

# 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

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DIRECTOR OF PERSONNEL

Monday, August 17, 2015

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

Re: **Veronica Manuel VS.  
Department of Police  
Docket Number: 8136**

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 - 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: Michael S. Harrison  
Shawn Lindsay  
Jay Ginsberg  
Veronica Manuel

file

VERONICA MANUEL

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 8136

Appellant is a Police Technician Specialist with permanent status. The Appellant received a 13-day suspension for violation of the Appointing Authority's regulations concerning Performance of Duty. The Appellant received a three (3) day suspension for not following instructions and a ten (10) day suspension for ending her shift early. As reflected in the February 25, 2013, disciplinary letter:

The investigation determined that on January 4, 2012...you failed in your duties to report and assist at a major crime scene shooting incident as instructed by your Supervisor. Additionally, you ended your shift without permission from your Supervisor, who instructed you to remain and assist at a shooting scene. As such, you violated Rule 4: Performance of Duty, paragraph 4 – Neglect of Duty, paragraph c6 – Failing to Comply with Instructions...from an Authoritative Source, and Rule 4: Performance of Duty, paragraph c5, Ceasing to Perform Before End of Period of Duty.

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 July 11, 2013. 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:

SERGEANT STEVEN GILLIAM:

Sgt. Gilliam testified that on January 4, 2012, he was assigned to the Crime Lab, second platoon, and was the Appellant's Supervisor. He testified that on January 4, 2012, Appellant was scheduled to work from 2:30 to 10:30.

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Sgt. Gilliam testified that technicians such as the Appellant are expected to work beyond the scheduled end of their shift if the crime scene requires their expertise, in which case they are paid overtime.

Sgt. Gilliam testified that on January 4, 2012, there was a shooting incident that occurred around 10:00 p.m., prior to the end of Appellant's tour of duty, and that the Appellant was available to assist at the scene. He testified that he instructed the Appellant several times to report to the scene. He testified that after speaking to the rank on scene that the shooting would likely result in a homicide. Sgt. Gilliam testified that the Appellant told him that she was not going to the scene.

Sgt. Gilliam testified that the Appellant in fact did not report to the scene. As a result, Sgt. Gilliam testified that only one technician reported to the scene, which did become the scene of a homicide. Sgt. Gilliam testified that the Appellant was needed on the scene to assist in diagramming the scene and preserving evidence and that the entire process was delayed as a result of her failure to respond.

Sgt. Gilliam testified that when Appellant left him at the parking lot of the Crime Lab to go home, it was prior to the end of her tour of duty.

CAPTAIN MICHAEL PFEIFFER:

Captain Pfeiffer testified that on January 4, 2012, he was the Commander of the Crime Lab. He testified that he reviewed the incident that is the subject of this Appeal and conducted the pre-disciplinary hearing. Captain Pfeiffer testified that the Appellant offered no mitigating factors to explain or justify her conduct at the hearing.

Captain Pfeiffer testified that on January 4, 2012, the Crime Lab was understaffed. He testified that it was thus very important for his staff to report for duty on time, that they do what

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they are assigned to do until they are relieved. Captain Pfeiffer testified this was especially true when the assignment involved, as in this particular case, a shooting that led to a person's death. Captain Pfeiffer testified that the assignment that the Appellant refused was a critical call for service that needed an immediate response.

POLICE TECHNICIAN SPECIALIST VERONICA MANUEL: APPELLANT

Appellant admitted that Sgt. Gilliam instructed her several times to report to the shooting scene prior to the end of her tour of duty. Appellant admitted that she in fact did not report to the scene as instructed.

Appellant testified that she heard the call for service come over the radio around 10:02 p.m. that night. Specifically, Appellant testified that at about 10:02 or 10:03 p.m. she heard the call dispatched to "another crime lab personnel." Appellant admitted that in homicide cases, all Crime Lab personnel respond. Appellant testified that Sergeant Gilliam then called her around 10:12 and instructed her to go to the talk channel, at which time he informed her that she was going to be needed on the scene.

Appellant testified that she contacted a rank on the scene, circumventing her chain of command, who indicated that the person had yet to expire. The Appellant then suggests that because the victim of the shooting had yet to expire at the time that she was ordered to the scene by her Sergeant, she should not have been ordered to go. Thus, Appellant suggests that she was authorized to take it upon herself to disregard the order and end her shift. The Appellant also suggest that because, according to her, it was exactly 10:30 p.m. when she deliberately defied her supervisor's direct order, she did not technically leave prior to the end of her shift.

Appellant's position is unavailing.

### 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.

### ANALYSIS

The Appointing Authority met its burden of proof and established by a preponderance of the evidence both the occurrence of the complained of activity and that the conduct complained of impaired the efficiency of the public service. The Appellant does not dispute the facts, which

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were proven by the Appointing Authority. Appellant admits that she was ordered to report to the scene of a shooting, which her Sergeant believed would and in fact did result in a homicide. Appellant admits that she was so ordered prior to the end of her shift. Appellant admits that she refused to obey the order. The Appointing Authority also established that the facts as demonstrated violate Departmental policy. Lastly, the Appointing Authority established that the Appellant's conduct in not responding to the shooting scene as ordered by her supervisor and which resulted in there only being one technician to process the scene of a murder, impaired the efficient and effective operation of the Department. The Appointing Authority demonstrated that such conduct could erode public confidence in its police service.

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

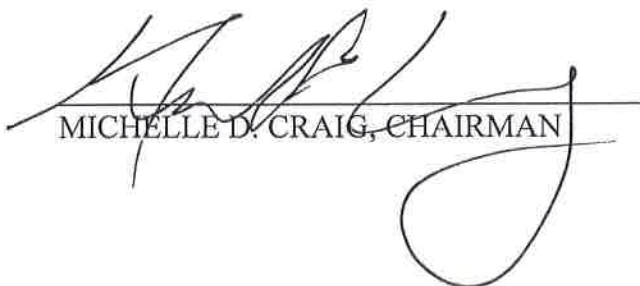
RENDERED AT NEW ORLEANS, LOUISIANA THIS 17<sup>th</sup> DAY OF  
August, 2015.

CITY OF NEW ORLEANS  
CIVIL SERVICE COMMISSION

  
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TANIA TETLOW, COMMISSIONER

CONCUR:

  
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RONALD P. MCCLAIN, COMMISSIONER

  
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MICHELLE D. CRAIG, CHAIRMAN