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CITY CIVIL SERVICE COMMISSION

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RONALD P. McCLAIN, VICE-
CHAIRPERSON
JOSEPH S. CLARK
TANIA TETLOW
CORDELIA D. TULLOUS

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Wednesday, February 24, 2016

Mr. Raymond C. Burkart, III
19407 Front Street
Covington, LA 70433

Re: **August Michel VS.
Department of Police
Docket Number: 8177**

Dear Mr. Burkart, III:

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 - 2/24/2016 - 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 cursive script that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Michael S. Harrison
Elizabeth S. Robins
Jay Ginsberg
August Michel

file

AUGUST MICHEL

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 8177

The Department of Police (“Appointing Authority”) employed August Michel (“Appellant”) as a police officer with permanent status. The Appointing Authority terminated the Appellant for violation of internal regulations regarding Adherence to Law after he entered a *nolo contendere* plea to a misdemeanor charge of R.S. 14:95.5, Possession of firearm on premises of alcoholic beverage outlet, on January 17, 2013. In addition to termination for the criminal violation, the Appellant was given a ten day suspension for the use of alcohol while off duty, a professional conduct violation. The Appellant contends termination is too severe a penalty for his violation.

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 October 23, 2013. 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.

A legal argument was raised by the Appellant’s counsel alleging a violation of the time limits set forth in La. R.S. 40:2531, the “Law Enforcement Officer’s Bill of Rights”. Counsel contends that the time limit to conduct the investigation was exceeded, rendering the disciplinary action a nullity. It is noted that the initiation date of the investigation was on February 22, 2012, but the initial investigation included allegations of criminal activity which were eventually resolved with the dismissal of one criminal charge, and a

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plea to the misdemeanor weapon charge, on January 17, 2013. The underlying criminal investigation changed to an administrative investigation after the department was informed of the guilty plea. The parties did not put the exact date of the change from the criminal to administrative investigation on the record. The Appellant received notice of sustained violations on March 4, 2013, a date that was within sixty days of Appellant's plea. Based on the case of *McMasters v. Department of Police*, 13-2634, p.2 (La. 2/28/14), 134 So. 3d 1163, 1164; La. R.S. 40:2531 B(7) ("...Further, nothing in this Paragraph shall limit any investigation of alleged criminal activity.") the applicable time limit was not violated, and the argument is without merit.

The Appointing Authority relied on the Appellant's plea and his subsequent admissions in his administrative statement and at his Commander's Hearing. Deputy Superintendent Kirk Bouyelas testified that he held the Commander's Hearing and considered all of the information presented. Appellant admitted at the Commander's Hearing that he had been drinking for several hours at two different alcohol outlets and had knowingly carried his service weapon into the establishments. The Appellant further admitted that after leaving the second outlet, he was treated at a hospital and his blood was tested for alcohol. The Appellant's blood alcohol level was .208%.

Deputy Superintendent Bouyelas sustained the Adherence to Law violation, and recommended dismissal for the violation. Additionally, he sustained the Professional Conduct, Use of Alcohol off duty, and recommended a ten day suspension for that violation. A third violation for fighting was not sustained. Deputy Superintendent Bouyelas explained that his recommendations were based on the knowing action of the Appellant in taking his service weapon inside of the alcoholic outlets. The Appellant was

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sober prior to his entry into the first establishment, and then went into a second establishment where he was involved in a physical altercation. Bouyelas stated that the Appellant's actions impacted the department negatively because of the public's expectation that the members of the police department will follow the law and ensure that the law is applied equally and fairly.

Superintendent Ronal Serpas reviewed the matter and confirmed the recommendations of Deputy Superintendent Bouyelas. The Superintendent terminated the Appellant for the criminal violation and issued a ten day violation for Professional Conduct based upon the blood alcohol content.

LEGAL PRECEPTS

An employer cannot discipline an employee who has gained permanent status in the classified city civil service 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 decide independently, 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

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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 cause. The Appellant pleaded *nolo contendere* to the criminal offense of Possession of firearm on premises of alcoholic beverage outlet. Regarding the discipline imposed, we cannot say that they were excessive or that the Appointing Authority abused its' discretion by terminating an employee for knowingly taking his service weapon with him into an alcoholic beverage outlet, and then pleading to the criminal violation. In addition, the blood alcohol reading was very high, was legal cause for discipline, and within the Appointing Authority's discretion to impose a ten day suspension.

Based upon the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 24TH DAY OF
FEBRUARY, 2016.

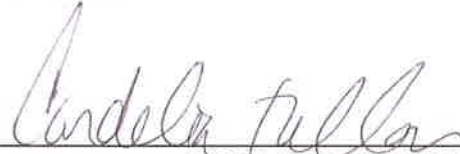
CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION

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MICHELLE D. CRAIG, CHAIRMAN

CONCUR:



CORDELIA D. TULLOUS, COMMISSIONER



RONALD P. MCCLAIN, COMMISSIONER