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LISA M. HUDSON
DIRECTOR OF PERSONNEL

Tuesday, May 24, 2016

Brett J. Prendergast
4603 S. Carrollton Avenue
New Orleans, La. 70119

Re: **Zolite Caliste VS.**
Department of Police
Docket Number: 8319

Dear Mr. Prendergast:

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 - 5/24/2016 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Amoco Building, 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 blue ink that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Michael S. Harrison
Elizabeth S. Robins
Victor Papai
Zolite Caliste

file

ZOLITE CALISTE

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 8319

The Department of Police (“Appointing Authority”) employed Zolite Caliste (“Appellant”) as a Police Communication Supervisor with permanent status. The Appellant was a civilian employee working in the City of New Orleans Call Center. The Appointing Authority suspended the Appellant for two days, for violating departmental rules regarding Instructions from an Authoritative Source, failure to submit employee leave paperwork, and, a three day suspension for violating departmental rules related to Performance of Duty, Neglect of Duty, by failing to monitor employee sick and annual leave status.

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 January 20, 2015. 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.

FACTS

The Appellant was the supervisor of a team of approximately twenty five civilian police communications dispatchers. In June of 2012 there was a change in the police officer Chain of Command at the Call Center. As a result, new policies were issued for personnel working at the Call Center. One of these policy changes dealt with an update as to how sick leave was to be treated by supervisors when an employee did not have any

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sick or annual leave. The new policy was announced by email on June 6, 2012. The Appellant informed her subordinates, and NOPD employees at the Call Center signed an acknowledgement sheet concerning the new sick leave policy. The new policy was aimed at reducing the impact on Call Center staffing levels due to absences an employee was able to anticipate. Under the new policy, an employee who had prior knowledge of a need to be out of work due to a medical-related issue must notify his/her supervisor. The supervisor then checked the employee's sick and annual leave account. If the employee had exhausted his/her leave, the supervisor needed to submit a request for Leave Without Pay (LWOP) prior to the employee's absence to the police officer chain of command for approval.

A dispatcher that Appellant supervised spoke with Appellant about a pending medical procedure that necessitated that the dispatcher miss work on June 11, 2012. In compliance with the new policy, the Appellant told the employee that she did not have any sick or annual leave, and that the dispatcher would have to find another employee to work for her on the afternoon of June 11. The employee was able to find a substitute and she submitted a memorandum to the Appellant with the substitution information.

On June 10th, the Appellant was informed that the employee had called in sick for her afternoon shift that morning, a day before the dispatcher had arranged with another dispatcher to cover the dispatcher's shift. As per a different, old policy, which was still in effect on June 10th, the Appellant told the morning supervisor to fill out the LWOP form and to let the administration office submit it for final approval¹. The Appellant testified that she had no prior notice that the employee was going to be absent on the

¹ An email recalling the old policies was not sent out until June 15. Under the policy in effect on June 10, the supervisor on duty who received the sick call was responsible for filling out the paperwork. The Appellant was not on duty for the morning shift when the employee called in sick.

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tenth. And, by the time she found out, it was too late for Appellant to comply with the new LWOP policy.

The police officer supervising the Call Center instituted a complaint alleging the Appellant had failed to follow the new LWOP policy in place because she had prior knowledge that the employee would be absent, and that she had failed to properly supervise her personnel because she did not monitor the sick leave usage of her employees. The complaint was investigated, it was sustained, and the Appellant was disciplined. The Appellant then appealed.

ANALYSIS

A review of the testimony and evidence at the hearing established the new policy was an attempt to mitigate the impact absences have on the staffing levels at the Call Center. The policy specifically addressed absences, due to medical-related issues, that an employee could anticipate. The police sergeant who made the complaint against the Appellant admitted that the Appellant had no prior knowledge that the dispatcher was going to be absent on June 10th. Therefore, the policy did not apply to the dispatcher's absence on June 10th, therefore, NOPD has failed to establish that there was any basis for the discipline issued to Appellant.

It is evident that Appellant was aware of the employee's sick and annual leave status, because she required the employee to find someone else to work her shift **on June 11**. The policy in effect on June 10 regarding which supervisor was to fill out the leave paperwork was not changed until June 15, after the date the Appellant told the on duty supervisor who received the sick call to complete the LWOP paperwork.

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 Civil Service Commission. The burden on appeal, as to the factual basis for the disciplinary action, is on the appointing authority. *Id.*; see also *Goins v. Department of Police*, 570 So. 2d 93 (La. App. 4th Cir. 1990). The 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. *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)).

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 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). While these facts must be clearly established, they need not be established beyond a reasonable doubt. *Id.*

CONCLUSION

The Appointing Authority failed to establish by a preponderance of the evidence that either suspension issued to Appellant was based upon sufficient cause. The Appellant complied with the new policy regarding anticipated absence. There was no evidence that the Appellant knew the employee was going to be absent on June 10.

The Appellant was aware of the employee's sick and annual leave balance, and followed procedure when she told the supervisor who received the sick call to complete the LWOP paperwork. The Appellant performed her supervisory duties and met her supervisory responsibilities in effect at the time of the incident.

Based upon the foregoing, the Appellant's appeal is GRANTED. Appellant's record shall be cleared of any reference to the suspensions covered by the instant appeal and NOPD shall remit to Appellant all back pay and emoluments consistent with this Judgment.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 24th DAY OF

May, 2016.



MICHELLE D. CRAIG, CHAIRPERSON

CONCUR:



JOSEPH S. CLARK, COMMISSIONER



CORDELIA D. TULLOUS, COMMISSIONER