



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

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MAYOR

Wednesday, August 1, 2018

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Mr. Roy Denson

Re: **Roy Denson VS.  
New Orleans Aviation Board  
Docket Number: 8597**

Dear Mr. Denson:

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 - 8/1/2018 - 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, Sec.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: Kevin Dolliole  
Alexa L. R. Strong  
Jay Ginsberg  
file

**CIVIL SERVICE COMMISSION**

**CITY OF NEW ORLEANS**

ROY DENSON  vs.  NEW ORLEANS AVIATION BOARD	DOCKET No.: 8597
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**I. INTRODUCTION**

Appellant, Roy Denson, 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 Aviation Board for the City of New Orleans, (hereinafter “Appointing Authority”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the Appointing Authority disciplined Appellant for sufficient cause. At all times relevant to the instant appeal, Appellant served as an Airport Technician I within the Appointing Authority and had permanent status as a classified employee.

On May 31, 2017, a hearing examiner appointed by the Commission presided over an appeal hearing. 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 BACKGROUND

### A. Alleged Misconduct

The Appointing Authority issued Appellant a memorandum in response to alleged threats Appellant directed towards his supervisor. (NOAB Exh. 0). Specifically, the Appointing Authority alleged that Appellant told a supervisor that he did not think that the supervisor would enjoy retirement since the supervisor would not be able to move. Appellant further stated that the supervisors brain would be functioning but “the rest of him would not.” *Id.* The memorandum informed Appellant that further threats would not be tolerated and that the memorandum would serve as a warning. Appellant received a copy of the memorandum as did the Civil Service Department. Based upon the content of the memorandum and the fact that the Appointing Authority send it to both “Personnel” and the Civil Service Department, the undersigned find that it falls under the Commission’s definition of a letter of reprimand. (C.S. Rule I, ¶ 43).

In response to the reprimand, Appellant submitted a written statement. (NOAB Exh. 1). In this statement, Appellant acknowledged that he made the comments attributed to him in the reprimand but denied that the comments were threats. Instead, Appellant characterized his statements as “prophesy,” and alleged that the Holy Spirit had chosen Appellant as a medium through which to issue a warning to Appellant’s supervisor. *Id.*

### B. November 2, 2016

Appellant served as an Airport Technician I during all times relevant to the instant appeal. One of his supervisors was Carlos Metoyer. On November 2, 2016, Appellant met with Renee Brunt, Airport Services Manager, and Mr. Metoyer to discuss Appellant’s request for a raise and promotion. (Tr. at 11:5-9). Appellant was advocating for a promotion to Airport Technician II and claimed that he went into the meeting knowing that he was not going to get the requested

promotion. *Id.* at 13:5-11. During the meeting, Ms. Brunt and Mr. Metoyer informed Appellant that he would not receive his requested promotion. *Id.* at 25:17-24. Among the reasons conveyed to Appellant for the rejection of his promotion request were the numerous “grievances” regarding his conduct and his general poor approach to supervisors. *Id.* at 26:10-20. Appellant was frustrated at what he perceived to be Mr. Metoyer’s resistance to moving Appellant to an Airport Technician II position and ended the meeting by “reiterating” a vision Appellant claimed to have had about Mr. Metoyer. *Id.* at 14:23-15:12. The alleged vision included Mr. Metoyer not enjoying retirement because of an inability to move his body. Appellant went on to state that Mr. Metoyer’s “mind” would function but his body would not. *Id.* at 21:2-13. Ms. Brunt testified that the manner in which Appellant delivered his vision was loud and the content of his words were threatening. *Id.* at 21:21-22:13.

### 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

Appellant claimed that the purpose of reiterating his “vision” was to enlighten Mr. Metoyer. The Commission does not find this explanation credible. Appellant was clearly frustrated after being told by Ms. Brunt and Mr. Metoyer that he would not be receiving a promotion. The fact that he chose that moment to repeat an alleged “vision” was clearly designed as a response to what Appellant perceived as Mr. Metoyer’s interference with Appellant’s promotion. Put simply, Appellant was unhappy with Mr. Metoyer and decided to suggest to Mr. Metoyer that retirement would be unpleasant for Mr. Metoyer because he would be paralyzed. The context of Appellant’s statement is important.

As a result of the foregoing, the Commission finds that the Appointing Authority has established that it was more likely than not that Appellant’s articulation of his “vision” was a threat against his supervisor.

##### B. Impact on the Appointing Authority’s Efficient Operations

There was limited testimony regarding the impact that Appellant’s threatening language had on the efficient operations of the Appointing Authority. At the least, when employees make inappropriate and threatening comments to fellow employees, it is more likely than not that morale will suffer.

The Commission finds that when employees make inappropriate or unprofessional comments to their co-workers, there is a negative impact on the appointing authority's efficient operations.

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

The Commission must independently decide, based upon the facts presented in each appeal, whether the punishment imposed by an appointing authority was commensurate with the offense. *Cornelius v. Dep't of Police*, 2007-1257 (La.App. 4 Cir. 3/19/08, 6), 981 So.2d 720, 724. In the matter now before the Commission, the question is whether or not a letter of reprimand was "commensurate" with Appellant's unprofessional comments towards Mr. Metoyer, otherwise, the discipline would be "arbitrary and capricious." See *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).

A letter of reprimand is the mildest form of discipline available to appointing authorities. Appellant contested the issuance of the reprimand on the grounds that he was merely reiterating a "vision." Yet, as we noted above, context matters. Appellant stated his dire prediction of Mr. Metoyer's future health after receiving unwelcomed news regarding a promotion from Mr. Metoyer and Ms. Brunt. At the very least, Appellant's timing was terrible. At the worst, and most likely, Appellant sought to threaten and intimidate Mr. Metoyer due to what Appellant perceived as Mr. Metoyer's interference with Appellant's promotion.

All appointing authorities have a duty to actively protect employees against harassment and threatening behavior. Appellant's conduct on November 2, 2016 certainly constitutes threatening language and the Appointing Authority must deter such language through all appropriate means, including discipline.

Based upon the foregoing, the Commission finds that a letter of reprimand was extremely lenient and Appellant's conduct likely warranted a more substantial form of discipline.

## **V. CONCLUSION**

As a result of the above findings of fact and law, the Commission hereby DENIES the appeal. Further, the Commission observes that Appellant is hereby placed on notice that, should the Appointing Authority substantiate allegations of further threatening behavior by Appellant, Appellant faces serious discipline up to and including termination.

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SIGNATURES APPEAR ON THE FOLLOWING PAGE.

R. Denson  
No. 8597

Judgment rendered this 1<sup>st</sup> day of August, 2018.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER

  
STEPHEN CAPUTO, COMMISSIONER

7-13-18  
DATE

CONCUR

  
RONALD P. McCLAIN, VICE-CHAIRMAN

7-27-18  
DATE

  
CLIFTON J. MOORE, Jr., COMMISSIONER

7-25-18  
DATE