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CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J.,
CHAIRMAN
AMY L. GLOVINSKY
JOSEPH S. CLARK
COLEMAN D. RIDLEY, JR.

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Tuesday, July 02, 2013

Mr. Eric Hessler
PANO 2802 Tulane Avenue #101
New Orleans, LA 70119

Re: **Kevin Imbraguglio VS.
Department of Police
Docket Number: 8045**

Dear Mr. Hessler:

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 - 7/2/2013 - 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, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Ronal Serpas
Shawn Lindsay
Jay Ginsberg

KEVIN IMBRAGUGLIO

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 8045

The Department of Police (“Appointing Authority”) employs Kevin Imbraguglio (“Appellant”) as a Police Lieutenant with permanent status. The Appellant received a one (1) day suspension after the Traffic Accident Review Board determined that he caused an avoidable accident by failing to put his vehicle in park before exiting his vehicle in an attempt to apprehend a suspicious person on a bicycle. The Appellant admits these facts, but contends that the penalty is not commensurate with the 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 November 1, 2012. 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.

Commander Bernadine Kelly of the Field Operations Bureau, a member of the Traffic Accident Review Board, recommended the disciplinary action. She testified that the Appellant should have secured the vehicle before exiting it. As a consequence of his failure to take basic safety precautions, the vehicle rolled into another parked vehicle causing damage.

The Appellant did not testify and offered no evidence supporting his appeal.

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 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

As noted above, the Appellant acknowledged that he caused the accident and he offered no mitigating circumstances that might have lessened his culpability. Therefore, the Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for cause.

K. Imbraguglio
#8045

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

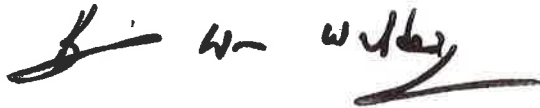
RENDERED AT NEW ORLEANS, LOUISIANA THIS 2nd DAY OF JULY,
2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



JOSEPH S. CLARK, COMMISSIONER

CONCUR:



REV. KEVIN W. WILDES, S.J., CHAIRMAN



COLEMAN D. RIDLEY, JR., COMMISSIONER