



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J.,
CHAIRMAN
AMY L. GLOVINSKY
JOSEPH S. CLARK
COLEMAN D. RIDLEY, JR.

LISA M. HUDSON
DIRECTOR OF PERSONNEL

MITCHELL J. LANDRIEU
MAYOR

Tuesday, July 02, 2013

Sherry L. Legaux
137 North Clark St.
New Orleans, La. 70119

Re: **Lester Royal VS.
Sewerage & Water Board
Docket Number: 8075**

Dear Legaux:

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 - 7/2/2013 - 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 that reads "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Marcia St. Martin
Yolanda Grinstead
Jay Ginsberg

LESTER ROYAL

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

SEWERAGE & WATER BOARD

DOCKET NO. 8075

The Sewerage & Water Board (“Appointing Authority”) employed Lester Royal (“Appellant”) as a Utilities Maintenance Technician I with permanent status. The Appointing Authority terminated the Appellant by letter dated August 14, 2012 after determining that he provided fraudulent doctor’s excuses to justify receiving paid sick leave. The factual basis for the disciplinary action is contained in the third paragraph of the termination letter which provided as follows:

You submitted to your supervisor doctor’s slips with the letterhead of Dr. Donald D. Yuratich for dental services provided on January 9, 2012, January 20, 2012, February 27, 2012, April 2, 2012 and July 9, 2012. After investigation by your supervisor, Mr. Todd Hatheway and Ms. Debra Griesardt of the Meter Shop, it was confirmed by Ms. Joycelyn Smith, the Office Manager of Dr. Yuratich’s office and by Dr. Yuratich himself that you are not a patient at the office. Furthermore, that office was closed the week of July 9, 2012.

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 December 5, 2012. 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 Appellant admitted that he never sought treatment from Dr. Yuratich. He said that someone gave him the doctor’s excuses in the parking lot of the dental office. The Appellant offered no credible explanation for his misconduct, claiming that he used nine paid days of sick leave to “shop around” for a dentist to extract his wisdom teeth. All of the doctor’s excuses were from the same dental office.

The Appellant also claims that he didn't receive sufficient notice of the reasons for his pre-termination hearing. Todd Hatheway, the Plant Superintendent, testified that he had a detailed conversation with the Appellant regarding the use of false doctor's excuses. However, Mr. Hatheway also testified that when the Appellant advised him that he wanted to record their conversation, he only read what was contained in the Notice of Pre-Disciplinary Hearing. The notification stated that the reason for the hearing was "Doctor's Notifications" and that is all Mr. Hatheway said when he knew he was being recorded.

The Appellant testified that he was unaware of the reason for the pre-disciplinary hearing and that the notice he received from Mr. Hatheway did not provide any clarity on that subject. He claimed that all that was said during his conversation with Mr. Hatheway was what was contained in the recording.

LEGAL PRECEPTS

An employer cannot subject an employee who has gained permanent status in the classified city civil service to disciplinary action 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 make an independent judgment, 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 terminated the Appellant for just cause. The Appellant used fraudulent doctor's notes as a justification for using paid sick leave. His explanation for using them was simply not credible. Further, the Appellant received sufficient notice prior to his pre-disciplinary hearing as to the reasons for the hearing. We credit Mr. Hatheway's testimony concerning the details of his conversation with the Appellant regarding the reasons for the pre-disciplinary hearing. The Appellant's claim that he was unaware of the reasons for the pre-termination hearing cannot be given credence considering the Appellant's lack of credibility in all other regards.

L. Royal
#8075

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

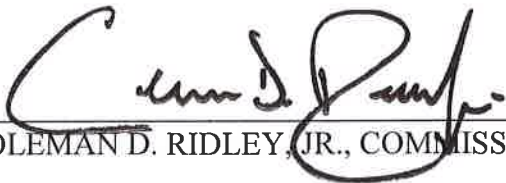
RENDERED AT NEW ORLEANS, LOUISIANA THIS 2nd DAY OF JULY, 2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION

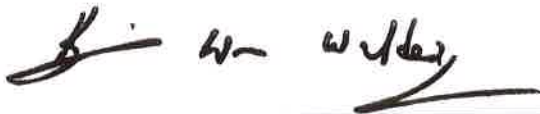


JOSEPH S. CLARK, COMMISSIONER

CONCUR:



COLEMAN D. RIDLEY, JR., COMMISSIONER



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