

JOSEPH MEISCH

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7862

INTRODUCTION

The Department of Police (“Appointing Authority”) employed Joseph Meisch (“Appellant”) as a Police Lieutenant with permanent status. By letter dated May 3, 2011, the Appointing Authority terminated the Appellant’s employment for violation of internal rules regarding Neglect of Duty and Instructions from an Authoritative Source. Specifically, the Appointing Authority determined that the Appellant observed possible criminal activity on September 2, 2005 and during the two to three days following; and thereby neglected his duty by failing to report what he observed in a timely fashion. The Appointing Authority also determined that the Appellant failed to follow instructions from an authoritative source in 2009 when he reported criminal activity to the Federal Department of Justice without first reporting the activity to the Appointing Authority’s Public Integrity Bureau (“PIB”). Finally, the Appointing Authority suspended the Appellant for ten (10) days for violation of internal rules regarding Professionalism.

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 August 25 & 31, 2011. 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.

The Appointing Authority terminated the Appellant based upon admissions he made during the internal investigation conducted by PIB. In this particular matter,

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because there are no disputed questions of fact, the Commission must determine whether the Appellant's admissions constituted violations of the Appointing Authority's internal rules and, if so, whether the Appellant provided sufficient explanations to justify, excuse, or mitigate his conduct.

FACTS

Upon the conclusion of the federal trial entitled *U.S. v. Warren* – a trial involving several New Orleans Police Officers as defendants - the Appointing Authority initiated an investigation that resulted in the Appellant's termination.¹ The Appellant testified for the prosecution in the federal trial. Based upon the Appellant's federal trial testimony and the internal investigation that followed, the Appointing Authority determined that the Appellant failed to report criminal activity in a timely fashion.

During his civil service appeal, the Appellant testified that he was assigned to the Fourth Police District located on the West Bank of the Mississippi River when Hurricane Katrina made landfall. He testified that he remained at his assignment after the storm and for the immediate days following.

On the afternoon of September 2, 2005, the Appellant was working behind the district station, which faced the levee of the Mississippi River. On that date, he observed two vehicles driving on the paved portion of the levee. The first vehicle drove off of the levee towards the river. The second vehicle remained approximately two hundred yards behind. Shortly after observing the vehicle disappear behind the levee, the Appellant observed a plume of smoke. He then observed Police Officer Greg McRae appear from where the vehicle had left the road and from where the smoke was rising. Officer McRae

¹ *U.S. v. Warren* was generally reported in the press as the "*Glover Case*".

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walked straight down the levee into the district compound. As he passed the Appellant, Officer McRae told the Appellant, "Don't worry about it". Approximately one minute later, Lt. Dwayne Scheuermann appeared from the Appellant's right walking at a diagonal from the levee. As Lt. Scheuermann walked past him, he told the Appellant, "I've got it." The Appellant stated that he saw no reason to investigate or report what he had observed to his commander because another police lieutenant told him that he was handling the matter. The Appellant further stated that he knew that Officer McRae worked for Lt. Scheuermann and that Lt. Scheuermann was in a better position to investigate his own officer.²

The Appellant further testified that he walked to the top of the levee two or three days later during the evening hours hoping to get a cell phone signal to call his wife. With the aid of his flashlight, the Appellant observed on the other side of the levee a burned-out vehicle containing what appeared to be a rib cage. The Appellant testified that he was startled by what he observed. However, his only action was to make a notation in a notebook, which he left with the Fourth District when he was later reassigned. The Appellant testified that there was nothing for him to do because there was no morgue for dead bodies and no detectives to investigate potential crimes. He also testified that he did not suspect that the police were involved in any misconduct and that Lt. Scheuermann had already informed him that he was handling the matter.

² The Appointing Authority determined that the Appellant's failure to investigate or report what he observed to this point was not a violation of internal rules. At this moment in time, the Appellant only knew that a car had driven off of the levee and that a plume of smoke appeared from where the car had disappeared. He also knew that a police officer may have been involved, but reasonably assumed that his superior officer was aware of what had occurred. The Appointing Authority concluded that the challenges caused by Hurricane Katrina, including the lack of resources and the need to prioritize, explained and justified the Appellant's decision not to act upon what he observed.

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The Appellant went on to testify that sometime in 2009 he read an article in the Times Picayune detailing a federal investigation into a possible homicide committed by a New Orleans Police Officer. The article included the allegations that Officer McRae and Lt. Scheuermann attempted to destroy evidence of the dead body by driving a vehicle containing the body to the far side of the levee and setting the vehicle on fire. After reading the article, the Appellant looked back on what he observed four years prior and realized that he may have observed the commission of a crime by Officer McRae and Lt. Scheuermann. He immediately reported to his commander, Captain Robert Norton, asking for furlough to speak to the FBI investigators involved in the criminal investigation. The Appellant did not report what he knew to PIB because he was aware that the matter was part of a Federal investigation, and there was nothing for PIB to do.

The Appellant cooperated with the Federal government in its prosecution culminating with his testimony at trial.

After the trial, the Appointing Authority conducted an investigation and determined that the Appellant neglected his duty by failing to report his observations to his commander. Asst. Supt. Kirk Bouyelas testified that he recommended the Appellant's termination because the Appellant "should have done something" after observing the burn out car with what appeared to be human remains. Asst. Bouyelas reasoned that, while the circumstances of Hurricane Katrina may have excused the Appellant's failure to report what he observed on September 2, 2005 because there was nothing to suggest the commission of a serious crime, once the Appellant observed the burned-out car and body, he should have known that this was a potentially serious matter possibly involving police officers. Asst. Supt. Bouyelas also testified that even assuming

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the Appellant did not realize the seriousness of what he observed until 2009, he should have reported his observations internally to PIB as well as to the federal authorities.

LEGAL PRECEPTS

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

The Appellant testified that he was busy dealing with overwhelming circumstances caused by a national disaster of epic proportions when he observed something that seemed odd but not criminal. He stated that it never occurred to him that Officer McRae and Lt. Scheuermann were engaged in criminal activity, and that he followed proper protocol when he deferred to a fellow ranking officer. He further testified that when he observed the burned-out vehicle and body, he suspected something was wrong, but still did not suspect that it was the result of police wrongdoing. Finally, the Appellant pointed out the irony of a situation where he was terminated as a consequence of coming forward and reporting what he saw once he realized its importance.

Conversely, the Appointing Authority contends that, regardless of the circumstances, it is the Appellant's duty to report to someone of a higher authority, at the time he observed it, what any police officer should suspect to be a possible criminal act. Quite simply, when one police officer observes another police officer appear from what he later learns to be a burned-out vehicle containing a dead body, he should be concerned regardless of the distractions and hardships caused by Hurricane Katrina. Further, relying upon a brief exchange with Lt. Scheuermann, even if he was not a suspect at the time, was insufficient to excuse his duty to report. Finally, according to the Appointing Authority, the fact that the Appellant came forward once he connected all of the dots did not excuse or mitigate the Appellant's inaction during the preceding period.

We conclude, based on the undisputed facts that, the Appellant should have suspected that a serious crime may have been committed. We further conclude that the

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Appellant should have, at the very least, associated Officer McRae with possible criminal conduct when he observed the vehicle and burned remains. The Appellant knew that Lt. Scheuermann and Officer McRae worked together, which should have provided further reason against relying on Lt. Scheuermann to report the incident. In normal times, the Appellant would have done more. At a minimum, his report would have corroborated any report filed by Lt. Scheuermann or Officer McRae. As we now know, his report may well have led to the exposure of the commission of a crime years sooner.

We agree with the Appointing Authority that, even amidst extraordinary circumstances, a police officer must be held to a minimum standard of conduct and must face reasonable consequences if he or she fails to live up to that standard. All indications are that Lt. Meisch was a very good police officer who had otherwise performed his duties in an effective and efficient manner. The Appellant is to be commended for reporting in 2009 what he observed in 2005. There is no indication that the delay in reporting his observations was in any way purposeful or the result of ill motive. Nonetheless, his failure to file a timely report was a serious neglect of duty that may well have delayed for years the discovery of a very serious crime. Hurricane Katrina and her aftermath presented extraordinary challenges for many. It was a time when minimum standards of conduct proved to be more important than ever. Under these circumstances, extraordinary as they were, we cannot say that the Appointing Authority abused its

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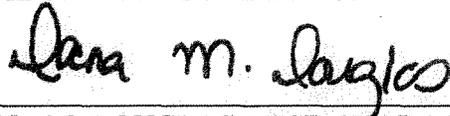
discretion by terminating the Appellant for neglecting his duty.³

Consequently, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 23rd DAY OF MARCH,

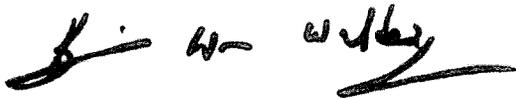
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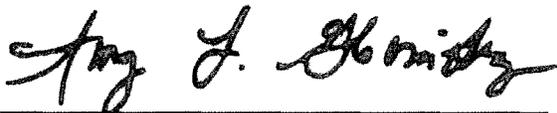


DANA M. DOUGLAS, VICE-CHAIRMAN

CONCUR:



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



AMY L. GLOVINSKY, COMMISSIONER

³ The Appointing Authority has failed to establish that the Appellant's failure to report to PIB violated internal rules regarding Instructions from an Authoritative Source. Reporting to the federal authorities and his commander was sufficient. As the record clearly establishes, PIB was aware and informed of the Appellant's activities once he spoke to the FBI.