



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION  
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Monday, August 26, 2024

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

Re: **Brian Mendelson VS.**  
**Department of Fire**  
**Docket Number: 9597**

Dear Mr. Robein:

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 - 8/26/2024 - 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: Roman Nelson  
Max V. Camp  
Jay Ginsberg  
Brian Mendelson  
file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**BRIAN MENDELSON,  
Appellant**

**Docket No. 9597**

v.

**DEPARTMENT OF FIRE,  
Appointing Authority**

**DECISION**

Captain Brian Mendelson 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 April 18, 2024, three-hour suspension. (Ex. HE-1). At all relevant times, Appellant had permanent status as a Fire Captain. (Tr. at 16). A Hearing Examiner, appointed by the Commission, presided over a hearing on June 7, 2024. At this hearing, both parties had an opportunity to call witnesses and present evidence.

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 Hearing Examiner's report August 14, 2024, and controlling Louisiana law.

For the reasons set forth below, Captain Mendelson's appeal is DENIED.

**I. FACTUAL BACKGROUND**

Brian Mendelson has served as a Fire Captain in the New Orleans Fire Department (NOFD) since 2018. (Tr. at 16). According to NOFD Rules, Regulations, and Standards of Professionalism, "[t]he Captain is the commanding officer of their respective company at all emergency incidents and will supervise its movements and operations unless ordered by a superior officer." (Ex. NOFD-7 at § 5.3.2, ¶ 7). Captain Mendelson commands a company of firefighters assigned to NOFD

Station 29, located at 317 Decatur Street (in the same building as NOFD Headquarters). (Tr. at 8, 17; Ex. NOFD-7 at § 5.3.2(3)). On April 18, 2024, the Department of Fire informed Captain Mendelson he would be suspended for three hours on May 1, 2024. (Ex. HE-1). The Department of Fire disciplined Captain Mendelson for violating section 5.3.2(4) of the NOFD Rules, Regulations, and Standards of Professionalism, which provides that “Captains are not to leave their first due territory, without notifying their District Chief, unless dispatched by Communications.” (Ex. NOFD-7 at 21; Ex. HE-1). NOFD and Captain Mendelson disagree about whether Communications dispatched Engine 29 to the fire on Kerlerec Street on February 28, 2024.

District Chief Glen Bagert, Captain Mendelson’s immediate supervisor, testified that Captain Mendelson responded to a fire on February 28, 2024, on the 1100 block of Kerlerec Street. (Tr. at 8). Captain Mendelson does not dispute that he failed to request permission from Chief Bagert before responding to the Kerlerec fire. (Tr. at 10, 68, 71-74). Instead, Captain Mendelson informed Communications he was taking the call, then Communications dispatched him to the fire. (Tr. at 19-20). In his special report in advance of the disciplinary hearing related to this incident, Captain Mendelson stated that “I made a decision to self-dispatch and informed communications that Engine 29 would be taking in the incident . . .” (Ex. NOFD-1). Captain Mendelson explained that he believed he could arrive faster than any other fire engine. (Tr. at 21). Chief Bagert, who was present at the scene of the fire, testified that Captain Mendelson did nothing wrong. (Tr. at 11). Captain Mendelson testified that “I feel like I did the right thing” by responding to the February 28 fire on Kerlerec Street. (Tr. at 85).

The Department of Fire assigns each fire station a “first due territory,” a specific geographic area for which the company at that station is “first up” to be dispatched by Communications. (Tr. at 8). Chief Bagert explained that “when an incident comes out, the location

on it, the nearest companies are called the first-up companies, and would be dispatched to that area.” (Tr. at 8). Superintendent of Fire Roman Nelson testified that Communications relies on computerized technology to dispatch the appropriate NOFD number and type of personnel and equipment to a fire: “The CAD system has pre-programmed guidance for companies that are dispatched on any particular call and intersection of the city based on the territory it's in, and what companies are first-up for that territory.” (Tr. at 60). District Chief Jon Bialas explained that “[s]o, for, like, one alarm fire, you have, usually, three pumps, a rescue unit, a chief vehicle and a safety.” (Tr. at 38).

Captain Mendelson took the position during the hearing that he complied with section NOFD Rules and Regulations, which he believed should be “more fluid.” (Tr. at 89). First, Captain Mendelson testified that Communications dispatched him. (Tr. at 70). Second, Captain Mendelson testified that the usual practice of Captains is to request that Communications dispatch the company to a fire, instead of asking permission from the District Chief. (Tr. at 84).

Superintendent Nelson testified that Captain Mendelson failed to comply with section 5.3.2(4). Captain Mendelson admittedly self-dispatched to the fire on Kerlerrec Street without requesting permission from his District Chief. (Tr. at 68). Superintendent Nelson disagreed that Communications dispatched Captain Mendelson to the fire. After a District Chief approves a Captain’s request to respond to a fire, the District Chief informs Communications. (Tr. at 62-63). Because Communications lacks the authority to grant permission to respond to a call, technically, Communications has dispatched a company to the fire only after the District Chief approves. (Tr. at 62-63).

The Department of Fire gives primary responsibility to the company assigned to the closest fire station to minimize response time “ensuring that we have fire stations strategically located

around the city to respond to any particular location in a specified amount of time based upon the NFPA standards and also PIL standards.” (Tr. at 60-61). Superintendent Nelson testified that “self dispatching puts lives at risk” by creating a “gap in the coverage.” (Tr. at 61). The territory to which the company is assigned then becomes “vulnerable.” (Tr. at 61). District Chief Bialas testified that self-dispatching “leav[es] another part of the city without fire service to go to another area where there’s already been a one alarm dispatched to that area.” (Tr. at 38).

District Chief Bialas testified that Captain Mendelson was warned several times not to “freelance,” or ignore the dispatch model. (Tr. at 37). Deputy Chief David Castle testified that he verbally counseled Captain Mendelson for responding to a fire on February 10, 2024, when Communications had not dispatched Engine 29. (Tr. at 27). District Chief Bialas testified that he instructed Captain Mendelson on February 1, 2024, not to “jump rolls.” (Tr. at 40). Captain Mendelson acknowledged this conversation, testifying that Chief Bialas told him that “[Deputy] Chief Bo[u]rdais doesn’t like that you’re jumping fire.” (Tr. at 81).

## II. ANALYSIS

### A. Legal Standard for Commission’s Review of Discipline

#### 1. The Appointing Authority must show cause for 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).

**2. The Appointing Authority must show the discipline was commensurate with the infraction**

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 suspending the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Durning v. New Orleans Police Dep’t*, 2019-0987 (La. App. 4 Cir. 3/25/20), 294 So. 3d 536, 538, *writ denied*, 2020-00697 (La. 9/29/20), 301 So. 3d 1195; *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). The Appointing Authority has the burden of showing that the discipline was reasonable and not arbitrary or capricious. *Neely v. Dep’t of Fire*, 2021-0454 (La. App. 4 Cir. 12/1/21), 332 So. 3d 194, 207 (“[NOFD] did not demonstrate . . . that termination was reasonable discipline”); *Durning*, 294 So. 3d at 540 (“the termination . . . deemed to be arbitrary and capricious”).

**a. Factors considered by Commission**

“In determining whether discipline is commensurate with the infraction, the Civil Service Commission considers the nature of the offense as well as the employee’s work record and previous disciplinary record.” *Matusoff v. Dep’t of Fire*, 2019-0932 (La. App. 4 Cir. 5/20/20), 2020 Westlaw 2562940, *writ denied*, 2020-00955 (La. 10/20/20), 303 So. 3d 313. The Commission considers the nature of the offense, the employee’s work ethic, prior disciplinary records, job evaluations, and any grievances filed by the employee.” *Honore v. Dep’t of Pub. Works*, 14-0986, pp. 8-9 (La. App. 4 Cir. 10/29/15), 178 So. 3d 1120, 1131, *writ denied*, 2015-2161 (La. 1/25/16), 185 So. 3d 749.

**B. The Department of Fire has Shown Cause for the Suspension of Captain Mendelson**

The Department of Fire has carried its burden of showing that Captain Mendelson violated section 5.3.2(4) of the NOFD Rules and Regulations by failing to seek the permission of District Chief Bagert before responding to the fire on Kerlerec Street on February 28. Captain Mendelson took the position that Communications dispatched him, even though this dispatch occurred after he informed Communications Engine 29 was responding to the fire. (Tr. at 70). Communications lacks the authority to give a company permission to respond to a fire. (Tr. at 63). Communications did not initially dispatch Engine 29, as Captain Mendelson recognized when he stated in his special report that he “self-dispatched.” (Ex. NOFD-1). Therefore, because Communications did not dispatch Engine 29 and Captain Mendelson failed to obtain the permission of District Chief Bagert, Captain Mendelson violated NOFD Rules and Regulations section 5.3.2(4).

This conduct impaired the efficient operation of the Department of Fire. Even though Captain Mendelson recognized the importance of following the rules and regulations of the Department of Fire, a paramilitary organization, he testified that he believed he “did the right

thing” by responding to the fire. (Tr. at 89). Despite verbal counseling on at least two prior occasions from superior officers about responding to fires without being dispatched, Captain Mendelson failed to comply with section 5.3.2(4) of the Department of Fire’s Rules and Regulations by responding to the fire on Kerlerec Street. In addition to the importance of adherence to NOFD rules and compliance with orders from superior officers, Superintendent Nelson explained that Captain Mendelson’s “self-dispatch” made other areas of the City vulnerable to a longer response time. Therefore, even though Captain Bagert’s actions at the scene of the fire benefitted the citizens, as Chief Bagert and Captain Mendelson suggested, Captain Mendelson failed to take into consideration the coverage standards developed by the Department of Fire.

**1. The Department of Fire’s imposition of a three-hour suspension is commensurate with the violation**

The Department of Fire imposed the presumptive penalty for failing to obtain permission of the District Chief before responding to a fire to which the company was not dispatched. A three-hour suspension is commensurate with the violation, especially in light of verbal warnings to Captain Mendelson at least twice about the same conduct.

For these reasons, Captain Mendelson’s appeal is DENIED.

WRITER:



Ruth Davis (Aug 22, 2024 09:58 CDT)

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RUTH DAVIS, COMMISSIONER

CONCUR:



Brittney Richardson (Aug 22, 2024 08:54 CDT)

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BRITTNEY RICHARDSON, CHAIRPERSON



J H Korn (Aug 19, 2024 17:32 CDT)

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JOHN KORN, VICE-CHAIRPERSON