



LATOYA CANTRELL  
MAYOR

# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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Monday, October 19, 2020

CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON  
CLIFTON J. MOORE, JR. VICE-  
CHAIRPERSON

BRITTNEY RICHARDSON  
JOHN H. KORN  
MARK SURPRENANT

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Mr. Rudolph Rogers

Re: **Rudolph Rogers VS.**  
**Department of Human Services**  
**Docket Number: 8881**

Dear Mr. Rogers:

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 - 10/19/2020 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal must conform to the deadlines established by the Commission's Rules and Article X, Sec. 12(B) of the Louisiana Constitution. Further, any 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 blue ink that reads "Doddie K. Smith".

Doddie K. Smith  
Chief, Management Services Division

cc: Kyshun Webster  
Erica A. Therio  
Alexandra Mora  
file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**RUDOLPH ROGERS,**  
**Appellant**

vs.

**DOCKET NO. 8881**

**DEPARTMENT OF HUMAN SERVICES,**  
**Appointing Authority**

**I. INTRODUCTION**

Appellant, Rudolph Rogers, (hereinafter “Appellant”) brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission's Rule II, §4.1 asking the Commission to find that the Department of Human Services (hereinafter “Appointing Authority”) did not have sufficient cause to discipline him. At all times relevant to the instant appeal, Appellant served as a Plant Attendant and had permanent status as a classified employee.

By letter dated December 11, 2018, the Appointing Authority notified the Appellant of its decision to suspend him for three days for failing to sufficiently clean and sanitize an area of the facility where incarcerated juvenile residents fouled a common area with bags of feces and urine. (H.E. 1).

A referee, appointed by the Commission, presided over a hearing during which both Parties had an opportunity to call witnesses and present evidence. The referee prepared a report and a recommendation based upon the testimony and evidence in the record. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing, as well as the hearing examiner's report. Based upon our review, we GRANT the appeal and

render the following judgment

## II. FACTUAL BACKGROUND

The material facts are not in dispute. On December 7, 2018, Dichelle Williams, who was the Interim Superintendent of the Youth Study Center (YDC), was informed of an incident that occurred at the facility.<sup>1</sup> Specifically, upon arrival, she learned that certain residents created a significant mess by throwing bags of feces mixed with urine around certain living areas. At the facility, there are individual rooms or “cells” that open onto a larger common room. These are the rooms where the incident occurred. (Tr. at 7 - 8).

As explained by Ms. Williams, the residents responsible for the mess were required to clean the area. However, once the residents completed their superficial cleaning, the cleaning staff was called upon to fully clean and sanitize the area. To this end, Williams alerted Katina Bills, the maintenance supervisor, who in turn assigned the task to the Appellant. (Tr. at 9 -11).

The next morning, Ms. Williams returned to the facility and was confronted by Glenn Ferrier, another plant attendant, who complained to her about having to clean the same area that the Appellant was to clean the night before. Williams testified that Ferrier informed her that the area was not fully cleaned and that there were still dried feces in the area. Upon inspection, Williams determined that the area was not fully cleaned. (Tr. at 14 – 16).

Ms. Williams thereafter called Kyshun Webster, the Interim Director of the Department of Human Services, to report her observations. Webster inspected the facility and testified at the appeal hearing that, when he opened the door to the common area, the smell of feces was evident. Introduced into evidence as City Exhibit 1 was a photograph taken by Webster of the threshold area between the common room and one of the individual cells. The photograph depicted dark matter in the threshold of one of the cells. (Tr. at 25 - 26).

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<sup>1</sup> The Youth Study Center is a facility where juvenile offenders are housed while awaiting trial.

It is undisputed that the Appellant was instructed on December 7, 2018 by his supervisor Katina Bills to clean up the urine and feces in the common area. The Appellant testified that, because the residents were in lock down as a consequence of their actions, the doors between the common area and the individual cells had been locked. Consequently, he was unable to access the individual cells or the threshold area between the common and individual cells. The Appellant testified that he was present at the facility the following morning and no one spoke to him regarding his work or the condition of the area where he had cleaned. He was also present the following day, which was a Sunday. The first he heard about a problem was when his direct supervisor, Compton Peters, informed him that he was suspended for three days. Peters was unable to tell him why he was suspended, and the Appellant did not receive actual notice until receipt of his disciplinary letter. (Tr. at 65 – 66).

Both Ms. Williams and Mr. Webster acknowledged that they never spoke to the Appellant. Williams testified that her responsibility was to notify Webster and that she had no input regarding Webster's decision to take disciplinary action. Webster admitted that the common area looked visibly clean, but that it smelled. Webster testified that when he arrived, the remaining feces and urine were in the threshold area. (Tr. at 39 – 44). Webster never spoke to the Appellant regarding the issue nor directed anyone else to do so.

Ms. Bills testimony was consistent with the Appellant's. She testified that she directed the Appellant to clean the common area, and that the individual cells and threshold areas were inaccessible to the Appellant because the residents were in lockdown. Bills stated that after the Appellant cleaned the area, the common area looked visibly clean but that it did smell bad. She testified that she did not instruct Rogers to clean the individual areas later after the lockdown ended, was never contacted by anyone about the cleaning performed by the Appellant on December 8<sup>th</sup>, and was never interviewed about the Appellant's cleaning job or the underlying incident. (Tr. at 56 – 63).

### III. LEGAL STANDARD

An appointing authority may discipline an employee with permanent status in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that an appointing authority issued discipline without sufficient cause, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, an Appointing Authority has the burden of proving, by a preponderance of the evidence; 1) the occurrence of the complained of activity, and 2) that the conduct complained of impaired the efficiency of the public service in which the appointing authority is engaged. *Gast v. Dep't of Police*, 2013-0781 (La. App. 4 Cir. 3/13/14), 137 So. 3d 731, 733 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094 (La. Ct. App. 2007)). If the Commission finds that an appointing authority has met its initial burden and had sufficient cause to issue discipline, it must then determine if that discipline "was commensurate with the infraction." *Abbott v. New Orleans Police Dep't*, 2014- 0993 (La. App. 4 Cir.2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). Thus, the analysis has three distinct steps, with the appointing authority bearing the burden of proof at each step.

### IV. ANALYSIS

It is undisputed that the individual rooms were on lockdown when the Appellant was tasked with cleaning the fouled area. Thus, he was not instructed to access the individual rooms and, in fact, was not able to access those rooms. He cleaned the area where he had access. While it is unclear how well he cleaned the common area, there is no evidence to suggest that he failed to follow instructions regarding the area to which he had access. Ms. Bills testified that she recalled the area being visibly clean.

Everyone complained about a strong smell when they arrived shortly after Ferrier began cleaning, but it is uncertain whether the smell emanated from the area cleaned by the Appellant or from the inaccessible areas. No one asked the Appellant to return to clean or brought any issues to his attention. There does not seem to be any evidence that the Appellant failed to take direction nor has it been established that he failed to properly perform his job.

Considering the foregoing, there is simply no grounds for discipline. Had the Appointing Authority provided evidence regarding the common area being poorly cleaned before Ferrier arrived, or that the Appellant was instructed and failed to clean the individual rooms, the outcome might be different. There is nothing to suggest the Appellant should have known to return and clean the individual rooms once lockdown was over. There is certainly no evidence that anyone instructed him to do so. It appears that the Appointing Authority reacted to what was observed and took disciplinary action without fully informing himself of the circumstances.


## V. CONCLUSION

The Appointing Authority has failed to establish by a preponderance of evidence that it disciplined the Appellant for cause. As a result of the above findings of fact and law, the Commission hereby GRANTS the appeal, and orders the Appointing Authority to remove the disciplinary action from the Appellant's permanent record, and pay all lost wages resulting from the suspension with all emoluments of employment.

This the 19<sup>th</sup> day of October, 2020.

CIVIL SERVICE COMMISSION

WRITER:

  
CJ Moore (Oct 19, 2020 09:15 CDT)  
CLIFTON J. MOORE, JR., VICE-CHAIRMAN

10/19/20  
DATE

CONCUR:

  
J. H. Korn (Sep 23, 2020 09:39 CDT)  
JOHN KORN, COMMISSIONER

Sep 23, 2020  
DATE

  
Brittney Richardson (Oct 16, 2020 21:18 CDT)  
BRITTNEY RICHARDSON, COMMISSIONER

Oct 16, 2020  
DATE