

**NOT DESIGNATED FOR PUBLICATION**

**MICHAEL HUGHES** \* **NO. 2007-CA-0501**  
**VERSUS** \* **COURT OF APPEAL**  
**DEPARTMENT OF POLICE** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**

\* \* \* \* \*

APPEAL FROM  
CITY CIVIL SERVICE COMMISSION ORLEANS  
NO. 7154

\* \* \* \* \*

**JAMES F. MCKAY III**  
**JUDGE**

\* \* \* \* \*

(Court composed of Judge Charles R. Jones, Judge James F. McKay III, Judge Roland L. Belsome)

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**AFFIRMED**

The appellant, Michael Hughes, appeals the judgment of the Civil Service Commission, upholding the Appointing Authority for the New Orleans Police Department's ("NOPD") disciplinary action imposing a fifteen (15) day suspension for violation of Instructions From An Authoritative Source.

By disciplinary letter dated December 12, 2005, Officer Hughes was accused of violating instructions from an authoritative source and was given a fifteen day suspension. He appealed the discipline to the Civil Service Commission ("CSC"), and the matter was assigned by the CSC 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 5, 2006, followed by a decision dated February 15, 2007, in which the CSC dismissed the Appellant's appeal.

Officer Hughes has been employed with the NOPD as a Police Officer IV with permanent status since June 24, 1990 and has no prior disciplinary record. At the time of Hurricane Katrina, he was and is still employed with the NOPD in the K-9 unit of the Mounted Police and K-9 Division. Officer Hughes is accused of

violating Rule 4, Performance Of Duty § 2 which reads in pertinent part that “ a member shall professionally, promptly and fully abide by or execute instructions issued from any authoritative source...” Officer Hughes is accused of violating an order to return to the K-9 unit as ordered by the Mounted Police and K-9 Division Commander, Captain Clarence Hebert.<sup>1</sup>

On Sunday, August 28, 2005, Officer Hughes was on duty as Hurricane Katrina approached the City of New Orleans; his shift ended at 6:00 p.m. After receiving authorization from his immediate rank, Sergeant Rickey Blanchard, he and his K-9 partner Carlos (“Carlos”) returned to his Gentilly home to secure his family. He and Carlos remained behind in the home. When the levees broke they became trapped. Sometime on or about Monday August 29, 2005, Officer Hughes was rescued from his roof by boat but was unable to rescue Carlos due to a lack of equipment; Carlos remained in the third floor of Officer Hughes’ flooded home. All of the K-9 equipment including the Carlos’ restraints and the police vehicle were lost to the flood waters. Eventually after being rescued from the rooftop of his home Officer Hughes and his neighbors found a boat and proceeded to rescue others from the neighborhood. Subsequently, an unnamed officer from the Wildlife and Fisheries Department, with a boat, agreed to help Officer Hughes to return to his home and rescue Carlos. After they rescued Carlos that same officer brought Officer Hughes and Carlos to Interstate 610 where they were assisted by a fellow NOPD officer and evacuated to the Sixth District Police District in uptown

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<sup>1</sup> According to the testimony of Captain Herbert the three rank officers in this Division are Captain Hebert, Sergeant Blanchard and Sergeant Fields.

New Orleans. He immediately notified his rank that he had been rescued and was at the Sixth District. He remained there from August 30, 2005 until September 11, 2005 when he returned to the K-9 unit.

The pertinent allegation is that Officer Hughes was instructed on or about September 4<sup>th</sup> or 5<sup>th</sup> 2005 to return to his K-9 unit, which had relocated to the West Bank. The record establishes that there is a conflict between Officer Hughes' testimony concerning his memory of the events that transpired and that of Captain Clarence Hebert. What is not in conflict is that all superior officers knew of Officer Hughes' whereabouts from the day he was rescued and evacuated to the NOPD Sixth District.

Officer Hughes maintains that he was never ordered to return to the newly relocated K-9 unit and asserts that his direct supervisor Sergeant Blanchard suggested that he remain with the Sixth District. He admits that Captain Hebert did tell him that he was needed at the K-9 unit but that he was never ordered to immediately return to that unit nor is it clear that his immediate supervisor Sergeant Blanchard was ordered to return Officer Hughes to the K-9 unit on the West Bank.

Conversely, Captain Clarence Herbert testified that he ordered Officer Hughes to return to the K-9 unit when he met with him on either September 4<sup>th</sup> or 5<sup>th</sup> outside of Harrah's Casino. After reviewing the record before us it is not clearly evident as to how and when Officer Hughes brought Carlos to the K-9 unit to be housed and taken care of during his five day R&R which had been approved

by Sergeant Blanchard and in which Captain Herbert acquiesced. Nevertheless, it is clear that either on September 4<sup>th</sup> or 5<sup>th</sup> Captain Clarence Herbert did instruct Officer Hughes to return to his K-9 unit on the West Bank.

Officer Hughes argues that the CSC was arbitrary and capricious in dismissing his appeal and characterizes its decision as an abuse of discretion. He further argues that in recognition of the condition created by Hurricane Katrina and that under these circumstances the discipline imposed by the Appointing Authority, a fifteen (15) day suspension, was excessive.

#### **STANDARD OF REVIEW**

A reviewing court should apply the clearly wrong or manifest error rule prescribed generally for appellate review in deciding whether to affirm Civil Service Commission's findings. LSA-Const. Art. 10, § 12, See also Goins v. Dept. of Police, 89-1243 (La.App. 4 Cir. 10/30/90), 570 So.2d 93. Once the CSC has rendered a decision regarding the employee's appeal of the disciplinary action, we are bound to uphold the decision of the CSC unless it is "arbitrary, capricious, or characterized by an abuse of discretion." Gant v. Department of Police, 99-1351, p. 4 (La.App. 4 Cir. 1/5/00), 750 So.2d 382, 384, citing, Walters v. Dept. of Police of New Orleans, 454 So.2d 106, 114 (La.1984); Newman v. Department of Fire, 425 So.2d 753 (La.1983).

The hearing examiner accepted the testimony of Captain Hebert that he gave Officer Hughes instructions to report for duty. The CSC noted that Officer Hughes waited a week before he followed this instruction. The CSC found that the

appointing authority had established by a preponderance of the evidence that Officer Hughes was disciplined for cause.

We also find nothing in the record to indicate that the fifteen (15) day suspension imposed by the appointing authority was excessive.

Based on the record before this Court and the above and forgoing reasons we do not find that the CSC decision to dismiss Officer Hughes' appeal and to uphold the disciplinary action taken by the appointing authority was arbitrary or capricious. Accordingly, the decision of the CSC is affirmed.

**AFFIRMED**