

April 28, 2022
DEPARTMENTAL ORDER OF DISCIPLINARY ACTION
AND STIPULATION AND AGREEMENT
Case No. C2021-051

Aaron McNally (F15056)
Firefighter in the Classified Service
Denver Fire Department (DFD)

This is before the Executive Director of the Department of Safety to approve, disapprove or modify the Chief of the Denver Fire Department's Written Command ordering disciplinary action against Firefighter Aaron McNally. The Written Command determined that Firefighter McNally violated:

- **Rule and Regulation (RR) #5** – Members shall observe written departmental or agency regulations, policies, or rules.

As applied to

Directive 1057.00 DFD Discipline Handbook – Code of Conduct 4, 6, 8, 10, 15, 18, 22

The Written Command determined that this was a Conduct Category E violation and imposed an aggravated penalty of a 336-hour suspension without pay/fine.

- **Rule and Regulation (RR) #24** – Members shall maintain satisfactory working relationships with co-workers, other City employees, and the public.

The Written Command determined that this was a Conduct Category C violation and imposed an aggravated penalty of a 72-hour suspension without pay/fine.

- **Rule and Regulation (RR) #28** – Members shall not intimidate or retaliate against an individual who has been identified as a witness, party, or representative of any party to any hearing or investigation relating to any disciplinary procedure, or any violation of a city, state, or federal rule, regulation, or law, or against an employee who has used a dispute resolution process in good faith.

The Written Command determined that this was a Conduct Category F violation and imposed an aggravated penalty of Termination.

DEPARTMENTAL ORDER OF DISCIPLINARY ACTION

Case No.: C2021-151
Aaron McNally (F15056)
Firefighter in the Classified Service
Denver Fire Department

The Written Command also determined that the penalty of termination for the violation of RR #28 should be held in abeyance for five (5) years provided there is no sustained Rule and Regulation violation within Conduct Category D or higher. The Written Command further determined that the penalties imposed for the violations of RR #5 and RR # 24 shall be served consecutively for a total penalty of 408 hours fine/suspension. Firefighter McNally agrees with these penalty determinations and has further agreed to the conditions set forth in the Stipulation and Agreement appended to this Order

On April 30, 2021, an incident occurred at Fire Station 5 which led to the initiation of an investigation and subsequent discipline against the House Captain, Charles Karl. As a result, Captain Karl was transferred to another firehouse and was ultimately demoted to the rank of Firefighter.¹

The incident created division and rancor between members of the B-shift, who had previously been under Captain Karl's leadership, and the C-shift. Firefighter McNally was a member of the B-shift and became the subject of an investigation and subsequent discipline for lying on behalf of Captain Karl during the investigation.²

Firefighter Karl filed an appeal of the disciplinary determination in his case with the Civil Service Commission and a hearing was set for December 1 and 2, 2021. On November 24, 2021, Firefighter Karl received a list of the City's witnesses for the hearing. The witness list included a member from Fire Station 5, JB³, who was a member of the C-shift.

On November 26, 2021, JB discovered that someone had placed a stuffed rat, attached with Velcro, on the partition wall of his assigned sleeping quarters at Station 5. JB notified Lieutenant K, who immediately notified DFD Internal Affairs, as she, JB, and the rest of her crew believed the rat was intentionally placed to imply JB was a "rat" for testifying against Firefighter Karl in his appeal

¹ In C2021-016, Captain Karl was found to have violated R&R #5, Failure to observe written departmental or agency regulations, policies, or rules as it pertains to Directive 1057.00, DFD Code of Conduct 4. (*Members shall*) Always conduct themselves to reflect credit on the Department and the City of Denver; DFD Code of Conduct 5. Supervisors will manage in an effective, considerate, and fair manner; and DFD Code of Conduct 10. (*Members shall*) Use good judgment. He was also found to have violated R&R #17, Members shall not lie to superiors or alter or falsify records; R&R #24, Members shall maintain satisfactory working relationships with co-workers, other City employees, and the public; R&R #27, Members shall not threaten, fight with, intimidate, or abuse employees or officers of the City or any other member of the public, for any reason; and R&R #39, Conduct Prejudicial, after he berated a Lieutenant before two firehouse crews and made vulgar comments about a shopper's physical appearance to junior firefighters while on a grocery run. Captain Karl received a demotion from the rank of Captain to the rank of Firefighter as penalty for the violations.

² In C2021-021, Firefighter McNally was found to have violated R&R #17, Members shall not lie to superiors or alter or falsify records; R&R #39, Conduct prejudicial to the good order and effectiveness of the department or agency or conduct that brings disrepute on or compromises the integrity of the City. Firefighter McNally obtained a total suspension of 96 hours without pay/fine for the violations.

³ The witness members are identified herein by their initials.

DEPARTMENTAL ORDER OF DISCIPLINARY ACTION

Case No.: C2021-151
Aaron McNally (F15056)
Firefighter in the Classified Service
Denver Fire Department

hearing. Investigators from the Fire Investigations Unit responded to take photos and collect the stuffed rat. [*see photo below*]



Subsequently, JB informed Assistant City Attorney Charles Mitchell, who was assigned to the Karl appeal, that he was concerned for his and his family's safety, repercussions on his career, and due to these concerns, he refused to testify at the appeal hearing. Because of incident with the stuffed rat and its apparent message, and JB's concern for his and his family's safety, the City Attorney did not force JB to testify.

The incident was referred to the Glendale Police Department for investigation of possible criminal charges related to CRS §18-8-704, Intimidating a Witness/Victim. Upon completion of the investigation, the 18th Judicial District Attorney's Office declined to file charges against Firefighter McNally.

DEPARTMENTAL ORDER OF DISCIPLINARY ACTION

Case No.: C2021-151
Aaron McNally (F15056)
Firefighter in the Classified Service
Denver Fire Department

On December 1, 2021, Firefighter McNally reached out to Internal Affairs through his Shift Commander and provided a statement over the telephone. Firefighter McNally wanted to come forward to admit that he, and he alone, was the one who placed the rat in JB's sleeping quarters at the Fire Station. He said the rat has been traded back and forth between firefighters for the past couple of years. Firefighter McNally said he placed the rat in JB's room as a joke, describing that it wouldn't stay put so he used tape to adhere it to the top partition of the wall.

Firefighter McNally said the rat was placed in fun and he hoped it would spark conversation. He said there was no malintent and described the incident as fire house humor. Firefighter McNally admitted that there had been negative feelings between the B and C shifts, but he thought the communications were improving.

Firefighter McNally acknowledged that he knew there was an appeal filed by Firefighter Karl and that he knew members were subpoenaed to testify. He said he was unaware of who specifically was involved in the case and that his placement of the rat was not intended to be intimidating. Firefighter McNally said he did not intend to hurt anyone's feelings or insinuate anything, but he was nonetheless remorseful.

Numerous personnel assigned to Fire Station 5 were interviewed by Internal Affairs. Lieutenant K reported in her interview on November 29, 2021, that interactions between the B and C shifts were improving somewhat since the April 30th incident. However, she also spoke of a conversation JB reported to her in which a member of the B shift, RM, told JB that he did not trust the C shift and agreed when asked if he was calling the shift "a bunch of rats." Lieutenant K said no one on C shift had seen the rat before and she suspected the rat was placed in JB's room because of the conflict over the case with Firefighter Karl.

In his interview with Internal Affairs on December 2, 2021, JB reported that he had not seen the rat when he dropped his bag at the beginning of his shift earlier in the morning on November 26th, because it was dark in the sleeping quarters. He had never seen the rat before that date. JB said the rat was a clear message to him that someone was suggesting he was a "rat" and placed it in his room because of his role in the appeal in Firefighter Karl's case. He said the rat played a large part in his decision to refuse to testify at the hearing on the appeal. JB said that he felt isolated because he and Lieutenant K were the only two members scheduled to testify, and he feared repercussions in his personal life and career. JB was not surprised when he was informed that Firefighter McNally placed the rat in his room because he knew that Firefighter McNally and Firefighter Karl were very close. JB said that he is not friends with Firefighter McNally, that they only occasionally say hello to each other, and affirmed they do not have a joking relationship.

At the Chief's Hearing held on March 31, 2022, Firefighter McNally read a prepared statement. He said that he has taken the incident seriously and that it "weighed heavily on his heart." Firefighter McNally described the incident as "meaningless", saying he "decided to create mystery

DEPARTMENTAL ORDER OF DISCIPLINARY ACTION

Case No.: C2021-151
Aaron McNally (F15056)
Firefighter in the Classified Service
Denver Fire Department

and spark a conversation with [JB]”. He denied that he had a close relationship with Firefighter Karl or that he attempted to intimidate JB, claiming he had no prior knowledge of JB’s involvement in the appeal. Firefighter McNally said though it was not his intent to harass JB, placing the rat was the wrong thing to do because of the way it was perceived. Firefighter McNally said that he had not communicated with Firefighter Karl between October 13, 2021 and December 7, 2021.

Firefighter McNally spoke mostly about his feelings and the impact this incident has had on him and he failed to adequately address the consequences of his misconduct. When asked about the symbolism of the rat, Firefighter McNally denied that he considered what the rat represented when he placed it in JB’s sleeping quarters. He said that he was “too complacent” about what had been going on in the house between the crews.

Firefighter McNally completed the DFD Tactical RECESS program to understand his actions in this case, what circumstances influence his decisions, and to learn how his actions affect others. He also presented letters of reference from fellow members of varying ranks within DFD. The letters spoke of Firefighter McNally’s passion for the Department, his work ethic, and his respect for his co-workers.

RR #5 of the Denver Fire Department Rules and Regulations

Members shall observe written departmental or agency regulations, policies or rules.

Directive 1057.00 DFD Discipline Handbook – Code of Conduct

The following Code of Conduct guidelines are applicable to Firefighter McNally’s actions under review:

MEMBERS SHALL:

- ...
- 4. Always conduct themselves to reflect credit on the Department and the City.
- ...
- 5. Always conduct themselves in a manner that creates good order inside the Department.
- ...
- 8. Be concerned and protective of each member’s welfare.
- ...
- 10. Use good judgment.
- ...

DEPARTMENTAL ORDER OF DISCIPLINARY ACTION

Case No.: C2021-151
Aaron McNally (F15056)
Firefighter in the Classified Service
Denver Fire Department

MEMBERS SHALL NOT:

15. Engage in activity that is detrimental to the Department.
...
18. Engage in intimidating, threatening, or hostile behaviors, physical assault, or other acts of this nature.
...
22. Depart from the truth.

There is a preponderance of evidence that Firefighter McNally violated this rule and regulation when he placed the stuffed rat in JB's sleeping quarters at the Fire Station. Firefighter McNally admitted that he placed the rat and claimed that he placed the rat in fun, hoping it would spark a conversation between himself and JB. Firefighter McNally's characterization of his motivation in placing the rat begs credulity.

The rat was discovered in the sleeping quarters adjacent to JB's bed on November 26th, two days after the City disclosed its witnesses for the December 1st disciplinary hearing for Firefighter Karl.

Firefighter McNally had previously been assigned to the B shift under the supervision of then-Captain Karl. In the earlier investigation into then-Captain Karl's misconduct, Firefighter McNally's statements were so dissimilar with those of other members and so mischaracterized then-Captain Karl's behavior that it was determined that Firefighter McNally lied to his superiors during the investigation.

Firefighter McNally's claim that he used the rat as a joke in the hopes of sparking a conversation with JB is implausible when one considers his prior relationship with Firefighter Karl, his crew's relationship with the C shift of which JB was a member, the placement of the rat, two days after the witness disclosure that included JB's name was made, and the fact that JB and Firefighter McNally only occasionally said hello and did not have a playful relationship. It is incredible to accept that Firefighter McNally did not consider the symbolism of the rat when he placed it in JB's sleeping quarters.

Firefighter McNally's action reflected poorly on the Department and City as it resulted in interfering with the disciplinary appeal process. His action had the opposite effect of creating good order inside the Department, especially when one considers the tenuous nature of the relationship between the two shifts. Firefighter McNally exercised poor judgment and did not demonstrate any concern for JB's welfare. In fact, JB was so concerned with the safety of himself and his family, and possible repercussions on his career, that he refused to testify at the hearing.

The DFD has an interest in protecting the integrity of the disciplinary process. Firefighter McNally's actions resulted in a witness refusing to appear at the disciplinary hearing, potentially weakening the City's case and compromising the integrity of the case to the Department's

DEPARTMENTAL ORDER OF DISCIPLINARY ACTION

Case No.: C2021-151
Aaron McNally (F15056)
Firefighter in the Classified Service
Denver Fire Department

detriment.

The totality of the circumstances presented support the conclusion that Firefighter McNally engaged in intimidating, threatening, and hostile behavior toward JB. His implausible explanation that he intended the rat as a prank and a conversation starter is not credible. In trying to dismiss his culpability for the consequences of his actions, Firefighter McNally departed from the truth.

A violation of RR #5 appears in Conduct Categories A-F of the disciplinary matrix. Conduct Category E includes "...an act that results in an actual serious and adverse impact on the Department's mission...or to the professionalism of the Department."

Firefighter McNally's misconduct further impaired the challenging situation between the members of the B and C shifts at Fire Station 5. Firefighter McNally misrepresented the truth to Department command. His actions were contrary to the Department's Mission to "serve with integrity, [and] accountability". The professionalism of the Department was tarnished to the City Attorney, the City of Glendale, and the 18th Judicial District Attorney's Office. Therefore, this misconduct is properly characterized as Conduct Category E misconduct.

For a Discipline Level 6, the mitigated penalty is a fine/suspension of 144-168 hours; the presumptive penalty is a fine/suspension of 240 hours; and the aggravated penalty is a fine/suspension of 288-336 hours.

In aggravation, Firefighter McNally violated seven separate conduct standards of the DFD Code of Conduct. Additionally, this is the second instance where Firefighter McNally has been untruthful in an Internal Affairs investigation. These factors warrant a penalty outside of the presumptive penalty and demand the maximum aggravated penalty within the prescribed Discipline Level. The Written Command is approved, and the maximum aggravated penalty of three hundred thirty-six (336) hours fine suspension is imposed.

RR #24 of the Denver Fire Department Rules and Regulations

Members shall maintain satisfactory working relationships with co-workers, other City employees, and the public.

There is a preponderance of evidence that Firefighter McNally violated this rule and regulation when he failed to maintain satisfactory working relationships with co-workers when he placed a stuffed rat in JB's sleeping quarters in an apparent attempt to intimidate or harass JB, after he had been disclosed as a witness in a disciplinary hearing.

Firefighter McNally's explanation that his intent was to place the rat as a joke to spark conversation with FB is implausible. To expect that a stuffed rat, with its associated meaning of being a snitch,

DEPARTMENTAL ORDER OF DISCIPLINARY ACTION

Case No.: C2021-151
Aaron McNally (F15056)
Firefighter in the Classified Service
Denver Fire Department

would spark conversation with one of the witnesses in the earlier cases against Firefighter Karl and Firefighter McNally is preposterous.

Firefighter McNally was well aware of the schism that developed between the B and C shifts following the case with Firefighter Karl. Though there is some evidence that the relationships were improving at the time of this incident, the two shifts were far from the point of lighthearted interaction.

Firefighter McNally's misconduct further degraded the relationship with JB who was concerned not only for his safety and that of his family, but also with repercussions to his career with the DFD. Firefighter McNally's misconduct negatively impacted the relationship with the City Attorney's Office when Mr. Mitchell was unable to present a significant witness at the hearing on the disciplinary rule.

A violation of RR #24 appears in Conduct Categories A-C of the disciplinary matrix. Conduct Category C includes "[c]onduct that has a pronounced negative impact on the operations or professional image of the Department; or on relationships with other firefighters, employees, agencies or the public."

The intimidating act resulted in JB refusing to testify at a disciplinary hearing as well as a criminal investigation into Firefighter McNally's actions. The relationships and professional image of the DFD was discredited to the Denver City Attorney's Office, Glendale Police Department, and the 18th Judicial District Attorney's Office. Firefighter McNally's misconduct further impaired the already challenging situation between the members of the B and C shifts at Fire Station 5. Therefore, this misconduct is properly characterized as Conduct Category C misconduct.

Firefighter McNally has one prior violation that mandatorily increases the penalty level. For a Discipline Level 4, the mitigated penalty is a fine/suspension of 24 hours; the presumptive penalty is a fine/suspension of 48 hours; and the aggravated penalty is a fine/suspension of 48-72 hours.

The aggravating factors present here include the broad swath of relationships negatively impacted, both inside and outside of the DFD. There are no mitigating factors relevant to this specification. Therefore, a penalty in the aggravated range is warranted. The Written Command is approved and the aggravated penalty of seventy-two (72) hours fine/suspension is imposed for this rule violation.

RR #31 of the Denver Fire Department Rules and Regulations

Members shall not intimidate or retaliate against an individual who has been identified as a witness, part, or representative of any party to any hearing or investigation relating to any disciplinary procedure, or any violation of a city, state, or federal rule, regulation, or law, or against an employee who has used a dispute resolution process in good faith.

DEPARTMENTAL ORDER OF DISCIPLINARY ACTION

Case No.: C2021-151
Aaron McNally (F15056)
Firefighter in the Classified Service
Denver Fire Department

There is a preponderance of evidence that Firefighter McNally violated this rule and regulation when he placed a stuffed rat in FB's sleeping quarters to intimidate FB who had been identified as a witness in a disciplinary hearing.

A violation of RR #28 appears in conduct categories E-F of the disciplinary matrix. Conduct Category F includes "[c]onduct that is substantially contrary to the guiding principles of the department or that substantially interferes with its professional image..."

By intimidating JB, a witness in a disciplinary hearing, which resulted in JB's refusal to testify, Firefighter McNally substantially interfered with the DFD's professional image. Members of the DFD "are expected to conduct themselves in a self-disciplined and professional manner" and "should project a positive, productive and mature demeanor...". [*Denver Fire Department Directive 1057.00 preamble*]. Firefighter McNally's conduct fell woefully short of these departmental expectations. These factors support the conclusion that his misconduct is properly characterized as Conduct Category F misconduct.

When one of its members commits egregious misconduct that brings such disrepute to the Department, a substantial penalty is warranted. There are no significant mitigating circumstances relevant to this specification and therefore, a presumptive penalty of termination is warranted. The Written Command is approved, and the penalty of termination is imposed. Pursuant to the terms of the Stipulation and Agreement, the penalty of termination is held in abeyance for five (5) years from the date of this order on the condition Firefighter McNally commits no sustained Rule and Regulation violation within Conduct Category D or higher during that period.

The Written Command is approved, and the penalties imposed for RR #5 and RR#24 shall be served consecutively for a total of four-hundred eight (408) hours fine/suspension. The timing of such suspension is to be determined by the DFD Administration.

The discipline enumerated in this Order is based upon the approved and executed Stipulation and Agreement appended to this Order and Firefighter McNally's agreement to accept the discipline as stated above and waive further disciplinary process.

BY ORDER:

Mary J. Dulacki

4/28/2022

Chief Deputy Executive Director

Date

DEPARTMENTAL ORDER OF DISCIPLINARY ACTION

Case No.: C2021-151
Aaron McNally (F15056)
Firefighter in the Classified Service
Denver Fire Department

MEMBER'S RETURN

I hereby certify that I received the within Departmental Order of Disciplinary Action and have delivered a true copy thereof to the within-named Aaron McNally this ____ day of _____ 2021.

Signature

Printed Name