



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

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MAYOR

Tuesday, August 14, 2018

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Ms. Sarah Whittington  
1340 Poydras, Suite 600  
New Orleans, LA 70112

Re: **Jazzlynn Glaspy VS.  
Sewerage & Water Board  
Docket Number: 8680**

Dear Ms Whittington:

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 - 8/14/2018 - 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: Jade Brown-Russell  
Darryl Harrison  
Jay Ginsberg  
Jazzlynn Glaspy

file

**CIVIL SERVICE COMMISSION**

**CITY OF NEW ORLEANS**

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| JAZZLYN GLASPY<br>vs.<br>SEWERAGE & WATER BOARD | DOCKET No.: 8680 |
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**I. INTRODUCTION**

Appellant, Jazzlyn Glaspy, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Sewerage and Water Board for the City of New Orleans, (hereinafter the “S&WB”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the S&WB disciplined Appellant for sufficient cause. At all times relevant to the instant appeal, Appellant served as an Office Assistant II for the S&WB and had permanent status as a classified employee.

On Wednesday, October 25, 2017, a hearing examiner appointed by the Commission convened an appeal hearing related to the above-captioned matter. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the hearing examiner’s report. Based upon our review, we render the following judgment.

## II. FACTUAL BACKGROUND

### A. Alleged Misconduct

The S&WB terminated Appellant effective April 17, 2017. (H.E. Exh. 1). The reason for Appellant's termination was her violation of the S&WB's "Workplace Harassment (Zero Tolerance)" Policy. *Id.*

### B. Workplace Harassment (Zero Tolerance) Policy

The purpose of the S&WB's Workplace Harassment Policy (hereinafter, "the Policy") is to:

[M]aintain a working environment free of harassment or discrimination of any type including that which may relate in any way to an individual's race, color, gender, sexual orientation, age, religion, national origin, disability, or any other protected class.

(S&WB Exh. 1).

In order to achieve this end, the Policy prohibits a variety of conduct including "threatening or profane language towards others" and "verbal, physical or visual harassment." The "Zero Tolerance" portion of the Policy explicitly prohibits "acts or threats of violence" as well as "verbal, physical or visual intimidation or harassment." Supervisors and Managers within the S&WB post the Policy in conspicuous places through S&WB locations, and all new employees sign an acknowledgement that they have received the Policy. (Tr. at 24:1-23).

Ms. Walden Mitchell, an Office Assistant IV in the S&WB's call center, testified that she supervised Appellant during all times relevant to this appeal and that she had specifically counseled Appellant regarding the Policy on an earlier occasion. (Tr. at 7:12-20, 24:1-23). Additionally, Ms. Jaqueline Shine, a Utility Services Administrator responsible for the customer service department, testified that she also counseled Appellant on the Policy. *Id.* at 49:9-15. For

her part, Appellant conceded that she was aware of the Policy and stipulated that her actions on March 27, 2017 violated the Policy. *Id.* at 54:10-17, 74:24-75:4.

**C. March 27, 2017**

On March 27, 2017, Appellant was one of several S&WB employees assigned to the customer call center. Her primary duty was fielding calls from S&WB customers who had questions regarding a variety of service issues. (Tr. at 7:25-8:9). The call center is located at the S&WB's headquarters on St. Joseph Street and consists of approximately thirty open cubicles. *Id.* at 15:5-17. During the course of the day, Ms. Whitney Bentley – an analyst responsible for rendering assistance to call center employees – and Appellant engaged in a verbal back-and-forth overheard by Ms. Mitchell. *Id.* at 9:12-10:1. Appellant alleged that the confrontation arose out of Ms. Bentley's insistence that Appellant had broken a call center rule regarding the use of personal cell phones. *Id.* at 75:9-13. Due to the nature of the floor plan and layout, other employees could easily hear Appellant's exchange with Ms. Bentley. Ms. Mitchell instructed Appellant to calm down and Ms. Mitchell approached Ms. Bentley to ask about the incident. As Ms. Mitchell began to speak with Ms. Bentley, Appellant arrived and allegedly pushed her way past Ms. Mitchell to get closer to Ms. Bentley. *Id.* at 33:20-34:5.

Ms. Butler, a call center supervisor, was also present during an earlier confrontation between Appellant and Ms. Bentley in Ms. Bentley's office. She described Appellant as angry and noted that both she and Ms. Bentley asked Appellant to leave on more than one occasion. Both Ms. Mitchell and Ms. Butler described Appellant's confrontation of Ms. Bentley as "loud and disruptive" (Tr. 17:18-18:24, 62:2-18, 66:8-67:5). When Ms. Butler attempted to escort Appellant back to her work station, Appellant stood at her desk using profanity and demanding to speak to someone "higher up" in the S&WB. (Tr. at 66:8-67:5).

Appellant has a much different version of events. According to Appellant, she had obtained permission to use her personal cell phone to contact her daughter's day care center after receiving several calls from the center. *Id.* at 86:6-87:17. She believed that Ms. Bentley was purposefully trying to antagonize her by using a loud tone of voice and accusing her of breaking call center rules. *Id.* at 97:7-18. Appellant initially stated that she was loud in response to Ms. Bentley's tone and volume. *Id.* at 84:22-85:3. She was also frustrated that Ms. Mitchell was not addressing complaints Appellant leveled against Ms. Bentley. But, Appellant later denied that there was "loud talking." *Id.* at 89:11-16. Instead, Appellant suggested that she merely went into Ms. Bentley's office to get clarification from Ms. Mitchell if she should clock out for the day and complained about the treatment she received from Ms. Bentley. *Id.* at 89:18-90:3. Appellant denied using profanity. *Id.* at 91:11-20.

Eventually, an NOPD Officer and Private Security Guard (both of whom were on duty at the call center) escorted Appellant off S&WB property. *Id.* at 17:13-14, 69:4-7.

### III. LEGAL STANDARD

An appointing authority may discipline an employee with permanent status in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that an appointing authority issued discipline without sufficient cause, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, an 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 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094 (La. Ct. App. 2007)). If the Commission finds that an appointing authority has met its initial burden and had sufficient cause to issue discipline, it must then determine if that discipline “was commensurate with the infraction.” *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). Thus, the analysis has three distinct steps with the appointing authority bearing the burden of proof at each step.

#### IV. ANALYSIS

##### A. Occurrence of the Complained of Activities

As noted above, Appellant stipulated that her conduct violated the S&WB’s Workplace Harassment Policy. Yet, Appellant’s testimony conflicts with her stipulation and undermines her credibility. According to Appellant, she did not raise her voice, pound her fist or use profanity. Appellant admitted that she entered Ms. Bentley’s office, ostensibly for the purpose of posing questions to Ms. Mitchell. She claims to have only asked Ms. Mitchell if she should “clock out” for the day and if Ms. Mitchell was going to do anything about Ms. Bentley’s aggressive behavior. In her version of events, she complained about Ms. Bentley’s antagonistic behavior, and only increased the volume of her voice when Ms. Bentley did so. Appellant’s version of events stands in stark contrast to both Ms. Mitchell’s version and Ms. Butler’s.

The Commission accepts the hearing examiners assessment of Ms. Mitchell’s testimony to an extent. According to the hearing examiner, he viewed Ms. Mitchell as prone to exaggeration with a desire to paint Appellant in a negative light. The motive for such a desire is not clear from the record. Alternatively, the hearing examiner found Ms. Butler to be credible. In Ms. Butler’s version, Appellant entered Ms. Bentley’s workspace and angrily confronted her. Appellant used

profanity when loudly complaining about the treatment she received and Ms. Butler had to escort Appellant back to Appellant's work station. Undeterred, Appellant returned to Ms. Bentley's office and continued to loudly disrupt the call center.

The Commission is not prepared to completely dismiss Ms. Mitchell's account of the incident, especially in light of the fact that there was no evidence of bias introduced by Appellant to call into question Ms. Mitchell's testimony. We will, however, accept the hearing examiner's recommendation to view Ms. Mitchell's account as overly-dramatized. Nevertheless, Appellant's own stipulation combined with Ms. Butler's testimony is more than enough to establish that Appellant violated the S&WB's policy regarding workplace harassment.

#### **B. Impact on the S&WB's Efficient Operations**

Employees in the S&WB's call center are under an enormous amount of pressure and work in a very stressful environment. Often, they are interacting with frustrated customers to whom they must dedicate full attention. Any disruption has an adverse impact, not only on the call center employees, but on the efficient operations of the S&WB itself. As stated above, the Commission finds that Appellant violated the S&WB's workplace harassment policy by engaging a fellow S&WB employee in a loud, profanity-laced verbal confrontation.

The Commission credits Ms. Butler's testimony that several call center employees needed to be counseled regarding the disruption and that it was more likely than not that S&WB customers heard the inappropriate and unprofessional exchange. Bearing this in mind, the undersigned Commissioners find that Appellant's misconduct had a substantial, negative impact on the S&WB's efficient operations.

**C. Was the Discipline Commensurate with Appellant's Offense**

“The Commission has a duty to independently decide, from the facts presented, whether the appointing authority had good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed was commensurate with the dereliction.” *Mitchell v. Dep't of Police*, 2009-0724 (La.App. 4 Cir. 3/17/10, 3), 34 So.3d 952, 953.

Appellant, thanks to previous counseling from both Ms. Mitchell and Ms. Shine, was well aware of the Policy as well as the consequences for violating the Policy. The Commission observes that Ms. Bentley likely had a role in the escalation of the events of March 27th. But Ms. Bentley's discipline, or lack thereof, is not before us. Further, we note that Appellant chose to continue the unprofessional confrontation on not one, but two occasions. Twice Appellant's supervisors had to escort her away from Ms. Bentley. Additionally, we note that Appellant herself admitted to violating the workplace harassment policy.

The context of Appellant's misconduct impacts the Commission's assessment of whether or not termination was appropriate. Here, Appellant was a customer service representative charged with fielding calls from concerned customers. Her use of a loud and unprofessional tone of voice was disruptive to a vital aspect of the S&WB's operations. Further, Appellant used profanity and continued the confrontation by twice approaching Ms. Bentley at her work station. The Commission recognizes that the S&WB had other options available to it when considering the appropriate level of discipline, but given the totality of the circumstances, the Commission does not find that termination was so severe a penalty as to constitute an arbitrary or capricious act by the S&WB. As a result of the above findings of fact and law, the Commission hereby DENIES Appellant's appeal.



J. Glaspy  
No. 8680

Judgment rendered this 14<sup>th</sup> day of August, 2018.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER

Ronald P. McClain  
RON McCLAIN, VICE-CHAIRPERSON

7/27/18  
DATE

CONCUR

Tania Tetlow  
TANIA TETLOW, COMMISSIONER

8/8/18  
DATE

DISSENT

[Signature]  
STEPHEN CAPUTO, COMMISSIONER

8/13/18  
DATE

**CIVIL SERVICE COMMISSION  
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**COMMISSIONER STEPHEN CAPUTO DISSENTS FROM THE MAJORITY  
AND ASSIGNS REASONS**

I respectfully dissent from the opinion of the majority. While Ms. Glaspy clearly engaged in inappropriate conduct that disrupted the S&WB's call center, the facts of this case do not support termination.

On the day in question, Ms. Glaspy had received multiple calls from her young daughter's day care center and was concerned about the welfare of her child. She followed call center protocols in requesting permission to use her personal cell phone to call the day care center and check on her daughter. Ms. Bentley, who either did not know that Ms. Glaspy had permission to use a cell phone or was trying to antagonize Ms. Glaspy, yelled across the call center at Ms. Glaspy suggesting that Ms. Glaspy had violated S&WB rules. Ms. Glaspy took the bait and responded with loud profanity. Her conduct certainly warrants discipline, but falls short of the type of misconduct that should result in termination.

Conflict between employees is an unfortunate but inevitable occurrence in the modern workplace. This is especially true for a high-stress environment like the S&WB's call center. Ms. Bentley, who did not have supervisory authority over Ms. Glaspy, yelled across a crowded work area in order to call Ms. Glaspy out for a rule violation Ms. Glaspy did not commit. Ms. Glaspy could have and should have responded in a far more professional and measured manner, but her

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failure to do so does not amount to a terminable offense. I agree with the majority that Ms. Glaspy's actions warranted discipline, but not termination. I further note that the dispute between Ms. Glaspy was not violent and did not involve discrimination or harassment based upon any categories protected by state or federal law. Given the circumstances, I believe that a ten-day suspension and final letter of warning would have been more in-line with Ms. Glaspy's confrontation of Ms. Bentley.