



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

MICHELLE D. CRAIG, CHAIRPERSON
RONALD P. MCCLAIN, VICE-
CHAIRPERSON

JOSEPH S. CLARK
TANIA TETLOW
STEPHEN CAPUTO

MITCHELL J. LANDRIEU
MAYOR

Tuesday, May 16, 2017

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Ms. Cammie Carroll

Re: **Cammie Carroll VS.**
Department of Public Works
Docket Number: 8242

Dear Ms. Carroll:

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 - 5/16/2017 - 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 must conform to the deadlines established by the Commission's Rules and Article X, Sec.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: Mark D. Jernigan, P.E.
Elizabeth S. Robins
Jim Mullaly
file

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

CAMMIE CARROLL vs. DEPARTMENT OF PUBLIC WORKS	DOCKET No.: 8242
---	------------------

I. INTRODUCTION

Appellant, Cammie Carroll, 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, Department of Public Works for the City of New Orleans, (hereinafter “the DPW”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the DPW disciplined Appellant for sufficient cause. At all times relevant to the instant appeal, Appellant served as a Parking Control Supervisor I (“Supervisor I”) and had permanent status as a classified employee.

On Tuesday, December 13, 2016, a hearing examiner appointed by the Commission presided over an appeal hearing.¹ 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.

¹ This matter was originally set for hearing on June 23, 2014. On the day of the hearing, counsel for the Appointing Authority contacted the Civil Service Department and indicated that she was ill and needed a continuance. Appellant appeared as directed by the hearing notice and promptly moved for dismissal of the underlying discipline. In support of her motion, Appellant claimed that the Appointing Authority had failed to prosecute the matter. Via Order dated July 8, 2016, the Commission denied Appellant’s motion and set the matter for a hearing. In that Order, the Commission acknowledged the delay in setting the matter and issued an apology to both Parties.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

The DPW suspended Appellant for two days after substantiating allegations that Appellant violated the DPW Code of Conduct. (H.E. Exh. 1). Specifically, DPW alleged that Appellant violated Section 1 of DPW's Code of Conduct which reads as follows:

No employee shall engage in conduct unbecoming an employee of the Department or the City of New Orleans, any violation of the following rules may be considered grounds for disciplinary action.

14.1 No PCO or Supervisor shall:

...

- 14.1:6 - Fail refuse or neglect to obey any lawful orders of a supervisor, whether oral or written.

...

- 14.1:20 - Fail to perform or improperly perform assigned duties.

(H.E. Exh. 1)

DPW alleged that Appellant violated the Code of Conduct on Saturday, September 14, 2013 when she failed to properly deploy Parking Control Officers ("PCOs") under her supervision and did not assist in the enforcement of parking ordinances. DPW further alleged that Appellant violated the Code of Conduct on Sunday, September 15, 2013 when she failed to make adequate arrangements to address a staffing shortage.

B. Saturday, September 14, 2013

The Parking Enforcement Division of DPW is responsible for the enforcement of parking ordinances throughout the City. Typically, Supervisor Is deploy PCOs to specific areas of the City during the course of a work day. On Saturday, September 14, 2013, Appellant was serving as a Supervisor I and was initially responsible for the supervision of five (5) PCOs. (App. Exh. 1).

However, at approximately 9:00 a.m., during roll call, Appellant discovered that two out of the five PCOs had called in sick.

Appellant instructed two of the PCOs to enforce parking ordinances in the French Quarter and gave the remaining PCO, Deishon Brown, enforcement duties for an area spanning Canal Street to Carrolton Avenue. (Tr. at 29:16-30:6). PCO Brown was also responsible for all “Code 18s” for the day. A “Code 18,” when used in the context of the instant appeal, is how members of the DPW’s Parking Enforcement Division describe incidents where residents contact DPW’s dispatch office regarding an alleged parking violation. *Id.* 30:7-19.

Ms. Sherida Emery, who also held the position of Supervisor I, was present at roll call on September 14th in connection with a special assignment. *Id.* at 26:18-27:4. At some point in time on the morning of the 14th Ms. Emery expressed a concern to Appellant regarding Appellant’s deployment of PCOs. *Id.* at 34:13-35:10. Appellant responded to Ms. Emery’s concerns with the following, “HmMMM.” (H.E. Exh. 1). Based upon her experience with Appellant, Ms. Emery understood this response to be an indication that Appellant did not intend to respond. (Tr. at 34:13-35:10).

DPW records reflecting the number of tickets issued on September 14, 2013 show that Appellant issued twenty-five parking citations while other PCOs issued between fifty-one and sixty-seven. (DPW Exh. 1). Ms. Emery described the number of parking tickets issued by PCOs on September 14, 2013 as “excellent” and a reflection that the PCOs had properly enforced restrictions in their respective areas. (Tr. at 42:6-18).

Despite these “excellent” numbers, Ms. Emery believed that Appellant’s deployment plan was not appropriate and that the area covered by PCO Brown would normally have been assigned to two PCOs. *Id.* at 34:1-6. Ms. Emery was also concerned that Appellant did not appear to be

rendering assistance to the enforcement operations performed by the PCOs under her supervision. Part of Ms. Emery's concern was driven by the fact that she believed Appellant intended to remain in the DPW's offices rather than out in the field. However, Supervisor Is could perform a wide variety of tasks while working in the DPW's offices ranging from assisting with communications to processing residential parking permits. *Id.* at 92:5-19.

As a result of her concerns with Appellant's apparent deployment plan, Ms. Emery contacted Zapporiah Edmonds, the DPW Parking Administrator at the time, and requested that Ms. Edmonds attempt to secure additional staffing. The Commission notes that, at the time of the alleged misconduct, Supervisor Is did not have the authority to contact off-duty PCOs and offer overtime. According to Ms. Emery, DPW management had instructed all Supervisor Is to contact their immediate supervisor whenever there was a staffing-level concern. *Id.* at 46:18-47:6. Ms. Valerie Petty, a fellow Supervisor I, denied that there was such an instruction from DPW management. Ms. Petty testified that, when someone is sick, then "they just call in sick and the day goes on." *Id.* at 122:20-22. Ultimately, another PCO reported for duty during the 9:00-5:00 shift.

Ms. Emery believed that Appellant should have been in the field with the PCOs enforcing parking ordinances instead of heading back to DPW's offices. *Id.* at 31:17-32:2. Both Appellant and Ms. Petty testified that, while Supervisor Is had the option of performing enforcement duties, there was no DPW policy requiring such action. *Id.* at 123:12-23, 125:6-15. In fact, Appellant did perform enforcement duties on September 14th as evidenced by DPW's own data. (DPW Exh. 1).

C. Sunday, September 15, 2013

On Sunday, September 15, 2013, Appellant was again serving in the capacity as Supervisor I and her shift was 10:00 a.m. to 6:00 p.m. The Commissioners note that Ms. Emery was also

working on the 15th but apparently did not work in the field because she did not issue any tickets. Appellant claimed that she was performing her supervisory duties on Sunday, September 15th and that four individuals were responsible for writing tickets, including two supervisors who were working overtime. *Id.* at 151:4-12. According to Appellant, four individuals with ticket writing duties represents a full complement of enforcement personnel for a Sunday. *Id.* at 151:8-12. DPW's ticket log for September 15, 2013 confirms that four individuals performed enforcement duties and issued 161 citations. (DPW Exh. 1). And, Appellant introduced schedules related to other Sundays in 2013 showing four PCOs scheduled for enforcement duties. (App. Exhs. 3 &4).

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

Part of the DPW's justification for disciplining Appellant was an alleged failure on Appellant's part to assist in parking enforcement duties on September 14, 2013. Based upon the ticket log introduced by the DPW, it is clear that Appellant did in fact assist the PCOs in enforcing parking regulations on the 14th. The assertion contained within the DPW's letter to Appellant that she "failed to assist [PCOs under her supervision] in enforcement" on September 14, 2013 is not accurate. In fact, it is demonstrably false.

Furthermore, Appellant testified that she did not issue citations on Sunday, September 15, 2013 because there was a full complement of DPW employees available to issue citations. The ticket log tends to support Appellant's testimony and the DPW did not introduce any testimony that called into question Appellant's claim. That Ms. Edmonds made arrangements for additional staffing on the 15th appears to be consistent with the DPW's practice that prohibits Supervisor Is from unilaterally assigning overtime.

The DPW did not establish that Supervisor Is had an obligation to contact Ms. Edmonds in the event of a staffing shortage. Both the Hearing Examiner and the undersigned Commissioners found Ms. Petty's testimony to be persuasive. Specifically, Ms. Petty testified that, in her experience as a Supervisor I, she did not recall ever receiving an instruction to contact a supervisor in cases where a PCO calls in sick. In fact, Ms. Petty testified that, when someone is sick, then "they just call in sick and the day goes on."

Finally, the Commission addresses Appellant's interaction with Ms. Emery. As a preliminary matter, we note that Appellant did not report to Ms. Emery, and was not under any obligation to engage Ms. Emery in a discussion regarding Appellant's deployment plan. While Ms. Emery may have believed that Appellant's response to her was impolite or terse, there is insufficient evidence to find that Appellant's monosyllabic responses were misconduct.

Based upon the foregoing, the undersigned Commissioners find that the DPW has failed to establish that Appellant engaged in the misconduct identified in the disciplinary notice. As a result, we need not analyze the remaining two prongs of the three-pronged test.

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby GRANTS the Appellant's appeal. The DPW is hereby ordered to restore to Appellant all back pay and emoluments related to the two-day suspension referenced in the notice identified as "Hearing Examiner 1." The DPW shall also expunge any record of the two-day suspension from Appellant's record.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.

SIGNATURES ARE ON THE FOLLOWING PAGE.

C. Carroll
No. 8242

Judgment rendered this 15th day of May, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION


STEPHEN CAPUTO, COMMISSIONER

5-15-17
DATE


RONALD P. McCLAIN, VICE-CHAIRMAN

5-15-17
DATE


MICHELLE D. CRAIG, CHAIRPERSON

5-15-17
DATE