



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
SUITE 900 - 1340 POYDRAS ST.
NEW ORLEANS, LA 70112
(504)658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION
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DIRECTOR OF PERSONNEL

Thursday, March 3, 2022

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

Re: **Mark Mulla VS.
Department of Police
Docket Number: 9303**

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 - 3/3/2022 - 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,


Stacie Joseph
Management Services Division

cc: Shaun Ferguson
Jonathan Adams
Jay Ginsberg
Mark Mulla

title

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**MARK MULLA,
Appellant**

Docket No. 9303

v.

**DEPARTMENT OF POLICE,
Appointing Authority**

DECISION

Appellant, Lieutenant Mark Mulla, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from an August 18, 2021, one-day suspension. (Ex. HE-1). At all relevant times, Appellant had permanent status as a Police Lieutenant. A Hearing Examiner, appointed by the Commission, presided over a hearing on October 7, 2021. 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 dated February 1, 2022, and controlling Louisiana law.

For the reasons set forth below, Lt. Mulla's appeal is DENIED.

I. FACTUAL BACKGROUND

On February 2, 2020, Officers Pozzo and Malveaux responded to a trespassing call initiated by the security guard from the main library about a belligerent patron. (Tr. at 31, 145; Ex. HE-1). Officer Pozzo deployed his taser twice when arresting the subject. (Tr. at 18-19, 30). On the second occasion, the subject was in handcuffs. (Tr. at 91, 147).

Lt. Mulla, who was assigned to the Eighth District, supervised Sgt. Leonard Davis, Officer Pozzo's immediate supervisor. (Tr. at 7-8). After Officer Pozzo radioed for a supervisor, reporting that he had deployed his taser, Lt. Mulla reported to the scene. (Tr. at 12, 16). Lt. Mulla believed that Officer Pozzo had only deployed his taser one time, which is a level two use of force. (Tr. at 12). The command desk is notified of a use of force. (Tr. at 123). In accordance with this policy, Lt. Mulla reported a level two use of force to the command desk. (Tr. at 64). However, Lt. Mulla failed to ask Officer Pozzo how many times Officer Pozzo deployed his taser. (Tr. at 13). Lt. Mulla should have asked Officer Pozzo follow-up questions about how many times Officer Pozzo deployed his taser and under what circumstances the taser was deployed. (Tr. at 131).

According to NOPD's Use of Force Policy, Chapter 1.3.6, paragraph 30 (addressing level four uses of force), the burden is on the supervisor to determine the level of force used. (Ex. NOPD-2). The supervisor obtains this information through a public safety statement. (Ex. NOPD-2; Tr. at 37).

If a subject is handcuffed when the officer deploys the taser, then the use of force is a level four. (Tr. at 11; Ex. NOPD-2). When an officer engages in a level four use of force, the Force Investigation Team reports to the scene. (Tr. at 9, 22). Lt. Mulla testified that he would have called the PIB FIT team if he had known Officer Pozzo tased the subject while in handcuffs and on two occasions. (Tr. at 15).

When Lt. Mulla arrived on the "active" scene, the subject was still combative. (Tr. at 32, 150). The subject, although handcuffed, kept trying to get up. (Tr. at 146). The subject had also pulled out one of the taser prongs and was attempting to stick the prong in other people. (Tr. at 146). Lt. Mulla called Emergency Medical Services to treat the subject and waited on EMS to arrive. (Tr. at 150). At one point, the subject kicked Lt. Mulla. (Tr. at 150). Eventually, Lt. Mulla

took Officer Pozzo from the main library to the Tulane Hospital emergency room for treatment for an abrasion to Office Pozzo's hand. (Tr. at 17).

Sgt. Davis realized that Officer Pozzo tased the subject twice when Sgt. Davis was reviewing Officer Malveaux's body-worn-camera footage. (Tr. at 148). Sgt. Davis called Lt. Mulla while Lt. Mulla was at Tulane Hospital with Officer Pozzo. (Tr. at 18-19). Lt. Mulla then called the command desk to report a level four use of force. (Tr. at 65). Lt. Mulla estimated that less than an hour elapsed from his first report of a level two use of force to his second report of a level four use of force. (Tr. at 20-21). Therefore, because Lt. Mulla did not take a public safety statement, there was a delay in the classification of the level of force. (Tr. at 47).

Sgt. Clinton Givens, the PIB Force Investigator, testified that a few hours elapsed from the incident until notification to the force investigation team. (Tr. at 25). This delay meant that the FIT team could not interview civilian witnesses or look for evidence at the scene. (Tr. at 39).

Captain Sabrina Richardson of the Public Integrity Bureau testified that a three-captain panel recommended the presumptive penalty for a failure to obtain a public safety statement, a one-day suspension. (Tr. at 106).

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 disciplining 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).

The Department of Police has carried its burden of showing that the complained-of conduct occurred. Lt. Mulla failed to obtain a public safety statement from Officer Pozzo. In this case, Lt. Mulla should have asked Officer Pozzo how many times Officer Pozzo deployed his taser and under what circumstances the taser was deployed. This violation of NOPD policy delayed the FIT team's investigation of the use of force, impairing the efficient operation of the Department of Police.

The undersigned Commissioners also find that the penalty is commensurate with the violation, as NOPD imposed the presumptive penalty under its disciplinary matrix.

This the 3rd day of March, 2022

WRITER:

JH Korn
JH Korn (Feb 17, 2022 16:35 CST)

JOHN KORN, VICE-CHAIRPERSON

CONCUR:

B. Richardson
Brittney Richardson (Mar 3, 2022 12:22 AST)

BRITTNEY RICHARDSON, CHAIRPERSON

Mark C. Surprenant
Mark C. Surprenant (Feb 17, 2022 10:05 CST)

MARK SURPRENANT, COMMISSIONER