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REV. KEVIN W. WILDES, S.J.,
CHAIRMAN
DEBRA S. NEVEU
AMY L. GLOVINSKY
JOSEPH S. CLARK

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Friday, April 26, 2013

Mr. Dave Wilson

Re: **Dave Wilson VS.
Department of Emergency Medical S
Docket Number: 8021**

Dear Mr. Wilson:

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 - 4/26/2013 - 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, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Jeffrey M. Elder
Victor Papai
Jay Ginsberg
file

DAVID WILSON

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

**DEPARTMENT OF EMERGENCY
MEDICAL SERVICES**

NO. 8021

David Wilson (“Appellant”) is employed by the Department of Emergency Medical Services (“Appointing Authority”) as a Paramedic with permanent status. The Appellant received a fourteen day suspension for violation of the Appointing Authority’s internal regulation concerning 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 August 16, 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.

The material facts are not in dispute. The Appellant called his supervisor, Darryl Richardson, at approximately 9:00 pm on April 20, 2012 to inform him that he would not be reporting for work for his next scheduled shift that began at 5:30 am the following morning due to illness. The Appellant made the call from a bar. Several hours later that evening and while still at the bar, the Appellant began suffering shortness of breath and an ambulance was called to transport him to the hospital. The Appointing Authority became aware of the Appellant’s location because those individuals that responded to the 911 call were the Appellant’s co-workers.

The Appointing Authority’s policy and procedure manual provides:

Any employee utilizing sick leave is deemed too ill to report for work and therefore too ill to be out socializing. They will be confined to their residence, inclusive of days off, between their scheduled work shifts...

Based upon the Appellant's failure to follow this rule, he received a fourteen day suspension.

The Appellant offered no explanation as to why he would call in sick from a bar and remain at that location if he was too ill to report for work the following day.

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 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 by a preponderance of the evidence the occurrence of the complained of activity 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 just cause. The Appellant violated internal rules regarding the use of sick leave and provided no reasonable explanation for his misconduct.

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

RENDERED AT NEW ORLEANS, LOUISIANA THIS 26th DAY OF APRIL,
2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



REV. KEVIN W. WILDES, S.J., CHAIRMAN

CONCUR:



AMY L. GLOVINSKY, COMMISSIONER



DEBRA S. NEVEU, COMMISSIONER