



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION  
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DIRECTOR OF PERSONNEL

Wednesday, January 17, 2024

Mr. Eric Hessler  
PANO 320 N. Carrollton Avenue #202  
New Orleans, LA 70119

Re: **Jessica Lehman VS.**  
**Department of Emergency Medical Se**  
**Docket Number: 9509**

Dear Mr. Hessler:

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 - 1/17/2024 - 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, 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: Dr. Megan Marino, Interim  
Elizabeth S. Robins  
Jay Ginsberg  
Jessica Lehman

file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**JESSICA LEHMAN,  
Appellant**

**Docket No. 9509**

v.

**DEPARTMENT OF EMERGENCY  
MEDICAL SERVICES,  
Appointing Authority**

**DECISION**

Appellant, Jessica Lehman, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from the Department of Emergency Medical Services' (EMS) September 13, 2023, termination of her employment. (Ex. HE-1). At all relevant times, Appellant had permanent status as an Emergency Medical Technician. (Ex. HE-1; Tr. at 6, 8). A Hearing Examiner, appointed by the Commission, presided over a hearing on October 30, 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 post-hearing briefs submitted December 18, 2023, the Hearing Examiner's report dated December 19, 2023, and controlling Louisiana law.

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

**I. FACTUAL BACKGROUND**

The City of New Orleans EMS hired Jessica Lehman in July 2021 as an Emergency Medical Technician. (Tr. at 6, 8). In addition to performing other job duties, Ms. Lehman provided emergency medical care to patients. (Tr. at 9). She usually had one partner on a shift, and she

typically drove the ambulance. (Tr. at 9-10). Ms. Lehmann admittedly had been counseled for chronic absenteeism, including a formal “Notice of Excessive Absenteeism” in December 2022 citing 28 days of absences during the year. (Tr. at 19, 21; Appellant’s Post-Hearing Brief at 1). She disclosed to EMS that her absenteeism was due to domestic violence. (Tr. at 24, 63).

On May 22, 2023, while intoxicated off duty, she drove her vehicle into a ditch near the intersection of Highway 59 and 1088 in St. Tammany Parish. (Tr. at 10-12; Appellant’s Post-Hearing Brief at 1). The Louisiana State Police tested her for alcohol, and Ms. Lehman registered .147 on a breathalyzer. (Tr. at 11-12; Ex. NOEMS-1). She was arrested on May 22, 2023, and charged on July 26, 2023, with operating a vehicle while intoxicated and careless operation of a vehicle. (Ex. NOEMS-1; Ex. NOEMS-2). She entered a 12-month pre-trial diversion program in July of 2023 based on the recommendation of the District Attorney for the 22d Judicial District Court. (Tr. at 17, 87). The diversion program includes education and random drug and alcohol testing to ensure compliance. (Tr. at 17, 87-88). According to the District Attorney’s website, if a participant in the diversion program successfully completes the program, the District Attorney will decline prosecution and the participant will be eligible for expungement of all charges.<sup>1</sup> Ms. Lehman will complete the diversion program in July of 2024, and her next court date is in August of 2024. (Tr. at 17).

EMS terminated Ms. Lehman’s employment on September 13, 2023, based on the May 22, 2023, incident, and excessive absenteeism. (Ex. HE-1). Meg Marino, M.D., the Director of EMS, testified she would have terminated Ms. Lehman’s employment even in the absence of attendance

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<sup>1</sup> [Diversion - J. Collin Sims Interim District Attorney 22nd Judicial District, Louisiana \(collinsimsda.org\)](https://www.collinsimsda.org)

issues. (Tr. at 46). However, Dr. Marino was “very concerned” that Ms. Lehman’s absenteeism issues may have been because of substance abuse issues. (Tr. at 39).

## 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).

**1. The Appointing Authority must show the discipline was commensurate with the infraction**

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 disciplining the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Durning v. New Orleans Police Dep't*, 2019-0987 (La. App. 4 Cir. 3/25/20), 294 So. 3d 536, 538, writ denied, 2020-00697 (La. 9/29/20), 301 So. 3d 1195; *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 appointing authority has the burden of showing that the discipline was reasonable and not arbitrary or capricious. *Neely v. Dep't of Fire*, 2021-0454 (La. App. 4 Cir. 12/1/21), 332 So. 3d 194, 207 (“[NOFD] did not demonstrate . . . that termination was reasonable discipline”); *Durning*, 294 So. 3d at 540 (“the termination . . . deemed to be arbitrary and capricious”).

**B. EMS has carried its burden of showing cause for the termination of Ms. Lehman’s employment**

Ms. Lehman has admitted she engaged in reckless driving and driving under the influence of alcohol, the complained-of activity. Because Ms. Lehman’s job duties include driving an ambulance and providing emergency medical services to patients, Ms. Lehman’s substance abuse impairs the efficient operation of EMS. Dr. Marino testified she was focused on the “safety of the patients” and had “serious concerns about allowing someone with a recent DUI to drive an ambulance and practice medicine under [her] license.” (Tr. at 44-45).

**1. The penalty imposed by EMS is commensurate with the violation**

CAO Policy Memorandum No. 89(R) addresses off-duty substance abuse: “Any employee whose off-duty conduct that is related to the use, sale, manufacture, or abuse of any drug, prescription drug, controlled dangerous substance, or alcoholic beverage that may or may not result in criminal charges of conviction shall be subject to disciplinary action up to and including immediate termination if the City believes that his off-duty conduct possibly could affect such individual’s safe performance of the job; jeopardize the safety of other employees, the general public, or the City’s property; or reduce the community’s trust in the ability of the City to carry out its responsibilities due to the notoriety or adverse effects of the employee’s conduct. (Ex. NOEMS-7). Dr. Marino explained that “my job is to do what’s best for the people of the City of New Orleans, and [what] I have to think about is [whether] having Jessica driving an ambulance was in the best interest of the people of the City of New Orleans.” (Tr. at 46). Because of the safety-sensitive nature of Ms. Lehman’s job duties and the importance of providing emergency medical services to members of the community, Dr. Marino acted within her discretion as the Appointing Authority when deciding to terminate Ms. Lehman’s employment.

Ms. Lehman’s appeal is DENIED.

New Orleans, Louisiana, this the 17th day of January, 2024.

WRITER:

Mark C. Surprenant  
Mark C. Surprenant (Jan 13, 2024 14:33 CST)

MARK SURPRENANT, COMMISSIONER

CONCUR:

Ruth White Davis  
Ruth Davis (Jan 11, 2024 12:42 CST)

RUTH DAVIS, COMMISSIONER

J H Korn  
J H Korn (Jan 11, 2024 20:30 CST)

JOHN KORN, VICE-CHAIRPERSON