding that Appellant was evasive and not credible during her testimony. Appellant was under oath during her testimony and was not forthcoming or honest.

Based upon NOPD's role in the community, the undersigned Commissioners do not believe that dismissal is an arbitrary or capricious level of discipline for employees who are purposefully deceitful.

## **V. CONCLUSION**

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

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**SIGNATURES APPEAR ON THE FOLLOWING PAGE.**

Q. Rivet  
No. 8431

Judgment rendered this 9<sup>th</sup> day of January, 2018.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER

Tania Tetlow  
TANIA TETLOW, COMMISSIONER

1-3-2018  
DATE

CONCUR

Clifton J. Moore, Jr.  
CLIFTON J. MOORE, Jr., COMMISSIONER

1-8-2018  
DATE

Stephen Caputo  
STEPHEN CAPUTO, COMMISSIONER

1-3-2018  
DATE