



MITCHELL J. LANDRIEU  
MAYOR

# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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Wednesday, February 22, 2017

Mr. Donovan A. Livaccari  
101 W. Robert E. Lee, Suite 402  
New Orleans, LA 70124

Re: **Aristotle Stephens VS.  
Department of Police  
Docket Number: 8479**

Dear Mr Livaccari:

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 - 2/22/2017 - 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 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: Michael S. Harrison  
Elizabeth S. Robins  
Jim Mullaly  
Aristotle Stephens

file

**CIVIL SERVICE COMMISSION**  
**CITY OF NEW ORLEANS**

ARISTOTLE STEPHENS  vs.  DEPARTMENT OF POLICE	DOCKET No.: 8479
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**I. INTRODUCTION**

Appellant, Aristotle Stephens, 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 Police Department for City of New Orleans, (hereinafter “NOPD”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the Appellant was disciplined for sufficient cause. At all times relevant to the instant appeal, Appellant served as a Police Officer for NOPD and had permanent status as a classified employee.

**II. FACTUAL BACKGROUND**

**A. Alleged Misconduct**

NOPD alleges that, on October 5, 2014, Appellant investigated a traffic accident at the intersection of Downman Road and Chef Menteur Highway in New Orleans East but failed to prepare a report documenting the accident. (H.E. Exh. 1).

NOPD further alleges that Appellant’s actions violated NOPD Rule 4, paragraph 2: Instructions for an Authoritative Source, to wit; Policy 344.1.1. (H.E. Exh. 1). The relevant portion of NOPD Rule 4, Paragraph 2 reads as follows:

An employee shall professionally, promptly, and fully abide by or execute instructions issued from any authoritative source, including any order relayed from

a superior by an employee of the same or lesser rank. If the instructions are reasonably believed to be in conflict with the Rules, Policies and Procedures of the Department or other issued instructions, this fact shall respectfully be made known to the issuing authority. If the issuing authority elects to insist upon execution of the instructions which are reasonably believed to be in conflict with Department Rules, Policies, and Procedures, the employee receiving the instructions shall have the right to request and is entitled to receive, IMMEDIATELY, said instructions in writing, except in cases of emergency as determined by the supervisor. The issuing authority shall be held responsible should any conflict materialize; however, no instructions shall be issued or executed which are in violation of law.

*Id.* NOPD takes the position that its rules, policies and procedures constitute “orders from an authoritative source.” Such policies include NOPD Policy 344.1.1, Report Preparation:

Employees should ensure that their reports are sufficiently detailed for their purpose and reasonably free of errors prior to submission. It is the responsibility of the assigned employee to complete and submit all reports taken during the shift before going off-duty, unless permission to delay submission of the report has been approved by a supervisor. Generally, reports requiring prompt follow-up action on active leads or arrest reports where the suspect remains in custody should not be delayed.

All reports shall accurately reflect the identity of the persons involved, witnesses, all pertinent information seen, heard or assimilated by any other sense and any actions taken. Employees shall not suppress, conceal or distort the facts of any reported incident, nor shall any employee make a false report orally or in writing. Generally, the reporting employee's opinions should not be included in reports unless specifically identified as such.

(H.E. Exh. 1)

#### **B. October 5, 2014**

Sergeant Sylvia Martin testified that she served within NOPD Public Integrity Bureau (hereinafter “PIB”) and fielded a call from a complainant who claimed he had been trying to obtain a police report regarding an accident that occurred on October 5, 2014. (Tr. at 6:4-21). According to the complainant, he had been trying to obtain a report for some time and contacted PIB to make a complaint. *Id.* at 7:9-16. After speaking with the complainant, Sgt. Martin began a preliminary investigation into the matter by attempting to locate the missing report in NOPD’s electronic

system. *Id.* at 12:18-13:9. Sgt. Martin's search confirmed that there was no such report lodged with NOPD's electronic records system.

According to Sgt. Martin, it is important that Officers dispatched to accident scenes promptly prepare and file accident reports so that the citizens involved in the accident may proceed with various insurance and/or litigation steps. *Id.* at 12:4-13.

On cross-examination, Sgt. Martin explained how an officer submits a report and how NOPD collects and records such reports. As a preliminary matter, an Officer lists each incident that prompted, or should have prompted a report on his or her "trip sheet." From the trip sheet, the Officer prepares a report log on which he/she would indicate whether or not he/she submitted the report. *Id.* at 15:4-11. When an Officer does submit a report, an administrative employee or a "desk officer" forwards the report to NOPD's records department. *Id.* at 15:15-16:4. Importantly, it is not the responsibility of the reporting officer to log the report in NOPD's electronic database but rather the Officer's supervising Sergeant. *Id.* at 16:1-17.

Appellant recalled responding to the October 5th accident at Downman and Chef Menteur and acknowledged that one of his primary duties in such a scenario, after checking on the health and safety of those involved, was to prepare a report. *Id.* at 18:4-16. Appellant testified that he prepared a report using NOPD's "traffic crash report" form. *Id.* at 18:17-18. It was only after receiving a call from a supervisor two to three months later that Appellant learned that the report he prepared had been lost. *Id.* at 18:21-19:3. During this phone call, Appellant alleges that the supervisor asked him if he had a copy of the report. *Id.* at 19:2-3. According to Appellant, he delivered a copy of the report to "the office" the following day. *Id.* at 19:7-10.

While Sgt. Martin conducted the preliminary investigation into the alleged missing report, Sergeant Raymond Young was responsible for the formal investigation. *Id.* at 32:21-25. Sgt.

Young acknowledged that his investigation began several months after the accident itself, but he could not locate the report Appellant claims to have produced on two separate occasions. *Id.* at 35:5-18. As part of his investigation, Sgt. Young reviewed the Seventh District's "night watch report log" that indicated Appellant *did* write a report regarding the accident in question and that report was *either approved or returned to Appellant for corrections*. (Tr. at 36:19-37:10; NOPD Exh. 1 at p. 4 of 5). Sgt. Young also spoke with other Sergeants assigned to the Seventh District who would have had some supervisory role regarding the report in question. But, none of Appellants supervisors recall receiving a report from Appellant regarding the accident in question. (Tr. at 46:11-47:10). On cross-examination, Sgt. Young confirmed that Appellant did not have access to the on-line LACRASH system through which he could have completed an electronic report of the accident and had to submit a paper report at the end of his shift.

Appellant called NOPD Commander Laurence Dupree during his case-in-chief. Cmdr. Dupree conducted the internal disciplinary hearing at which Appellant had the opportunity to directly address the allegations against him. *Id.* at 57:1-5. Upon reviewing the evidence collected by Sgt. Martin and Sgt. Young, and hearing Appellant's version of events, Cmdr. Dupree deemed Appellant "exonerated." In Cmdr. Dupree's opinion, the term "exonerated," when used in the context of a disciplinary hearing means "that the allegations were totally fictitious and we can definitely prove that they didn't happen." *Id.* at 57:10-14. Cmdr. Dupree went on to testify that he, as Seventh District Commander, had put in place a policy that required supervisors to follow up with Officers regarding all outstanding reports. *Id.* at 58:15-24. If Appellant had in fact failed to file his report, Cmdr. Dupree stated that his supervisors should have caught the failure within a day. *Id.* at 58:15-20. Furthermore, Cmdr. Dupree testified that Appellant's district had "a history

of poor recordkeeping, [and] had a history of losing paperwork;” based on this history, Cmdr. Dupree found Appellant’s defense credible. *Id.* at 60:8-18.

### 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

Based upon the testimony and evidence in the record, the Commission makes the following findings of fact:

1. The Seventh District had a history of poor record keeping at the time of Appellant’s alleged misconduct. (Tr. at 60:8-12).

2. The Seventh District had a history of losing documents and records at the time of Appellant's alleged misconduct. (Tr. at 60:12-13).
3. In response to the Seventh District's recordkeeping issues, Cmdr. Dupree instituted a policy that required supervisors to verify whether or not Officers has submitted all required paperwork at the end of each tour of duty. If the Officer had not, then the policy required the supervisor to follow up with the Office the very next day. (Tr. at 58:10-23).
4. Appellant's supervisors did not notify him of the missing report until several months after the accident in question. (Tr. at 58:24-59:5).
5. Appellant claimed that he turned the report in at the end of his shift on October 5, 2014 but that Seventh District personnel lost the report. (Tr. at 19:22-21:15).
6. NOPD records indicate that Appellant did prepare a report regarding the incident in question and Appellant's supervisors either approved the report or returned it to Appellant for corrections. (Tr. at 36:19-37:10; NOPD Exh. 1 at p. 4 of 5).
7. NOPD investigators could not locate any report authored by Appellant regarding the incident in question. (Tr. at 35:5-18).

Based upon the above facts, the Commission finds that NOPD failed to meet its burden with respect to the first prong of the Commission's analysis. NOPD had to establish that it was more likely than not that Appellant failed to properly file his report regarding the accident in question on October 5, 2014. While NOPD did establish that the report was not logged in NOPD's recordkeeping system, a Commander in NOPD responsible for supervising personnel in the Seventh District testified that the Seventh District *had a history of losing documents*. In fact, the problem was so bad that the Commander had to implement a specific policy aimed at following up on missing reports. If Appellant had not filed the report at issue at the end of his shift, then Seventh District policy would have mandated that Appellant's supervisors immediately follow up with Appellant. Yet, the follow up did not occur for more than four months.

The Commission notes that then-Assistant Superintendent Bardy, who overturned Cmdr. Dupree's exoneration of Appellant, did not consult with Cmdr. Dupree about his decision. In fact,

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the record does not contain Mr. Bardy's reasoning for the reversal. We find this troubling given Cmdr. Dupree's excellent grasp of the both the facts of the case as well as the context in which this alleged misconduct occurred. While it is possible that Appellant failed to turn in the report in a timely fashion, we find it more likely, based upon the facts before us, that shoddy recordkeeping resulted in the missing report.

#### **V. CONCLUSION**

As a result of the above findings of fact and law, the Commission hereby GRANTS the Appellant's appeal. NOPD is hereby ordered to remit to Appellant all back pay and emoluments related to the one-day suspension referenced in Hearing Examiner Exhibit 1. Furthermore, NOPD shall expunge any record of the one-day suspension from Appellant's records.

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Judgment rendered this 21<sup>st</sup> day of February, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

  
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MICHELLE D. CRAIG, CHAIRPERSON

2-21-2017  
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DATE

  
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RONALD P. McCLAIN, VICE-CHAIRMAN

2-21-2017  
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DATE

  
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TANIA TETLOW, COMMISSIONER

2-22-2017  
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