CIVIL SERVICE COMMISSION
CITY AND COUNTY OF DENVER, COLORADO

Case No. 12 CSC 08

In re the matter of:

RICHARD NUANES (F74010)
Lieutenant in the Classified Service of the Denver Fire Department
Petitioner.

FINDINGS, CONCLUSIONS, DECISION AND ORDER

An evidentiary hearing in the above captioned matter was held on December 10 – 13, 2012 and January 14, 15, and 17, 2013 before Timothy R. Arnold, Civil Service Hearing Officer. The Petitioner Richard Nuanes ("Petitioner") testified and was represented by Issac H. Kaiser, Esq. The Respondent, Honorable Alex J. Martinez Manager of Safety through the Deputy Manager of Safety ("the Deputy Manager" or "Respondent") Ashley Kilroy, represented by Jennifer L. Jacobson, Denver Assistant City Attorney. A broad sequester order was entered directing witnesses to refrain from discussing issues of the appeal, or their testimony with any other witness in the hearing or with any member of the Denver Fire Department. The evidentiary hearing was concluded with the submission of the parties' written summations on February 11, 2012. On January 29, 2012 the Hearing Officer issued an Order
Regarding The Status Of Exhibits. In that Order he indicated that Exhibit J (Disciplinary Guidebook, Denver Fire, Topic No. 106.01, Investigations) had not been admitted into evidence. Because both parties have referenced the content of that Exhibit in their written closings and it appears to be important to this matter, the Hearing Officer now admits the Exhibit. Exhibit MM-2 was not admitted into evidence since it merely summarized evidence in other Exhibits. However, the Hearing Officer indicated the Petitioner would be allowed to attach that document to his written closing. At page 56 of Petitioner’s Closing he indicates Exhibit MM-2 is attached. However, it was not physically attached. Therefore, the Exhibit MM-2 not admitted into evidence should be maintained in the record as an attachment to Petitioner’s Closing.

Based upon the evidence received at the hearing and the arguments made by the parties, the hearing officer hereby adopts the following findings of fact and conclusions of law, and he renders his decision upon Richard Nuanes’ appeal:

**ACTION APPEALED**

The Manager of Safety Alex J. Martinez and Deputy Manager of Safety Ashley Kilroy issued the Departmental Order of Disciplinary Action in regards to Richard Nuanes, F7410 on June 13, 2012.¹ Lieutenant Nuanes was demoted to the rank of Firefighter 1st grade for his failure to supervise, failure to train, and performance issues. He was suspended without pay for three (3) duty shifts (72 hours total) for the misconduct described in the Order including bullying and harassing conduct, retaliation and retribution against his crew; misuse of city and department time and

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¹ The parties agreed for the purpose of this appeal that Ashley Kilroy was the decision maker in this matter.
resources; and insubordinate conduct. Lieutenant Nuanes was also required to participate in training regarding harassment and retaliation and performance-related training to be determined by the Chief of the Fire Department or his designee. The Order also specifically set out the Department Rules, which were found to have been violated by Lieutenant Nuanes. Those were as follows:

Rule 1  Every member shall comply with the Guidelines of their respective Divisions and written Directive of both the Denver Fire Department and the City of Denver;

Rule 2  Every member shall use their training and capabilities to protect the public at all times;

Rule 3  Every member shall work to the level of expertise in their position so as to enable all department programs and functions to operate effectively;

Rule 4  Every member shall always conduct themselves to reflect credit on the Department and the City of Denver;

Rule 5  Supervisors will manage in an effective, considerate and fair manner and subordinates will follow instructions in a positive, cooperative manner;

Rule 6  Every member shall always conduct themselves in a manner that creates good order inside the Department;

Rule 7  Every member shall keep themselves informed to enhance their awareness and efficiency concerning their positions;

Rule 8  Every member shall be concerned and protective of each member’s welfare;

Rule 9  Every member shall operate safely;

Rule 10 Every member shall use good judgment, and

Rule 15 No member shall engage in activity that is detrimental to the Department.
The Respondent also found that Lt. Nuanes violated the following Denver Fire Department Directives: 1019.00, Mission Statement; 101.04, Personal Activities While On Duty; 1020.00, Code of Conduct; 103.01, Hazing, Harassment, and Retribution; 2104.07, Personal Activities in Fire Station; 2108.04, Division Training, Company Standards; Incident operations, Tactical Considerations at Emergency Incidents; and District 6 Policy as well as his actions contrary to the expectations contained in his job description.

FINDINGS OF FACT

Credibility of certain witnesses:

Captain Battenhouse knew Jodi Freemonth had a reputation for exaggeration, embellishment and not being truthful. He had had no personal experience with her twisting the truth, but working with her on a handful of shifts he felt she told tall stories. When he told the chiefs what Jodi Freemonth was texting him on December 11, 2011, he told them the information was from her and he knew she had a reputation for not always telling the truth. However, Battenhouse decided he believed what she said about Lt. Nuanes because Stoakes and Hensler told him essentially the same things. He did not look at the records and did not have access to them, although he could have requested them. However, he did not since the Administration took over the investigation.

Examples of Engineer Freemonth’s tendency to exaggerate were testified to. Jodi Freemonth has told other Firefighter, specifically Ron Hensler and Dan Piel, that
she had a helicopter’s pilot license. She admitted on cross exam that she did not. Her father was a helicopter pilot and she rode with him numerous times.

In regards to the Mary Crest incident involved in the investigation and discussed below, Jodi Freemonth told Chief Bray in her interview that she was not comfortable about Nuanes’ actions (hesitating at least 3 minutes to call an ambulance) because she had some medical school. Also, she had told others, specifically Ron Hensler and Dan Piel, that she had gone to medical school but quit to take the firefighting job. However, she admitted on cross-examination that she did not go to medical school. She had only taken some pre-med classes.

Another example concerning her credibility was presented by the Petitioner through two Fleet Management witnesses. Floyd Schiller was an Assistant Master Mechanic and had been at Fleet Management for 18 years, his current position for 10 years. He ran the day-to-day fire equipment and engines inspections, which they did from time to time. Engine 17 was due for inspection so he called Lt. Nuanes on November 30, 2011 in the morning and asked that he have the engine to him at the main fleet shop at 5440 Rosalyn St. at 6:30 a.m. the next day. Nuanes told Freemonth that afternoon and that afternoon Daniel Freix, Schilling’s assistant, received a call from Engineer Freemonth questioning why they had to have the engine there and she wasn’t sure she would be able to. Freix left a voicemail about her call with Schiller.

At 6:30 a.m. she brought the engine in and questioned why he hadn’t cleared bringing it in with her. He told her he followed the chain of command. She told him she hadn’t learned of it until 6:00 a.m. that morning. She was not rude but agitated.
(F.Sch.) Nuanes had no idea that Jodi had called. He received a call the next morning confirming the appointment and took all the equipment off the rig. He told Bray in his interview that this was an example of Jodi departing from the truth and Battenhouse said he would look into it. However, he didn’t.

The Hearing Officer, based on this evidence and other discrepancies and exaggerations that will be mentioned below, concludes that Ms. Freemonth’s testimony and statements in the investigation are not entirely credible. Therefore, he attributes little weight to her testimony. However, in regard to certain events where her statements were supported by other witnesses or events, he does rely on her testimony.

The credibility of other witnesses was also of concern to this Hearing Officer. Glenn Stoakes testified that Jodi Freemonth was like a sister to him. From that statement and others it appeared that he was inclined to support her exaggerated version of events at times. There were also indications in his testimony that his memory of events was not to be fully trusted. He even indicated that he wished to not remember the events.

Petitioner Rick Nuanes’ credibility was also not fully reliable. However, his avoidance of answering certain questions directly and/or changes in his statements from Internal Affairs to his pre-disciplinary “hearing” with Chief Tade, and even at the hearing on particular topics caused the Hearing Officer to carefully weigh his testimony. An example of his avoidance was when Lt. Nuanes indicated in his written statement and also in his pre-disciplinary “hearing” with Chief Tade, he stated that there was nothing unusual on December 11th because he didn’t think his
actions were unusual for the circumstances. Another example was that Nuanes didn’t fully explain the temporary nature of kicking Stoakes out of the food league to Chief Tade because he didn’t think he was allowed to explain it. However, the Notice of Contemplation of Discipline sent to him before that pre-disciplinary meeting (Exhibit 3, at page 4) indicated that it was his opportunity to present facts, to present his side. A final example was his waffling and changing of his position from the Internal Affairs interview to the pre-disciplinary hearing to the hearing *de novo* regarding his discretion and actions as to Code 9 and 10 calls. As with Freemonth’s statements, the Hearing Officer accepted his testimony where it was supported by other testimony, documents, events or appeared to be more logically true than not true.

Ryan Nuanes is the nephew of Petitioner Rick Nuanes. The Hearing Officer, however, found that this relationship did not taint his testimony. The Hearing Officer found his testimony to be balanced, fair and credible.

The atmosphere of Firehouse 17 A shift and Lt. Nuanes’ treatment of his crew:

Petitioner Rick Nuanes was a Lieutenant assigned to Station 17 on the A shift during 2010 and 2011. His crew at Firehouse 17 during 2010 and 2011 consisted of Jodi Freemonth, Engineer, Ronald Hensler, Junior Firefighter, and Glenn Stoakes, Senior Firefighter. Engineer Freemonth had been at Firehouse 17 for approximately 7 ½ years and had served under Lt. Nuanes for approximately 3 years. Firefighter Stoakes was with the Denver Fire Department for seventeen years and at Firehouse Engine 17 for approximately 4 years on A shift until he transferred to Truck 26 at
the beginning of 2012. He put in for the transfer in September, which had nothing to do with Lt. Nuanes. Firefighter Hensler was at Firehouse 17 for approximately 4 years and under Lt. Nuanes on A-shift for approximately 2 years. He was the junior firefighter with that crew. Lt. Nuanes has been with the Denver Fire Department for 39 years. He was promoted in 1992 to Lieutenant. He is currently at Fire Station 28 as a Firefighter 1st grade and Station 12 from April to June of 2012. He had been at Station 17 for 8 – 9 years. While there, he had worked all three shifts at different times.

Captain Battenhouse was assigned to Engine 17 B shift in 2011 and had the opportunity to interact and observe Lt. Nuanes during the shift change period. Engineer Freemonth did not have any problems with Lt. Nuanes for the first 2 ½ years she served with him, only the last half year. During the initial period that Captain Battenhouse was assigned to Engine 17 B shift he had limited opportunity to observe the A shift crew and Lt. Nuanes and described Lt. Nuanes interaction with his crew as okay and did not see or hear of any issues. However, he felt things were up and down during 2011 and then steadily worsened the last few months. Much of his information came from Jodi Freemonth in October and November of 2011. Ron Hensler concluded by December of 2011 that Nuanes did not have a positive attitude towards the crew. Ron Hensler spent 50 to 75 % of his time at the station in his room so he wouldn’t have to deal with the interpersonal relationships of the crew. However, despite the tensions, Lt. Nuanes did invite the crew to his daughter’s wedding.
Battenhouse did hear adverse comments by Lt. Nuanes concerning Glenn Stoakes such as his saying, “Stupid, fucking stupid,” when Stoakes was talking. Stoakes indicated he was upset and told him Lt. Nuanes gave him no respect. However, Stoakes did not ask the Captain for help. He told the Captain he could wait until the end of the year to transfer and Captain Battenhouse took no action. On occasion, after the A shift crew left Lt. Nuanes talked negatively about Jodi Freemonth and Hensler too. He said, “She doesn’t do anything” and “Ron doesn’t know how to be a Firefighter, I can’t do anything with him.” Captain Battenhouse reported the conduct and issues he observed to the District Chiefs, who he said were aware of the issues during 2011 but took no action until December. The term “harassment” was never used by the crewmembers until December. Hensler did not report Nuanes' treatment to any higher officer until the December investigation.

Lt. Nuanes frequently made negative derogatory comments towards Firefighter Stoakes. Stoakes felt Lt. Nuanes was malicious and nasty because nearly every day for three years he told Stoakes that he stank, and was dirty, referred to him as “pinky” because he said his skin was pink, and said to him he was not a good fire fighter or made some other derogatory remark. Freemonth testified that during 2011 Lt. Nuanes picked on all of them but daily picked on Stoakes calling him stupid or saying, “You’re pink, you stink. You’re fucked up.” The use of offensive nicknames is not uncommon in the department. Action against that conduct depends, to some extent, on whether the target is offended.

He complained about Stoakes’ car and home and used profanity. Nuanes would tease Stoakes on a topic and even though Stoakes let him know he didn't like
it, Nuanes still continued. Topics included his hygiene, his cars, his motorcycle, his
house. Although Lt. Nuanes complained to Stoakes about the condition of his house
he helped him out by delivering a load of rock there at a reduced price of $250.00.
Others on the crew would tease each other and Stoakes, in particular, but their
relationships were different than with Nuanes.

Nuanes feels he treated Stoakes the same as everyone else on the crew. He
asserted he never called him “stinky”. He probably called him “pinky” once. He
admitted that he made negative comments about his house and cars. Lt. Nuanes
admits that he has yelled at the crew and cursed at them on occasion. He admitted
that he made negative comments about the crew.

Dan Robinson, retired, who served Denver Fire for 32 ½ years, was at Engine
house 17 in 2011 under Captain Battenhouse. During the shift change he did
observe Lt. Nuanes badmouth his crewmembers in a joking manner. He poked fun at
them. It was not done in a vicious way. John Tsapakis, a firefighter with the Denver
Fire Department for 9 years served at Station 17 under Lt. Jesse Smith and then with
Capt. Battenhouse in 2011. He had interactions with Nuanes’ crew in 2011, in the
morning around shift change, involving about 96 shift changes plus or minus a half
dozen or so. He never heard Lt. Nuanes denigrate his crewmembers.

Dan Piel had worked with Lt. Nuanes for years before 2011 when Nuanes had
been the officer on C shift. Nuanes’ A shift relieved the C-shift around 6:30 to 7:30
a.m. Piel never saw any conflicts between Nuanes and his crew during shift change.

Steven Welch, who worked several trades that put him on Nuanes’ crew, also
testified that he did not experience problems with Nuanes. He felt Nuanes knew the
rig, connections, gear, and use of it. He didn’t observe any problems between
Nuanes and the crew. He liked working with him.

Despite the conflict in testimony between witnesses, the Hearing officer finds
that Lt. Nuanes had an on-going practice during 2011 of making negative derogatory
comments to his crew and name calling, in particular towards Glenn Stoakes.

Using swearwords and profanity is common in all Firehouses in Denver. It is
common in the Engine 17 Firehouse. Lt. Nuanes frequently used swear words
including the word “fuck.” Captain Battenhouse also curses and has used the word
“fuck.” Lt. Nuanes’ use of profanity was not any greater than others around the
firehouse; it was typical firehouse language. Jodi Freemonth has used foul language
including “fuck” in firehouse 17 and on calls, and in talks with Lt. Nuanes and other
superior officers. She has heard crewmembers Glenn Stoakes and Ron Hensler use
swear words including the word “fuck”. Dan Piel also used swear words including
the “F” word. It was common at all the firehouses he had been in.

Each firehouse has a food league in which the members usually participate,
although participation is voluntary. There are no Department Rules on how a
firehouse food league is run. Lt. Nuanes was the cook for the Engine 17 firehouse
food league. It was very unusual for a Lt. to serve as the cook. Each member
contributed an equal amount of money for the grocery shopping. Usually, when the
Engine 17 A shift crew went shopping for food, by agreement of the league
members, Lt. Nuanes swiped his King Soopers card in order to get the King Soopers
gas points.
An incident occurred in which Lt. Nuanes thought that Glenn Stoakes swiped his own card rather than letting Lt. Nuanes swipe his. Lt. Nuanes reacted strongly to this action by confronting Stoakes when they reached the rig. He threw Stoakes’ money at him and told him he was out of the league for swiping his card, which denied Lt. Nuanes his points. Stoakes explained that Firefighter Hodges, a trade Firefighter that day, had swiped his King Soopers card rather than Stoakes. He showed Lt. Nuanes the receipt and the number of the card. Lt. Nuanes then reversed himself and let Stoakes give his money back and stay in the league. They unraveled the confusion of the situation and resolved it in a few minutes. Glenn Stoakes recalled that although Nuanes took his ten dollars back in the parking lot, it took until the next shift to fully resolve the situation. However, he never missed a meal. No witness knew of any other fireperson being kicked out of a food league. Nuanes admits that he kicked Stoakes out of the food league temporarily but he asserts, since he allowed him back in almost immediately, no harm was done.

Jodi Freemonth complained to Lt. Nuanes in April or late May 2011 about Rocky Velasquez, a Firefighter on Shift-B, walking by her area in the firehouse while she was changing clothes, essentially peeping at her, and related concerns. He stayed after shift change as late as 9:30 or 10:00 a.m. and showered in the shower that she was assigned to use. She thought Lt. Nuanes had taken care of the problem. After a second incident about a month later both Nuanes and Freemonth confronted Velazques and told him to stop. A few weeks later Velasquez asked Nuanes permission to shower there again if he went around through the kitchen and avoided Freemonth’s sleeping area. That seemed to work and Freemonth was
satisfied. However, in late August or September, after the Company Standards training and after relations between the crew and Nuanes had become tense, Velasquez started walking past Freemonth’s sleeping area again. When she objected, Nuanes refused to take action and told her he couldn’t give her special treatment and impose a specific rule against one Firefighter and not others. Although she didn’t voice her dissatisfaction to Nuanes, this resulted in Freemonth’s unhappiness with Nuanes to grow further.

There had been friction between Jodi Freemonth and other Firefighters over a trade issue that happened in 2009. Rocky Velasquez took a shift for her and although she repeatedly tried to pay him back Velasquez wouldn’t agree to the return trade. This went on for one and a half to two years. Lt. Nuanes tried to resolve the dispute, in May of 2011 by looking up the rule with Jodi, and they told Velasquez the rule supported her. It provided that a trade had to be repaid within a year, otherwise the debt would be lost. However, he also told her he recommended that she still repay the trade to maintain good relations. She refused at that point. Generally, other Firefighters felt she was morally wrong to refuse to repay the trade. Some Firefighters told her that they would not trade with her because they couldn’t count on her repaying it. This situation also contributed to Engineer Freemonth’s unhappiness with Lt. Nuanes.

Training:

The Denver Fire Department required frequent, if possible, daily training per its policies. (Exhibit 43, Standard Operating Guideline, Company Standards, para. C; Exhibit 46, Lieutenant Job Description, page 7) The Department has an Operations
Training Division. Per the District 6 Policy dated January 1, 2011 company officers are responsible for daily training of probationary firefighters. (Exhibit 48, District 6 Policy, para. 18), “Captains and company officers shall conduct training sessions with appropriate content and within the required time frame, as directed by the Training Division or the District 6 Training Chief.” (Exhibit 48, para. 4) However, there were no directives or guidelines as to what constituted such training aside from those concerning the Company Standards Testing held in 2011.

A Lieutenant was also responsible for daily training of probationary Firefighters. Ron Hensler reported that in 2009 a probationary Firefighter, Jennifer Rosely, was confused over an improper response to an incident to which he attributed Lt. Nuanes’ inadequate training of her. However, she testified that she felt his training was good and did not recall the incident.

Chief Tade testified that training on a 2-hour daily basis is the general expectation. However, there was no written instruction to that effect offered and Assistant Chief Ryan Nuanes testified there is no Denver policy setting a specific amount of training to be undertaken each day. Chief Tade conceded that Exhibit 48 showed that only 4 officers of 21 recorded in excess of 150 hours of training so he’s aware numerous officers do training and don’t enter it. He indicated the problem recording training was among a number of problems being addressed as a result of this case. Captain Battenhouse considered the daily routines of the firehouse to be included as training and he reported two hours including such activities regularly on the computer.
The January 1, 2011 memo (Exhibit 48, para. 4) indicated that officers conducting such training were required to complete training records either by computer or on paper. Training was entered on the computer in quarter hour increments. Officer Nuanes rarely did so. He only reported 7 hours for 2011. He testified that he trained more than the record showed, but that he hadn’t realized he was supposed to be logging it.

Firefighter Dan Piel trained nearly every day, with his regular crew during 2011 under Lt. Jesse Smith. However, Smith only recorded 8 hours of training. Exhibit 58 lists the training time reported for each officer in 2010 and 2011. Besides Smith’s and Nuanes’ minimal reports, that record only showed 6 hours for Lt. Simpson, and 5.75 hours for Lt. Brady. The record showed an incredible range of reporting from the low of 5.75 hours to a high of 185.50 hours. (also see Exhibit VV-1) The Respondent did not look at a comparison between Lt. Nuanes’s record of training and other officers contained in Exhibit 58 in reaching the decision regarding Nuanes’ conduct.

Captain Battenhouse was aware that Lt. Nuanes failed to enter training records but over two years never spoke to him about the problem. He did tell him several times he should train with his crew. The District Chief was responsible for reviewing the training records. No evidence was presented that the District Chief ever did so.

Lt. Nuanes did not train his crew for the Company Standards Training. Glenn Stoakes requested training for the Standards Training, but Lt. Nuanes told him “he didn’t need it since he should know his job.” Stoakes then trained with the Engine 17
B shift under Captain Battenhouse. Tsapakis, under Battenhouse, trained on nozzles and other things. They practiced and went over materials for the district standards training.

Ron Hensler also asked that they train and Nuanes told him no, that he knew his job. Nuanes admits he did not train his crew for Company Standards. He testified he asked them to train, but they told him they were good to go. He felt the evolutions were simple, and they should be able to do them. During her 3 years working with Lt. Nuanes, Jodi Freemonth said they never trained as a crew. She requested that they go over the job sheets for the Company Standards and Nuanes told her she should know her job.

At the standards training on July 8, 2011, it was Dan Piel’s responsibility, in place of the junior Firefighter Ron Hensler, to lay out hoses and the Sampson and make the connection to the hydrant. Then the truck moved off and the Senior Firefighter, Stoakes, was to clamp the hose with the Sampson. If the hose isn’t clamped correctly it could flood the hose bed of the truck. On the evolution Piel made the hydrant connection and opened it. Stoakes hadn’t put the Sampson on and there was flooding. Lt. Nuanes had handed the Sampson to Glenn Stoakes from the back of the fire truck. They had a miscommunication. However, they made a great save correcting the mistake and finished well. Firefighter John Tsapakis was present and observed Nuanes yell at Jodi Freemonth when the Sampsons were not put on and she started the water flow. Nuanes had to wrap the hose and sit on it to stop the flow. Piel also tripped and fell on his face on one evolution, but did okay on the other two. The next two evolutions he did his job without incident.
Although she knew that Lt. Nuanes was in charge of their crew at the standards testing, Freemonth claimed she had to follow an order from a superior officer present. Therefore, when Chief Mees told her to add hose in the second evolution she felt she had to do it. The hearing officer finds this explanation was incredible and merely an attempt to save face. They didn’t have headsets and had to yell to each other. While she was adding the hose, Nuanes and Stoakes were on the ladder and Piel was 300’ away at the hydrant. They didn’t hear what was going on and couldn’t intervene. Freemonth also claimed that after the evolution Nuanes yelled at her, “You don’t run this rig, I do. I give the instructions.” Afshar did not hear any yelling and felt Nuanes and Freemonth resolved their issue. Dan Piel testified that Nuanes raised his voice but was not yelling. Piel observed that Freemonth was mad after that and stayed mad. Freemonth testified that before Company Standards she got along with Lt. Nuanes, but after he was upset with her and the tension was raised. Dan Piel indicated that after the Company Standards there was tension that hadn’t been there before.

Freemonth testified she didn’t realize that Chief Afshar was their proctor although he had a clipboard and met with the crew. According to Assistant Chief Afshar the Company Standards Training exercise in 2011 was the first ever. He was the monitor or proctor for Lt. Nuanes’ crew. He has known Rick Nuanes for 20 + years. Engine 17, A shift finished all the exercises. At the end he went over all the exercises with the crew. They had a problem taking a line up a ladder. The Engineer missed the mark. The rig was not in the right place and Mees apparently told her to add line. It slowed the process. Nuanes was upset with her. Afshar wasn’t aware of
Mees’ instruction. He did not hear anyone scream or yell at anyone. The exercises were stressful. There were four chiefs watching. Afshar thought the crew did well.

Assistant Chief Afshar responded to a verbal request by email (Exhibit 56, top email) from Assistant Chief Drennan, who had asked him to write a letter about Rick Nuanes’ failure to have his gloves on in the one evolution. He was not asked about Nuanes’ manner of wearing his mask and hood. Afshar didn’t see a problem with gloves, so he wrote that he did not observe any performance issues specific to Lt. Nuanes. At the time Nuanes was on the ladder and showed water (turned the hose on) he had his gloves on. He testified that his notation about PPE on the evaluation sheet (Exhibit 31) only referred to a general point he went over with the crew. Afshar testified that Assistant Chief Drennan and possibly Assistant Chief Resecki noted that they observed Nuanes erroneously put his hood underneath his face piece. The third evolution with the ladders went well, and, overall, Glenn Stoakes felt the A-shift crew, with Dan Piel from C-shift substituting for Ron Hensler, did pretty well at the Standards Training under Lt. Nuanes, better than most other crews.

After the Company Standards Training Captain Battenhouse and Lt. Nuanes talked about it and Lt. Nuanes was clearly angry and upset with his crew and felt that they had made him look bad – they had failed to do basic things. He told Battenhouse “he was going to lower the hammer on them.” Battenhouse suggested that Lt. Nuanes train with his crew. Nuanes told him he thought they knew their jobs better than they did, and maybe he needed to start training with them. When Lt. Nuanes complained to him about Freemonth not knowing what to do during the
Company Standards, Battenhouse told him, “You are the officer you need to correct their actions.” Standards Assistant Chief Meese testified that it was his opinion that after the Standards training an officer should go back and practice with his crew in daily training to the extent it’s possible. However, their proctor Chief Afshar felt nothing in that day’s exercise required Nuanes’ crew to have extra training. Lt. Nuanes did not train with his crew after the Company Standards Evaluation.

Jodi Freemonth testified that Nuanes told the crew after the Company Standards that they didn’t do their jobs. They went back to the Engine house by way of the grocery store and at the store Nuanes turned to her and yelled, asking her specifically what her job was. However, Dan Piel testified that Nuanes did not yell.

The next morning in front of the B shift crew he said, “It’s because of her (gesturing towards her). You’re the problem. You do whatever the fuck you want. You pulled too much hose.” She explained that Chief Mees had told her to add 50 feet more hose. Nuanes said, ”I don’t care. He’s not the fucking boss. I’m the commander of the rig. He can fuck himself.” She felt she had to take orders from the higher officer, Chief Mees. She said he was talking in a raised voice but did not yell. Piel didn’t remember the word “fucking” used. He thought Nuanes did use “hell.” He felt it was too much hose.

**Nuanes’ general firehouse duties and the use of radios:**

The Captain of a particular firehouse (Captain Battenhouse) sets the duties and routines of that firehouse. The officer in charge (Lt. Nuanes) oversees or
supervises the performance of the duties, such as cleaning and checking equipment, by the shift crew under him.

There was a clipboard at the front of the firehouse with a 52-point checklist. Dan Piel indicated on his shift he did the inspection. Others helped. The engineer checked the engine. Usually, the officer hovered or passed by but didn't directly supervise the check. Nuanes testified that he checked the clipboard regularly and if something was missing he would take action. Members of his crew testified they rarely or never saw him check the inventory clipboard. The nozzles were the shift officer’s discretion under Captain Battenhouse. Nuanes' crew knew which nozzles he wanted. He checked daily. Members of the crew testified they did not see him check the nozzles.

Each Engine has four radios, one for each crewmember. The officer in charge has the primary radio. On an Engine the Engineer is in the front cab driving and the officer in charge is seated on the right of the front cab. There are two Firefighters in the back of the engine. When crewmembers leave the Engine each member should have their radio on them with their other equipment. The officer in charge or supervisor should enforce the radio policy. However, Freemonth didn’t take her radio with her off the rig on some calls other than fire calls because Lt. Nuanes took his. On medical calls it interfered with her hearing of what was going on. Stoakes also didn’t carry his radio off the rig until after an incident at 49th and Federal at a Conoco station where they encountered a homeless man calling for help. Nuanes remained on the rig with a radio while they checked out the patient. After that, Stoakes carried his radio.
Knowledge of nozzles and fire scenes:

Although Nuanes’ regular crew wasn’t involved, they complained about Nuanes’ involvement fighting a fire on Utica Street based on rumors they had heard. On November 5, 2011 Nuanes worked a trade to serve on C shift. Steven Welch, Rocky Velasquez, Rick Nuanes and Chris Kennedy were the crew. Most of the facts concerning that fire are gleaned from the testimony of Steve Welch. Welch positioned the rig and the water supply was pre-connected to the rig. They pumped it through two lines, simply had to open the valve. According to Welch, it was a 75 psi, fog nozzle, which was capable of delivering 125 gallons of water per minute. The nozzle could be used for foam or water with the flip of a switch on the engine. It was the normal nozzle for that fire according to Welch. The hose line had been spread out properly and Nuanes and Kennedy took the hose to the fire. As they were deploying the line Welch saw that it was wrapped around an obstacle. Kennedy was at the door of the house and Nuanes was pulling the line across the yard when he tripped over a bush and fell backwards. He untangled the hose. A second engine arrived but they didn’t deploy their hose line correctly. Welch believed that both Nuanes and Kennedy went into the house. Nuanes had his full gear on that night including his mask. Welch has been to other fires with Nuanes and does not recall any failures over the years. In 2011 Welch only worked several times with Nuanes.

Nuanes also testified they used the correct nozzle – 125 gal. per minute although his statements at the Internal Affairs interview and pre-disciplinary meeting with Chief Tade were inconsistent with his hearing testimony. Nuanes
testified on the trip to the fire Nuanes told Welch to catch a hydrant at 39th and Decatur but Welch said he would catch one at 38th. This only added a few extra seconds.

Nuanes indicated there was a formula used to determine which nozzle to use on a fire. You multiplied the length of the hose by the width by three. In the Utica fire it was 528 sq. feet. At the fire he estimated 600 sq. ft. Therefore it required a half of 200 and he used a 125 gal. per minute nozzle. When interviewed by Bray he didn’t bother to clarify this because he felt it was an uphill battle. At Chief Tade’s hearing when Chief Tade had referred to the nozzle as a 75-foot, 9 gal. per min. in his question to him, Nuanes merely responded that it put the fire out. Chief Tade testified that the NFPA formula required a minimum water stream of 300 gallons per minute and the Nuanes was wasn’t sure what the nozzle he had used at their meeting. In his interview with Assistant Chief Bray Lt. Nuanes demonstrated an acceptable familiarity with the equipment on the engine such as attachments and nozzles, although he was not completely comfortable with the fog nozzle.

A call to dispatch sets a date and time of the call as well as the time of a call by dispatch to a firehouse, which constitutes a verbal alarm to the firehouse loudspeaker system indicating the nature of the incident and location, which can be heard throughout the firehouse. There is a button on the engine, which, when pressed, sets the date and time of a response to an alarm. Any member of the crew may press the button on the engine. Ron Hensler usually pressed the button since he was the first on the engine.
Upon arrival at the scene of the incident the button is pressed again by the company commander setting the time of arrival. After the incident it is pressed again indicating the engine is back in service. This information is collected by the Department computer system. There is also a computer (MDT) on board of the engine at the disposal of the officer in charge. Only the officer in charge could see the screen.

There was a structural fire at 45th and Decatur on August 7, 2011. The crew on Engine 17 consisted of Lt. Nuanes, Jodi Freemonth, Glenn Stoakes, and Ron Hensler. Engine 17 arrived third after Engines 7 and 12. The call was made around midnight. Glenn Stoakes felt Engine 17 should have been first there. He blamed Lt. Nuanes for their late arrival. Lt. Nuanes was slow to dress and don his PPE. He came to the rig slowly, yawning and stretching. Ron Hensler, the junior crewmember, pushed the button when they still only had three on the Rig. Ron Hensler punched the button that night. He testified that 95% of the time in 2011 he punched the button while the rig was still in the house before everyone was on the rig. The officer punched the button upon their arrival.

Engine 7 was closest to the fire. An engine’s anticipated response time or the order of arrival at a scene is based on proximity and physical boarder lines. Engine 17 has beaten Engine 12 to similar call scenes a number of times. There was minimal traffic on 44th that night but parking on both side so it was narrow. It took them a while to get up to their maximum speed that night, which was about 35 mph.
Engine 17 drove East on 46th Ave. and at Lowell the crew could see Federal ahead of them. Chief Ryan Nuanes\textsuperscript{2} testified he saw Engine 17 coming on 44th Ave. Engine and Truck 12 with Chief Ryan Nuanes on Federal crossed 46th ahead of Engine 17. Ryan Nuanes is Lt. Nuanes’ nephew. He has been with the Denver Fire Department nearly 16 years. He is a roving chief and was assigned to District 6 at that time. Ryan Nuanes testified he was in Chief’s vehicle and let Engine 17 go ahead of him. When they arrived the building was in flames. They went around the block to another hydrant at the corner with Elliot that Lt. Nuanes directed them to and then sat there waiting.

After a minute or two they walked up to the Chief’s command post and he assigned them the RIT duty. The Chief told them to do a 360-degree inspection on foot of the building for window bars, etc.. He did not want them to attach to that plug, and if they had it would have been a violation of his order. Chief Nuanes testified you don’t want two hoses opposing each other. He had determined the fire was in the front of the building so there was no need to fight it from the back. It took about 15 minutes to put the fire out and Engine 17 was there about 14 minutes.

After the fire was under control. Chief Ryan Nuanes put Engine 17 back in service due to the need for coverage of District 6, North Denver. It is the furthest Northern District in the city. There wasn’t a need for the Engine 17 crew to help pick up the hoses. Stoakes was embarrassed about not helping with the cleanup and as Jodi Freemonth backed the Engine out, although it was Stoakes’ duty to walk behind and guide her, he testified that he slinked out in the shadows because he was

\textsuperscript{2} Surprisingly, Chief Ryan Nuanes was not interviewed by Internal Affairs.
embarrassed to be leaving. The other crews were still using the hoses when Engine 17 left. All members of the crew agreed the RIT was an important assignment.

According to Nuanes, he did not intentionally delay getting on the rig. He got on directly. He told Internal Affairs that Engine 17 got a slow pull on the fire. The turnout time on the report showed the time was within the minute allowed -55 seconds. Times are not 100% accurate. Engine 17’s response time was acceptable. It was 3 minutes 56 seconds on a four minute standard for response. (Exhibit N)

**Medical calls, Code 9 and Code 10:**

A Code 9 call is considered non-emergent and the Engineer (driver) is to follow all the rules of the road, i.e. stop at lights and stop signs, comply with speed limits, etc. In a code 10 call the engine travels with lights and sirens and must meet a response time of four minutes under the Department guideline. An April 22, 2011 memo from Charlie Drennan III, Division Chief of Operations indicated that “Turnout times are required to be less than one minute and response time are required to be less than four minutes” under the NFPA standard. It also indicated that in both emergent and non-emergent calls Department apparatus are to be driven in a manner that is deemed safe by Engineers, Company Officers and Assistant Chiefs. Chief Tade also testified, however, that the actual parameter for acceptable response time was six minutes and the national standard is six and a half minutes. At the same time any unwarranted delay could be adverse.

Chief Tade’s July 13, 2011 memo (Exhibit C) changed the rules regarding the coding. All med calls were to be treated as code 10’s if not coded by dispatch. Chief
Tade testified his July 2011 memo was clear to officers that they were not to contact dispatchers and that his memo resulted in a dramatic improvement in the response time. After the change all calls were treated as 10's until the MDT or dispatch indicated otherwise. Although Chief Tade also testified that discretion of officer in treatment of a Code 9 would be improper, Nuanes and several other officers testified that they understood they did have discretion in a Code 9 that was not a lift assist or clear emergent call. Nuanes claimed that no other officer is applying the policy the way Tade describes it.

Assistant Chief Mees testified that the current dispatch medical response procedure is that everything is treated as Code 10, if the computer shows a code 9 and it is not a lift assist or emergency and the engine hasn’t reached the scene, then it is in the discretion of the officer in charge to go back to service. Assistant Chief Afshar testified that running on a code 10 is dangerous and an officer has the discretion to go back into service if on a code 9 call that is not serious but you can’t ignore an emergent call. Assistant Chief Ryan Nuanes testified that all EMT calls are treated as 10’s. He testified that later, before arrival at a scene, if the officer learns from dispatch the call is a 9 and an ambulance is on its way he has discretion to return to service. The officer can check the computer notes. Once at the scene, if no ambulance has arrived yet, the crew should stay until a higher medical authority releases them. A crew is required to respond to a code 9 lift assist. Henry Magana, with the Denver Fire Department for 30 years, Captain 12 years, testified that it is in the discretion of the company commander whether to call dispatch to determine information – whether 9 or 10. In a code 9 call he has discretion to go back into
service. He has done this. He was not familiar with a FOG or DOG from Chief Tade requiring all Code 9's as 10's. He said that is not the policy or practice. Pomponio indicated if a code 10 is changed to a 9 the commander has discretion whether to pull up and return to duty.

Lt. Nuanes testified that whether he responded to a code 9 call before the July 2011 memo was totally his discretion. However, at his Internal Affairs interview and pre-disciplinary meeting he initially did not distinguish his actions before and after the July 2011 memo. He indicated he always had discretion in Code 9 calls and checked whether the call was a 9 or 10. In his pre-disciplinary hearing with Tade, his union president explained the change in policy. That was that on a code 9-lift assist call he had to go. However, it would be at the officer's discretion if it was a headache or a lockout until Tade changed the policy in July. Then the engine was still expected to respond but without lights and sirens. If the call was downgraded to a Code 9 “ambulance only” call, it would be at the officer's discretion.

From time-to-time, on such calls, Nuanes would inquire of Dispatch whether a call was a 9 or 10 if it wasn’t apparent. Hensler had worked in dispatch and would have explained how they operated, but it was obvious to him that Nuanes didn’t want to know. Freemonth, in her interview, said Nuanes called dispatch to check on the code 9 or 10 “a million times.” Especially, since Freemonth and Hensler were only able to give one or two dated examples, the Hearing Officer rejects their testimony that it happened all the time or a million times, or a majority of the time as not credible. (Exhibits EE, MM, and MM-1) Of 73 responses by Engine 17,

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3 The Department did not consider the dispatch audiotapes in its investigation. During
Nuanes only had 6 responses that exceeded the six-minute – six and a half minute parameters (applying the 4 minute Department response standard without looking at the factual explanation appears to result in 18 tardy responses out of 73).

Petitioner gave explanations for each of those as to why they were not tardy or shouldn’t be counted (See pages 57 – 59 of Petitioner’s written Closing Statement). Only 2 were not clearly explained and therefore he argues that a record of 2 out of 73 calls equals a 2.7% tardiness record for all of 2011, which he asserts should not justify discipline (the 18 tardy responses without factual explanation out of 73 incidents would result in a 25% tardiness record for 2011).

Respondent took a different approach to the random sampling data and focused on the record of responses to incidents after Chief Tade’s July 13, 2011 memo changing the policy. The summary last page of Exhibit MM-1 shows of the 73 incidents, 54 were EMS calls. Respondent asserts that of the 28 EMS calls after July 13th the Exhibit shows that on 5 occasions Petitioner contacted dispatch asking whether an ambulance had been dispatched in violation of Chief Tade’s memo. That Respondent asserts is approximately an 18% rate of improper contacts with dispatch by Lt. Nuanes.

discovery Respondent objected to the production of all of Lt. Nuanes’ dispatch records for 2011 as burdensome. Therefore, the hearing officer, based on the opinion of Petitioner’s expert Professor Balaji that production of a random sample of 73 incident reports during Lt. Nuanes’ A shift involving Engine 17 would have a 95% accuracy factor in demonstrating the typical conduct of Lt. Nuanes responses the hearing officer ordered their production. Ultimately, that information was admitted into evidence in Exhibits EE and MM. Exhibit MM-1 and MM-3 were also admitted as a demonstrative exhibits. Exhibit MM-2, another demonstrative exhibit was not admitted but Petitioner was permitted to attach it to his written Closing Statement.
Under either scenario, the Hearing Officer still finds that Freemonth and Hensler exaggerated the extent of Lt. Nuanes’ improper contacts with dispatch. However, whether or not the contacts resulted in tardy responses to Code 9 calls, there is sufficient evidence to find that Lt. Nuanes had a practice of contacting dispatch on Code 9 calls in conflict with Chief Tade’s understanding of his July 13, 2011 memo.

According to Jodi Freemonth, Lt. Nuanes asked her to hold on and not start driving on some calls while they were still at the station while he scanned his notes. He also asked her to drive at less than Code-10 speed, what they called 9½ speed to see if the coding changed on the computer. The Engineer set the speed 95% of the time.

**Protective gear:**

Under the January 1, 2011 District 6 Policy (Exhibit 48), at paragraph 7 required all members to wear safety equipment and at paragraph 19 stated, “all members are to wear all personal protective equipment (PPE) (bunkers, helmet, gloves, and SCBA) whenever they are (1) in the area of an activated zone at a box or PFAS alarm, (2) inside the building at a report of fire or smoke, (3) above the lobby floor at a high-rise incident, (4) inside the “warm zone” at a hazardous materials incident, or (5) when conditions at any emergency scene require personal protection.” Exhibit 44 also required the use of protective equipment (paras. 2 and 30). The January 1 policy also states at paragraph 19 “the Incident Commander shall determine when conditions allow for a reduced level of personal protection.”
Engineer is an exception when leaving the station since some of the equipment could interfere with his/her driving of the engine. The Engineer does not bunk up or leave the rig on a box alarm. Assistant Chief Bray was of the opinion that the officer in charge should wear full PPE in responding to a Box fire and entering the zone of the alarm. Chief Tade also expressed a similar opinion. Under District 6 Policy dated January 1, 2011, (Exhibit 48) testimony indicated an entire building may or may not be considered the zone of a box alarm. Three quarters of the calls at Engine 17 are box alarms.

Glenn Stoakes indicated that he wore full bunkers on box alarm calls while Nuanes only wore some and never carried a bottle. If there was a fire Nuanes would not have been able to immediately back them up. Hensler would have had to step in for him. Because of this Stoakes did not feel safe with Nuanes as his command officer. However, Dan Piel testified that he has seen his officer, Jesse Smith, not wear his bunkers to a box call. He testified that the level of the officer wearing bunkers varies from firehouse to firehouse. (D.P.)

District 6 Chief Connor had a relaxed policy or practice of not requiring company officers to wear full bunkers on box calls. However, after the first half of 2011, Chief Travis took over in July and changed the practice requiring full bunkers. The policy set out in the January 2011 memo, including the language in paragraph 19, did not change. Chief Travis told Captain Battenhouse he was working with Lt. Nuanes to correct his not wearing the PPE gear. In August of 2011, Chief Travis observed Lt. Nuanes at a scene without his full PPE and directed him to thereafter
wear it. Freemonth and Stoakes testified that he followed Travis’ order for a while but then began to not wear all his PPE if he thought Travis wouldn’t be on a scene.

None of his crew had ever actually fought a fire with him. A chief basis for their concern about safety was their report to Captain Battenhouse that Lt. Nuanes frequently failed to put on his PPE before they left for a fire or even on arrival and checking the alarm. If there were a fire, there could be delay while Lt. Nuanes donned his gear. Captain Battenhouse observed Lt. Nuanes’ failure to wear his PPE. Once he saw Nuanes “really late getting to the rig” and wondered how he would have time to bunk up.” He saw him get on the rig in his t-shirt as the rig pulled out to respond to a code 10 box alarm. He reported Nuanes’ failure to wear his PPE gear to the Chiefs. No specific time frame was indicated but the context indicated it was likely in the first half of 2011.

Nuanes knew how to use most of his protective equipment. However, Stoakes never saw him check it over and on a call to the Denver Post building (no dates given) Stoakes saw him put his mask on over his hood. This would allow his air to flow back out. Chiefs Drennan and Ruzycki also saw him improperly don his hood at the Company Standards Training in July. He also never saw him check out the rig. Lt. Nuanes usually wore his pants and a t-shirt on box alarms. Freemonth observed Nuanes struggle with his gear, in particular with his air tank kept in the seat holder, and concluded he was not familiar with it or knew how to don it properly. Ron Hensler didn’t see Nuanes don his full PPE very often.

For the first half of the year the Engine 17 A shift crew didn’t wear their earphones on the rig. After the Standards Jodi Freemonth decided to wear her
headphones. Nuanes didn’t like wearing the headset although, with them, it was easier to speak to and hear each other. The majority of time they did not use their headphones as they deferred to Lt. Nuanes’ wishes. With the new engine, headsets were not necessary because the rigs were so quiet inside. Two shifts after he told Freemonth to follow his orders, the crew told him they wanted to wear headset. They hadn’t worn them for 2 ½ years. They discussed the issue and compromised that they would wear them on emergency calls since they could be noisier.

On Aug. 8, 2011 Lt. Mark Pomponio (with Denver Fire for 19 years) was on a first aid call to 17th St. to Republic Plaza and saw Lt. Nuanes coming out of a building. His crew was still in the building. Nuanes was the incident commander and was going to flag down the paramedics to show them the location of the person in need. Nuanes was able to flag them down and show them the shortest route. Nuanes didn’t have his bunkers on and Pomponio felt that was ok on that call.

Each crew has at least one EMRIC serving with it who is a certified EMT. The EMRIC designated at a particular scene was in charge of the medical scene. Glenn Stoakes was usually the EMRIC for Engine 17. However, Jodi Freemonth and Ron Hensler were also EMTs. Rick Nuanes was not an EMT. At a scene on a code 9 non emergent medical call they had to stay with the patient until the EMRIC could determine that no medical care was needed. To obtain clearance the EMRIC must call in to Denver General to obtain approval from a physician or wait for approval to depart from a paramedic or other higher medical authority. Once Glenn Stoakes had asked Chief Travis who was in charge on a medical call, the EMRIC or the Officer. Stoakes also complained to Captain Battenhouse that Lt. Nuanes pressured him to
leave patients before he felt comfortable. None of the crew complained about the medical calls to Battenhouse until his December investigation. Despite Stoakes’ earlier complaint to Battenhouse, he testified that Nuanes never made him leave a scene or attempted to make him leave a scene. The Hearing Officer finds that Nuanes never pressured Stoakes to leave a scene or overrode one of Stoakes’ decisions.

Firefighter Dan Piel never saw Nuanes delay or not make an effort to get out on a call. He felt secure with Nuanes in 2011 as his officer. He felt Nuanes was a competent Lieutenant and enjoyed working with him.

On a Code-9 lift assist call at the Mary Crest Care Facility Glenn Stoakes was assessing a patient who was sweating, uncommunicative, and had questionable vitals. Stoakes and Nuanes had a discussion about what to do. Hensler could hear their conversation and it was definitely a discussion and not an argument. Nuanes had to leave the room to call for an ambulance because of the noise.

On a February 16, 2011 call to the Argyle, an elder assisted care facility, to which they had responded many times, Lt. Nuanes held up the crew from going in while he called dispatch for clarification as to the code level, 9 or 10. The crew could see the facility staff in the glass entrance to the building waiting for them to come in. He did this about a handful of times. Nuanes claimed he only held the crew on the rig that time. He claimed he didn’t have any information on the call so he did reach for the radio and the ambulance pulled up. There was no complaint by the Argyle staff.

According to Freemonth, on medical calls Lt. Nuanes frequently stayed on the rig while the crew went in. Hensler testified that Nuanes usually jumped off the rig
with the crew, or if he stayed on, he came in directly. He only did that a handful of times over two years, but developed a habit of returning to the rig infrequently. Nuanes explained he went back to the rig sometimes to check the MDT because sometimes they update it, e.g. 49th and Federal, or to call to see if an ambulance was coming. Sometimes they get other calls.

Conflicting testimony was presented concerning Engine 17’s response to a call at 38th Ave. and Perry. According to Jodi Freemonth, when they arrived there were police cars there, and the police were moving between homes. Three of the crew members got off the rig and Lt. Nuanes stayed on the rig. The police officers informed them they were there on a domestic violence call involving a suspect with a weapon, and they should not be there since the area was not cleared yet. According to Nuanes they went down Tennyson and turned left on 38th to Perry. They never found the address. He contacted dispatch after the police search. The whole crew stayed on the rig. He never let them get off. He indicated he kept them on the rig for their safety. When he talked to dispatch they speculated it was a South Perry address. They told him to go back into service. Neither party offered the report of this call into evidence.

Engine 17 was called to a car accident at 49th and Sheridan with unknown injuries. Ron Hensler was driving. They did not find it but soon Glenn Stoakes realized the parties had moved their cars down Sheridan into a parking lot out of the city. By then, at Lt. Nuanes’ instruction, they had turned East on 52nd. Normally they didn’t go out of Denver but when the accident occurred in the city they considered it theirs. Bordering cities have mutual aid compacts to assist each other. Nuanes said
to return to the station, but Stoakes, the EMRIC, and Nuanes continued to discuss what to do. It was not an argument. Stoakes felt contact was needed to determine if anyone was injured. Nuanes changed his mind and Nuanes said to turn around at first chance, which was an apartment parking lot. They returned to the parking lot where the parties had pulled their cars. Nobody was injured and no ambulance was called. Hensler testified that they called an ambulance and Stoakes testified they didn’t.

Engine 17 was called to a Conoco or Bradley station at I-70 and Federal to assist an individual who was on the ground in the parking lot. Hensler may have heard Nuanes tell Engineer Freemonth to drive 9 ½ on the way. They pulled up to where the person was near a pay phone. The person may have been on the phone as they drove up and had fallen. He may have been drunk. The crew got off the rig and contacted the person who they found to be very delusional and saying he was hearing voices and he wanted to hurt people. Lt. Nuanes stayed on the rig. An ambulance arrived and the paramedics found that the person had a knife. Nuanes never got off the rig at that scene. None of the crew had their radios. Nuanes had his on the rig. Nuanes testified Stoakes never told him of the knife. If it had been longer than 2 ½ inches, he would have had to report it to the police. Nuanes claimed they all got off the rig and waited for the ambulance. In this instance, I find that the evidence established that Lt. Nuanes stayed on the rig while his crew attempted to administer to the person.

Lt. Nuanes left Firefighter Stoakes at the firehouse once when the crew went to the store for groceries. Stoakes was either sick or exhausted and was asleep. Also,
Lt. Nuanes left Freemonth once at the station to take the rig and crew to the grocery store. She was in the shower and told them to go without her.

The Department policy is that crews should make an effort to always move together with a full crew of four when they leave the firehouse, e.g. to shop for groceries, fueling the engine, etc. Engines do respond to calls almost daily riding short of 4 crew members. It is not unsafe but it is not preferred. According to Chief Ryan Nuanes, the officer has discretion to approve to the absence of a crew member for reasons such as training, medical issues and other serious personal problems, but mere errands don’t warrant an absence.

In the hearing Freemonth said Nuanes left Stoakes at the firehouse one time but in her Internal Affairs interview, she had said he left him 3 or 4 times at the firehouse. The one time she testified about was an incident when Stoakes was slow to leave a medical call and so Lt. Nuanes directed her to leave. She testified they drove around the block and returned for him. Nuanes testified he never left Stoakes at a scene. He said Stoakes tended to hang around and talk to the paramedics after they were finished so he would have Engineer Freemonth tap the breaks, which made a loud sound to warn Stoakes that everyone was on the rig and ready to go.

**Misuse of city & department time & resources:**

The Engine 17 A shift crew went to yard sales seasonally. Nuanes mapped them out and would put together a list of garage and yard sales in the neighborhood. The trips were usually on Friday and Saturday. Ron Hensler and Jodi Freemonth were uncomfortable when Nuanes persisted in negotiating over items while in his
uniform. Stoakes also bought items at yard sales but never negotiated on the price and frequently paid more than the person asked, e.g. he gave $5.00 for a 50-cent item at a fundraiser yard sale once. Nuanes admitted to yard sales and putting items on the rig. He asked crew members to help him carry large items. They put them on the hose bed or the back step, which they would have to be removed if they had a call.

Captain Battenhouse went to yard sales with his B-shift crew in 3 to 4 times in warm weather in 2011. He usually associated such a stop with fueling the engine or getting food. He felt the activity was good for community relations. He never negotiated on a purchase. Dan Robinson, a member of his crew, negotiated and purchased items while in his uniform. Battenhouse was not embarrassed by that and did not feel it was inappropriate. He stated that he knew Lt. Nuanes was going to yard sales but not to the extent he learned from the investigation. He never spoke to Lt. Nuanes about limiting his going on yard sales or took any other action.

Dan Robinson testified that he participated in going to yard sales every Friday and Saturday in good weather his entire time at 17 including time under Battenhouse. He also did it with Lt. Nuanes. He planned the stops while they were on their way to shop for groceries. He personally bought items. He and Nuanes both negotiated the price on items while wearing their class B’s. The public loved it when they showed up at a sale. It was his opinion that it was good for public relations. Tsapakis went on yard sales with Capt. Battenhouse. Robinson was the organizer. They had class B’s on. He recalls 1 – 5 times. He observed Battenhouse negotiate and purchase something on one.
Among the witnesses who testified, Bray, Fremonth, Hensler, Ryan Nuanes and others all washed their cars at their fire stations on occasion. Stoakes never washed his car or van, but indicated everyone else did. Dan Piel observed Nuanes wash his car in the firehouse next to the engine. Nuanes says he washed his car at the engine house for 38 years and never put aside his duties to do so. He was able to observe his crew while he washed the car.

**Insubordinate Conduct & Referring to Superiors in a Negative & Disdainful Manner:**

Captain Battenhouse reported that after the District Chiefs met with the crews at shift change and gave them daily orders Lt. Nuanes made negative comments and told his crew now that the chiefs were gone they could return to what they were doing. Captain Battenhouse took that type of comment as meaning that they could disregard what the Chiefs had told them. Nuanes admits he did make bad comments towards supervisors on occasions. This included Captain Battenhouse.

Jodi Freemonth alleged that she heard Lt. Nuanes make a comment that he would continue to go to yard sales despite a memo curtailing unnecessary driving of rigs. However, evidence showed that the memo about eliminating unnecessary driving of rigs was in 2008, and Jodi Freemonth did not work with Lt. Nuanes at that time.

Captain Battenhouse considered Lt. Nuanes’ failure to order high-rise straps, as he had instructed, to be insubordination. Based on the testimony of James Harris, the Hearing Officer finds that Lt. Nuanes did, in fact, order the straps.
Retaliation and retribution against the crew:

After the Company Standards Training on November 11, 2011, at the beginning of the shift, Lt. Nuanes was unhappy with how the crew had performed the day before and ordered the crew to change into their Class-B uniform until further notice and meet with him at the desk in the firehouse. Normally, Lt. Nuanes did not require the crew to wear their Class-B’s unless something special was happening. When they met, he told them they were not to exercise for more than an hour each day and they would have to check in and out with him to do so. Previously, Lt. Nuanez had not imposed such a requirement on the crew. Generally, Firefighters are encouraged to work out an hour each day.

Nuanes testified that he made changes but they sat down and talked over everything and agreed they had had a bad day so he revoked the changes he had announce. It only lasted 15 minutes. He thought they had patched things up but felt he was blindsided when they did the investigation in December. (R.N.)

The Engine 17 crew never reported any safety concerns about Lt. Nuanes to Captain Battenhouse until his investigation began in December, at which time all three members expressed concern that they didn’t trust Lt. Nuanes if they had to go into a fire with him. Jodi Freemonth had told Captain Battenhouse about her complaints concerning Rocky Valezquez and Lt. Nuanes handling of that and other matters. She was unhappy with Lt. Nuanes as early as March, April, and May of 2011. He told her to try to get along with him; that Lt. Nuanes had a difficult personality. He thought some changes would be made or would come with the end of year
rotation. Changes were scheduled in September. After the Standards Lt. Nuanes told Battenhouse that Freemonth was trying to undermine his authority. During November Jodi Freemonth complained to Battenhouse by phone or in person frequently, almost daily. He took no action until December. Firefighter Hensler reported in his Internal Affairs interview that Jodi Freemonth was “constantly going on” about her negativity towards Nuanes, especially on shifts where roving Lieutenants were present in Lt. Nuanes’ absence due to a Kelly day or other reason.

However, at that point, because of complaints by all three members of the Engine 17 A shift crew about Lt. Nuanes, Captain Battenhouse interviewed the crew-members on December 6, 2011: Glenn Stoakes after the shift change at 8:30 a.m., Jodi Freemonth by phone later that morning, and Ron Hensler in the afternoon. Later that day he sent a memo to Assistant Chief, District 6, Daniel R. Garcia (Exhibit 23). In the memo he identified several of the issues that the crew had raised to him and requested assistance and guidance because one issue involved hazing, harassment, or retribution which under Directive 105.04 required an investigation by the immediate supervisor and advice and assistance from the Human Resource Bureau.

On December 9, 2011, a Friday, Captain Battenhouse informed Lt. Nuanes in person that there was an investigation underway of his conduct based on complaints by his crew. He felt Nuanes should know about it before he and the A shift crew would work together on Sunday, December 11, 2011. Captain Battenhouse informed Chief Garcia on Thursday that he intended to inform Lt. Nuanes of the investigation and Chief Garcia approved. When Battenhouse spoke to
Lt. Nuanes, Nuanes called his crew “backstabbers” and “that he would never fight fires with them again.” Nuanes said the conversation took place early in 2012 not when Battenhouse told him of the investigation. The Hearing Officer finds that the statements were more likely to have been made after the new year when Nuanes had been removed from his assignment to Engine 17 A-shift than on December 9th. Nuanes testified that he never retaliated against his crew. He said he felt under the microscope so he wanted everyone to follow the rules to the letter.

Battenhouse told the crew he was going to tell Nuanes of the investigation before December 11th. Ron Hensler didn’t look forward to working his shift that day. He feared that things would not go well and he expected hostility from Nuanes. Glenn Stoakes didn’t recall that Battenhouse had told them that he was telling Nuanes of the investigation and Jodi and Ron never said anything to Stoakes. Stoakes didn’t recall being interviewed by Captain Battenhouse before December 11th and he claimed he was unaware of the problems they faced on that day. He testified he didn’t know where Nuanes was coming from with his new directions.

When the crew arrived on December 11th Lt. Nuanes was sitting in his class B’s at the table with the rules book at 8:00 a.m. Usually he came in wearing nice street clothes. After the B shift left around 7:30 a.m., he told them to put on class B’s and meet him at the front desk. Lt. Nuanes told the crew that he had been told he was under an investigation and he didn’t know why. Therefore, they would have to do things by the book. Lt. Nuanes announced a new regime. He informed the crew that they were to wear their Class B uniforms until 0600 and again the next morning. They were to do all the housework until he was satisfied. They could only
work out one hour per day and had to check in and out with him. One hour per day of exercise was encouraged (Exhibit DD) but was not a limit. The crew was to perform their usual responsibilities such as inventory and housecleaning, but they would not be considered complete until he had checked and approved them. He had never imposed these requirements before except the brief time after the company standards.

He also removed himself from the food league. Captain Battenhouse stated that the actions Lt. Nuanes took on that date were all within his authority. Glenn Stoakes did not recall any other actions by Lt. Nuanes that made things worse throughout the day.

The crew went to the grocery store in the morning and returned around 9:30 a.m. Lt. Nuanes bought his own food that day, fixed it, and ate it separately. After shopping about 10:30 a.m. they did the regular activities – equipment inspections, cleaning, etc. Nuanes reviewed the inventory checklist. Ron Hensler never observed Lt. Nuanes inspect their daily work, although Hensler was in his room much of the time and may not have seen him do that. They responded to a call at 12:30 to 12:45. Lt. Nuanes testified he washed his car around 2:00. Stoakes did not recall Nuanes washing his car on December 11th and Hensler did not see him wash it either since he was in his room much of the day. Around 3:00 p.m. Freemonth said, in response to cross examination, that Nuanes was in his room and she didn’t know what he was doing.

Nuanes watched the Denver and Chicago football game with Glenn Stoakes. They spoke incidentally. Hensler walked by Stoakes and Nuanes sitting in chairs
next to each other watching the Bronco game. It was around 3:00 in the afternoon. He didn’t sense any hostility by Lt. Nuanes towards Stoakes. Stoakes left during the 4th Quarter and went to his room. Nuanes watched the game ’till the end around 5:30 or 6:00 p.m. He made his own dinner and ate it. Hensler came in to the kitchen and made spaghetti sauce in a crockpot, which they talked about. After his dinner he went to his room to watch TV and then around 8:00 p.m. they went on another call. They returned about 8:30 and Lt. Nuanes went to his room to sleep.

Lt. Nuanes had no contact with Freemonth that day except the two calls. Nuanes did not speak except when she asked a question he would answer yes or no. Ms. Freemonth reported he didn’t read the notes from the computer as usually did. Nuanes was not very communicative on the calls with her but Ron Hensler and Glenn Stoakes recalled that Nuanes was with them.

Hensler cooked spaghetti sauce in a crockpot mid to late afternoon. It took a couple of hours. Stoakes and Nuanes watched the game until around 6:00 p.m. The tv was in the kitchen area. Nuanes asked him why he used the crockpot. There was little interaction between Nuanes and Freemonth.

When Freemonth asked Stoakes how he felt, he told Jodi Freemonth he wouldn’t work one more day. They then talked to Ron Hensler. Hensler had decided on his own that he would call in sick on the next shift since he was very uncomfortable. Hensler didn’t feel safe working with any of the crew because of their hostility. Also, he had concluded by then that Nuanes did not take the safety of the crew or public seriously. Freemonth decided for their physical wellbeing and safety, they shouldn’t work the next shift and informed Captain Battenhouse.
On December 11, 2011, according to Captain Battenhouse, Jodi Freemonth called or texted Captain Battenhouse approximately five times to report on conditions at the firehouse andLt. Nuanes’ conduct. She called around 9:00 a.m., 1:00 p.m., at 3:30 to 4:00 p.m., at around 6:30 to 7:00 p.m. Most of her texts did not give details. She reported that they had to be in uniform all day and were not allowed to exercise. Around 3:30 she texted that things were increasingly awkward but gave no details. The 7:00 -7:30 text indicated things were horrible, she was very uncomfortable, but no details were given. Jodi Freemonth testified she texted Captain Battenhouse around 8:30 p.m. that she and the others would not come in to the next shift. As a result of her calls, Battenhouse contacted Chief Berumen and left a message. He received a return call from Chief Drennan and reported what Freemonth had told him. Chiefs Berumen and Drennan came to the firehouse around 11:00 p.m. and woke Lt. Nuanes and removed him from his command.

Freemonth testified at the hearing that in her 3:00 p.m. text to Battenhouse she only said things were tense and did not say things were worse or uncomfortable as Battenhouse had testified. Freemonth said in her Internal Affairs interview that at 7:30 p.m. on December 11th Nuanes had been washing his car for about 3 hours. However, at the hearing she testified she did not recall making that statement or seeing him wash his car that day.

Freemonth testified that her first text or call to Battenhouse on December 11, 2011 was around 8:00. p.m. However, in addition to Captain Battenhouse,’s testimony about Freemonth’s calls, Ron Hensler indicated that Jodi Freemonth was on the phone to Captain Battenhouse several times during December 11th and she
told him she was on the phone with the Captain most of the day. The Hearing Officer finds that she was in contact with Captain Battenhouse by phone frequently throughout the day and evening and greatly exaggerated her reports painting a much more negative situation than actually existed.

Previous discipline and mitigation:

The Hearing Officer denied the admission of Exhibit 33 regarding Lt. Nuanes’ history of prior discipline. However, Lt. Nuanes testified about several, which he complained did not involve the type of process provided now. One involved a Feb 16, 2000 written reprimand for intimidation and harassment of a firefighter. He complained that he was never shown the statements or interviews and given a chance to respond to the allegation. That action was taken more than five years ago and should not be considered. Thus, there is no previous discipline of Petitioner in evidence.

Lt. Nuanes also testified that he has a medal of valor for staying at a call on Jan. 1993 and pulling a fellow firefighter, who had been shot, to safety while everyone else left. The Hearing Officer believes that experience probably influenced Lt. Nuanes’ conduct regarding dangerous calls.

CONCLUSIONS

The Respondent failed to prove by a preponderance of the evidence that Lt. Nuanes argued with his EMRIC Glenn Stoakes over medical issues and whether to leave a scene or call an ambulance. The evidence indicates that Nuanes may have
had discussions with Stoakes about what was happening concerning a patient but Stoakes himself testified that Nuanes never argued with him and never made him leave a scene or attempted to make him leave a scene.

The evidence concerning Lt. Nuanes’ conduct in regard to the structural fire at 45th and Decatur on August 7, 2011 did not prove any violations by him. Although he was slow to dress and don his PPE and mount the engine the turnout time and response times for engine 17 were within the required times. There was no other evidence of inappropriate conduct by Lt. Nuanes at that incident.

The evidence concerning the fatal fire at Utica St. also does not prove any violation by Lt. Nuanes. There was no indication of a problem in the incident report on that fire. Firefighter Welch’s testimony showed Lt. Nuanes conduct was acceptable. The debate over the use of the nozzle on that fire and the formula used was inconclusive as to any inappropriate actions by Lt. Nuanes.

The Hearing Officer did not find any evidence concerning Lt. Nuanes’ conduct regarding the call to a car accident at 49th and Sheridan to support a conclusion that he violated any Fire Department Rules or duties.

In light of the common practice among Firefighters and officers to wash their cars while on duty at firehouses, the Hearing Officer concludes that Lt. Nuanes’ practice of washing his car was not a violation of the Department’s policy against personal activities while on duty (Exhibit 35) or other policies and rules. There was insufficient evidence to show that Lt. Nuanes’ conduct was any greater discredit than that of other members of the Department or that his practice interfered with his duties.
In a similar vein, Lt. Nuanes’ practice of going to yard sales during the warmer months to negotiate purchases was not significantly different from that of others. Again, the evidence showed this is a common activity in the Denver Fire Department that may require more explicit definition of limitations prior to the imposition of discipline.

The Hearing Officer concludes that the evidence concerning Lt. Nuanes’ leaving crew members behind at the firehouse does not prove any violation. His actions were within the discretion of a command officer to allow the absence of a crew member and operate with a short crew. The evidence did not prove by a preponderance that Lt. Nuanes left any crew member at a scene.

The evidence concerning the crew’s practices with regard to the use of headphones on the engine and radios off the engine do not clearly establish a violation by Lt. Nuanes. However, they do tend to show his hesitancy to exercise his command authority, allowing the crew to do what they wanted.

The January 1, 2011 written policy regarding the wearing of PPE was ambiguous in light of the sentence in paragraph 19 allowing discretion to the company officer to allow less than full PPE. (Exhibit 48) Likewise, from the testimony about the understanding and application of the policy by other officers such as Chief Connor and Lt. Smith the practice was inconsistent.

However, in Lt. Nuanes’ situation Chief Travis, upon seeing him wearing less than full PPE in August of 2011, instructed him to thereafter wear the gear. When Travis had become the District Chief around July of 2011, it was known that officers were expected to wear their PPE during box alarms. Thus, it became crucial whether
Lt. Nuanes failed to do so after Travis August 2011 Order to Nuanes. In Respondent’s written Closing Statement, it is stated at page 12, “The only question of fact is whether Petitioner violated the policy after AC Travis spoke to him. From the testimony of his crew as well as Captain Battenhouse, it appears that Petitioner continued to violate the policy.” However, Captain Battenhouse gave no dates to when he observed Lt. Nuanes mount the engine without his PPE gear fully donned. Freemonth and Stoakes testified that Nuanes complied for a while but then he again didn’t wear the full PPE if he thought Chief Travis wasn’t going to be present at an incident. They gave no specific instances or dates. The Hearing Officer concludes that Lt. Nuanes’ conduct constitutes a violation of the policy as dictated to him by a superior officer and also constitutes insubordination.

The Hearing Officer concludes that in light of the Denver Fire Department’s broad acceptance of the use of foul language and swearing, without some notice to Petitioner of a change of policy, discipline of Firefighter Nuanes for the use of such language is improper. However, the evidence does establish by a preponderance that Petitioner was verbally abusive towards his crew. In particular, he relentlessly targeted Firefighter Glenn Stoakes with negative comments, name calling to the point that his conduct constituted harassment under the Department Policy. (Exhibit 37) Nuanes’s defense that he should be excused because the victim and his Captain failed to complain to him or report the conduct to Nuanes’s superiors is rejected. Although the policy required action by those parties, if the Captain knew of a harassment problem and didn’t deal with it, there may be a disciplinary issue with
that Captain, but it doesn’t excuse the conduct of the harasser. His conduct still warrants discipline and/or training.

Nuanes treatment of Stoakes in kicking him out of the food league was also evidence of his poor judgment. Testimony indicated that the cook was in charge of the food league. Having taken on the role of cook, Nuanes had to be careful of his treatment of the league members in light of his dual role also of company officer. He was in a position of greater power than any other Firefighter acting as cook. Nuanes’ initial action abruptly kicking Stoakes out of the league was arbitrary and capricious. His willingness after cooling down to listen to Stoakes and reversal of his initial action mitigates the abuse of authority. However, his conduct is still demonstrative of poor judgment in an officer.

The evidence showed that the Department’s policy regarding the recording of training was ambiguous and inconsistently followed by officers. Therefore, it would be inappropriate to impose discipline on Petitioner for his failure to record the training. Also, to some extent the training policy was not clear as to what even constituted training. Captain Battenhouse considered day-to-day activities in the firehouse to be training. The Department clearly needs to clarify its policies in this area. Despite that, the company standards training in July of 2011 was an activity that legitimately warranted training in advance of the actual day of evaluation. Lt. Nuanes failed to engage his crew in any preparation for that activity despite the request by members of his crew. His excuse that his crew was ready and didn’t need to train is insufficient. Nuanes also acknowledged to Captain Battenhouse after the standards that he should probably train with his crew. While Chief Afshar testified
that he saw no need for any specific training after his evaluation, Nuanes himself indicated to his crew that he was dissatisfied with their performance. It is concluded that he failed to train adequately under his duties as a Lieutenant.

Testimony indicated that Lt. Nuanes frequently contacted dispatch to question whether calls were at level 9 or 10 for the purpose of terminating responses and returning to the station (going back into service). Chief Tade’s policy of July 2011 indicated officers were to treat all medical calls as 10 unless otherwise notified through the MDT. The testimony of his generalized practice of contacting dispatch as to whether an ambulance was enroute is not acceptable by itself in light of the evidence from the random sampling of records that showed he had few tardy responses to such calls. However, that testimony is bolstered by the random sample of records showing of 28 EMS calls after Chief Tade’s July 13, 2011 memo, Nuanes still contacted dispatch concerning ambulances. Nuanes admitted, and the evidence showed, that at the Argyle he held his crew on the rig while he attempted to contact dispatch. Thus, Respondent proved that Lt. Nuanes violated the policy.

Respondent did prove that Lt. Nuanes stayed on the rig at the incident involving a person who had fallen at a Conoco or Bradley gas station near I-70 and Federal. Respondent did not prove that he stayed on the rig while the crew disembarked at the domestic violence incident at 38th and Perry. There was also evidence that he returned to the rig on medical calls occasionally but he testified to a reasonable explanation that he needed to check the MDT to determine whether updated information had been sent or they had been sent a new call. Thus, the
Hearing Officer concludes that Respondent failed to prove a pattern or significant violation by Lt. Nuanes in this area.

The Hearing Officer concludes that certain of Lt. Nuanes’ conduct constitutes insubordination. His negative and defiant comments about his superiors in front of his crew and others were designed to undermine respect for their command. As discussed above, Lt. Nuanes’ action of not always wearing his PPE on box calls after Chief Travis gave him a direct order to do so constitutes insubordination as well.

Another basis for the discipline of Lt. Nuanes was retaliation against his crew. The two incidents cited involved the shift after the company standards training due to his dissatisfaction with the crew’s performance and the December 11, 2011 shift. In the first instance Nuanes imposed requirements on his crew that were not typical of his command. They included the wearing of Class B uniform and limitations on exercise. He did not propose any specific regimen of training. However, after sitting down with his crew and discussing the company standards performance, he withdrew the new requirements. Although he mitigated his initial arbitrary and inappropriate action it was still retaliatory rather than constructive, which clearly had the adverse affect of undermining his relationship with his crew.

The second instance involved Lt. Nuanes’ imposition of similar sanctions. In that instance his action was more understandable in light of his explanation that he felt he and the crew were under the microscope because of the investigation of him of which he had just learned. Still, he made no effort to explore or resolve the issues and problems with his crew. Rather, the new requirements were imposed in a manner of sanctions. That approach resulted in two of the three crew (Freemonth
and Stoakes) members’ decisions to not report to duty on the next shift under those circumstances. The hostility of Stoakes and Freemonth towards their Officer as a result of those orders caused Hensler to consider calling in sick.

The Hearing Officer concludes that Petitioner Nuanes’ conduct in these two instances did constitute retaliation and are further evidence of his poor command as a Lieutenant and his failure to fulfill his duties involving motivation and development of his subordinates. (Exhibit 46, page 6). However, the Hearing Officer believes the retaliatory action was not as severe as portrayed in the Internal Investigation and feels it is necessary to comment on the events leading up to December 11th and culminating that night in Lt. Nuanes’ removal from command.

It appears from the evidence that Engineer Freemonth was embarrassed by Lt. Nuanes criticism of her at the Company Standards Evaluation and the next day. This brought to a head her dissatisfaction with Lt. Nuanes, which had been growing throughout the year as evidenced by her repeated complaining to Captain Battenhouse in October and November. To some extent it is difficult not to conclude that she negatively influenced her fellow crewmembers against Lt. Nuanes. From those complaints one would have reasonably expected Captain Battenhouse and his superiors to have stepped in earlier. Although the Department’s Disciplinary policy did not require progressive discipline it does provide that whenever possible, discipline should be progressive. Here there were numerous opportunities to apply progressive discipline regarding areas of Lt. Nuanes’ conduct that were not taken.

But for the fact, as reported to Captain Battenhouse by Engineer Freemonth, that the crew was contemplating not reporting the next shift, the atmosphere and Lt.
Nuanes’ conduct on December 11th was not so severe as to necessitate his removal that night. Hensler’s contemplation of not working was based on the hostility of the whole crew not just Nuanes. Hensler’s and Stoakes’ relationship with Nuanes that day was at least cordial. Freemonth had no interaction with him after the morning orders other than the calls. The action removing Nuanes appears to have been necessitated as a result of the exaggerated reports Ms. Freemonth made throughout the day and evening to Captain Battenhouse, which he passed on to his superiors. Had those exaggerated reports not been made he likely would not have been removed and the crew would have proceeded to have completed their service together until the impending rotation. It is hindsight to speculate on whether the results of the investigation or the discipline imposed may have been different. The Hearing Officer cannot speculate, but must decide based on the evidence before him.

DECISION

A civil service hearing is de novo and the Manager of Safety shall have the burden of proof (by a preponderance of evidence) to establish the factual grounds for the disciplinary action administered. CSC Rule 12 § 8 (D)(1) and (2). The hearing officer is required to give due weight to the necessity of the Manager to maintain administrative control. Also, the Hearing Officer shall not merely substitute his judgment for that of the Manager in determining the level of penalty. CSC Rule 12 § 9 (B)(1) and (3).

This case poses a difficult balancing. The Hearing Officer has found that Respondent failed to meet the burden of proof in regard to a number of the factual
grounds relied on for the discipline imposed. On the other hand Respondent has also proved a number of the grounds. Thus, the factual bases for discipline are significantly different from those before the Manager and the question before the Hearing Officer is whether the grounds proved alone are sufficiently serious to support the Manager’s actions, giving due weight to his responsibility to maintain control or if some modification of the discipline is appropriate. CSC Rule 12 §9 (C) (2), (3), (7), and (8).

The Hearing Officer concludes that the suspension without pay for three (3) duty shifts (72 hours total) is appropriate. The requirement that Petitioner participate in training regarding harassment and retaliation and performance-related training to be determined by the Chief of the Fire Department or his designee is also appropriate. Whether Mr. Nuanes should be demoted is the remaining discipline, which the Hearing Officer must decide is appropriate or not, in light of the violations proved.

Deputy Manager Kilroy concluded that Petitioner’s misconduct rendered him unfit to fulfill duties and responsibilities of the rank of Lieutenant. The demotion was specifically imposed for his failure to supervise, failure to train, and performance issues. This demotion may have been avoided if Captain Battenhouse or his superiors had acted sooner during 2011 and imposed some level of progressive discipline. However, the misconduct proved by Respondent involved bullying and harassing his crew, retaliating against his crew, insubordinate conduct, including violation of Chief Tade’s July 13, 2011 policy regarding the response to Code 9 and 10 calls by contacting dispatch and his failure to wear his PPE after
being directly ordered to do so by Chief Travis. Therefore, the Hearing Officer concludes that this conduct is sufficiently serious to justify upholding the Lt. Nuanes’ demotion to a Firefighter, 1st. Grade.

ORDER

Based on the Findings of Fact and Conclusions the discipline contained in the Manager of Safety’ Departmental Order of Disciplinary Action dated June 13, 2012, is sustained.

DONE AND SIGNED THIS 18th DAY OF MARCH 2013.

*/s/ Timothy R. Arnold
Timothy R. Arnold
Hearing Officer

NOTICE OF APPEAL RIGHTS

Pursuant to Charter § 9.4.15(E), and Rule § 11 (A)(1 and 2), the decision of the Hearing Officer may be appealed to either the Civil Service Commission, or directly to District Court. Any appeal to the Commission shall be initiated by filing a Notice of Appeal with the Commission, within fifteen (15) calendar days of the date noted on the certificate of service of the Hearing Officer’s decision by the Commission. Any appeal to District Court shall be initiated in accordance with the Colorado Rules of Civil Procedure currently in effect.

*The original signed Order is filed with the Civil Service Commission.