

# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRMAN  
JOSEPH S. CLARK  
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LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Monday, August 17, 2015

Ms. Stacey Warren

Re: **Stacey Warren VS.**  
**Department of Safety & Permits**  
**Docket Number: 8245**

Dear Ms. Warren:

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 - 8/17/2015 - 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,



Doddie K. Smith  
Chief, Management Services Division

cc: Jared Munster  
Elizabeth S. Robins  
Jim Mullaly  
file

STACEY WARREN

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF SAFETY & PERMITS

NO. 8245

Stacey Warren is a Taxicab Investigator with the Department of Safety and Permits. Appellant was suspended by letter dated November 4, 2013. As set forth in the disciplinary letter, the discipline arises out of allegations that the Appellant violated Departmental policy relative to the use of sick time and was absent from work without authorization for five days.

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 June 23, 2014. 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.

The testimony was as follows.

KAREN THIBODAUX:

Ms. Thibodaux is the Executive Deputy Director of Taxicab Bureau. She has been employed with the Taxicab Bureau since 2011 and has held her current position for the last six months. She oversees the investigators and the office staff in the motor vehicle division. The Taxicab Bureau falls under the office of Safety and Permits.

Ms. Thibodaux was the Appellant's indirect supervisor. She testified that on October 10, 2013, the Appellant requested leave from October 11 until October 15, 2013. She was to return to work on October 17, 2013. Her direct supervisor, Ronnie Blake, signed the form approving her leave as did the Director of Taxicab Bureau.

Ms. Thibodaux testified that on October 16, 2013, a young lady (Ms. Toney) came into

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Ms. Thibodaux's office and gave her a letter indicating that the Appellant would not be returning to work. The letter was signed by a Dr. Cisco Weiss and stated that the Appellant would not be returning to work until October 30, 2013. Ms. Thibodaux showed the letter to the Director, Mr. Hull, and then gave the letter to Ms. Adams in Human Resources who was responsible for keeping the records on all employees.

Ms. Thibodaux testified that the Appellant was scheduled to work on October 31, 2013, at 3:00 pm. The Appellant did not appear for her shift. The Appellant was also scheduled to work November 1 and 2, 2013. She did not appear on those dates either. Ms. Thibodaux testified that she attempted to contact the Appellant twice on the city-issued cell phone but immediately received voice mail.

Ms. Thibodaux testified that the Appellant returned to work on November 4, 2013, and brought with her a letter from Ocshner saying that she would not return to work until November 4th and gave the letter to Ms. Adams. Ms. Thibodaux testified that Ms. Adams made her aware of the letter, and noted that the letter did not indicate that the Appellant was unable to perform the duties of her job between October 30 and November 4, 2013, during the time she was absent. Ms. Thibodaux also noted that Ms. Warren failed to notify Human Resources and properly request sick leave for those 5 days.

Ms. Thibodaux stated that the sick leave policy, memorandum number, 13-05, effective March 1, 2013, states that; "Incidents in excess of three days within the same quarter and for all sick leave incidents during the subsequent quarter, the doctor certificate must attest that the employee is not capable of performing full-time work." An incident is defined as "any sick leave of two hours or more or consecutive days of sick leave." Thus, the Appellant had no permission, either by way of a doctor's note or a request for sick leave, to be out of work for those 5 days.

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Ms. Thibodaux testified that she had spoken to the Appellant on previous occasions regarding her improper usage of sick leave.

MALACHI HULL:

Mr. Hull is Director for the Taxicab Bureau, and has been since June of 2011. He oversees the Department that licenses permits and regulates all for-hire vehicles and the employees thereof. Mr. Hull makes disciplinary recommendations regarding the employees he oversees to Jared Munster, the Director of Safety and Permits. He supervised Appellant and six other investigators.

Mr. Hull testified that the Appellant was responsible for going into the field and making sure that the for-hire vehicles were in compliance with City ordinances and codes. If they were not in compliance the Appellant would issue a citation, a municipal summons and would then complete paperwork. Appellant was also responsible for monitoring different areas of the City to resolve customer complaints.

Mr. Hull testified that he had had problems with Appellant's attendance in the past. He stated that her off days were Sundays and Wednesdays. Many times, according to Mr. Hull, the Appellant would call in sick on either Saturday or Monday and either Tuesday or Thursday. The Appellant would effectively take four days off out of seven, using two of those days as sick leave.

Mr. Hull testified that he was aware of her leave in October and that at no time did she contact him in order to use sick days between October 30 and November 4, 2013. Nor did she have a letter from a doctor indicating she was unable to work.

Mr. Hull testified that in order to make sure that the Appellant had not contacted the office he had Ms. Yolanda Brownfield, the Office Manager, check all the voice mails for the

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City phones to determine whether the Appellant had left any voicemails. She had not. Additionally he asked both Ms. Adams and Ms. Thibodaux to attempt to contact the Appellant. They were both unsuccessful.

At this point, Mr. Hull notified Mr. Munster to let him know that Appellant did not appear for work, that she had contacted no one, and that all attempts to contact the Appellant had failed.

Mr. Hull consulted with Aubrey Keen, Human Resources for the Department of Safety and Permits, who recommended a finding of job abandonment and a 90 day suspension. Based on Ms. Keen's recommendation and Appellant's past abuse of sick time, Mr. Hull recommended to Mr. Munster a ten day suspension for every day that the Appellant failed to show up for work; thus a 30 day emergency suspension for her absence of five days. Mr. Munster agreed. Mr. Hull testified that the Appellant's absence had a negative impact on public service as the other investigators were spread thin and the number of complaints rose.

Mr. Hull testified that although Appellant was due to come back from suspension on December 16, 2013, a Notification of Return from Suspension letter, dated December 4, 2013, requested she return to work on December 9, 2013. This was because Mr. Hull recommended to Mr. Munster that her suspension time be cut short because they had a shortage of personnel. The Appellant therefore did not serve the entire 30 day emergency suspension and no other disciplinary action was taken.

STEPHANIE TONEY:

Ms. Toney is employed with the Purchasing Department for the City of New Orleans. She testified that she brought a letter from Appellant's doctor to Ms. Thibodaux on October 17, 2013. She testified that the Appellant is her sister and that she is aware that the Appellant did not

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receive any discipline for being out of work from October 17 until October 30, 2013, the dates for which she had authorized sick leave.

ODA MAE ESTELL:

Ms. Estell testified that she was present when Ms. Toney brought the letter to Ms. Thibodaux.

STACEY WARREN:

Appellant is a Taxicab Investigator. Appellant testified that she had surgery on her wrist for carpal tunnel syndrome. She testified that she knew she was to return to work on October 30, 2013. On October 31, 2013, she notified her supervisor, Ronnie Blake that she was going to get her stitches removed that day. Appellant testified that she was told by her doctor after the stitches were removed that she would be under doctor's care until November 4, 2013. Appellant then called Mr. Blake and informed him that she would not make it to work the rest of the day of October 31, 2013, and told him she would be under a doctor's care until November 4, 2013. Appellant testified that although Appellant did have a note from her doctor stating that she was unable to work between October 16, 2013, and November 14, 2013, she did not present that paperwork to anyone until her return on December 9, 2013.

Appellant testified that contrary to the sick leave policy she didn't notify anyone that she was having surgery on October 16, 2013. Appellant also stated that although she knew she would need extended sick leave, she did not request it. Appellant admitted that the letter her doctor wrote indicated that she would be able to return to work on October 30, 2013. The Appellant testified that with regard to her shifts on November 1 and 2, 2013, she had no documentation indicating that she would be unable to work those shifts.

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KIM WILLIAMS:

Ms. Williams is an Investigator for Taxicab Bureau. She testified that she saw Ms. Toney bring a letter into the office on a day in October before lunch.

#### LEGAL PRECEPTS

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer except for cause expressed in writing. La. 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 from 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.

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ANALYSIS

The Appointing Authority satisfied its burden of proof. The Appellant was absent for five days without authorization and in violation of the Department's policy governing the use of sick time. This caused a manpower shortage that was detrimental to the effective operation of the Department.

The sick leave policy requires employees to notify their supervisor 48 hours before a scheduled medical appointment. Appellant admits that she didn't notify anyone that she was having surgery on October 16, 2013. Appellant also admits that although she knew she would need extended sick leave, she did not request it. Appellant admitted that the letter her doctor wrote indicated that she would be able to return to work on October 30, 2013. The Appellant admitted that with regard to her shifts on November 1 and 2, 2013, she had no documentation indicating that she would be unable to work those shifts.

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

RENDERED AT NEW ORLEANS, LOUISIANA THIS 11<sup>th</sup> DAY OF August, 2015.

CITY OF NEW ORLEANS  
CIVIL SERVICE COMMISSION

  
JOSEPH S. CLARK, COMMISSIONER

CONCUR:

  
MICHELLE D. CRAIG, CHAIRMAN

  
RONALD P. MCCLAIN, COMMISSIONER