



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
SUITE 900 – 1340 POYDRAS ST.
NEW ORLEANS LA 70112
(504) 658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION

BRITTNEY RICHARDSON,
CHAIRPERSON
CLIFTON J. MOORE, JR, VICE-
CHAIRPERSON
JOHN KORN
MARK SURPRENANT
RUTH WHITE DAVIS

Monday, November 15, 2021

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Mr. Derek Payton

Re: **Derek Payton VS.
Recreation Department
Docket Number: 9202**

Dear Mr. Payton:

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 - 11/15/2021 - 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
Eraka Williams Delarge
Alexandra Mora
file



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Monday, November 15, 2021

Mr. Derek Payton

Re: **Derek Payton VS.
Recreation Department
Docket Number: 9203**

Dear Mr. Payton:

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 - 11/15/2021 - 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.

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Doddie K. Smith
Chief, Management Services Division

cc: Larry Barabino
Eraka Williams Delarge
Alexandra Mora
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**DEREK PAYTON,
Appellant**

Docket Nos. 9202, 9203

v.

**RECREATION DEPARTMENT,
Appointing Authority**

DECISION

Appellant, Derek Payton, 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 three-day suspension beginning September 1, 2020, and his termination on September 4, 2020. (Exhibit HE-1, HE-2). At all relevant times, Appellant had permanent status as a Maintenance Worker. (Tr. at 9). A Hearing Examiner, appointed by the Commission, presided over a hearing on March 30, 2021. 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 April 30, 2021, and controlling Louisiana law.

For the reasons set forth below, Payton's appeal is DENIED.

I. ANALYSIS

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). The Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance of evidence that it had good or lawful cause for suspending and terminating the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d 106 (La. 1984).

The undersigned Commissioners find that the Appointing Authority has carried its burden of showing that the complained-of conduct occurred. Mr. Payton worked as a driver/maintenance worker for the Recreation Department for over four years. (Tr. at 9). Payton's responsibilities included cleaning the parks and completing logs reflecting the mileage, parks visited, and time of arrival and departure. (Tr. at 25). The Recreation Department assigned a truck to Payton, a white Dodge Ram #3132, to travel between the parks, and he signed the truck in and out every day. (Tr. at 26, 29). On three consecutive days (August 26-28, 2020), Payton's supervisor, Monique Richardson, photographed the truck assigned to Payton at his home in New Orleans East when Payton's log sheet reflected he was elsewhere. (Tr. at 31-37). On two of these occasions, when a supervisor called Payton, Payton informed the supervisor he was at Burger King (8/26/20 at approximately 1:31) or coming "across the river" from Cutoff (8/27/20 at approximately 11:33). (Tr. at 33). Payton's log sheet for 8/26 reflects that Payton was at Behrman X on the West Bank beginning at 1:30 when his truck was photographed at his home at 1:31. (Ex. NORDC-2; Tr. at 40). Payton's log sheet for 8/27 reflects that Payton was at Lambert on the West Bank at 11:00 and at River Park on the West Bank at 11:30 when his truck was photographed at home at 11:33. (Ex. NORDC-2; Tr. at 40, 42). On August 28, Ms. Richardson observed Payton outside his apartment

building at 1:25 PM. (Tr. at 37). Payton's log sheet indicates he arrived at Behrman X at 12:30. (Ex. NORDC-2; Tr. at 41).

Payton testified he was at home changing clothes and that he was not trained on how to complete the log sheets. (Tr. at 22-23). The undersigned Commissioners do not find Payton's testimony credible.

The undersigned Commissioners also find that the Appointing Authority carried its burden of showing that the complained-of conduct impaired the efficiency of the Recreation Department. The Director testified that the playgrounds were not being serviced during this time, which was during the pandemic. (Tr. at 62). Further, the Director testified the conduct was dishonest and fraudulent, displaying a lack of leadership, as Payton was the lead of his team. (Tr. at 53, 56).

The undersigned Commissioners also find that the penalty is commensurate with the violation.


The appeal is DENIED.

This the 15th day of November, 2021

WRITER:


Brittney Richardson (Nov 3, 2021 11:45 CDT)
BRITTNEY RICHARDSON, CHAIRPERSON

CONCUR:


CJ Moore (Nov 15, 2021 08:40 CST)
CLIFTON J. MOORE, JR., VICE-CHAIRPERSON


Ruth Davis (Nov 3, 2021 13:00 CDT)

RUTH DAVIS, COMMISSIONER