



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
SUITE 900 - 1340 POYDRAS ST.  
NEW ORLEANS, LA 70112  
(504)658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION  
BRITTNEY RICHARDSON, CHAIRPERSON  
JOHN H. KORN, VICE-CHAIRPERSON  
CLIFTON J. MOORE JR.  
MARK SURPRENANT  
RUTH WHITE DAVIS

AMY TREPAGNIER  
DIRECTOR OF PERSONNEL

Wednesday, September 13, 2023

Mr. Jack Bohannon  
1340 Poydras St, Ste. 600  
New Orleans, LA 70112

Re: **Rodney Crayton VS.  
Sewerage & Water Board  
Docket Number: 9443**

Dear Mr. Bohannon:

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 - 9/13/2023 - 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 that reads "Stacie Joseph".

Stacie Joseph  
Management Services Division

cc: Ghassan Korban  
Ashley Ian Smith  
Jay Ginsberg  
Rodney Crayton

file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**RODNEY CRAYTON,  
Appellant**

**Docket No. 9443**

v.

**SEWERAGE & WATER BOARD,  
Appointing Authority**

**DECISION**

Appellant, Rodney Crayton, 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 Sewerage & Water Board's termination of his employment, communicated to him by letter dated December 29, 2022. (Ex. HE-1). At all relevant times, Appellant had permanent status as a Painter at Sewerage & Water Board Support Services. (Tr. at 42). A Hearing Examiner, appointed by the Commission, presided over a hearing on April 28, 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 Hearing Examiner's report dated July 21, 2023, and controlling Louisiana law.

The Commission grants Mr. Crayton's appeal, as the Sewerage & Water Board lacked reasonable suspicion for subjecting Mr. Crayton to a drug test.

**I. FACTUAL BACKGROUND**

Edgar Edwards, Sewerage & Water Board investigator, testified that on Friday, November 11, 2022, Alvin Flint, security manager of Sewerage & Water Board, received a text message alleging that Sewerage & Water Board employees were consuming alcohol in vehicle 39 at the

corner of Claiborne and Dumaine. (Tr. at 11, 13-15; Ex. SWBNO-1). The text message, received at 12:02 P.M., reads, “Van 39 is a Dumaine and Claiborne Two employees drinking beer on the clock.” (Ex. SWBNO-1). Flint replied, “Who is this!!” (Ex. SWBNO-1), and the sender replied, “Ms. Boyd with Parking and Violations.” (Ex. SWBNO-1).

Flint asked Edwards to locate vehicle 39 via the GPS placed in the vehicle by the Sewerage & Water Board. (Tr. at 12). Edwards discovered that the GPS system used to track Sewerage & Water Board vehicles could not register the location of vehicle 39. (Tr. at 18-19).

When the Sewerage & Water Board could not determine the location of the vehicle, Edwards emailed the Director of Support Services, Dave Cappel, to ask him to obtain the identity of the Sewerage & Water Board employees in vehicle 39. (Tr. at 14). Mr. Cappel responded to Edwards that Rodney Crayton and Dasper Newell were in vehicle 39, and they were just arriving at the Sewerage & Water Board office. (Tr. at 14).

Cappel testified that the decision to send Crayton and Newell for substance abuse testing was “a consensus...with [the Sewerage & Water Board] security department” based on the text message received by Flint. (Tr. at 32). Cappel approved the decision to send Mr. Crayton to be tested. (Tr. at 32). Cappel believed the text message to Flint constituted reasonable suspicion to send Crayton to be tested. (Tr. at 32, 35).

No evidence was offered by the Sewerage & Water Board that before Mr. Crayton was instructed to submit to drug testing on Friday, November 11, anyone attempted to contact Ms. Boyd via phone, even though the Sewerage & Water Board had possession of her phone number. (Tr. at 23 (Edwards), 38 (Cappel); Ex. SWBNO-1). In addition, neither Cappel nor Edwards, the only Sewerage & Water Board witnesses, talked to Mr. Crayton on Friday before Mr. Crayton was tested (Tr. at 33).

Two supervisors, including Just Lamar, completed a reasonable suspicion checklist. (Ex. SWBNO-2). A box was checked next to “Any articulable facts or evidence that indicate possible substance abuse on the job.” (Ex. SWBNO-2). Another box was checked next to “Any information or evidence that warrants, or emanates from, an authorized investigation of possible drug-related activity by a specific individual or group.” (Ex. SWBNO-2).

Kedrick Williams, a supervisor in the Maintenance Department, drove Crayton and Newell to a testing facility. (Tr. at 16).

Neither Just Lamar nor Kedrick Williams testified at the hearing.

Mr. Crayton’s blood alcohol content was initially .036, and .030 in the confirmation test. (Tr. at 10-11).

The following Monday, November 14, 2022, after the drug test of Crayton, Flint instructed Edwards to conduct an investigation. (Tr. at 15-16). Edwards visited a store located on the corner of Dumaine and Claiborne where he knew there were camera systems inside and outside of the building (Tr. at 14). The store manager informed Edwards that the camera system was inoperable on Friday, November 11, so the store would be unable to provide footage. (Tr. at 14). Edwards also interviewed Williams on Tuesday, November 29, 2022, about the completion of the reasonable suspicion observation checklist. (Tr. at 16-17). Williams informed Edwards that he did not independently observe any impairment on the part of Crayton. (Tr. at 28). During his investigation, Mr. Edwards attempted to contact Ms. Boyd. (Tr. at 15-17).

Edwards submitted his investigatory report to Flint, David Callahan, and Jason Higginbotham. (Tr. at 19). Cappel then recommended termination of Mr. Crayton’s employment. (Tr. at 36).

During the pre-termination hearing, Crayton conceded that he had been drinking beer on Thursday, November 10, 2022, the night before the date of the test. (Tr. at 18-20).

## II. ANALYSIS

The Commission must determine the threshold issue of whether the Sewerage & Water Board had reasonable suspicion to conduct a drug test of Mr. Crayton.

“[T]he Fourth Amendment of the United States Constitution prohibition against unreasonable searches and seizures by government officials is applicable to the states via the Fourteenth Amendment.” *Razor v. New Orleans Dep’t of Police*, 2004-2002 (La. App. 4 Cir. 2/15/06), 926 So. 2d 1, 8. “The Louisiana Constitution protects against unreasonable invasions of privacy as well as unreasonable searches and seizures.” *Razor*, 926 So. 2d at 8. “[T]he collection and subsequent analysis of biological samples for the purpose of drug testing with government encouragement, endorsement, and participation are Fourth Amendment searches.” *Razor*, 926 So. 2d at 8 (citing *Skinner v. Railway Labor Executives’ Ass’n*, 489 U.S. 602 (1989)). “[S]tate-compelled collection and testing of urine . . . constitutes a “search” subject to the demands of the Fourth Amendment.” *Bryant v. City of Monroe*, 593 Fed. Appx 291, 294, 2014 WL 6466862 (5<sup>th</sup> Cir. 2014) (quoting *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 652 (1995)). “[S]uch searches must meet the reasonableness requirements of the Fourth Amendment.” *Razor*, 926 So. 2d at 8. (citing *National Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989)). “To be reasonable under the Fourth Amendment, a search ordinarily must be based on individualized suspicion of wrongdoing.” *Bryant*, 593 Fed. Appx at 294 (quoting *Chandler v. Miller*, 520 U.S. 305, 313 (1997)).

“The propriety of a urinalysis test not ordered pursuant to a random drug testing program is appropriately evaluated according to whether the appointing authority had reasonable suspicion that a particular officer was a user of illegal drugs.” *Richard v. Lafayette Fire and Police Civil Service Bd.*, 2008-1044 (La. 2/6/09), 8 So. 3d 509, 514; *Safford v. Dep’t of Fire*, 627 So. 2d 707, 709 (La. App. 4 Cir. 1993). “‘Reasonable suspicion’ is defined as a ‘particularized and objective basis, supported by specific and articulable facts, for suspecting a person of criminal activity.’” *Richard*, 8 So. 3d at 517 (quoting Black’s Law Dictionary 1273 (7<sup>th</sup> Ed. 1999)).

Civil Service Rule V, section 9.12 sets forth the criteria for reasonable suspicion drug testing:

- 9.12 An employee shall be required to participate in the substance abuse screening procedure if there exists reasonable suspicion (Category III) to believe that the employee's fitness for duty is questionable, based on the following criteria:
- (a) Any observable, work-related behavior or similar pattern of conduct that appears to be abnormal, erratic or otherwise not in conformance with acceptable City policy.
  - (b) Any observable, work-related behavior or similar pattern of conduct that indicates signs of impairment in normal sensory and/or motor body functions.
  - (c) Any articulable facts or evidence that indicate possible substance abuse on the job.
  - (d) Any information or evidence that warrants, or emanates from, an authorized investigation of possible drug-related activity by a specific individual or group.
  - (e) Any pattern of alcohol and/or drug-related behavior, conduct or activity that is violative of municipal, state or federal law.

Despite the fact that boxes were checked on the Sewerage & Water Board’s Reasonable Suspicion Checklist, none of the factors in Civil Service Rule V, section 9.12 is present in the instant appeal.

When an informant alleges a classified employee is under the influence of drugs or alcohol, the criteria for determining whether reasonable suspicion exists to warrant a non-random drug test are:

- 1) the nature of the tip or information;
- 2) the reliability of the informant;
- 3) the degree of corroboration; and
- 4) other facts contributing to suspicion or lack thereof.”

*Richard*, 8 So. 3d at 517; *Safford*, 627 So. 2d at 709. An appointing authority may not rely on information gleaned after the appointing authority ordered a drug test to justify ordering the test. *Richard*, 8 So. 3d at 521. Therefore, even if Edwards had substantiated the tip from Ms. Boyd on Monday, November 11, this information could not be used to bolster the facts offered for reasonable suspicion.

In *Safford*, the Fourth Circuit held that a telephone call from a person purporting to be Safford’s spouse, with no corroboration other than the district chief calling back the number given by the caller, was insufficient for reasonable suspicion. *Safford*, 627 So. 2d at 709-10. The Fourth Circuit also reasoned that Safford exhibited no unusual conduct on the morning of the call, and the appointing authority did not call the spouse to testify that she did make the call. *Id.* at 710. The Fourth Circuit also noted that “the Office of Municipal Investigations conducted no substantial investigation before ordering plaintiff to submit to the test.” *Id.*

Likewise, in *Richard*, the Louisiana Supreme Court affirmed the Third Circuit Court of Appeal’s holding that reasonable suspicion was absent when the Police Chief ordered an officer to be drug tested based on “guilt by association or a single instance of bad judgment.” *Richard*, 8 So. 3d at 520.

In contrast, the Fourth Circuit held that reasonable suspicion existed to submit to drug testing when a drug dealer reported that the officer had stolen narcotics from him. *Razor*, 926 So. 2d at 9. In order to corroborate the information received, NOPD obtained a search warrant, discovering cocaine residue in the officer's vehicle's glove compartment. *Id.* “[T]he Commission’s finding that reasonable suspicion existed to justify Razor’s non-random drug testing was not based on the admittedly questionable accusations of [the drug dealer], but on the fact that those accusations were corroborated by the finding of cocaine residue in his car and Lt. Vappie’s testimony that the finding of the residue was corroborative or [the drug dealer’s] accusations.” *Razor*, 926 So. 2d at 11.

Applying the factors set forth in *Richard* and *Safford* to the facts of the instant appeal, the nature of the tip was a text message from a person identified as Ms. Boyd. Even though it appears from Exhibit SWBNO-1 that the Sewerage & Water Board was in possession of Ms. Boyd’s telephone number, no effort was made to determine the reliability of the informant before the Sewerage & Water Board ordered Mr. Crayton to submit to a drug test. Ms. Boyd also did not testify at the hearing of this matter. In fact, the recipient of the text message, Alvin Flint, also did not testify at the hearing of this matter. The supervisors who had contact with Crayton on November 9 did not testify that Crayton appeared impaired, and, in fact, Williams informed Edwards that he did not notice any impairment. The Sewerage & Water Board had no corroboration of Ms. Boyd’s allegation at the time it ordered the drug testing of Mr. Crayton, and no other facts contributed to the suspicion that Mr. Crayton was drinking alcohol while on duty.

The Sewerage & Water Board did not attempt to corroborate the allegations in the text message until the following Monday, when the Sewerage & Water Board sent Crayton for drug



testing on Friday. Therefore, the Sewerage & Water Board lacked reasonable suspicion to conduct drug and/or alcohol testing of Mr. Crayton.

Because the Sewerage & Water Board subjected Mr. Crayton to drug testing without reasonable suspicion, Mr. Crayton's appeal is GRANTED. The Sewerage & Water Board shall reinstate Mr. Crayton with back pay and all other emoluments of employment from December 29, 2022, to present.

This the 13<sup>th</sup> day of September, 2023

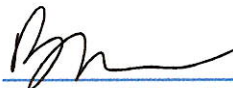
WRITER:



Ruth Davis (Aug 31, 2023 21:43 CDT)

RUTH DAVIS, COMMISSIONER

CONCUR:



Brittney Richardson (Sep 12, 2023 23:31 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON



J H Korn (Sep 6, 2023 08:19 CDT)

JOHN KORN, VICE-CHAIRPERSON