



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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Wednesday, July 31, 2024

Mr. Louis Robein
2540 Severn Avenue, Suite 400
Metairie, LA 70002

Re: **Louis Guidry VS.
Department of Fire
Docket Number: 9558**

Dear Mr. Robein:

Attached is the decision of the City Civil Service Commission in the above-referenced 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 - 7/31/2024 - 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 purple ink that reads "Stacie Joseph".

Stacie Joseph
Management Services Division

cc: Roman Nelson
Jasmine L. Bandy
Jay Ginsberg
Louis Guidry

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**LOUIS GUIDRY,
Appellant**

Docket No. 9558

v.

**DEPARTMENT OF FIRE,
Appointing Authority**

DECISION

Appellant, Operator Louis Guidry, 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 New Orleans Fire Department's (NOFD) January 27, 2024, imposition of a three-hour suspension. (Ex. HE-1). At all relevant times, Appellant had permanent status as a Firefighter. (Ex. HE-1; Tr. at 42). A Hearing Examiner, appointed by the Commission, presided over a hearing on April 8, 2024. At this hearing, both parties had an opportunity to call witnesses and present evidence. The parties submitted post-hearing briefs on June 24, 2024, and July 2, 2024.

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 parties' post-hearing briefs, the Hearing Examiner's report dated July 4, 2024, and controlling Louisiana law.

For the reasons set forth below, Operator Guidry's appeal is GRANTED.

I. FACTUAL BACKGROUND

The facts of this appeal are largely undisputed. On November 30, 2023, while then-Firefighter Guidry was working in a higher classification of Operator, he drove Fire Engine 29 from the NOFD Headquarters on Decatur Street to a three-alarm fire in progress in the French

Quarter on the block of Dauphine Street between Toulouse Street and St. Louis Street. (Tr. at 8, 44-45; Ex. Appellant-2). Captain Brian Mendelson was in the passenger seat, and two other firefighters were in the fire truck. (Tr. at 47). Firefighter Guidry traveled lake-bound on St. Louis Street to the intersection with Dauphine Street. (Tr. at 45, 66; Ex. Appellant-2). Firefighter Guidry intended to turn right on Dauphine Street, which would result in the fire truck traveling the wrong way on a one-way street.¹ (Tr. at 40). At the intersection with Dauphine Street, two vehicles were parked in the intersection illegally. (Tr. at 45-46, 94-95). One of the vehicles, a black Chevrolet Suburban, had been traveling in front of Engine 29 on St. Louis Street but stopped in the intersection with Dauphine Street on the right-hand side of the street. (Tr. at 24, 45-46, 66, 93). The second vehicle was parked illegally on the left side of the street. (Tr. at 94). When turning onto Dauphine Street, Operator Guidry performed a three-point turn, where the driver turns, reverses, and then completes the turn. (Tr. at 114). He did not use a spotter when backing up, as required by NOFD policy, although he did use a back-up camera. (Tr. at 67; Ex. NOFD-2 at 7 (RR53)). Captain Brian Mendelson explained that he made the decision not to use a spotter because he was concerned the fire would spread. (Tr. at 68-70). When Firefighter Guidry drove forward, Engine 29 scraped the Suburban parked on the right-hand side of the street, causing minor damage. (Tr. at 6, 90). Firefighter Guidry testified that “it was tight” turning onto Dauphine, but he thought he “could make it.” (Tr. at 92). Firefighter Guidry and the other occupants of Engine 29 did not realize Engine 29 had damaged the Suburban. (Tr. at 68). Engine 29 suffered no damage. (Tr. at 6; Ex. Appellant-1).

¹Deputy Chief David Castle testified that traveling the wrong way on the one-way street was necessary to reach the “Bravo” side of the building on fire. (Tr. at 22, 45, 66; Ex. Appellant-2).

When the owner of the Suburban visited Fire Station 29 to report the incident, Captain Andrew Monteverde completed a Vehicle Accident Investigation Report on an NOFD Supervisor's Report Form. (Ex. Appellant-2). Included in this report is information provided by Firefighter Guidry in response to an inquiry from Captain Monteverde. (Ex. Appellant-2). Captain Monteverde provided a narrative and annotated a map as part of his report. (Ex. Appellant-2).

On January 20, 2024, Deputy Chief David Castle emailed Firefighter Guidry to inform him of a January 23, 2024, hearing before the Vehicle Accident Review Board. (Ex. NOFD-3). Deputy Chief Castle attached documents to this email, including a notice of pre-disciplinary hearing, a notice of interrogation, and a copy of the Firefighter Bill of Rights. (Ex. NOFD-3). Firefighter Guidry appeared before the Vehicle Accident Review Board on January 23, 2024, and Deputy Chief Castle conducted the hearing. (Tr. at 13). Deputy Chief Castle and two other district chiefs comprised the Vehicle Accident Review Board. (Tr. at 14; Ex. NOFD-3 (Notice of Pre-Disciplinary Hearing)). The Board determined that the accident was a Class B preventable accident and recommended discipline of a letter of reprimand and additional training. (Tr. at 11; Ex. Appellant-1). Class B preventable accidents are "accidents in which the operator shared a portion or all of the responsibility for the accident. (Appendix A to Ex. NOFD-1). Superintendent of Fire Roman Nelson testified that Captain Mendelson was counseled. (Tr. at 58).

Operator Guidry testified that he believed the accident should have been classified as a Class C preventable accident or a Class A non-preventable accident. (Tr. at 103). NOFD policy defines a Class A non-preventable accident as "an accident which was beyond the operator's control while practicing good driving methods." (Appendix A to Ex. NOFD-1). A Class C preventable accident "may be applied only to emergency vehicles (line of duty) when said vehicle is responding to an emergency and had not broken any traffic laws governing motor vehicles."

(Appendix A to Ex. NOFD-1). A Class C preventable accident is not chargeable to the operator's record. (Appendix A to Ex. NOFD-1).

Deputy Chief Castle explained that Firefighter Guidry violated traffic laws when he hit the Suburban, so the Board felt the accident could not be classified as a Class C preventable accident. (Tr. at 40).

Superintendent Nelson agreed with the Vehicle Accident Review Panel's classification of the accident as a Class B preventable accident. (Ex. HE-1). Superintendent Nelson testified that he imposed discipline because Firefighter Guidry failed to use a spotter when backing up Engine 29. (Tr. at 57). Because the November 30, 2023, accident was Firefighter Guidry's third class-B preventable accident,² Superintendent Nelson imposed a three-hour suspension. (Ex. HE-1).

II. ANALYSIS

A. NOFD Complied with the Firefighter Bill of Rights

Firefighter Guidry argues that NOFD failed to comply with the procedural protections in the Firefighter Bill of Rights, La. R.S. 33:2181. This statute applies to fire employees who are "under investigation with a view to possible disciplinary action, demotion, or dismissal." La. R.S. 33:2181. The Firefighter Bill of Rights required NOFD to inform Firefighter Guidry in writing of a formal investigation before the investigation commenced. La. R.S. 33:2181(B)(1). The Firefighter Bill of Rights also required NOFD to inform Firefighter Guidry in writing before commencing an interrogation. La. R.S. 33:2181(B)(2).

Firefighter Guidry argues that Captain Andrew Monteverde interrogated him November 30, 2023. (Appellant's Post-Hearing Brief at 1-2). The Firefighter Bill of Rights excludes an initial

² NOFD required Firefighter Guidry to complete additional training following an accident on June 3, 2022. (Ex. NOFD-3). NOFD issued a letter of reprimand following Firefighter Guidry's accident on July 6, 2023. (Ex. NOFD-4).

inquiry by a supervisor from the definition of “interrogation”: “An initial inquiry conducted by the fire employee's immediate supervisors shall not be considered an interrogation.” La. R.S. § 33:2181. Captain Monteverde completed an NOFD fillable form entitled Vehicle Accident Investigation Report, supplying information about the roadway, road defects, weather, and type of loss. (Ex. Appellant-2). Captain Monteverde also attached a narrative and a map of the accident. (Ex. Appellant-2). Captain Monteverde’s inquiry of Firefighter Guidry fits within this exclusion. Unlike the situation in *Farrelly v. Jefferson Par. E. Bank Consol. Fire Dist.*, 19-216 (La. App. 5 Cir. 12/4/19), 284 So. 3d 680, 685, and *Pitre v. Dep't of Fire*, 2021-0632 (La. App. 4 Cir. 4/20/22), 338 So. 3d 70, 78, *writ denied*, 2022-00804 (La. 9/27/22), 347 So. 3d 152 this routine inquiry was not performed by the Superintendent of Fire/Assistant Superintendent of Fire with one or more deputy chiefs in attendance. Instead, Captain Monteverde was performing a routine inquiry to complete a supervisor’s report required by NOFD for all vehicle accidents.

Firefighter Guidry also argues that NOFD’s formal investigation began when Captain Monteverde interviewed him on November 30, 2023. Captain Monteverde did not undertake this inquiry with a view to possible disciplinary action. *Craft v. Benton Fire Dist. #4*, 52,578 (La. App. 2 Cir. 4/10/19), 268 So. 3d 384, 396. Therefore, NOFD did not commence a formal investigation until January 23, 2024, when Firefighter Guidry appeared in a formal hearing before a Deputy Chief Castle and two district chiefs. Deputy Chief David Castle provided Firefighter Guidry with a written notice of pre-disciplinary hearing and a notice of interrogation on January 20, 2024, in advance of the January 23, 2024, Vehicle Accident Review Panel. Therefore, NOFD complied with the requirements of the Firefighter Bill of Rights.

B. Legal Standard for Commission's Review of Discipline

“Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A).” *Whitaker v. New Orleans Police Dep't*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep't of Police*, 2000-1682 (La. App. 4 Cir. 5/9/01)). “Legal cause exists whenever an employee’s conduct impairs the efficiency of the public service in which the employee is engaged.” *Id.* “The Appointing Authority has the burden of proving the impairment.” *Id.* (citing La. Const., art. X, § 8(A)). “The appointing authority must prove its case by a preponderance of the evidence.” *Id.* “Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the “efficient operation” of the public service.” *Id.* “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).

1. The Department of Fire failed to show cause for the suspension of Operator Guidry

The Department of Fire failed to show that the complained-of conduct occurred. Superintendent Nelson testified that Firefighter Guidry failed to use a spotter when backing up the fire truck, and the letter of discipline states that the “unit was placed in reverse with no ground guides, and you struck a parked car.” (Ex. HE-1). First, Firefighter Guidry’s captain instructed him not to use a spotter when backing up the fire truck. Second, Firefighter Guidry struck a parked car

when he was driving forward on Dauphine Street, not when he was backing the apparatus up. Therefore, factually, the Department of Fire failed to show that the accident was caused by backing up the fire truck without a spotter. In addition, based on the instruction from his captain and the fact that two vehicles were parked illegally in the intersection of St. Louis Street and Dauphine Street, this accident should have been classified as a Class A non-preventable accident.

Operator Guidry's appeal is GRANTED. The Department of Fire shall reimburse Operator Guidry all back wages and emoluments of employment from his three-hour suspension and shall remove this discipline from his record.

WRITER:

Mark C. Surprenant
[Mark C. Surprenant \(Jul 30, 2024 12:28 CDT\)](#)

MARK SURPRENANT, COMMISSIONER

CONCUR:

J H Korn
[J H Korn \(Jul 31, 2024 13:40 CDT\)](#)

JOHN KORN, VICE-CHAIRPERSON

Ruth White Davis
[Ruth Davis \(Jul 30, 2024 15:11 CDT\)](#)

RUTH DAVIS, COMMISSIONER