

BRYAN MULVEY

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7843

Bryan Mulvey ("Appellant") is employed by the Department of Police ("Appointing Authority") as a Police Officer III with permanent status. The Appellant received a four day suspension for violation of the Appointing Authority's internal regulation concerning Neglect of Duty. The Appellant received an enhanced penalty because it was his second sustained violation of the same rule within a twenty-four month (24) period. The factual basis for the violation is contained in the second paragraph of the March 16, 2011 disciplinary letter, which provides as follows:

The investigation determined that on Saturday, May 1, 2010, you failed to properly investigate a complaint of a runaway juvenile. The complainant provided you with important detailed information concerning a runaway juvenile. You admitted in your administrative statement that you received the information, but you did not believe the information had any significance to the investigation. Additionally, you elected not to do anything with the information because it was near the end of your tour of duty. As such, you violated Rule 4: Performance of Duty, paragraph 4 – Neglect of Duty, c8, failing to thoroughly search for, collect, preserve and identify evidence in an arrest or investigation situation.

The matter was assigned by the Civil Service Commission to a Hearing Examiner pursuant to Article X, Section 12 of the Constitution of the State of Louisiana, 1974. The hearing was held on July 21, 2011. The testimony presented at the hearing was transcribed by a court reporter. The three undersigned members of the Civil Service Commission have reviewed a copy of the transcript and all documentary evidence.

Sgt. Andre LeBlanc, assigned to the Public Integrity Bureau, conducted the internal investigation. He testified that he sustained the violation because the Appellant chose not to investigate a potential lead provided by the parent of a runaway juvenile,

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instead informing the parent that the information provided was not a legitimate lead. Ultimately, even though the information would not have assisted in the investigation, Sgt. Maumus testified that the Appellant neglected his duty by failing to look into the information provided.

The information provided to the Appellant was the name and telephone number of an employee of the Salvation Army, which was provided to him by the parent. The parent, Brunella Ramirez, testified that she was suspicious of the Salvation Army employee because she had seen him speaking to her children earlier that week while he was driving a Salvation Army truck. She testified that he was trying to recruit them for an after school program, which she found suspicious. It appears that Ms. Ramirez went to the Salvation Army, spoke to the employee, and obtained his name and telephone number. Ms. Ramirez stated that she gave the Appellant the information and informed him that she suspected the man from the Salvation Army could have something to do with her fifteen year old daughter's disappearance. When she asked the Appellant whether he went to the Salvation Army to speak to the employee, the Appellant informed her that it was not worth pursuing.

The Appellant acknowledged that he did not go to the Salvation Army because in his judgment the information provided by Ms. Ramirez was of no value. He explained that he concluded the employee was not a legitimate suspect. He reasoned that an individual that kidnapped a juvenile would not give his or her name and telephone number to the parent of the juvenile. The Appellant also testified that he was vigorously investigating the complaint. He had already pursued two leads provided by the parent before receiving the information about the Salvation Army. Finally, the Appellant

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established that his failure to investigate the information provided to Ms. Ramirez had no connection to his work schedule. In this one regard, the Appellant established that the disciplinary letter was incorrect. The failure to investigate was not due to it being the end of his shift. In fact, the information was provided a number of hours before the end of his shift.

LEGAL PRECEPTS

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer except for cause expressed in writing. LSA Const. Art. X, sect. 8(A); Walters v. Department of Police of New Orleans, 454 So. 2d 106 (La. 1984). The employee may appeal from such a disciplinary action to the city Civil Service Commission. The burden of proof on appeal, as to the factual basis for the disciplinary action, is on the Appointing Authority. Id.; Goins v. Department of Police, 570 So 2d 93 (La. App. 4th Cir. 1990).

The Civil Service Commission has a duty to decide, independently from the facts presented, whether the Appointing Authority has good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. Walters, v. Department of Police of New Orleans, supra. Legal cause exists whenever the employee's conduct impairs the efficiency of the public service in which the employee is engaged. Cittadino v. Department of Police, 558 So. 2d 1311 (La. App. 4th Cir. 1990). The Appointing Authority has the burden of proving by a preponderance of the evidence that the complained of activity occurred and that the conduct complained of impaired the efficiency of the public service. Id. The Appointing Authority must also prove the actions complained of bear a real and substantial relationship to the efficient

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operation of the public service. Id. While these facts must be clearly established, they need not be established beyond a reasonable doubt. Id.

A police officer has to rely on his training and experience in making judgments in the field. The record establishes that the Appellant was responsive to the complainant and followed up on every lead that he thought could potentially result in the recovery of the runaway juvenile. He did not fail to investigate because it was the end of his shift. He failed to investigate because he did not take the parent's suspicion seriously. His failure to respond was upsetting to the parent who reacted by filing a complaint, which had to be investigated. The Appellant was correct in that the parent's suspicion turned out to be misplaced. However, the officer should have followed up, even if only to let the parent know that the matter was being taken seriously and that all leads were being investigated.

The Appointing Authority has established that it disciplined the Appellant for cause. The violation was minor. However, because it was the Appellant's second

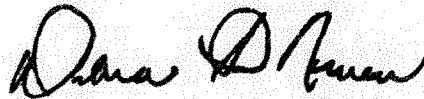
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violation, the penalty is commensurate with the violation.

Considering the foregoing, the Appellant's appeal is DENIED.

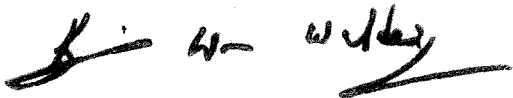
RENDERED AT NEW ORLEANS, LOUISIANA THIS 23rd DAY OF MARCH,
2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



DEBRA S. NEVEU, COMMISSIONER

CONCUR:



REV. KEVIN W. WILDES, S.J., CHAIRMAN



JOSEPH S. CLARK, COMMISSIONER