



CITY OF NEW ORLEANS

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CITY CIVIL SERVICE COMMISSION

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DIRECTOR OF PERSONNEL

MITCHELL J. LANDRIEU
MAYOR

Wednesday, February 24, 2016

Ms. Shewanda Milton

I

Re: **Shewanda Milton VS.
Department of Public Works
Docket Number: 8197**

Dear Ms. Milton:

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 - 2/24/2016 - 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 cursive script that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Mark D. Jernigan, P.E.
Elizabeth S. Robins
Victor Papai
file



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CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

SHEWANDA MILTON

vs.

DEPARTMENT OF PUBLIC WORKS

DOCKET NO.: 8197 & 8273

I. INTRODUCTION

Appellant, Shewanda Milton (hereinafter “Ms. Milton” or “Appellant”), a permanent employee in the classified service, appeals a thirty-day suspension and subsequent termination pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Department of Public Works for the City of New Orleans, (hereinafter the “DPW” or “Appointing Authority”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the Appellant was terminated for sufficient cause.

II. FACTUAL BACKGROUND

As many citizens of New Orleans know, the DPW employs Parking Control Officers (hereinafter “PCO”) who are responsible for issuing citations to illegally parked vehicles. Tr. at 10:17-11:1, 11:13-17. Naturally, in order to execute his or her job functions, a PCO must determine whether or not a particular vehicle is illegally parked. For metered spaces, the first and most obvious way in which a PCO accomplishes this task is to look into a vehicle’s window and determine, 1) if a receipt indicating payment is displayed, and 2) if such a receipt is displayed, whether or not that receipt is still valid. *Id.* at 12:19-13:12. Beginning in 2009 and continuing

at least through the summer months of 2013, another manner in which PCO could determine if a car was illegally parked was to check the “Verrus” system. *Id.* at 13:13-15. The Verrus system was an automated program that allowed citizens to pay for parking over the phone or internet. *Id.* at 16-21. PCOs accessed the Verrus system through a DPW-issued cell phone and could enter either a vehicle’s license plate number or meter number to determine if a citizen had in fact used Verrus to pay for parking. *Id.* at 14:9-25. For the obvious reason that PCOs needed to check the Verrus system numerous times throughout the day, DPW policy required each PCO to carry with him or her a DPW-issued cell phone. *See id.* at 26:1-11. However, DPW prohibited PCOs from using work cell phones for personal communications.

At the time of her suspension and termination, Appellant had been employed by the City of New Orleans for nine years and spent the last six or seven of those years as a Senior Parking Control Officer. *Id.* at 54:7-16. Based upon the above-referenced procedures, before Appellant could properly issue a citation, she must have first physically examined a vehicle to determine if it was in a metered space. If there was no receipt indicating payment, then DPW policy required Appellant to check the Verrus system, using her DPW-issued smart phone, to determine if a citizen had paid for parking via phone. Only after these steps were taken could Appellant properly issue a parking citation in relationship to a metered parking area.

On July 11, 2013, Appellant worked from 9:00 a.m. until approximately noon when she ended her patrol early due to weather. *Id.* at 54:20-22, 56:8-14. During this approximately three-hour time frame, Ms. Milton issued thirty-three tickets. *Id.* at 56:18-19. Twenty-one of those thirty-three tickets were for meter violations. H.E. Exh. 2.

Unrelated to any specific action by the Appellant, supervisors within DPW requested that all PCOs return the DPW-issued cell phone to a supervisor for inspection. This request stemmed

from a concern by supervisors that some PCOs had installed applications on the city-owned cell phones that would allow PCOs to text and/or receive/make phone calls in violation of DPW policy. *Id.* at 17:15-18:1. When Appellant's supervisor, Valerie Petty, requested that Appellant produce her DPW cell phone for inspection on July 11, 2013, Appellant initially conducted a search of her person in an attempt to find the phone, then Appellant told Ms. Petty that she had left the phone at a hotel in the CBD where she had taken a break. *Id.* at 18:18-19:3. Ms. Petty informed Appellant that they would both need to return to the hotel and attempt to retrieve the phone; on her way out of the DPW facility, Ms. Petty told Ms. Milton "don't make me leave out here and you know you don't have your phone for today." At that point, Appellant admitted that she did not have her DPW-issued cell phone. *Id.* at 19:11-19. Ms. Petty informed her supervisor and the report eventually made its way upon the chain of command at DPW to Ms. Zepporah Edmonds, Parking Administrator. *Id.* at 25:3-15.

Upon learning of Appellant's alleged misconduct, Ms. Edmonds placed Appellant on a thirty-day emergency suspension without pay; Ms. Edmonds then extended this emergency suspension through October 2013 pending the outcome of DPW's investigation into Appellant's misconduct. *Id.* at 30:4-32:10; H.E. Exh. 1. During the course of Ms. Edmonds's investigation into Appellant's actions, she discovered that Appellant had issued seven "no pay" citations between 9:50 a.m. and 10:35 a.m. to citizens who had paid for parking using the Verrus system. H.E. Exh. 2. Ms. Edmonds also discovered that no other PCO had reported an issue with the Verrus system on July 11, 2013 and program managers at Verrus indicated that there had not been any issues with the program during the time Ms. Milton had issued the seven tickets. H.E. Exh. 2; Tr. at 39:23-40:6.

Following her investigation, Ms. Edmonds scheduled a pre-termination meeting for Ms. Milton. At her pre-termination meeting Ms. Milton claimed that she had checked the Verrus system using her personal cell phone as well as the city-issued cell phone of a fellow PCO, Kelly Smith. H.E. Exh. 2.¹ Ms. Milton reiterated this claim during her appeal hearing and testified that she did not issue a parking citation on July 11, 2013 without first attempting to determine whether or not payment had been made through Verrus using her personal cell phone. Tr. at 57:21-58:3.

According to Ms. Edwards - a thirty-year employee within DPW with substantial institutional knowledge regarding the operations of DPW - on a typical day, three invalid tickets issued by any one particular PCO would be on the “high end.” *Id.* at 70:10-11. She described the seven invalid tickets issued by Appellant as “quite unusual” and “very high” especially in light of the fact that Appellant had only been on patrol for a total of three hours. *Id.* at 69:21-70:13, 73:6-11.

Among the functions within the Verrus program is one that tracks queries performed by certain users. Ms. Edmonds testified that, in reviewing the Verrus program in connection with the seven invalid tickets issued by Ms. Milton, no one used a DPW-issued cell phone to run a license plate query for any of the ticketed vehicles. *Id.* at 33:9-12, 34:4-12. On cross-examination, Ms. Edwards acknowledged that she was not sure if this query-tracking functionality would be able to show queries performed via personal cell phone or queries related to meters as opposed to license plates. However, had Ms. Milton used Ms. Smith’s DPW-issued cell phone to query a license plate for any of the seven invalid tickets, such a query would have been reflected in the Verrus system. *Id.* at 34:4-12.

¹ The Commission notes that the DPW chose not to call Ms. Smith as a witness in this matter. Ultimately, the Appellant’s own shifting and inconsistent testimony served to undermine her credibility, it would have aided the Commission in assessing the Parties’ position had this seemingly important witness been called to testify.

At the time of Appellant's suspension and termination, DPW policy required that a PCO immediately notify a supervisor if he or she did not have a DPW-issued cell phone at the start of his/her shift. In the event that a PCO could not reach a supervisor, he or she was to contact the DPW dispatcher. Appellant was aware of this policy and claimed that she attempted to reach Ms. Petty on July 11, 2013, but that Ms. Petty did not answer the radio call. *Id.* at 60:14-20. She stated that she did not contact the DPW dispatcher because of a DPW policy that prohibited PCOs from contacting the dispatcher during street cleaning days. *Id.* at 60:21-61:7. On rebuttal, Ms. Petty stated that she did not receive a call from Appellant on July 11, 2013 despite the fact that Ms. Petty had her radio on her person the entire day. *Id.* at 68:4-14. Ms. Petty also testified that the DPW restriction regarding contacting dispatchers during street cleaning days pertained only to PCO requests for vehicle towing. *Id.* at 68:1-14, 68:23-69:4.

III. LEGAL STANDARD

It is well-settled that, in an appeal before the Commission, 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. *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, we 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)).

IV. ANALYSIS

In the termination notice issued to Appellant, there are six grounds listed for termination:

- 1) Failure on Appellant's part to have her department-issued cell phone during her shift;
- 2) Appellant's failure to notify her supervisor that she did not have her department-issued cell phone;
- 3) Appellant's failure to inform the DPW dispatcher that Appellant did not have her department-issued cell phone;
- 4) Appellant's issuance of at least seven "fraudulent parking citations" without verifying that the citizens to whom Appellant issued the citations had paid for parking through the Verrus system; and
- 5) Appellant's multiple and changing explanations as to her conduct.

H.O. Exh. 2.

A. The Board Has Established the Occurrence of the Complained of Activity

i. Appellant did not have her department-issued cell phone and did not follow DPW protocol (allegations 1-3)

When Ms. Petty first asked for Appellant's city-issued phone, Appellant engaged in a search of her person and then claimed to have left the phone in a local hotel during a break. During the Appeal Hearing, Ms. Milton admitted that she did not have her city-issued cell phone at all during her shift on July 11, 2013 because she had forgotten it in her vehicle after confusing it with her personal cell phone. Tr. at 55:7-19. During her direct examination, Appellant testified that she realized that she did not have her DPW-issued cell phone "once she reported to her beat." *Id.* at 55:19-25. She claims to have used both her personal cell phone as well as a co-worker's DPW-issued phone to check the Verrus system. While the Commission very much doubts the veracity of these claims, it serves to emphasize Appellant's initial attempt to deceive her supervisor. We find that Appellant's search of her person was a charade and her initial story that she had left the

phone at a local hotel was a last-ditch effort by Appellant to avoid revealing to her supervisor that she did not have her phone.

For similar reasons, we find Appellant's explanations for not contacting her supervisor regarding her missing DPW-issued cell phone dubious at best. Appellant initially attempted to mislead her supervisor and only after Ms. Petty called Appellant's bluff did Appellant admit that she did not have her DPW-issued phone at all during her shift. Had Appellant truly attempted to reach her supervisor regarding the missing cell phone, one would have expected Ms. Milton to immediately acknowledge that she did not have the cell phone and emphasize her earlier attempts to reach her supervisor via radio. Instead, Appellant tried to deceive Ms. Petty. Further, Ms. Milton's excuse as to why she failed to contact the dispatcher is similarly flawed. According to Ms. Milton, she did not contact the dispatcher because the DPW had a policy that PCOs were not to contact the dispatcher during street cleaning days. Tr. at 60:21-61:7. Ms. Petty clarified that DPW's policy was to request that PCOs not contact dispatching with tow requests during street cleaning times but could reach out to the dispatcher with other problems. *Id.* at 68:23-69:4. The Commission finds it very difficult to believe that a nine-year employee like Appellant would not understand and appreciate this distinction. Clearly, Appellant has peppered her deception with half-truths in hope of retaining her job.

ii. Appellant issued at least seven fraudulent tickets without first determining if payment had been made through the Verrus system.

We find Appellant's explanation regarding the seven invalid tickets utterly unbelievable. Appellant asserts that the Verrus system is unreliable and often does not accurately reflect whether

or not a citizen has paid.² While this may be true, Appellant's credibility as to her actions on July 13th is very much in question.

Appellant would have the Commission believe that she checked the Verrus system before issuing each of the twenty-one "meter" violations on July 11, 2013, and, despite conducting such a review, one-third of the tickets she issued that day were invalid. The Commission notes that no other PCO reported an issue with the Verrus system between 9:50 and 10:30 on July 11, 2013, and Verrus program managers confirmed that there were no problems with the application during that same period of time. Finally, Appellant offered no rebuttal to Ms. Edmonds's description of the volume of invalid tickets being very unusual. When the Commission considers all of these facts in combination with Appellant's admission that she did not have her DPW-issued cell phone with her on July 11th, it becomes clear that, more likely than not, Appellant issued citations without first checking to see whether or not payment had been made through Verrus.

To summarize, the Commission finds that:

- 1) Appellant did not have her DPW-issued cell phone with her during her shift on July 11, 2013;
- 2) Appellant made no attempt to contact her supervisor or DPW dispatcher to report her missing phone;
- 3) Appellant issued twenty-one meter violation citations without determining if the citizen to whom she was issuing the citation had paid for parking using the Verrus system;
- 4) Appellant initially tried to mislead her supervisor regarding the status of her DPW-issued cell phone and only revealed the truth when forced to do so;
- 5) No other PCO reported an issue with the Verrus system on July 11, 2013;
- 6) Verrus program managers did not report any problems with the system on July 11, 2013;

² Ms. Petty acknowledged that the Verrus system suffered from technical issues that would occasionally result in citizens being issued invalid tickets. Citizens have the opportunity to contest these citations before the DPW. Tr. at 22:12-25.

- 7) No one used a DPW-issued cell phone to perform a query within the Verrus system for any license plate associated with the seven invalid tickets issued by Appellant; and
- 8) Seven invalid tickets issued in a three-hour span is very unusual.

Given the above findings, along with Appellant's questionable credibility, this Commission finds that the DPW has met its burden with respect to the first prong of the Commission's analysis.

B. Appellant's Misconduct Impaired the Efficiency of the DPW

On a very basic level, Ms. Milton's actions impaired the efficiency of the DPW by causing additional work for staff who had to review the citations issued by Ms. Milton to determine whether or not those citations were valid. When DPW's investigation revealed that seven tickets were invalid, staff needed to set their regular tasks aside and address the need to rescind the wrongfully issued citations and notify the affected citizens. More generally, when Ms. Milton issued citations for nonpayment to citizens who had actually paid for parking, she "tarnished the credibility" of DPW, inconvenienced citizens and forced DPW employees to step away from regular duties. Tr. at 40:12-25. Citizens will not take advantage of new programs and initiatives put forth by the DPW, or any other City entity, if those programs are not faithfully implemented by staff so as to provide a promised benefit or convenience.

The Commission need not stretch its imagination very far to envision the unfortunate DPW staff members who must respond to very irate citizens who had followed DPW instructions regarding payment and received tickets nonetheless. Furthermore, it is more than likely that a citizen who tried a new approach for paying for parking and was ticketed anyway will either try his/her luck by not paying or return to an antiquated and less efficient system. For the sake of both citizens and staff, conduct like Ms. Milton's must be strongly discouraged.

C. Appellant's Termination was Commensurate with her Offense

Since the Appointing Authority has established that Appellant engaged in the conduct for which she was disciplined and that such conduct compromised the efficient operation of the Department, the Commission now turns to whether or not termination is the appropriate level of discipline for such misconduct. In conducting its analysis, the Commission must determine if the Appellants' termination was "commensurate with the dereliction;" otherwise, the discipline would be "arbitrary and capricious." *Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d 976, 978 (citing *Staehele v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

The primary responsibility of a PCO is to enforce the parking regulations throughout the City. These regulations are in place to benefit citizens, businesses and generate revenue for the City. By failing to faithfully enforce parking restrictions, Appellant harmed those who properly paid for parking and disadvantaged those for whom the parking ordinances are designed to benefit. Appellant then compounded her misconduct by lying about it, first to her immediate supervisor, then during her pre-termination meeting and finally to the Hearing Examiner. Appellant's dereliction, combined with her attempt to cover it up, warrants the highest level of discipline.

VI. CONCLUSION

Upon considering the evidence and testimony presented by the Parties, we find that the DPW has satisfied its burden of proof and shown that Appellant engaged in the conduct for which she stood accused. Furthermore, Appellant's conduct compromised the operations and efficiency of the DPW. Finally, we find that termination was commensurate with Appellant's offense. Based upon the foregoing, the Commission hereby finds that the DPW had sufficient cause to suspend

S. Milton
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and terminate the Appellant. Therefore, Appellant's appeal is hereby DENIED, and her termination shall stand.

Judgment rendered this 28th day of January, 2016.


CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION



MICHELLE D. CRAIG, CHAIRWOMAN

1/28/2016

DATE

CONCUR


RONALD P. McCLAIN, VICE-CHAIRMAN

2/18/16

DATE



TANIA TETLOW, COMMISSIONER

2/15/16

DATE