



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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Wednesday, June 9, 2021

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

Re: **Christopher Eymard VS.
Department of Police
Docket Number: 9122**

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 - 6/9/2021 - 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 blue ink that reads "Stacie Joseph".

Stacie Joseph
Management Services Division

cc: Shaun Ferguson
Renee E. Goudeau
Jay Ginsberg
Christopher Eymard

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

CHRISTOPHER EYMARD
Appellant

v.

Docket No. 9122

DEPARTMENT OF POLICE
Appointing Authority

DECISION

Appellant, Christopher Eymard, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his December 6, 2019, termination by the New Orleans Police Department. (Ex. HE-1). At the time he was terminated, Appellant was employed as a Senior Police Officer and had permanent status as a classified employee. A Hearing Examiner, appointed by the Commission, presided over a hearing held on May 28, 2020. At this hearing, both parties had an opportunity to call witnesses and present evidence. The Hearing Examiner provided the Commission with his advisory report dated November 3, 2020.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the May 28, 2020, hearing, all exhibits submitted at the hearing, the Hearing Examiner's November 3, 2020, report, and controlling Louisiana law. For the reasons set forth below, we GRANT the appeal.

I. FACTUAL BACKGROUND

A. Appellant's course of employment

NOPD hired Appellant as a police officer on January 20, 2012. (Tr. at 42-43). In 2015, Sgt. Stephanie Taillon supervised Appellant in the Third District, where Appellant worked as a bicycle officer, until Appellant's June 2016 vehicle accident. (Tr. at 101-02). Sgt. Taillon testified

she viewed Appellant as one of the “star employees” at that time. (Tr. at 102). Sgt. Taillon never had a problem with Appellant abusing leave while she supervised him at the Third District. (Tr. at 102).

On June 10, 2016, Officer Eymard was on the high rise in his parked vehicle after directing traffic, and another vehicle rear-ended him. (Tr. at 196). About a month after the accident, Appellant was diagnosed with a traumatic brain injury. (Tr. at 196-97). Appellant returned to work in November of 2016 on desk duty and returned to full duty in May 2017. (Tr. at 197, 200).

Appellant had problems with absenteeism following his June 2016 injury. (Tr. at 22). Dr. McDermott’s October 2019 Fitness for Duty Report notes NOPD’s “considerable concern about [Appellant’s] long-standing inordinate levels of absenteeism over the past two years. (Ex. City-2). Dr. McDermott testified that Appellant’s superior testified that Appellant performed well when he reported to work. (Tr. at 55).

In March of 2019, NOPD assigned Appellant to the Alternative Police Response Unit, where police officers handle calls over the phone and write a report. (Tr. at 11, 103). According to his supervisor at APR from March to December 2019, Sgt. Taillon, Appellant’s job performance was fine and he did not have attendance problems at APR. (Tr. at 107-08).

Appellant was hospitalized for four days because of an overdose in September 2019. (Tr. at 63-64).

After NOPD’s psychologist evaluated Appellant and determined he was not fit to return to duty, NOPD administered a pre-termination hearing on December 5, 2019, on the basis that Appellant was unable or unwilling to perform his job duties. (Ex. City-4). This hearing was not based on Appellant’s violation of any rule, and was non-disciplinary. (Tr. at 94). Deputy Chief Christopher Goodly testified that he decided to terminate Appellant’s employment – even though

two medical providers said Appellant could return to work 25 days after the hearing -- because Appellant “may be a potential safety risk.” (Tr. at 69, 83).

B. Appellant’s testimony

The traumatic brain injury in June of 2016 exacerbated Eymard’s depression, and he began exhibiting problems with attendance. (Tr. at 199). After an overdose and a four-day hospitalization, Eymard became committed to his recovery. (Tr. at 202-03). Eymard believes the transcranial magnetic stimulation, medications, and therapy resulted in improvement, so that he could return to work on January 1, 2020. (Tr. at 206-07). At his Rule IX pre-termination hearing on December 5, 2019, Eymard stated that he was prepared and ready to go back to work on January 1, 2020. (Tr. at 207-08; Ex. City-4).

C. Appellant’s treating psychiatrist’s testimony

Nicholas Pejic, MD, a psychiatrist who was accepted at the hearing as an expert in psychiatry and traumatic brain injury, began treating Appellant on May 28, 2019. (Tr. at 114). Dr. Pejic testified that Appellant had sleep apnea, traumatic brain injury, and a long-standing history of clinical depression. (Tr. at 115-16). From June through September of 2019, Appellant was not compliant with treatment. (Tr. at 141). Dr. Pejic testified that when he first started treating Eymard, he was not functioning well at all and that his depression was triggered by the 2016 accident. (Tr. at 117-18). Following Appellant’s overdose, Dr. Pejic treated him with new medication, transcranial magnetic stimulation, therapy with a social worker, and group therapy. (Tr. at 120, 124). Dr. Pejic testified that Appellant slowly improved over six months, and he anticipated Appellant would be ready to go back to work full-duty on January 1, 2020. (Tr. at 122).

Dr. Pejic completed a Form 50 for NOPD on October 2, 2019, opining that Appellant should be off work until November 20, 2019, on desk duty from November 20, 2019 to January 1,

2020, and return to full duty on January 1, 2020. (Tr. at 125; Ex. NOPD-6). Dr. Pejic completed another Form 50 on October 15, 2019, opining that Appellant could return to full duty on January 1, 2020. (Ex. Appellant-2). In addition, Dr. Pejic submitted a letter to the Superintendent dated December 3, 2019, stating that Appellant's depression had improved and that he could return to patrol duty on January 1, 2020. (Ex. Appellant-3). In Dr. Pejic's opinion, Appellant's return to full duty would not pose a safety concern. (Tr. at 129). Dr. Pejic also testified at the hearing in May of 2020 that Appellant had stayed in treatment and was released to return to full duty at that time. (Tr. at 132-33).

Dr. Pejic noted in his December 3, 2019, letter to Superintendent Ferguson and during his testimony that NOPD's psychologist, Dr. McDermott, evaluated Appellant during one of his lowest points. (Tr. at 131; Ex. Appellant-3).

D. NOPD's psychologist's evaluation

W.V. McDermott, Ph.D., a clinical psychologist, performed a fitness for duty evaluation of Appellant in October 2019. (Tr. at 9, 11). NOPD requested the evaluation because Appellant had been hospitalized and had exhibited absenteeism. (Tr. at 12). Dr. McDermott met with Appellant three times. (Tr. at 18). The only medical record Dr. McDermott reviewed was the discharge summary from Appellant's hospitalization, which contained a diagnosis of major depressive disorder and generalized anxiety disorder. (Tr. at 23). Dr. McDermott talked to Appellant's therapist, Carly LeBlanc, LCSW, to corroborate her treatment of Appellant, but did not talk to Dr. Pejic. (Tr. at 24, 36). In Dr. McDermott's opinion, Appellant was no fit for duty and his behavior was unlikely to change. (Tr. at 25-26). Dr. McDermott recommended the termination of Appellant. (Tr. at 25-26). During Dr. McDermott's interview of Appellant, immediately following his hospitalization, Appellant stated he was anxious on the street when policing and did

not want to be a police officer anymore. (Tr. at 27-28). Dr. McDermott also opined that Appellant did not meet the criteria for major depressive disorder or general anxiety disorder. (Tr. at 29). In addition to his report, Dr. McDermott completed a Form 50 stating Appellant would never be able to return to full duty. (*See* Exs. City-2 and City-3). Chief Goodly testified it was a deviation from normal practice to have a non-treating physician complete a Form 50. (Tr. at 86).

E. Other medical information

Appellant's treating therapist, Carly LeBlanc, LCSW, also opined Appellant could return to work on January 1, 2020. (Tr. at 38; Ex. Appellant-1). The Director of the NOPD Officer Assistance Program, Cecile Tebow, LCSW, treated Appellant from early to mid-2019 until NOPD terminated his employment. (Tr. at 181). Ms. Tebow also testified that Appellant's motivation and mood were improving over time, and that she had no concern about Appellant's personal safety or any danger he would pose to the public. (Tr. at 174, 180, 180). Ms. Tebow appeared at the Rule IX hearing in support of Appellant. (Tr. at 185).

II. ANALYSIS

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). The Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance of evidence that it had

good or lawful cause for terminating the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d 106 (La. 1984).

Rule IX, § 1.1 of the Commission's rules provides that "[w]hen an employee in the classified service is unable . . . to perform the duties of his/her position in a satisfactory manner . . . the appointing authority shall take action warranted by the circumstances to maintain the standards of effective service." The action may include demotion to a lower classification. Rule IX, § 1.1(d).

When reviewing termination decisions under Rule IX based on physical inability to return to work, the Louisiana Court of Appeal for the Fourth Circuit has held in more than one decision that the Appointing Authority failed to meet its burden of proving that an employee was permanently unable to return to work. *See, e.g., Laviolette v. Dep't of Police*, 2016-0095 (La. App. 4 Cir. 8/24/16), 200 So. 3d 962, 966 ("Captain Laviolette never stated or otherwise indicated that he was unwilling to return to work . . . Most importantly, there was never any medical determination that Captain Laviolette's injuries would prevent him from returning to work in the future).; *Wilson v. Dep't of Prop. Mgmt.*, 2016-1124 (La. App. 4 Cir. 5/10/17), 220 So. 3d 144, 148 ("[n]either Ms. Wilson nor her physician suggests that she is unable to return to work"). In an earlier decision concerning the termination of a police officer under Rule IX for medical reasons, the Fourth Circuit concluded that "in the case *sub judice* the Commission heard all of the testimony, including the appellant's testimony in which he admitted that he was not able to return to his duties as a police officer." *Muhammad v. New Orleans Police Dep't*, 2000-1034 (La. App. 4 Cir. 7/11/01), 791 So. 2d 788, 792. Likewise, a police officer's failure to provide information to

the New Orleans Police Department about when he could return to work was fatal to his appeal of his Rule IX termination: “Officer Adams was told he could supplement the Rule IX hearing record with medical evidence that he could return to work in September 2009, as he claimed. He did not do so.” *Adams v. Dep't of Police*, 2012-1268 (La. App. 4 Cir. 2/20/13), 109 So. 3d 1003, 1006.

Unlike the situation in *Adams* or *Muhammad*, Appellant informed NOPD he could return to work on January 1, 2020, the date his treating psychiatrist and therapist informed NOPD he was able to return to work. Further, NOPD’s internal mental health professional appeared at the Rule IX hearing in support of Appellant. However, NOPD has offered evidence from its psychologist who evaluated Appellant and determined he was unable to return to work, unlike the situation in *Wilson* and *Laviolette*.

NOPD bears the burden of proving the termination was for cause. There is a conflict in the medical testimony as to whether Appellant can or cannot return to his full duties as a police officer at some point. NOPD has failed to carry its legally imposed burden when the entirety of the testimony is considered and analyzed, especially in light of *Childress v. Dep't of Polie*, 487 So. 2d 590 (La. App. 4 Cir. 1986) (reversing Civil Service Commission’s denial of appeal of termination of police officer when treating psychiatrist recommended cooperation of police department in desensitization program to assist in officer’s return to duty). As Dr. Pejic testified, the Appellant should have been afforded an opportunity to attempt to return to his normal duties as a police officer with continued treatment. (Tr. at 175). Appellant was denied that opportunity when he was improperly terminated.

For the foregoing reasons, the Commission GRANTS Eymard’s appeal. NOPD shall reinstate Eymard as of December 6, 2019, with all back pay and other emoluments of employment.

This the 9th day of June, 2021.

WRITER:

CJ Moore
CJ Moore (Jun 9, 2021 14:43 CDT)

CLIFTON J. MOORE, JR., VICE-CHAIRPERSON

CONCUR:

Brit
Brittney Richardson (Jun 9, 2021 13:43 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

Mark C. Surprenant
Mark C. Surprenant (Jun 9, 2021 16:37 EDT)

MARK SURPRENANT, COMMISSIONER