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CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J.,
CHAIRMAN
AMY L. GLOVINSKY
JOSEPH S. CLARK
COLEMAN D. RIDLEY, JR.

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Friday, September 06, 2013

Mr. Joseph Hamilton

Re: **Joseph Hamilton VS.
Sewerage & Water Board
Docket Number: 8079**

Dear Mr. Hamilton:

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 - 9/6/2013 - 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,

A handwritten signature in blue ink, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Marcia St. Martin
Yolanda Grinstead
Jay Ginsberg
file

JOSEPH HAMILTON

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

SEWERAGE & WATER BOARD

DOCKET NO. 8079

The Sewerage & Water Board (“Appointing Authority”) employs Joseph Hamilton (“Appellant”) as a Diesel Mechanic with permanent status. The Appointing Authority suspended the Appellant after determining that he was insubordinate and disrespectful towards his supervisor, Lucas Simmons. The factual basis for the disciplinary action is contained in the second paragraph of the September 13, 2012 disciplinary letter, which provides as follows:

On August 22, 2012, you interfered with directives given to another employee by your Supervisor, Lucas Simmons. Mr. Simmons advised you to proceed with your own duties and not to concern yourself with what he was telling the other employee. However, you began to argue with Mr. Simmons and used profanity. Your actions constitute insubordination and will not be tolerated. Additionally, you have been counseled and received several written warnings regarding your continued acts of insubordination.

The Appointing Authority introduced three prior reprimands received by the Appellant that occurred in 2011.

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 May 2, 2013. 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.

Mr. Simmons and the Appellant are mechanics who work on diesel dump trucks. Mr. Simmons assigns work to the Appellant and two other mechanics who work in the same garage. Mr. Simmons is responsible for making sure the work is completed. According to Mr. Simmons, on August 22, 2012, he assigned a task to Katrone Franklin. Specifically, Mr.

Simmons instructed Mr. Franklin to complete a job that was begun by another mechanic, Thomas Brown. The Appellant interjected himself into the conversation opining to Mr. Franklin that he should refuse the assignment because it was someone else's work. Mr. Simmons stated that, after he instructed the Appellant to stay out of it and return to his work, the Appellant became belligerent and abusive making obscene gestures and using profanity. Because this was not the first occasion where the Appellant exhibited such behavior, he reported the incident to his supervisors. According to Mr. Simmons, he has had to reprimand the Appellant for acts of insubordination on three occasions. On each occasion, the Appellant had refused to sign the disciplinary action form.

Terrence Wills, Management Development Specialist, testified that he investigated the incident. He stated that Mr. Simmons reported his version of what occurred and that Mr. Franklin confirmed Mr. Simmons version of events. However, according to Mr. Wills, Mr. Franklin later refused to sign the written statement Mr. Wills prepared and ultimately changed his story without explanation.

John Wilson, Director of Public Support Services, conducted the pre-disciplinary hearing and recommended a three day suspension. Mr. Wilson stated that he was present when the Appellant was presented the three previous reprimands which the Appellant refused to sign.

The Appellant denies ever receiving any written reprimands and also denies that he was insubordinate towards his supervisor on August 22, 2012. His co-workers Mr. Franklin and Mr. Brown both supported his version of events testifying that Mr. Simmons yelled at the Appellant without justification and that the Appellant never interfered with Mr. Simmons attempts to manage the work assignments.

LEGAL PRECEPTS

An employer cannot subject an employee who has gained permanent status in the classified city civil service to disciplinary action except for cause expressed in writing. LSA 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 make an independent judgment, based on 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.*

CONCLUSION

The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for legal cause. The Appellant's attempt to undermine Mr. Simmons's authority is a serious violation that warrants disciplinary action. Mr. Simmons was the more credible witness, regardless of the testimony of his subordinates. Mr. Simmons had no reason to fabricate the incident and it is clear from his testimony that he took action because he requires the cooperation of his subordinates in order to perform his supervisory functions. The Appellant was untruthful when he denied receiving the written reprimands, which calls into question his testimony as to what occurred on August 22, 2012. Mr. Franklin was also untruthful when he denied initially telling Mr. Wills that the Appellant interfered. Consequently, his version of events was also not credible.

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

RENDERED AT NEW ORLEANS, LOUISIANA THIS 6th DAY OF SEPTEMBER,
2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION


AMY L. GLOVINSKY, COMMISSIONER

CONCUR:


REV. KEVIN W. WILDES, S.J., CHAIRMAN


JOSEPH S. CLARK, COMMISSIONER