



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

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Friday, October 26, 2012

Mr. Raymond C. Burkart, III
19407 Front Street
Covington, LA 70433

Re: **Justin Ferris VS.
Department of Police
Docket Number: 7920**

Dear Mr. Burkart, III:

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 - 10/26/2012 - filed in the Office of the Civil Service Commission in Room 7W03, City Hall, 1300 Perdido Street, 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 cursive script that reads "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Ronal Serpas
Russell B. Ramsey
Jay Ginsberg
Justin Ferris

JUSTIN FERRIS

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7920

INTRODUCTION

The Department of Police (“Appointing Authority”) employed Justin Ferris (“Appellant”) as a Police Officer with permanent status. By letter dated August 31, 2011, the Appointing Authority terminated the Appellant’s employment for violation of internal rules regarding Truthfulness. The Appointing Authority also suspended the Appellant for eighty (80) days for violation of internal rules regarding Neglect of Duty (four counts). The disciplinary actions all arose from a high speed vehicle pursuit that concluded with the fleeing suspect striking an uninvolved vehicle, which resulted in the death of one of the occupants.¹ The Neglect of Duty violations all concern the Appellant’s disregard of internal rules regarding vehicle pursuit. The Truthfulness violation concerns the Appellant’s recorded statement taken during the Appointing Authority’s internal investigation, where the investigator determined that the Appellant was not truthful.

The matter was assigned by the Civil Service Commission to a Hearing Examiner pursuant to Article X, Section 12 of the Constitution of the State of Louisiana, 1974. The hearing was held on April 4, 2012. The testimony presented at the hearing was transcribed by a court reporter. The three undersigned members of the Civil Service Commission have reviewed a copy of the transcript and all documentary evidence.

Neglect of Duty

¹ The Appointing Authority determined that an enhanced penalty of twenty suspension days per violation was appropriate because the Appellant was driving at an excessively high rate of speed and going the wrong way on a one way street, all of which contributed to the resulting death of an uninvolved third party.

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During the April 4, 2012 hearing, the Appellant stipulated that he violated internal rules regarding Neglect of Duty, as set forth in the August 31, 2011 disciplinary letter. The factual basis for the neglect of duty violations and the enhanced penalties are set forth in the first five paragraphs on the second page of the disciplinary letter, which provides as follows:

The investigation determined that on Friday, January 7, 2011, at about 11:53 p.m., while on patrol you observed the occupant of a vehicle discard a white powdered substance from the window. You activated the police vehicle's emergency lights and siren and followed the vehicle in an attempt to stop the vehicle, but the vehicle accelerated away from the police vehicle. You were granted permission to pursue the vehicle by your supervisor. During the pursuit the suspect vehicle traveled at a high rate of speed against traffic on Milan Street and struck a vehicle not involved in the pursuit. As a result, one of the female occupants in the uninvolved vehicle died on the scene of the accident.

During the pursuit you neglected to terminate the vehicle pursuit when you and target vehicle traveled against traffic on General Taylor and Milan Streets.

You neglected to terminate the vehicle pursuit when you and the target vehicle traveled at a high rate of speed, disregarded "Stop Signs" and "Do Not Enter" signs, traveled across two major thoroughfares (Broad Street and South Claiborne Avenue) and traveled against traffic on General Taylor and Milan Streets.

You neglected to exercise reasonable care for the safety of yourself, other persons and property when you and the driver of the wanted vehicle disregarded several stop signs and do not enter signs at a high rate of speed and traveled against traffic at a high rate of speed.

During the pursuit you traveled across intersections on Wamsley Street with posted stop signs at Broadway Street at a speed of 68 miles per hour; at Vendome Street at a speed of 59 miles per hour; at Octavia Street at a speed of 61 miles per hour; and at Broad Street at 57 miles per hour. You also traveled across intersections on Milan Street with posted stop signs at South Miro Street at a speed of 68 miles per hour and at South Claiborne Avenue at 70 miles per hour.

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Based upon the Appellant's stipulated admissions, the Appointing Authority has established by a preponderance of evidence that is suspended the Appellant for good cause for neglecting his duty, and that the penalty of eighty days is commensurate with the violation. Considering the foregoing, the Appellant's appeal of the Neglect of Duty charges is DENIED.

Truthfulness

The truthfulness rule is applicable and forms the basis for disciplinary action "when an employee makes a materially false statement with the intent to deceive." According to the rule, "a statement is material when...it could have affected the course or outcome of an investigation or an official proceeding..." The factual basis for the Truthfulness violation is found on the second page of the disciplinary letter paragraph six, which provides as follows:

You stated in your administrative statement that you terminated the pursuit after the target vehicle accelerated away from you after crossing South Claiborne Avenue, but the video of the incident revealed that you did not begin reducing your speed until you reached the accident scene, and you did not notify police communications or the pursuit supervisor you were terminating the pursuit. Your actions did not support that you disengaged the pursuit, you did not turn off the police vehicle's lights and sirens.

During the internal investigation, the Appellant provided a statement that was recorded by Sgt. Andre LeBlanc, an investigator assigned to the Public Integrity Bureau. The Appellant's statement was made part of the record as City Exhibit 2 and formed the basis for the disciplinary action. Sgt. LeBlanc testified that the Appellant was untruthful on page 3 of the statement when responding to the following question:

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Q: Officer Ferris, on January 7, 2011, you initiated a vehicle pursuit after making certain observations. What were those observations and what proceeded after?

The Appellant responded with a long narrative that was accurate up to a point. However, Sgt. LeBlanc determined that the Appellant was not truthful when he stated:

A: ...We had continued at this point southbound on Milan Street until it crossed Claiborne Avenue. I realized that the vehicle took off; I lost sight of it and I realized that it was a one-way street. I realized I was going down a one-way street the wrong way. I advised dispatch the vehicle had taken off and the pursuit was terminated...The vehicle pulled ahead of me, four, five, six blocks. Uh, barely able to see the rear lights of the vehicle, go up into the air, um, which led me to believe the vehicle had possibly collided with a telephone pole or some object. I slowly approached the intersection where I observed the vehicle had 20-d out, or had collided with a telephone pole...

Sgt. LeBlanc did not ask the Appellant any further questions regarding what he meant by terminating the pursuit until after he showed the Appellant the video recording of the incident.²

After viewing the video, the Appellant acknowledged that he did not inform the dispatcher that he terminated the pursuit, but only told the dispatcher that the vehicle had "taken off". The Appellant stated that he had "terminated the pursuit in his mind" and was proceeding forward looking for the speeding vehicle when, within a matter of seconds, the collision occurred. He further stated that he thought he informed the dispatcher that he terminated the pursuit, but he was mistaken. Finally, he maintained that he had no reason to misrepresent the facts and that he provided the best information based upon his recall of the incident several months after the fact.

LEGAL PRECEPTS

² Each police unit is equipped with a video camera.

An employer cannot discipline an employee who has gained permanent status in the classified city civil service except for cause expressed in writing. LSA Const. Art. X, sect. 8(A); *Walters v. Department of Police of New Orleans*, 454 So. 2d 106 (La. 1984). The employee may appeal from such a disciplinary action to the city Civil Service Commission. The burden of proof on appeal, as to the factual basis for the disciplinary action, is on the appointing authority. *Id.*; *Goins v. Department of Police*, 570 So 2d 93 (La. App. 4th Cir. 1990).

The Civil Service Commission has a duty to decide independently, based on the facts presented, whether the appointing authority has good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. *Walters v. Department of Police of New Orleans, supra*. Legal cause exists whenever the employee's conduct impairs the efficiency of the public service in which the employee is engaged. *Cittadino v. Department of Police*, 558 So. 2d 1311 (La. App. 4th Cir. 1990). The appointing authority has the burden of proving by a preponderance of the evidence the occurrence of the complained of activity and that the conduct complained of impaired the efficiency of the public service. *Id.* The appointing authority must also prove the actions complained of bear a real and substantial relationship to the efficient operation of the public service. *Id.* While these facts must be clearly established, they need not be established beyond a reasonable doubt. *Id.*

CONCLUSIONS

Based upon the facts contained in the disciplinary letter, the Appellant was clearly inaccurate when he stated that he terminated the pursuit and slowly approached the

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intersection where the collision occurred. In fact, he neither reduced his speed nor took any other steps that would indicate that his pursuit ever ended. However, a span of less than ten seconds is at issue and it is difficult to discern whether or not the Appellant intended to deceive. Reasonable minds could conclude that this part of his statement was intentionally misleading, though we would have preferred that Sgt. LeBlanc have asked a few clarifying questions regarding what actually happened after he “terminated the pursuit” before showing the Appellant the video. With a few additional questions, the Appellant might have either clarified his answers, thus avoiding a truthfulness charge, or he may have been shown more clearly to be intending to deceive. It appears that Sgt. LeBlanc chose to stop pursuing that particular line of questioning once he concluded that he had what he needed to sustain a violation.

We find that the Appointing Authority has satisfied its burden of proof, which is preponderance of the evidence, though the question is closer than we would prefer. While giving a statement in an internal investigation, the Appellant made material statements which were not true. The conclusion by the Appointing Authority that Appellant’s assertion that he “terminated the pursuit” was intended to deceive is supported by the evidence, notwithstanding the Appellant’s attempt at hearing to explain and mitigate the impact of the misleading parts of his statement. Therefore, we cannot

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say that the Appointing Authority abused its discretion by terminating the Appellant.

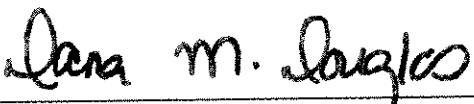
Considering the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 26th DAY OF
OCTOBER, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION


REV. KEVIN W. WILDES, S.J., CHAIRMAN

CONCUR:


DANA M. DOUGLAS, VICE-CHAIRMAN


AM L. GLOVINSKY, COMMISSIONER