



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
BRITTNEY RICHARDSON, CHAIRPERSON
JOHN H. KORN, VICE-CHAIRPERSON
MARK SURPRENANT
RUTH WHITE DAVIS
ANDREW MONTEVERDE

Monday, October 23, 2023

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Mr. Devin Hall

Re: **Devin Hall VS.
Recreation Department
Docket Number: 9455**

Dear Mr. Hall:

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 - 10/23/2023 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal must conform to the deadlines established by the Commission's Rules and Article X, Sec.12(B) of the Louisiana Constitution. Further, any 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: Larry Barabino
James M. Roquemore
Imtiaz A. Siddiqui
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**DEVIN HALL,
Appellant**

Docket No. 9455

v.

**RECREATION DEPARTMENT,
Appointing Authority**

DECISION

Appellant, Devin Hall, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his April 20, 2023, termination of employment. (Ex. HE-1). At all relevant times, Appellant had permanent status as a Maintenance Supervisor. (Ex. HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on June 6, 2023. At this hearing, both parties had an opportunity to call witnesses and present evidence.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the hearing, all exhibits submitted at the hearing, the Hearing Examiner's report dated September 28, 2023, and controlling Louisiana law.

For the reasons set forth below, Mr. Hall's appeal is GRANTED.

I. FACTUAL BACKGROUND

The Recreation Department terminated Mr. Hall's employment for job abandonment. (Ex. HE-1). In particular, the Recreation Department terminated Mr. Hall's employment for failing to return to work on August 23, 2021, after the Recreation Department sent Mr. Hall a letter dated August 4, 2021, requiring him to return by August 23, 2021. (Ex. HE-1). The Recreation Department did not offer the August 4, 2021, letter into evidence, and the author of the letter did

not testify at the hearing. The Human Resources Manager, Mark Zinter, testified he could not find the August 4, 2021, letter. (Tr. at 91).

The Recreation Department placed Mr. Hall on leave through the Families First Coronavirus program on May 7, 2020. (Tr. at 38). Mr. Hall completed a Families First Coronavirus Recovery Act (“FFCRA”) Paid Leave Request Form on June 1, 2020, stating that he was caring for his three children whose school was closed due to COVID-19. (Ex. City-10; Ex. City-12). The payroll documents reflect that Mr. Hall received FFCRA leave, supplemented with Civil Leave, until August 14, 2020. (Ex. City-12). The payroll documents also reflect that the Recreation Department placed Mr. Hall on leave without pay beginning September 3, 2020, after he had exhausted all his paid leave. (Tr. at 80; Ex. City-12). Mr. Hall testified that he communicated regularly with supervisors Monique Richardson or Wayne McCormick during his leave, and these witnesses corroborated the contact with them. (Tr. at 140, 146, 152).

On July 26, 2021, Mr. Hall was in a vehicle accident, and he was unable to return to full duty. (Tr. at 182; Ex. Hall-4). Mr. Hall testified he was unable to walk. (Tr. at 49). Mr. Hall provided documentation of this accident to the Recreation Department via fax on or about August 2, 2021. (Tr. at 182; Ex. Hall-2; Ex. Hall-3). Mr. Hall stated, “I expected to return on August 20, 2021, but due to accident I will be out until I am well.” (Ex. Hall-3). Monique Richardson, Public Works Supervisor III, testified that she received the paperwork about Mr. Hall’s accident, and she forwarded the documents to Mr. McCormick. (Tr. at 152). When Mr. Hall asked about returning to work in a light duty position, the Recreation Department informed Mr. Hall it had no light duty positions. (Tr. at 186).

The Recreation Department sent a letter to Mr. Hall dated August 4, 2021, requiring that he return to work on August 23, 2021. (Tr. at 48). Mr. Hall failed to receive this letter, but he did

receive the notice of pre-termination hearing in December 2021. (Tr. at 183). Mr. Hall testified that he received permission from Human Resources to move to Slidell following damage to his home in Orleans Parish from a tornado in 2019 or 2020. (Tr. at 19-20). Mr. Hall attended a pre-termination conference in January of 2022, and informed the Human Resources manager that he had failed to receive the August 4, 2021, letter requiring him to return to work because it was sent to the wrong address. (Tr. at 52, 134, 160, 183). The Recreation Department took no action after the January 2022 pre-termination conference. Mr. Hall hand-delivered a copy of a February 22, 2022, MRI report to Monique Richardson. (Ex. Hall-5). On February 9, 2023, Mr. Hall's treating physician released him to full duty, but the Recreation Department would not give him a return date. (Tr. at 169; Ex. Hall-5).

The Recreation Department sent Mr. Hall a second notice of pre-termination hearing on February 10, 2023. (Ex. City-3). Mr. Hall attended a second pre-termination hearing on February 20, 2023. (Tr. at 62). The Recreation Department terminated his employment effective April 20, 2023. (Ex. HE-1).

II. ANALYSIS

A. Legal Standard for Commission's Review of Discipline

“Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A).” *Whitaker v. New Orleans Police Dep't*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep't of Police*, 2000-1682 (La. App. 4 Cir. 5/9/01)). “Legal cause exists whenever an employee's conduct impairs the efficiency of the public service in which the employee is engaged.” *Id.* “The Appointing Authority has the burden of proving the impairment.” *Id.* (citing La. Const., art. X, §

8(A)). “The appointing authority must prove its case by a preponderance of the evidence.” *Id.* “Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the “efficient operation” of the public service.” *Id.* “It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, 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 in which the appointing authority is engaged. *Gast v. Dep't of Police*, 2013-0781 (La. App. 4 Cir. 3/13/14), 137 So. 3d 731, 733 (quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094).

B. The Recreation Department has failed to carry its burden of showing cause for termination based on a failure to return to work on August 23, 2021

The Recreation Department failed to show the occurrence of the complained of activity. The Recreation Department terminated Mr. Hall’s employment because he failed to return to work on August 23, 2021, as required by an August 4, 2021, letter. Mr. Hall testified he never received the August 4, 2021, letter, and that he informed the former Human Resources Manager of his failure to receive the letter at the January 2022 pre-termination hearing. In the interim, Mr. Hall suffered an injury from a vehicle accident on July 26, 2021, and was unable to return to full duty. When Mr. Hall was released to return to work in February of 2023, NORD failed to give Mr. Hall a return date. Instead, NORD terminated his employment effective April 20, 2023, for failing to return to work on August 23, 2021.

Because the Recreation Department failed to offer the August 4, 2021, letter into evidence, and failed to offer any testimony from the author of the letter, Mr. Hall’s testimony that he failed

to receive the letter is un rebutted. In addition, witnesses corroborated the discussion during the January 2022 pre-termination hearing about Mr. Hall's failure to receive the August 4, 2021, letter. (Tr. at 135, 148 (McCormick); Tr. at 160 (Coleman)). Mr. Hall was injured on July 26, 2021, and was unable to return to work until February of 2023.

Mr. Hall's appeal is GRANTED. The Recreation Department shall reinstate Mr. Hall and reimburse him for all wages and emoluments of employment from February 8, 2023, when Mr. Hall was released to return to work, to date.

This the 23rd day of October, 2023.

WRITER:

J H Korn
J H Korn (Oct 11, 2023 14:50 CDT)

JOHN KORN, VICE-CHAIRPERSON

CONCUR:

Ruth White Davis
Ruth Davis (Oct 20, 2023 19:44 CDT)

RUTH DAVIS, COMMISSIONER


Andrew Monteverde (Oct 11, 2023 14:38 CDT)

ANDREW MONTEVERDE, COMMISSIONER