

STANLEY DOUCETTE * **NO. 2000-CA-1641**
VERSUS * **COURT OF APPEAL**
DEPARTMENT OF POLICE * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
*

APPEAL FROM
CITY CIVIL SERVICE COMMISSION ORLEANS
NO. 6078

JOAN BERNARD ARMSTRONG

JUDGE

(Court composed of Judge Joan Bernard Armstrong, Judge Michael E. Kirby
and Judge Terri F. Love)

F. GERALD DESALVO
HARRY F. BOYER, Jr.
FRANK G. DeSALVO, A.P.L.C.
201 S. GALVEZ STREET
NEW ORLEANS, LA 70119

COUNSEL FOR PLAINTIFF/APPELLEE

FRANZ L. ZIBILICH, CHIEF DEPUTY CITY ATTORNEY
MAVIS EARLY, CITY ATTORNEY
JOSEPH V. DIROSA, Jr., DEPUTY CITY ATTORNEY
1300 PERDIDO STREET
CITY HALL - ROOM 5E03
NEW ORLEANS, LA 70112

COUNSEL FOR DEFENDANT/APPELLANT

REVERSED AND RENDERED.

This is an appeal by the New Orleans Police Department from a decision of the Civil Service Commission ("the Commission") which decision reduced the disciplinary suspension of a police officer from 15 days to 10 days. Because we find that the Commission acted arbitrarily and capriciously in reducing the suspension, we reverse the Commission's decision and reinstate the original 15 day suspension.

Officer Stanley Doucette was involved in an automobile collision, with a civilian vehicle, while driving a police vehicle while on duty. The Police Department investigated the accident, determined that the collision was a preventable accident that was Officer Doucette's fault, and suspended him for 15 days. The combined total damage to the police vehicle and to the civilian vehicle was \$11,000.

Officer Doucette appealed to the Commission. The Commission's decision states, in pertinent part:

The Appointing Authority has established by a preponderance of evidence that it suspended the Appellant for just cause. The Appellant failed to yield the right of way and caused an accident

with substantial property damage.

However, the penalty is not consistent with the Appointing Authority's prior disciplinary actions where a police officer has failed to yield while proceeding to a emergency call. Further the Appellant has no prior at-fault accidents. Considering these mitigating factored, we find the penalty to be excessive and an abuse of discretion.

Accordingly, the suspension of fifteen working days is to be reduced to ten working days. Appellant is to be RESTORED all pay ad emoluments for the remaining five days of suspension.

Thus, the Commission had two reasons for its decision to reduce the suspension period.

First, the Commission found that the 15 day suspension was not consistent with prior disciplinary actions in similar cases. However, the record contains no evidence that the 15 day suspension was not consistent with disciplinary actions in similar cases. In fact, the only evidence in the record as to the consistency of the 15 day suspension with disciplinary actions in similar cases, which was the testimony of Chief Duane Johnson, was that the 15 day suspension was consistent with disciplinary actions in similar cases.

Second, the Commission noted that Officer Doucette had no prior at-fault accidents. Chief Johnson testified that this was Officer Doucette's first

accident "within the three year window" indicating that the Police Department systematically takes into account the occurrence or absence of other accidents. Thus, the Police Department had already taken this mitigating circumstance into account when assessing the fifteen day suspension.

Under numerous prior decisions of this court, it is well established that the Commission may not reduce a disciplinary penalty simply because it has a view different than that of the Police Department as to the appropriate penalty. The Commission may reduce a penalty but only if there is insufficient cause for imposing the greater penalty. E.g., Chapman v. Dept of Police, 97-1384 (La. App. 4 Cir 1/28/88), 706 So.2d 656, writ denied, 98-0828 (La. 5/8/98), 719 So.2d 55; Braighan v. Dept. of Police, 362 So.2d 1221 (La. App. 4th Cir. 1978). It is the appointing authority, in this case the Police Department, and not the Commission, which has the primary responsibility for disciplining employees. E.g. Joseph v. Dept. of Health, 389 So.2d 739 (La. App. 4th Cir. 1980); James v. Sewerage and Water Board, 505 So.2d 119 (La. App. 4th Cir. 1987), Macelli v. Dept. of Police, 98-0253 (La. App. 4 Cir. 9/9/98), 718 So.2d 1021. Thus, the Commission may not substitute its own judgment for the judgment of the Police Department with respect to the severity of the disciplinary penalty to be

imposed. E.g., Palmer v. Dept of Police, 97-1593 (La. App. 4 Cir. 1/28/98), 706 So.2d 658; Chapman, *supra*.

For the foregoing reasons we reverse the decision of the Commission and render judgment reinstating the fifteen day suspension imposed by the New Orleans Police Department.

REVERSED AND RENDERED.