



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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Monday, February 8, 2021

Dale E. Williams
212 Park Place
Convington, LA 70433

Re: **Herman Hogues Jr. VS.
Department of Property Management
Docket Number: 8807**

Dear Mr Williams:

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 - 2/8/2021 - 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,
Stacie Joseph
Stacie Joseph
Management Services Division

cc: Martha Griset
Megan A. Haynes
Jay Ginsberg
Herman Hogues

file

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

HERMAN HOGUES, JR.,
Appellant

vs.

DOCKET NO. 8807

DEPARTMENT OF PROPERTY MANAGEMENT,
Appointing Authority

I. INTRODUCTION AND PROCEDURAL BACKGROUND

Appellant, Herman Hogues, Jr., (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 this Commission to find that the Chief Administrative Officer did not have sufficient cause to suspend him. At all times relevant to the instant appeal, Appellant served as Operations Manager of the Department of Property Management (“Appointing Authority”) and has permanent status as a classified employee.

By letter dated May 3, 2018, the Chief Administrative Officer notified the Appellant of its decision to issue a 30-day emergency suspension effective May 4, 2018. (Exhibit HE-1). Mr. Hogues resigned on May 10, 2018, and the period of his suspension was May 4, 2018, to May 11, 2018. (Tr. at 66, 72, 90). Appellant attempted to email an appeal to the Civil Service Department on May 22, 2018. (Ex. DPM-1). The Commission ruled on March 20, 2019, that the appeal was timely, but rejected Appellant’s assertion that his resignation was involuntary. (May 20, 2019, Commission Order). The Commission ruled that the hearing should be limited

to whether the Appointing Authority had cause to suspend Appellant from May 4, 2018, to May 11, 2018. (May 20, 2019, Commission Order). On May 28, 2019, subsequent to the Commission's Order, but before the hearing of the suspension held on August 7, 2019, the Appointing Authority submitted a memorandum of authorities to the hearing officer concerning Appellant's lack of standing based on his voluntary resignation.

A Hearing Examiner, appointed by the Commission, presided over a hearing on August 7, 2019, during which both Parties had an opportunity to call witnesses and present evidence. The Hearing Examiner re-opened the record on September 10, 2019, in order to rule on the admissibility of Exhibit DPW-6. The parties submitted post-hearing briefs. In its post-hearing brief, the Appointing Authority again asserted that the Appellant lacked standing to appeal his suspension because of his voluntary resignation. The Hearing Examiner prepared a report and recommendation based upon the testimony and evidence in the record. The undersigned Commissioners have reviewed the transcripts and exhibits from this hearing, the post-hearing briefs of the parties, as well as the Hearing Examiner's report. Based upon our review, we DENY the appeal and render the following judgment.

II. ANALYSIS

Mr. Hogues has no right to appeal his suspension because of his voluntary resignation. Rule II, § 4.1 provides that "[r]egular employees in the classified service shall have the right to appeal disciplinary actions to the Commission, including dismissal, involuntary retirement, demotion, suspension, fine, reduction in pay, or letters of reprimand as defined in Rule I." Because Mr. Hogues was not a regular employee in the classified service at the time he appealed his suspension, Mr. Hogues has no cause of action. The question of whether an employee has the right to appeal is analogous to the question of whether a plaintiff has a cause of action. *Banks v. New*

Orleans Police Dep't, 2001-0859 (La. App. 4 Cir. 9/25/02), 829 So. 2d 511, 514, *writ denied*, 2002-2620 (La. 12/13/02), 831 So. 2d 990. “If an appellant voluntarily resigned, then [he] has no right of appeal.” *Pugh v. Dep’t of Culture, Recreation and Tourism*, 597 So. 2d 38, 41 (La. App. 1 Cir. 1992). “An employee has no right of appeal when the employee voluntary resigns.” *Stern v. New Orleans City Planning Comm’n*, 2003-0817 (La. App. 4 Cir. 9/17/03), 859 So. 2d 696. If the resignation is involuntary, then the employee has a right of appeal, so that an Appointing Authority may not subvert an employee’s right of appeal:

However, an employee does have the right to an appeal when he is either forced to resign or involuntarily retires. The reason an appeal is permitted when an employee is forced to resign or retire is to preclude characterization of disciplinary action as a “resignation” to subvert an employee's right to an appeal. *Russell v Mosquito Control Board*, 06-0346 (La. App. 4 Cir. 9/27/06), 941 So.2d 634, 640, *citing Peterson v. Department of Streets*, 369 So.2d 235, 237 (La. App. 4 Cir. 1979).

Voltolina v. City of Kenner, 20-151 (La. App. 5 Cir. 12/2/20). In the instant case, the Commission has held that Appellant’s resignation was voluntary, so the policy basis for allowing appeals of separated employees -- to preclude characterization of disciplinary action as a resignation in order to subvert an employee’s right to appeal – is not present in this case. Therefore, the exception to the rule disallowing appeals of employees who have resigned does not apply, and Appellant has no right of appeal.

Therefore, the Commission DENIES Mr. Hogues’ appeal.

Judgment rendered this 8th day of February 2021.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER:

J H Korn
J H Korn (Feb 5, 2021 18:43 CST)

JOHN KORN, COMMISSIONER

CONCUR:

Brittney
Brittney Richardson (Feb 4, 2021 15:55 CST)

BRITTNEY RICHARDSON, COMMISSIONER

Mark C. Surprenant
Mark C. Surprenant (Jan 26, 2021 15:11 CST)

MARK SURPRENANT, COMMISSIONER