

CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

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LISA M. HUDSON
DIRECTOR OF PERSONNEL

Monday, August 17, 2015

Mr. Joseph Simmons Sr.

Re: **Joseph Simmons Sr. VS.
Sewerage & Water Board
Docket Number: 8272**

Dear Mr. Simmons:

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 - 8/17/2015 - 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,


Doddie K. Smith
Chief, Management Services Division

cc: Cedric S. Grant
Yolanda Grinstead
Jim Mullaly
file

JOSEPH SIMMONS

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

SEWARAGE & WATER BOARD

NO. 8272

Joseph Simmons is a Network Maintenance Tech 1. Mr. Simmons received a ten-day suspension based upon allegations that on January 21, 2014, he was insubordinate and used inappropriate language toward his supervisor, Mr. Simpson. He filed a timely appeal.

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 August 18, 2014. The 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 testimony was as follows.

CORNELL COLLIER:

Mr. Collier is a Quality Assurance Safety Inspector with the S&WB. Mr. Collier testified that he does safety training, timekeeping, supervises repair crews that repair sewer and waterlines and assures the customers are happy with the work.

Mr. Collier testified that "standby" work is what they call work on the weekends or holidays. When an individual arrives to work for standby they must check in with security at the front entrance, show ID and sign a sign-in sheet. The individual then reports to the Zone 7 office where they sign-in again, put their arrival time and are given their work assignment. The individual must then report to the crew or truck to which they are assigned.

Mr. Collier testified that employees are allowed to be late so long as they have a valid reason; flat tire, etc. He also testified that employees, under certain circumstances, could arrive a

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few minutes late. He explained that the employee should first let security see them, tell security they are going to the restroom and then catch up with the group. Mr. Collier testified that another employee could always sign them in at security provided they know he is present. Mr. Collier noted, and Mr. Simmons testified that Mr. Simmons did not do that. Mr. Simmons walked past security, past Zone 7 and went to the restroom in the warehouse. He didn't let anyone know he had reported to work.

Mr. Collier testified that he was present at the meeting on January 21, 2014, and that Mr. Simmons was using profanity toward Mr. Simpson and that when asked to leave Mr. Simmons refused. Mr. Collier testified that Mr. Simpson had to call a security officer to remove Mr. Simmons from the meeting.

MR. LEROY SIMPSON:

Mr. Simpson is a Zone Manager with the S&WB. Mr. Simpson testified that he is a day supervisor. He supervises 52 employees on three shifts including a pavement department and two repair departments within Zone 7. Mr. Anderson Martin, his assistant supervises with him during the day. Mr. Cornell Collier, also his assistant, supervises Mr. Clark, who is the night supervisor.

Mr. Simpson testified that Zone 7 hours are from 7:00 am to 7:00 am; it is the only 24-hour zone. Zone 7 is responsible for emergency work; that is, repairing water, sewer, and drainage lines, and paving work.

Mr. Simpson testified that Zone 7 has employees that work "standby." That is; a weekend crew that commits to working the weekend and/or holidays. On "standby" days, each crew member must report by 7:00 am and if a crew member fails to report by that time, he/she is typically sent home.

Mr. Simpson testified that on January 21, Mr. Simpson called a meeting regarding Mr. Simmons tardiness on Sunday, January 19, his standby day. Mr. Simpson testified that he wanted to hear Mr. Simmons' side of the story.

Mr. Simpson testified that Mr. Simmons was late in reporting to the meeting and that Mr. Simpson had to have a foreman/supervisor go retrieve Mr. Simmons. When Mr. Simmons arrived he was agitated and defensive. He refused to sit down in a chair and remained standing. Mr. Simpson explained to Mr. Simmons that if he didn't want to sit down and discuss the incident he could just go home; Mr. Simmons sat. The group began discussing Mr. Simmons' tardiness. Mr. Simmons was using profanity, the individuals in the group kept interrupting one another, and finally Mr. Simmons refused to answer any more questions. Mr. Simpson told Mr. Simmons to leave if he wasn't going to answer any questions. Mr. Simmons left.

Mr. Simpson testified that he then sent someone to get Mr. Simmons. Mr. Simmons returned, still agitated and angry. The tone of the meeting continued to deteriorate and Mr. Simpson again asked Mr. Simmons to leave. At that point Mr. Simmons refused and Mr. Simpson told him that he would have security escort him out if he didn't leave. Mr. Simpson testified that Mr. Simmons told him to go get security, which he did. Security arrived, the security officer, obviously a friend of Mr. Simpson's, greeted him with a smile and the two joked, laughed and smiled as the security officer escorted Mr. Simmons off the property.

Mr. Simpson testified that Mr. Simmons has a "very bad attitude and... a total disregard at times for authority." Mr. Simpson also testified that during previous meetings Mr. Simmons had responded the same way to questioning. Mr. Simpson has had to counsel Mr. Simmons on a number of occasions regarding incidents with his crew members. Mr. Simpson has never suspended him or taken any action adverse to Mr. Simmons as Mr. Simpson would rather talk to

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him and see if the problem could be worked out.

Mr. Simpson testified that he gave Mr. Simmons the ten day suspension because of Mr. Simmons' total disregard for authority at the meeting; exhibited by profane language and a threatening demeanor, and because Mr. Simmons had exhibited that same demeanor toward his supervisors on many prior occasions.

Mr. Simpson testified that Mr. Simmons was now working the 3:00 pm to 11:00 pm shift. Joseph Clark is his supervisor.

APPELLANT – MR. SIMMONS:

Mr. Simmons is a Network Maintenance Tech, Zone 7. He has worked in Zone 7 since 2011. His first immediate supervisor was Michael Duplessis and his second was, and currently is, Joseph Clark.

Mr. Simmons testified that on Sunday, January 19, 2014 he arrived at work with stomach problems. Before checking in, he used the restroom in the warehouse. When he was finished using the restroom he walked to security to check in. Mr. Simmons was told by Mr. Cornell Collier to go home and return on Tuesday. Mr. Simmons called Mr. Leroy Simpson who again told him that he should go home and return on Tuesday as Mr. Collier had requested. Mr. Simmons then left.

Mr. Simmons testified that on Monday, he arrived at worked and checked in with security and his supervisor, Mr. Collier. He was told to leave and return the next day.

Mr. Simmons testified that on January 21, 2014, he was called into a meeting with Mr. Simpson, Mr. Collier and Mr. Clark. Mr. Simmons testified that he did not curse at Mr. Simpson. Mr. Simmons admitted that if he had cursed out Mr. Simpson it would have been fair for him to have been suspended.

LEGAL PRECEPTS

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer except for cause expressed in writing. La. 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 decide independently from 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.

ANALYSIS

The Appointing Authority proved that on January 21, 2014, Mr. Simmons was insubordinate and used inappropriate language toward his supervisor, Mr. Simpson, and that insubordination of this kind affects the efficient operation of the Appointing Authority. All of

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the witnesses present at the January 21, 2014, meeting with exception of the Appellant testified that the Appellant was insubordinate, used inappropriate language toward his supervisor, refused to leave and had to be escorted out of the meeting by security. Appellant's blanket denial was self-serving and otherwise outweighed by the other testimony from his Supervisors.

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

RENDERED AT NEW ORLEANS, LOUISIANA THIS 17th DAY OF
August, 2015.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION

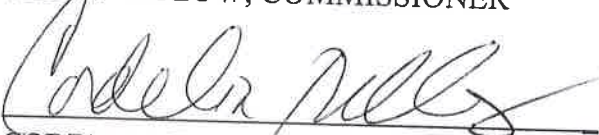


RONALD P. MCCLAIN, COMMISSIONER

CONCUR:



TANIA TETLOW, COMMISSIONER



CORDELIA TULLOUS, COMMISSIONER