



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

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LISA M. HUDSON
DIRECTOR OF PERSONNEL

Tuesday, November 06, 2012

Mr. Arthur Jones

Re: **Arthur Jones VS.
Department of Public Works
Docket Number: 7903**

Dear Mr. Jones:

Attached is the decision of the City Civil Service Commission in the matter of your appeal.

This is to notify you that, in accordance with the rules of the Court of Appeal, Fourth Circuit, State of Louisiana, the decision for the above captioned matter is this date - 11/6/2012 - filed in the Office of the Civil Service Commission in Room 7W03, City Hall, 1300 Perdido Street, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,

A handwritten signature in cursive script, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Mark D. Jernigan, P.E.
Victor Papai
Jay Ginsberg
file

ARTHUR JONES

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF PUBLIC WORKS NO. 7903

The Department of Public Works (“Appointing Authority”) employs Arthur Jones (“Appellant”) as an Auto Facility Specialist with permanent status. The Appointing Authority suspended the Appellant for one day for violation of internal rules regarding attendance and the use of sick leave.

The matter was assigned by the Civil Service Commission to a Hearing Examiner pursuant to Article X, Section 12 of the Constitution of the State of Louisiana, 1974. The hearing was held on November 10, 2011 and February 2, 2012. The testimony presented at the hearing was transcribed by a court reporter. The three undersigned members of the Civil Service Commission have reviewed a copy of the transcript and all documentary evidence.

Alfred Coleman, Parking Division Operations Manager, was the Appellant’s immediate supervisor in July of 2011. Mr. Coleman testified that the Appellant failed to report for work on July 2, 2011 and instead called in sick. Mr. Coleman suspected that the Appellant was using sick leave when he was not actually sick because on July 1, 2011, the Appellant informed Mr. Coleman that he was not coming to work on July 2, 2011 because he had other plans. When Mr. Coleman informed the Appellant that he could not take leave on July 2nd because of the increased amount of work caused by the Essence Music Festival, the Appellant responded by saying that he would just call in sick.¹ The Appellant did not return to work until July 19, 2011 because July 3rd and 4th were his scheduled days off and the Appellant had pre-approved leave from July 5th until

¹ The Appellant operated a tow truck.

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his return to work on July 19th. Upon the Appellant's return to work, Mr. Coleman requested a doctor's certificate to account for the use of sick leave on July 2nd. Mr. Coleman explained that he requested the doctor's certificate because of his suspicion that the Appellant was misusing sick leave. The Appellant refused to provide a doctor's certificate informing his supervisor that he did not have to provide a doctor's certificate for one day of sick leave.

The Appellant contends that the Appointing Authority does not have the authority to require a doctor's certificate for one day of sick leave. He contends that he did not come to work on July 2nd due to arthritis. He denies having a conversation with Mr. Coleman on July 1st during which he informed Mr. Coleman that he intended to take sick leave on July 2nd if Mr. Coleman would not approve his annual leave request.

LEGAL PRECEPTS

An employer cannot discipline an employee who has gained permanent status in the classified city civil service except for cause expressed in writing. LSA Const. Art. X, sect. 8(A); *Walters v. Department of Police of New Orleans*, 454 So. 2d 106 (La. 1984). The employee may appeal from such a disciplinary action to the city Civil Service Commission. The burden of proof on appeal, as to the factual basis for the disciplinary action, is on the appointing authority. *Id.*; *Goins v. Department of Police*, 570 So 2d 93 (La. App. 4th Cir. 1990).

The Civil Service Commission has a duty to decide independently, based on the facts presented, whether the appointing authority has good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the

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dereliction. *Walters, v. Department of Police of New Orleans, supra*. Legal cause exists whenever the employee's conduct impairs the efficiency of the public service in which the employee is engaged. *Cittadino v. Department of Police*, 558 So. 2d 1311 (La. App. 4th Cir. 1990). The appointing authority has the burden of proving the occurrence of the complained of activity by a preponderance of the evidence and that the conduct complained of impaired the efficiency of the public service. *Id.* The appointing authority must also prove the actions complained of bear a real and substantial relationship to the efficient operation of the public service. *Id.* While these facts must be clearly established, they need not be established beyond a reasonable doubt. *Id.*

CONCLUSION

The Appointing Authority has established by a preponderance of evidence that it suspended the Appellant for cause. Mr. Coleman had valid concerns regarding the Appellant's use of sick leave and the authority to require a doctor's certificate to confirm that the Appellant used sick leave for a legitimate medical reason. The Appellant

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disregarded his supervisor's instruction.

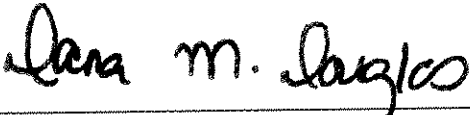
Considering the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 6th DAY OF
NOVEMBER, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION


DEBRA S. NEVEU, COMMISSIONER

CONCUR:


DANA M. DOUGLAS, VICE-CHAIRMAN


AMY L. GLOVINSKY, COMMISSIONER