

SULPHUR MUNICIPAL FIRE AND POLICE CIVIL SERVICE BOARD

P.O. BOX 1309

SULPHUR, LOUISIANA 70664

Office: (337)888-5352

The Sulphur Municipal Fire and Police Civil Service Board met in Special Meeting for an Appeal Hearing on Tuesday, December 8, 2020, at 5:30 pm. The Appeal Hearing was held at the City of Sulphur Council Chambers, located at 500 North Huntington Street, Sulphur, LA 70663.

After the meeting was called to order at 5:34 pm by Chairman Granger. Member Bourgeois proceeded with the Invocation, which was then proceeded by the Pledge of Allegiance. Chairman Granger introduced the newly elected Police Representative John Wall. A roll call was then made with the results below.

Present were:

- Chairman, Mike Granger
- Vice Chairman, Chris Vice
- Member, Mary Ceasar
- Member, Thomas Bourgeois
- Police Representative, John Wall

Also, Present:

- Board Secretary, Lee Ann Hebert
- Fire Chief, Dan Selph
- City Attorney, Billy Loftin
- Appellant, Firefighter Joshua Berry
- Appellant's Counsel, Joe Norman
- Assistant Fire Chief, Mark McClelland
- Fire Captain, Raymond Gaudet
- Fire Captain, David Richard
- Fire Inspector, Richard Wingard
- Fire Engineer, Brandon Broussard
- Provisional Assistant Fire Chief, John Naquin
- District Fire Chief, Trigg White
- Fire Captain, Ricky Buller
- Police Officer, AJ Powell
- Glenn Berry & wife

Not Present:

- Appointing Authority, Mayor Mike Danahay

#### **APPROVAL OF AGENDA**

Motion to approve agenda was made by Member Bourgeois and seconded by Vice Chairman Vice. All members voted in favor, none opposed.

#### **APPEAL HEARING**

Chairman Granger advised this is an Appeal Hearing for Firefighter Joshua Berry vs the City of Sulphur regarding disciplinary action received on December 21, 2019.

As note for the record and for the board, State law provides that the board may grant an appeal hearing and investigation to determine the reasonableness of the action taken against an employee who has submitted a written request within fifteen (15) days after the action as provided in LA RS 33:2501. After the conclusion of the investigation and testimony and evidence are presented, the board will need to consider the following:

- Whether proper procedure was followed in conducting the investigation, determination, and notification of disciplinary action to be given.
- Determining whether the action taken by the Appointing Authority was done in good faith and for just cause.

The board will then render a decision, by motion, whether to uphold the action taken by the Appointing Authority or not.

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At this time Chairman Granger proceeded to recognize the counsel for the Appointing Authority and the Appellant. At this time City Attorney Billy Loftin was recognized as attorney on behalf of the Appointing Authority for the City of Sulphur and Attorney Joe Norman was recognized as representing the Appellant Firefighter Joshua Berry by the Board.

At this time Chairman Granger requested that all the witnesses that were subpoenaed come forward. The witnesses will be sequestered, a room has been set up in the back for them.

At this time City Attorney, Billy Loftin addressed the board that both he and the opposing Counsel have identified all the witnesses and would like to release one of them that was subpoenaed. Mr. Loftin advised that they will be calling Fire Chief Selph, who is a representative and will remain in the room, as well as the Appellant Mr. Berry, Captain David Richard, Engineer Brandon Broussard, Captain Raymond Gaudet and Assistant Chief Mark McClelland. We ask that Fire Investigator Richard Wingard be released at this time from his subpoena. Chairman Granger asked Mr. Norman if he was okay with the dismissal of Investigator Wingard? Mr. Norman advised Chairman Granger that he agreed. Fire Investigator Richard Wingard was released.

At this time Chairman Granger advised the witnesses to follow Secretary Hebert to escort them to the back-waiting room where they will be sequestered until they are called to testify.

At this time Chairman Granger recognized Mr. Loftin as representing the Appointing Authority and first to present evidence and testimony and asked him to call his first witness, Mr. Loftin called Captain Raymond Gaudet to give testimony. Captain Gaudet was sworn in by Secretary Hebert. Mr. Loftin asked Raymond (preferred name) to state for the record his name and address and to verify his employer and rank and to verify if he was employed during 12/10/2019 through 12/13/2019. Raymond gave his testimony. Mr. Loftin presented (C-1) 2-pages, Incident Report and photo to Raymond asked him to identify and review the documents and explain what lead him to fill out the incident report. Raymond gave testimony regarding the discovery of the damage and the reasoning for reporting the incident. Mr. Loftin asked Raymond if the photo reflects the exact damage of the truck. Raymond gave testimony that yes, it is exact because he took the photo. Loftin asked Raymond why he reported the incident. Raymond testified that is what he's supposed to do. Mr. Loftin introduced into evidence (C-1, 2-pages-Incident Report, and photo of damage), Chairman Granger approved. Mr. Loftin asked Raymond what the incident report was used for and verify date of incident and date the report was prepared. Raymond gave his testimony.

Mr. Norman then cross-examined Raymond asking him to verify if he worked on 12/10/2019 and 12/11/2019. Raymond gave his testimony. Mr. Norman questioned Raymond regarding the daily check sheets and who fills them out. Raymond gave his testimony. Mr. Norman asked Raymond if he noticed any damage to the truck on 12/11/2019. Raymond testified that he didn't notice any obvious damage and no damages were reported. Mr. Norman then presented (B-1) Daily Check sheet to Raymond and asked him to verify that the check sheet is for the month of December 2019 and is it the accurate check sheet used for December 2019. Raymond gave his testimony. Mr. Norman then proceeded to (C-1) line by line as previously asked by Mr. Loftin. Mr. Norman asked Raymond if he had asked anyone what happened and was the light functioning. Raymond testified that as he was stepping on the running board to put his gear on the truck that's when he noticed the damage, and the light was not functioning at the time he saw the damage. Mr. Norman questioned Raymond regarding the length of time the light was operational after the incident and the marks on the check sheet indicating if it was working or not. Raymond gave testimony regarding check sheet. Mr. Norman asked Raymond about the incident report narrative. Raymond testified that the narrative is what he was told by Firefighter Berry when he asked about the damage.

Mr. Loftin cross-examined Raymond saying that how Mr. Loftin reads the report after referring to the damage. Mr. Loftin asks Raymond does Firefighter Berry refer back to the incident. Raymond testifies yes. Mr. Loftin advised the board he was finished with the witness.

Mr. Norman advised he was finished with the witness and introduced into evidence (B-1, SF28 Daily Apparatus check sheet December 2019). Chairman Granger approved.

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Board members did not have any questions at this time. Captain Gaudet's testimony was concluded.

Mr. Loftin then called his next witness, Assistant Fire Chief Mark McClelland to give testimony. Assistant Fire Chief Mark McClelland was sworn in by Secretary Hebert. Mr. Loftin advised him to state for the record his name and address and to verify his employer and rank and to verify if he was employed by and held the same rank on or about 12/10/2019 through 12/13/2019. Assistant Chief McClelland gave his testimony. Mr. Loftin presented to Assistant Chief McClelland a document (C-2) and asked him to look over and identify the document. McClelland gave his testimony regarding the documents. Mr. Loftin asked McClelland to verify on bottom right were those his initials by "individual making complaint" and by "referred to supervisor" and did you receive an Incident Report from Captain Gaudet that you referred to Chief Selph. McClelland testified the validity of the Critical Incident Form that he filled out after he received an Incident Report from Gaudet and gave it to Chief Selph. Mr. Loftin asked McClelland if he indicated and marked all the actions that are on the Critical Incident Form. McClelland gave his testimony regarding the Critical Incident Form. Mr. Loftin asked McClelland to read the description provided on the Critical Incident Form. McClelland read the description aloud. Mr. Loftin asked McClelland if it was well known to all firefighters and employees and standard protocol to report and inspect anytime damage may have occurred and to report the damage or incident to the supervisor. McClelland gave his testimony. Mr. Loftin introduced into evidence (C-2, 2-pages, Critical Incident Form and Record of Authorization of an Investigation). Chairman approved. Mr. Loftin asked McClelland to review and verify that the Record of Authorization of an Investigation is part of that form or made in connection with the Critical Incident Form. McClelland gave his testimony. No further questions from Mr. Loftin at this time.

Mr. Norman cross-examined Assistant Chief Mark McClelland and referred to (C-2, Critical Incident Form) and asked McClelland under "did employees actions result in one of the following" section, what do you understand "deliberate" to mean. McClelland testified his definition of what deliberate means. Mr. Norman asked McClelland if he fills out the form often and what does "deliberate" mean on this form? McClelland testified "choosing not to do it". Mr. Norman asked McClelland intentionally choosing not to do it. McClelland testified deliberately. Mr. Norman asking McClelland if it's an accurate statement to say that it requires some kind of intent or purposefulness to it. McClelland gave his testimony. Mr. Norman refers back to (C-2) last sentence of the description and asks McClelland who discovered the damage and did he see the damage on 12/10/2019. McClelland gave his testimony. Mr. Norman gave testimony of how he understood the process of the description on the Critical Incident form. Mr. Norman then asked McClelland if he thought Mr. Berry deliberately failed and refused to report the damage. McClelland gave his testimony. Mr. Norman presented (B-2) to McClelland and asked him to verify and identify the form. McClelland gave his testimony regarding the Critical Incident Form. Mr. Norman asked McClelland if he filled out this form as well. McClelland gave his testimony. Mr. Norman read a clause on Critical Incident Form that stated, "they heard something hit the top of the cab", and asked McClelland if "they" referring to Mr. Berry, Mr. Broussard, and Mr. Richard. McClelland gave his testimony. Mr. Norman asked McClelland on (B-2) Critical Incident Form where it says, "deliberate omission of any act that is was his duty to perform", you indicated yes and by using your previous interpretation of "deliberate" you believe this to be correct. McClelland gave his testimony. Mr. Norman asked since Mr. Broussard was a driver, is he more senior in rank than Mr. Berry. McClelland testified yes. Mr. Norman presented (B-3) to McClelland and asked him to identify the document and did McClelland fill out this form too. McClelland testified to the validity of the Critical Incident Form and he filled it out. Mr. Norman asked McClelland is Mr. Richard more senior than Mr. Berry. McClelland testified yes. Mr. Norman asked is Mr. Richard more senior than Mr. Broussard. McClelland testified yes. Mr. Norman said, you indicated on the form that deliberate omission for Mr. Richard was yes. McClelland testified yes. Mr. Norman asked McClelland if he believed that Mr. Richard intentionally failed to report the damage as well and that he should have reported it. McClelland testified yes. Mr. Norman advised no further questions. Mr. Norman introduced into evidence (B-2, Critical Incident Form-Engineer Brandon Broussard) and (B-3, Critical Incident Form-Captain David Richard). Chairman Granger approved.

Mr. Loftin advised no further questions for the witness.

Chairman Granger asked if any board members had any questions. Vice Chairman Vice asked Assistant Chief McClelland if the incident narrative that's on each Critical incident Report (C-2, B-2, and B-3) a generic statement

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from the incident report made by Captain Gaudet or was it a statement from each individual. Assistant Chief McClelland testified that no it is not a statement. Vice Chairman Vice explained that his understanding of the incident narrative on the Critical Incident forms is just the description made by Captain Gaudet from the incident report that came from Firefighter Berry.

Mr. Loftin followed up with another question for McClelland to verify the process of the investigation and how it followed. McClelland gave his testimony of the investigation process and that the investigation began after he received the incident report.

Mr. Norman asked McClelland if the Critical Incident Form is filled out first before the investigation started. McClelland testified yes. Mr. Norman asked McClelland would you change your description of deliberate for any other firefighter. McClelland testified no. Mr. Norman asked McClelland to verify that all persons made deliberate omission and failed to report it. McClelland testified yes. Mr. Norman has no further questions.

The board members did not have any other questions. Assistant Chief McClelland's testimony was concluded.

Mr. Loftin on behalf of the City calls his next witness, Fire Chief Dan Selph to give his testimony. Chief Selph was sworn in by Secretary Hebert. Mr. Loftin advised him to state for the record his name and address and to verify his employer and rank and to verify if he was employed by and held the same rank between 12/10/2019 through 12/20/2019. Chief Selph gave his testimony. Mr. Loftin asked Chief Selph if he handled the investigation for Mr. Berry, Mr. Broussard and Mr. Richard and did you make recommendations to the Appointing Authority and did the Appointing Authority follow your recommendations. Chief Selph gave his testimony regarding his role in the process and verified his recommendation to the Appointing Authority. Mr. Loftin presented documents and asked Chief Selph to verify and identify the documents and if the documents are part of the investigation process and procedure. Chief Selph testified to the validity of the documents. Mr. Loftin introduced into evidence (C-3, all procedural documents related to the disciplinary process for Mr. Berry). Chairman Granger approved and no objections from Mr. Norman. Mr. Loftin advised that both he and Mr. Norman and his client have agreed that the procedure and process of the investigation were followed. Mr. Norman advised he is not disputing the process of the investigation. Mr. Loftin advised they will move on to the disciplinary process which is why they are here.

Mr. Loftin presented two documents to Chief Selph and asked him to identify the documents. Chief Selph testified to the identity of the documents. Mr. Loftin introduced into evidence (C-4, 4-pages, Notice of Disciplinary Action and Personnel Action Form for Mr. Berry), Chairman Granger approved, no objections from Mr. Norman. Mr. Loftin asked Chief Selph to give a brief description to the board of what occurred and what he discovered during the investigation. Chief Selph gave his testimony regarding his findings. Mr. Loftin asked Chief Selph what did Mr. Berry say in his failure to follow up on whether there was any damage or not. Chief Selph testified that in Mr. Berry's own words "I got lazy after noticing the branches contact the truck and did not look to see if there was damage". Mr. Loftin asked Chief Selph if the rules are known by all employees and how are they accessible to the employees and have any rules changed since Mr. Berry has been employed at the Fire department. Chief Selph testified regarding how and where the employees can access the department rules, Civil Service rules and the Louisiana Revised Statutes. Chief Selph also testified that changes were made, and a document was created to make it easier to report the less severe incidents and damage. Mr. Loftin asked Chief Selph if the incident report changed. Chief Selph testified no changes were made to the incident report. Mr. Loftin presented a photo (C-1) to Chief Selph and asked him to identify the damage and the problems associated with the significant damage to the truck. Chief Selph gave his testimony regarding the damage and the NFPA standard for visible lights while operating emergency vehicles. Mr. Loftin asked Chief Selph if the lights were still functioning. Chief Selph testified yes to his knowledge. Mr. Loftin testified asking Chief Selph if due to the damage to the case of the light, is it more likely that the light will malfunction while being used? Chief Selph testified yes, without a doubt. Mr. Loftin asked Chief Selph in this incident were you able to repair damage with surplus/broken equipment. Chief Selph testified yes, that Captain Gaudet previously testified that he was the individual that fixed it, and its standard and with budgetary restraints it is standard for us to make repairs with things we have on hand and when we can, we do that. Mr. Loftin asked

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Chief Selph is it your position that broken equipment such as safety lights or light on truck would impair the efficient operation of the department and jeopardize the safety of the citizens as well as firefighters. Chief Selph testified yes. Mr. Loftin testified that since Mr. Norman wants to bring up the check sheet (B-1) and various things that happened, what are the various distinctions between employees Broussard and Richard. Mr. Loftin to Chief Selph first, did you act in good faith and for just cause in issuing discipline with the employees involved in this incident. Chief Selph testified yes. Mr. Loftin asked Chief Selph were some of the employees handled differently. Chief Selph testified they were handled the same, but the outcome was different. Mr. Loftin to Chief Selph explain to the board how you handled it and how the outcomes were different and start with the two individuals that were in the truck. Chief Selph gave testimony that his goal was to find out who was in the vehicle, directing the vehicle, were the windows down, who had knowledge of the damage on the truck and why it wasn't reported. Chief Selph testified that his findings were two individuals were in cab, windows were up, Mr. Berry was behind directing the apparatus and Mr. Berry indicated that it was not a small branch that struck the truck. Chief Selph testified that his findings were that Mr. Berry had the most knowledge of damage to truck as he was in the back of truck and the individuals in cab had knowledge but less because they were in the cab of the truck. Mr. Loftin asked Chief Selph if he's saying that each individual had different levels of culpability and you disciplined them accordingly and what was the differences and how did you handle them. Chief Selph gave his testimony. Mr. Loftin asked Chief Selph if there was another group or level of individuals that had different levels of culpability and describe that group and their levels of culpability. Chief Selph gave his testimony. Mr. Loftin went over the department rules and civil service laws that Mr. Berry was disciplined for. Mr. Loftin has no further questions at this time.

Mr. Norman questions Chief Selph about the rules (C-4) that were violated and what each violation meant. Chief Selph gave his testimony. Mr. Norman presented (B-4, B-5) to Chief Selph and asked him to identify the documents and were the documents what was given to the employees. Chief Selph gave his testimony. Mr. Norman questions Chief Selph about the job description and job duties of each individual and asks him if each individual violated their job duties. Chief Selph gave his testimony. Mr. Norman questions Chief Selph regarding the specific job duties, responsibilities and ranking of each job. Chief Selph gave his testimony. Mr. Norman continues reading the job descriptions for each job and asks Chief Selph specific questions related to the descriptions. Mr. Norman reads aloud the job duties for Fire Captain and asks Chief Selph if what he read was correct. Chief Selph testified yes. Mr. Norman asks Chief Selph is it correct that you chose to punish Mr. Berry more harshly than Mr. Richard despite what the job duties say. Chief Selph testified yes and asked Mr. Norman if he wanted an explanation for that. Mr. Norman replied yes. Chief Selph testified that Mr. Richard was supervising his crew but backing up the truck is not in violation of the rules and regulations, he was supervising that action and based on his knowledge and based on his testimony and the driver's testimony he had less knowledge of what occurred other than hearing branches scraping on top of the truck which is routine when driving a fire truck. Someone else had more knowledge and didn't pass that knowledge on to the Captain or Engineer. Mr. Norman questions Chief Selph that all violations were the same as all the individuals. Chief Selph testified yes. Mr. Norman advised he had no further questions at this time. Mr. Norman introduced into evidence (B-4, Notice of Disciplinary Action for Engineer Brandon Broussard, B-5, Notice of Disciplinary Action for Captain David Richard), Chairman Granger approved and no objections from Mr. Loftin.

Mr. Loftin testifies and reads aloud the violations (LA. RS 33:2500) and asks Chief Selph if these are rules and duties that were violated that are stated above that. Chief Selph testified yes. No further questions from Mr. Loftin.

No further questions from Mr. Norman.

Chairman Granger advised that Member Bourgeois had a question for Chief Selph. Member Bourgeois directs his questions to Chief Selph, during Mr. Berry's training was he trained to back up trucks and this training is in his training documents and is learned as he is on the job. Chief Selph testified yes. Member Bourgeois to Chief Selph is it safe to say that Mr. Broussard and Mr. Richard were inside the apparatus and the windows were up and they

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had knowledge of sound. Chief Selph testified yes. Member Bourgeois to Chief Selph and Mr. Berry had knowledge of visual and sound. Chief Selph testified yes.

Chairman Granger directs his questions to Chief Selph asking for clarity that he understood earlier testimony that the apparatus was repositioned and who requested the repositioning of the truck. Chief Selph testified yes and Mr. Berry directed the repositioning of the truck to the Engineer. Chairman Granger also asks Chief Selph during your previous testimony you stated that Mr. Richard and Mr. Broussard heard branches or limbs scratching on the truck. Chief Selph testified yes. Nothing further from Chairman Granger.

Member Bourgeois redirects questions to Chief Selph asking him would you say that one of the reasons for repositioning the truck was because they were having difficulty backing up and something was impeding the ability to back up. Chief Selph testified yes. Member Bourgeois asked Chief Selph if it's safe to say that it might have been a significant size branch. Chief Selph testifies that he doesn't remember exactly, but he remembers Mr. Berry stating that it was a significant size of branch. Chief Selph also testified that after the interviews he familiarized himself with the particular height of that vehicle and went to the scene that was indicated by all three individuals, that there was even a branch that could possibly touch the top of the cab of that truck and there was no tree that was similar to the branches that were on top of the truck in the photo and they very much were low enough to come in contact with the apparatus.

Mr. Norman directs his question to Chief Selph saying you were not at the incident on 12/10/2019. Chief Selph testified he was not at the incident on that date. Mr. Norman to Chief Selph and you are just testifying to the best of your ability of what you remember the three individuals telling you. Chief Selph testified yes. No further questions from Mr. Norman.

Mr. Loftin speaks to the board requesting the audio/video of Mr. Berry's testimony be played that he relies so heavily on. Mr. Norman requests that Mr. Broussard's and Mr. Richard's audio/videos be played as well so that the board can hear all sides of the story. Chairman Granger and board members approve.

Chairman Granger redirects a question to Chief Selph asking him when did Mr. Broussard and Mr. Richard have knowledge of the incident and when did they notify Chief Selph of the incident. Chief Selph testified that he was not notified of the incident by Mr. Broussard or Mr. Richard and he was not aware when they were notified of the incident.

Vice Chairman Vice spoke to the board saying that he wanted to clarify that he's on shift with these three guys and that day on Tuesday that's the end of their shift cycle so that next morning we went on our week off. So they were not around during the time it was found except that Firefighter Berry was working overtime that day 12/13/2019, and the other two guys were on their week off from morning of 12/11/2019 until 12/18/2019. If they had heard anything it would have been from them getting a call from someone at the fire station.

Member Bourgeois directs his question to Chief Selph, stating you said that Mr. Berry was on overtime that day. Chief Selph testified that Vice Chairman Vice stated Mr. Berry was on overtime that day of 12/13/2019. Member Bourgeois asked if Mr. Berry was on overtime, was he just coming in for the day. Vice Chairman Vice stated it was a Friday day and he would have came on at 6:00 am on 12/13/2019.

Chairman Granger calls for a 5-minute recess at 7:05 pm.

Chairman Granger calls the hearing back in order at 7:10 pm.

Mr. Loftin requests to play the audio/video of Mr. Berry's interview and skip past to approximately 01:00 into the video and requests the board pay close attention to the video at 05:50 into it and you can see that on the bottom left corner. I think that would be some discussion that would be relevant later on.

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Chairman Granger directs Secretary Hebert to begin the audio/video. The audio/video of Mr. Berry's interview with Assistant Chief Mark McClelland is played for the board members and all present in the room. Mr. Loftin requests that the video be stopped. No objections. Mr. Loftin directs questions regarding the video to Chief Selph asking him this is something that you observed in your investigation, and he stated he heard the branches breaking and you made a distinction between what the other guys heard inside the truck, the normal scraping of leaves or branches, he also stated it slipped his mind to not do anything about it, in his words he got lazy and didn't follow up on it. Chief Selph testified correct to all the statements. No further questions from Mr. Loftin.

Mr. Norman requests to finish playing the remainder of the video. Secretary Hebert resumes the audio/video of Mr. Berry's interview. The video was concluded, and Secretary Hebert turned it off. Mr. Loftin advised Chairman Granger that he didn't have any further questions.

Mr. Norman requests to play the audio/video of Mr. Broussard's interview. Secretary Hebert plays the audio/video of Chief Dan Selph and Engineer Broussard's interview. The video was concluded, and Secretary Hebert turned it off. Mr. Loftin directs his questions to Chief Selph that Mr. Broussard stated he heard the normal scraping of the branches. Chief Selph testified correct. Mr. Norman presents a document (B-6) to Chief Selph and asks him to identify the document. Chief Selph testifies that the document is an Incident Report for a small scratch on the step of SF-18, the apparatus that runs out of Station 1. Chief Selph states that the document is not completed it is missing the signatures of the supervisors. Mr. Norman asks Chief Selph where is the document located. Chief Selph gave his testimony. Mr. Norman testifies that the date of this incident is May 26, 2019. Chief Selph testified that if that's what is indicted on the form. Mr. Norman states so that's approximately 6 months prior to the date of Mr. Berry's incident. Chief Selph testified give or take. Mr. Norman asks Chief Selph if he conducted this investigation. Chief Selph testified that this was not an investigation. Mr. Norman asks Chief Selph to explain what it is. Chief Selph testified that it is just a report of finding to and on City property. Chief Selph read the incident narrative aloud. Mr. Norman asked Chief Selph is this the same Engineer that was driving during the incident that involves Mr. Berry. Chief Selph testified yes. Mr. Norman asked Chief Selph if any discipline was involved in that incident. Chief Selph testified that it was a verbal consultation. Mr. Norman introduced into evidence (B-6, Incident Report for Engineer Broussard from accident involving him on 5/26/2019). Chairman approved, no objections by Mr. Loftin.

Mr. Loftin redirects his questions to Chief Selph asking him if the incident on 5/26/2019, was this reported. Chief Selph testified yes. Mr. Loftin asks Chief Selph had Mr. Berry reported the.. Chief Selph interrupts by testifying that the incidents both involved the apparatus touching another object but the difference in this incident was it was reported per the rules and regulations and the other incident was not reported. Chief Selph testified that he wanted to be clear that he did not discipline the individuals because the apparatus came in contact with an object, he disciplined them because they did not do their diligence by reporting it and investigating it. No further questions from Mr. Loftin.

Chairman Granger directs his question to Chief Selph regarding the incident (B-6) and asks him who else was in the truck with Mr. Broussard. Chief Selph testifies that it's his assumption that Captain Ricky Buller was a witness to the incident.

Mr. Loftin requests to play the audio/video of Mr. Richard's interview. Secretary Hebert plays the audio/video of Chief Selph and Captain Richard's interview. After the conclusion of the video, Secretary Hebert stopped the video. Mr. Loftin advised he did not have any questions. Mr. Loftin then asked Chief Selph that you followed up after that interview and did you follow up with Mr. Berry's interview in determining that he indicated that the truck stop. Chief Selph testified yes that he followed up with the GPS data for where that truck went throughout the City and I drive that route and visited that parking lot that they visited, and I didn't see any branches that I felt could have put the damage on that vehicle. No further questions from Mr. Loftin and no further questions from Mr. Norman.

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Chairman Granger asks Chief Selph if there was any reason why he didn't conduct the investigation for Mr. Berry. Chief Selph testified that typically the Assistant Chief does the fact finding and he comes in during the Pre-Disciplinary or the Disciplinary hearing. But since Assistant Chief went out on sick leave, he took over the role.

No further questions. Chief Selph's testimony was concluded.

Mr. Loftin calls Firefighter Joshua Berry to give his testimony. Firefighter Joshua Berry was sworn in by Secretary Hebert. Mr. Loftin advised him to state for the record his name and address and to verify his employer and rank and to verify that during the time of the investigation between 12/10/2019 through 12/20/2019, he was a Probational Firefighter First Class, and you are now longer a Probational Firefighter First Class. Mr. Berry gave his testimony. Mr. Loftin directs his questions to Mr. Berry by stating looking back in your personnel file, one thing that was asked of you is, in the past five years have you been terminated, resigned in lieu of termination from any position for reasons other than a reduction in force, and Mr. Berry you stated yes, is that correct and what was that for. Mr. Berry testified yes and it was during the EMR class and I was let go for.. I was sick during that time I had the flu. Mr. Loftin asks Mr. Berry why did they let you go. Mr. Berry testified that he was told if I couldn't show up, I would get let go and if I showed up, I would get let go. Mr. Loftin asks Mr. Berry, so you just chose not show up. Mr. Berry testified that he chose to call and let him know he would show up and he was told not to show up. Mr. Loftin asks Mr. Berry to identify this document.

Mr. Norman objects to the relevance of this. Chairman Granger advised he was having a hard time with the relevance as well. Chairman Ganger asked Mr. Loftin how long ago it was, five years ago. Mr. Loftin testifies that his agreement was about the same relevance as to whether or not to Mr. Broussard hitting the yellow ballard and I was bringing that up as it was something in his personnel file as it would relate to.... I didn't know the answer to be honest with you, if he had said he broke a rule then I would have thought it would have been important, but he said he didn't so. Mr. Loftin advised he would move on to the next thing. Mr. Norman addresses the board saying that one thing we are talking about a driver backing into something and causing damage to the truck four or five months before and this is talking about him being sick, I just don't see it. Mr. Loftin then repeats his same conversation regarding the personnel file..... Chairman Granger advised Mr. Loftin that it has no relevance. Mr. Loftin moves on.

Mr. Loftin presents a document to Mr. Berry and asks him to identify the document. Mr. Berry testifies the document is for him receiving the Sulphur Fire Department Rules and Regulations Handbook and it's the acknowledgment. Mr. Loftin asks Mr. Berry and you signed and dated that on 12/22/2017 and you received the Rules and Regulations Handbook and departments Protocols manual. Mr. Berry testified yes sir. Mr. Loftin offers into evidence (C-5, Rules and Regulations and department protocols acknowledgment form signed by Mr. Berry), no objections from Mr. Norman, Chairman Granger approved.

Mr. Loftin asks Mr. Berry are you aware that you are supposed to report damage to City vehicles or equipment as a Firefighter. Mr. Berry testified yes sir. Mr. Loftin speaks to Mr. Berry and asks him can you please tell the board and myself why exactly you have appealed this hearing and why you think the City of Sulphur or the Appointing Authority and the Chief were not in good faith and just cause in giving you this discipline in connection with this incident. Mr. Berry testified that his reasoning for the appeal was that I feel, in my opinion, that I received a harsher judgment than I should have received because of looking back at the interviews and everything that if somebody were to get disciplined it should have been same for all. I do feel that I should have received some type of discipline, but I do feel that it should have been equal across the board. Mr. Loftin testifies the entire issue that we are here over tonight as it relates to your appeal, is whether or not the Chief acted in good faith and for just cause in giving different levels of discipline to the three different groups you, the driver and District Chief, the Engineer or the District Chief and the other people that he actually gave informal counselling to and whether or not that discipline was fair to be different, correct. Mr. Berry testified yes sir. Mr. Loftin asked Mr. Berry and you heard Chief's explanation regarding that correct. Mr. Berry testified yes. Mr. Loftin asked Mr. Berry and how do you disagree with that explanation? Mr. Berry testified that as you hear all the interviews that they were all aware



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of what had happened and words were thrown out rubbing, scrapping, breaking, hitting and those four words were describing words for all of what we heard and or felt and it was stated that they had different perspectives than what I had as I was standing on the back driver side and all of the incident happened on the front passenger side and the truck is 10 feet tall and I am 6 feet tall so seeing above and through the entire back and all the compartments to the front is entirely impossible for me to be able to see and the statements made about me saying me seeing the branches hit the truck was never said. Mr. Loftin asks Mr. Berry, you do acknowledge that you said that you heard the breaking of branches as opposed to the other two individuals that said they heard the normal typical scrapping of the branches on the truck is that correct. Mr. Berry testifies that they also stated... Mr. Loftin asked Chairman Granger if I can just have him answer the question then he can explain anything he wants to. Mr. Berry testifies that yes sir I used the term breaking and they used the term scrapping, hitting, rubbing just like anything. Mr. Berry goes on to talk about different ways and terms that can be used to break other items. Mr. Loftin asks Mr. Berry, so the Chief is doing his job by evaluating the testimony and determining who had what level of culpability correct. Mr. Berry testified yes sir. Mr. Loftin testifies and says you also said that it slipped your mind to report it and that you just got kind of lazy and is that correct. Mr. Berry testifies it slipped by mind... Mr. Loftin asked Mr. Berry if he made those statements in his interview. Mr. Berry testified no sir I did not say that it slipped my mind to report it that was not said. Mr. Loftin asked Mr. Berry then what did you say. Mr. Berry testified that he honestly couldn't remember. Mr. Loftin testified that he will go back to the video at around 5:50 and we can hear what he said. Secretary Hebert plays the audio/video of Mr. Berry's interview beginning at 5:35 per Mr. Loftin's request. Mr. Loftin asks Mr. Berry, so you said that it slipped your mind to look for damage to the truck, right. Mr. Berry testified that yes sir, that's what slipped my mind. Mr. Loftin asks Mr. Berry, so you just feel like you got lazy. Mr. Berry testified yes sir because I've heard branches breaking more for different turns and..... Mr. Loftin had no further questions for Mr. Berry.

Mr. Norman asks Mr. Berry that since this Appeal Hearing is about being heard and is there anything else you think that you think is relevant that you want to tell the board and to feel like you received a fair Appeal Hearing. Mr. Berry gave his testimony of the notes he wrote down during the Appeal Hearing and all evidence presented. Mr. Norman asked Mr. Berry the reason we are here is because the Engineer and the Captain received a written reprimand and you got suspended for one day, right and tell the board why that matters. Mr. Berry gave his testimony regarding his reasonings for the Appeal Hearing.

Mr. Loftin testifies to Mr. Berry asking him, so what you're saying is that in the light of all those things, all the little rules and the things you have to do and the duties and obligations that are extremely important for a variety of reasons including public health and safety of not only the firefighters but the public and your own preservation and wellbeing as it relates to your rank and promotion within the fire department. So you are keenly aware of all of your responsibilities and you know that a little error like this could in fact have a consequence for you as it relates to when you make these decisions, correct. Mr. Norman objects to this due to hearing several questions during that. Mr. Loftin testifies that he will back them up one by one. Mr. Loftin testifies and asks Mr. Berry, tell me if this is an accurate statement, your decisions with respect to your duties, obligations or failure to perform safe, you are keenly aware of the potential consequences of your failure to do those things properly is that correct. Mr. Berry testified yes sir. No further questions from Mr. Loftin.

Mr. Norman asks Mr. Berry in connection with this appeal did you hire a private attorney. Mr. Berry testified yes sir I did. Mr. Norman asked Mr. Berry and have you paid him at or above \$1,000.00. Mr. Berry testified yes, yes sir I have. Mr. Norman advised no further questions.

Chairman Granger advised that he didn't see any relevance in that. Mr. Norman advised Chairman Granger that he brought that up in the event that the decision is overturned or modified for are going to ask for statutory attorney fees. Mr. Norman reads the statute aloud.

Chairman Granger asked if the board members had any questions for Mr. Berry.

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Chairman Granger asked Mr. Berry, in Mr. Richard's testimony he said he heard some scrapping, and he was inside the truck correct. Mr. Berry testified yes sir. Chairman Granger asked Mr. Berry, and David Richard is a Captain. Mr. Berry testified yes sir. Chairman Granger asked Mr. Berry, in Mr. Richard's testimony he said he heard scratching and you said you heard some scratching. Mr. Berry testified yes sir and I used the term breaking, Engineer Broussard used the term rubbing and Captain Richard used the terms scrapping and hitting. Chairman Granger testified that his main concern was there was an incident and whether the term used was scrapping, breaking or whatever the words were when you heard that is that when you decided to stop the truck. Mr. Berry testified yes sir, while I was in the act of putting my hand up to stop the Engineer, the Engineer had already stopped the apparatus. Chairman Granger asked Mr. Berry if he had any conversations with Brandon Broussard and David Richard about the scrapping of the truck. Mr. Berry testified no sir. Chairman Granger asked Mr. Berry, so you didn't tell him to stop because you said that he had already stopped the truck. Mr. Berry testified yes sir. Chairman Granger asked if it is a normal practice of the scrapping of the truck who makes the decision to inspect a scrap as opposed to not inspecting. So, if it's a normal procedure that you always hear the scrapping of the truck, at what point in time and who's responsible for checking the scratch. Mr. Berry testifies that he's not sure, but no one ever checks

Chairman Granger directs his question to Chief Dan Selph asking him if it's normal procedure of scrapping the truck and it's heard all the time who makes the decision at some point in time to inspect that particular scrapping of the truck. Chief Selph testified that in this particular incident. Chairman Granger stated he's not asking just about this specific accident but all. Chief Selph testified, whomever has the most knowledge is how he feels and if you have reasonable cause and if you in your judgement you make a call as to whether it was significant or insignificant. Chairman Granger spoke to Chief Selph advising him that the board heard from Chief Selph's testimony that the person ultimately responsible for the truck is the Captain. Chief Selph testified correct it is the Captain, but the Captain can't make the decision when he doesn't have the information. Chief Selph testified that he also made his decision that he felt that Mr. Berry had the information but did not do his duty and pass it on to his superiors. Chairman Granger spoke to Chief Selph stating that Mr. Richard knew that something had scratched the truck. Chief Selph testified not to the significance in my opinion and what I'm trying to get at is that I feel that the Captain wasn't given the opportunity and wasn't given the tools, he wasn't given the knowledge to make that decision. Now if it was somebody else or if it was the Engineer and if Mr. Berry happen to be doing some driver training after the call which we do sometimes then it would have been the Engineer that was in that position, whomever was in that position had the most knowledge, I feel like it was their duty to pass the knowledge on so that report can be made. The same way it was made when the ballard was hit at station 1, and so that's why I'm trying to make a point that I didn't discipline based on the fact that there was an incident with the truck. There was an incident with the truck at station 1 that was submitted as evidence, but that incident was reported properly, and this incident was not, and my point is that accidents happen but when you have firsthand knowledge then I feel like you should do your due diligence to make sure that accident doesn't turn into something so action doesn't happen.

Member Ceasar spoke to Chief Selph, in her opinion, and how she's thinking about it right now is that they all have acknowledged that they have heard something. Chief Selph testifies correct. Member Ceasar so none of them addressed it to see whether or not there was damage. Chief Selph testifies that his decision came from Firefighter Berry's words saying "I got lazy" I felt like that he, in his testimony had the most knowledge and while they all had some knowledge of it that's why they all got disciplined.

Chairman Granger asked Chief Selph, the decision to discipline Mr. Berry more is because he had more knowledge than the other two, but they all had knowledge, is that what you are saying. Chief Selph testified some, exactly.

Member Bourgeois asked Chief Selph, is there a set routine that looks at your equipment on a periodic basis. Chief Selph testifies yes, we have daily and weekly check sheets. Member Bourgeois advises daily. Chief Selph testifies yes. Member Bourgeois asked Chief Selph if they also have it for this particular apparatus also. Chief Selph testifies

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correct. Member Bourgeois asked Chief Selph, so there was a number of failures with the personnel so that's why you issued discipline to one, two and three levels. Chief Selph testified correct, there were verbal consultations, written reprimand and one day suspension.

Member Bourgeois asked Mr. Berry if due to the incident did, he feel like some type of discipline probably would occur. Mr. Berry testified yes sir and I did expect some discipline just not being the Firefighter and receiving the worst punishment.

Member Ceasar wanted to clarify, and asked Chief Selph because three days went by, did the other people get disciplined. Chief Selph testified the people that checked the apparatus were given verbal consultations and spoken to by their direct supervisors, the reason being they checked the lights they still didn't visibly check the light so that's why they got a verbal consultation.

Mr. Loftin has no further questions for Mr. Berry as his witness and also rests his case with the reservation and asks for a closing argument.

Mr. Norman has no further questions for Mr. Berry, and agrees to the release of the remaining witnesses, Mr. Broussard and Mr. Richard and request to continue to the closing arguments.

Mr. Loftin requests to remove to release Mr. Broussard and Mr. Richard from their subpoena and let them be released. No objections from Mr. Norman. Chairman Granger approved.

Police Representative Wall asks Mr. Berry if the discipline was the same across the board for all the individuals and it was a one-day suspension, would you have still appealed this. Mr. Berry testifies absolutely, if we all would have received the same discipline then we wouldn't be here today.

Chairman Granger advised no further questions from the board. Mr. Berry's testimony has concluded.

Mr. Loftin began closing arguments on behalf of the City of Sulphur. Mr. Loftin asks the board to find that Chief Selph acted in good faith, for just cause and was not arbitrary and capricious and it's not the role of the board to micromanage the daily affairs of the department. If that's the case, then we will have every person in here with any discipline trying to get you to see what we can do to change and see whether or not the Chief was reasonable. I think that he made it clear that he was reasonable today. Mr. Loftin finished his closing, nothing further.

Mr. Norman began closing arguments on behalf of the Appellant Firefighter Joshua Berry. Mr. Norman agrees that they acknowledged that Mr. Berry should have received some type of discipline. But we are here today regarding the severity of the discipline that Mr. Berry received. Mr. Norman asks that the board enforce the penalty uniformly across the board to all three employees. Mr. Norman finished his closing.

Chairman Granger asked Mr. Norman to repeat what he said, and are you saying that each employee should receive a one-day suspension. Mr. Norman responds to Chairman Granger stating no sir, we are requesting that Mr. Berry's one-day suspension be reduced to a written reprimand as equally across the board as the other two employees. Chairman Granger advises that he now understands.

Mr. Loftin and Mr. Norman both advise Chairman Granger they have nothing else.

Mr. Loftin then speaks to the board stating that since a court reporter is not present the board would have to furnish a written finding of the fact. Chairman Granger advised that was no problem.

Board members speak and ask questions at this time.

Chairman Granger speaks to Chief Selph stating that you said a couple comments about a team and I'm having a hard time because if they all three knew about it, determined why Mr. Berry got more discipline than the other two. Chief Selph asked Chairman Granger do you want me to answer that. Chairman Granger advised not at this

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moment. Chairman Granger said that even some of the job duties says that the Captain is ultimately in charge of that rig, which he didn't report it, you made a comment that they are a team. Chairman Granger said if the Engineer runs a red light and wrecks a truck. Chief Selph testified that does the Engineer have knowledge of that, 100%. Chairman Granger advises that according to testimony they all had knowledge of something happening to the truck. Chief Selph testified they did at different levels and what was really the tipping point for me was when the Engineer nor the Captain said I had knowledge and did nothing with it. Mr. Berry said I have knowledge and he acknowledged that it was in his mind, in his words, something he should have checked on, not routine. Chairman Granger asked Chief Selph, after so many scraps who checks it, in my opinion, I think that on this check sheet, everyone that checked the fire truck and missed it for two to three days they should have got... to me, because if they had failed to check the steering and they got in a wreck then the responsibility would be on these guys. Chief Selph testifies that he agrees. Chairman Granger said and they got a verbal consultation. Chief Selph testified that they had checked the lights, but they didn't physically touch the lights and the lights were still working so that's why their direct supervisor gave them a verbal consultation. Chairman Granger says that he's just having a hard time understanding how he reached that decision and Mr. Richard said he had knowledge of the scrapping of the truck. Chief Selph testified correct. Chairman Granger said so he had knowledge of the incident but didn't report it. Chief Selph testified correct. Chairman Granger said whether it was a scrapping or normal, so if it's a normal scrapping and common practice to not report it because it happens every day, when does someone determine. Chief Selph testified that you have to use your judgement, and I used the testimony of three individuals that were involved in the incident and I felt that the person in his words that had the most knowledge of the incident. Chairman Granger then asks Chief Selph if the fire rating for the City of Sulphur continues to increase or decrease who will be ultimately responsible for that. Chief Selph testified that will be a lot of people, because there's a lot of people that have their hand in that. Chairman Granger then asked then who the ultimate responsible person. Chief Selph testified that would be the Appointing Authority. Chairman Granger then gives different scenarios asking who would ultimately be the person responsible for the situations. Chairman Granger said the point I'm trying to make is that you stated the Captain is ultimately responsible for that truck, yet the Firefighter got disciplined more than the Captain did. Chief Selph testified that's because he had more knowledge of the incident.

Mr. Loftin then asked if he could make a comment on that because we were talking about the evidence and if we're going to continue giving testimony about it then Mr. Berry clearly indicated that when he got back in the vehicle that he did not discuss what he saw with his supervisor or with what he heard. So there was no... for him to be ultimately responsible he has to know what was going on, when he found out what was going on he made a decision and that's the tool he uses and that's why he's ultimately held accountable but it was based on him conducting a proper investigation. The information that was given to them was not..., he didn't have enough information to act on it, it was the typical noises that he heard and it's not exactly what Mr. Berry said. Mr. Berry said I got lazy and didn't do something, I did not talk to them when I got back in the truck. Chairman Granger advised that he's not knocking the Chief or anyone or that position, but as a board we have to determine if the discipline was fair that was ruled on the employee of the City of Sulphur, with all the testimony and what I've seen the three guys in the truck is..., what sticks out in my mind is saying that the Captain is ultimately responsible for that truck whether he had knowledge of the incident or not. Chief Selph states to Chairman Granger and that's your opinion. Chairman Granger advises and that's my opinion, and he did. Chief Selph states that he did have knowledge. Chairman Granger states that he's thinking about oh well the buck stops here, so anybody under a supervisory position can cause some trouble but normally what happens is the one that's over them normally gets the discipline, honestly, but if it works different in the fire department the supervisor or the Fire Chief or the Captain gets less discipline when he's ultimately responsible for the people under him. Chairman Granger then explains another scenario and says that in most management positions that's what happens, the manager, whether the employee was right or wrong is normally responsible and that's just my take on it all.

Vice Chairman Vice speaks explaining his take on things by saying as a Captain that sits in the seat on the passenger side, even though we are ultimately responsible for the truck. In my opinion, whether in the case of a driving accident whether it would be going forward and hitting something and running a red light or backing into a

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tree, a branch or a pole, which has happened before, me as the Officer sitting in the seat, and not helping the driver back up, I don't see how I can get held responsible for what the driver who is backing the truck up or the spotter who's in the back who's responsible to keep him from hitting something that he can't see, I don't see how the Captain gets the... but for the not reporting that's a different story. Chairman Granger says that he's not questioning the incident he's questioning the reporting, that's the whole discipline is that he didn't report it and neither did Broussard or Richard and they had knowledge of something hitting or whatever terminology they used and they didn't report it. Vice Chairman Vice states that as far as he remembers that with Chief Selph and when Chief Dupre was here no one has ever been disciplined or punished for breaking a piece of equipment on the truck if they reported it, it was the guys that didn't report it that would get in trouble. Chairman Granger asked Vice Chairman Vice do you agree that Broussard and Richard didn't report it. Vice Chairman Vice told Chairman Granger that he agreed none of the three reported it. Chairman Granger asked if in a shift and you have four people on a fire truck and something happens to the fire truck, the one with the most knowledge is the one that must report the damage. Chief Selph stated that it would be impossible for someone that don't have the knowledge to report something. Chairman Granger asked do we agree that they all three had knowledge that something happened. Chief Selph stated yes 100%. Mr. Loftin stated that's why they all got different levels of discipline.

Member Bourgeois asked Chairman Granger at the conclusion of this we as a board are gonna vote individually of whether to uphold, reject or modify the decision, is that correct. Chairman Granger advises member Bourgeois that's correct, he then reads aloud the description of each action that each board member has to vote on.

Chairman Granger asks Member Ceasar if she has any questions or comments. Member Ceasar states that she's still going back to whether or not I fell at the end of the day the other two may not have came out and said that they were being lazy or at the end of the day they didn't go check it either so without saying it, there's another way, he said it, he phrased it that way but the other two didn't, but they also didn't go check it.

Chairman Granger asked member Bourgeois if he had anymore questions or comments. Member Bourgeois stated that he's ready to vote. Chairman Granger advised that a motion has to be made first.

Member Bourgeois made a **MOTION TO UPHOLD, the decision based upon the preponderance of evidence, the action of the Appointing Authority was taken in good faith, for cause and the punishment imposed was commensurate with the infraction and uphold the 1-day suspension without pay and 1-day loss of seniority.** It was then **SECONDED** by Police Representative Wall. Chairman Granger advised that we have a MOTION and a SECOND, and asked Secretary Hebert to take a Roll Call.

Voting to **UPHOLD** the decision, went as follows:

Chairman Granger	_____yes	<u>  X  </u> no
Vice Chairman Vice	_____yes	<u>  X  </u> no
Member Ceasar	_____yes	<u>  X  </u> no
Member Bourgeois	<u>  X  </u> yes	_____no
Police Rep. Wall	<u>  X  </u> yes	_____no
<b>TOTAL NUMBER</b>	<u>  2  </u> Yes	<u>  3  </u> No

Chairman Granger advised that with 2 YES and 3 NO, the motion didn't carry. Chairman Granger advised a new motion will need to be made.

Chairman Granger made a **MOTION TO MODIFY, the disciplinary action taken against Mr. Berry that he received and make it equal to the discipline that the other two individuals involved (Brandon Broussard and David Richard) received. Mr. Berry will receive a written reprimand and Mr. Berry will be reinstated back his one-day loss of seniority and one-day loss of pay.** It was then **SECONDED** by Vice Chairman Vice. Chairman Granger advised that we have a MOTION and a SECOND, and asked Secretary Hebert to take a Roll Call.



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Voting to **MODIFY** the decision, went as follows:

Chairman Granger      X   yes           no

Vice Chairman Vice      X   yes           no

Member Ceasar      X   yes           no

Member Bourgeois           yes      X   no

Police Rep. Wall      X   yes           no

**TOTAL NUMBER**      4   Yes      1   No

Chairman Granger advised that with 4 YES and 1 NO, the motion to MODIFY the decision is approved and the board issued an Order to the Appointing Authority to make Firefighter Joshua Berry whole.

Mr. Loftin asked Chairman Granger if they could get the written reasons from the board. Chairman Granger advised we will get them to you.

Mr. Norman asked if the board could make a motion or ruling on awarding Mr. Berry his attorney fees up to \$1,000.00. as per the board rules. Chairman Granger advised Mr. Norman that in his 16 years serving on the board, I don't remember, they have ever requested the Appointing Authority to pay the Appellants Attorney fees. Mr. Loftin reads aloud the Louisiana Revised Statue 33:2501.1, regarding the Awarding of the Attorney's fees. After reading and understanding the LA RS. Mr. Norman rejected his request to be awarded the Attorney fees.

**ADJOURN**

With no further business before the Board a motion to adjourn was made by Member Bourgeois and seconded by Chairman Granger. All members voted in favor, none opposed. Meeting was adjourned at 8:50 pm.

**Minutes submitted by**

Lee Ann Hebert, Board Secretary

**Approved by the board**





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December 10, 2020

## WRITTEN FINDING OF FACT

Hearing of appeal by Joshua Berry on December 8, 2020.

Appellant is employed by the City of Sulphur Fire Department as a permanent Firefighter First Class.

By written communication dated December 20, 2019, Firefighter Berry was notified that he was being suspended for one (1) calendar day without pay and will lose one (1) day of seniority, for violation of Sulphur Fire Departmental Rules. Specifically, Chapter II, Section 4, d. (1); Chapter IV, Section A, Line 1, 2 and Chapter IV, Section D, Line 1, 2.

Appellant Berry filed timely an appeal within fifteen (15) days of receipt of the written communication for the disciplinary action. A public hearing was held at 5:30 pm on December 8, 2020, at the City of Sulphur Council Chambers, located at 500 N. Huntington Street, Sulphur, LA 70663. Appellant Joshua Berry was present with his counsel, Joe Norman.

## FINDING OF FACT

1. Sulphur Fire Departmental Rule **Chapter IV, Section A, Line 2-Duty Responsibilities:** requires all members to perform all duties delegated to them, in a manner prescribed by law, ordinance or departmental policies. Members shall maintain the operation and readiness of all apparatus and equipment in their care or possession and be in ready condition at all times.
2. Sulphur Fire Departmental Rule **Chapter VI, Section D, Line 1-Department Property and Equipment:** requires that all members are responsible for the proper care of the department property and equipment assigned to them. Damaged property due to negligence behavior may subject the responsible individual to reimbursement and/or appropriate disciplinary action.
3. Sulphur Fire Departmental Rule **Chapter IV, Section D, Line 2-Damaged or Inoperative Property or Equipment:** requires members to immediately report to their Company Officer any damaged departmental property assigned or used by them.
4. On December 10, 2019, appellant Joshua Berry failed to report the damage to the apparatus to his superior officer in charge.

## DECISION OF THE BOARD

The evidence and testimony presented to the Civil Service Board on December 8, 2020, established that the alleged violations did occur. The board determined that the Appointing Authority, Mayor Mike Danahay, acted in good faith for cause, but the punishment was not commensurate with the infraction. The board's decision to modify the order of the one (1) day suspension without pay and one (1) day loss of seniority, to a written reprimand to be placed in Firefighter Berry's permanent file. The board hereby orders the Appointing Authority to reinstate Firefighter Joshua Berry's one (1) day loss of full pay and one (1) day loss of seniority back to him.

Sincerely,

  
Mike Granger, Chairman

# NOTICE OF **RESCHEDULED** PUBLIC APPEAL HEARING

## SULPHUR MUNICIPAL FIRE AND POLICE CIVIL SERVICE BOARD

**DECEMBER 8, 2020, @ 5:30 PM**

The City of Sulphur Council Chambers  
500 N. Huntington Street  
Sulphur, LA. 70663

*NOTE: Notice of the September 15, 2020, @ 5:30pm, public hearing was posted from 08/20/2020, through 09/15/2020. The public hearing was not held on September 15, 2020, @ 5:30pm, due to the catastrophic damage caused by Hurricane Laura and no quorum will be present. The board will postpone the meeting to a future date. The rescheduled public hearing is to be held on UNKNOWN DATE AT THIS TIME*

*NOTE: Notice of the July 21, 2020, @ 5:30pm, public hearing was posted from 06/14/2020, through 07/21/2020. The public hearing was not held on July 21, 2020, @ 5:30pm, due to the rise in COVID-19 cases. The board approved to postpone the meeting to a future date. The rescheduled public hearing is to be held on UNKNOWN DATE AT THIS TIME*

*NOTE: Notice of the March 30, 2020, @ 5:30pm, public hearing was posted from 01/21/2020, through 03/30/2020. The public hearing was not held on March 30, 2020, @ 5:30pm, due to the Coronavirus Pandemic, the board approved to postpone the meeting to a future date. The rescheduled public hearing is to be held on UNKNOWN DATE AT THIS TIME.*

*NOTE: Notice of the January 22, 2020, @ 5:30pm, public hearing was posted from 01/10/2020, through 01/22/2020. The public hearing was not held on January 22, 2020, at the request of the Appellant's Attorney and approval by the board. The rescheduled public hearing is to be held on March 30, 2020, @ 5:30pm.*

IN ACCORDANCE WITH THE PROVISIONS OF THE MUNICIPAL FIRE AND POLICE CIVIL SERVICE LAW, THE SULPHUR MUNICIPAL FIRE AND POLICE CIVIL SERVICE BOARD WILL HOLD A PUBLIC HEARING AND INVESTIGATION CONCERNING THE APPEAL OF **FIREFIGHTER FIRST CLASS JOSHUA BERRY:**

Employee received disciplinary action taken against him from the City of Sulphur Fire Department, effective 12/21/2019.

In the form of the following:

- one (1) day suspension without pay
- one (1) day loss of seniority

Reasons given were as follows:

- Sulphur Fire Department Rules and Regulations Chapter II, Section 4, d. (1); Chapter IV, Section A, Line 1 & 2; Chapter IV, Section D, Line 1 & 2
- Civil Service Law RS 33:2500, Section A, (1), (2) and (3)

**POST FROM 11/06/2020 THROUGH 12/08/2020**

**DO NOT REMOVE BY ORDER OF**

**THE SULPHUR MUNICIPAL FIRE AND POLICE CIVIL SERVICE BOARD**