



MITCHELL J. LANDRIEU  
MAYOR

# 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

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

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Friday, August 09, 2013

Tyronne Beshears  
3681 Plymouth Place  
New Orleans, La. 70131

Re: **Sterling Williams VS.  
Department of Police  
Docket Number: 8027**

Dear Mr. Beshears:

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 - 8/9/2013 - 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 that reads "Germaine Bartholomew".

Germaine Bartholomew  
Chief, Management Services Division

cc: Ronal Serpas  
Shawn Lindsay  
Jay Ginsberg

**STERLING WILLIAMS**

**CIVIL SERVICE COMMISSION**

**VERSUS**

**CITY OF NEW ORLEANS**

**DEPARTMENT OF POLICE**

**NO. 8027**

The Appellant is a Police Sergeant with permanent status. The Appellant received a letter of reprimand based upon the Appointing Authority's determination that the Appellant violated internal rules regarding Professionalism. The facts upon which the Appointing Authority based its determination are found in the second paragraph of the May 9, 2011 disciplinary letter, which provides as follows:

This investigation determined that on July 10, 2011, while on duty you informed the dispatcher, on open air, that she would not be sending you at any calls for service. You should have exercised reasonable discretion before transmitting such a statement over the working NOPD radio frequency. As a veteran supervisor you are held at a higher standard to set a more professional example to your subordinates. Your actions were demeaning to the dispatcher, such action brought discredit to you as a member of the New Orleans Police Department and the Department which is a violation of Rule 3: Professional Conduct, paragraph 1, Professionalism.

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 8, 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.

The salient facts are not in dispute. The original complaint concerned an allegation that the Appellant, who was assigned as a supervisor, failed to respond or assign units to a dispatched call. The primary complaint was non-sustained. However, based upon a review of the transmission tapes, the Appointing Authority's investigation determined that the Appellant was unprofessional when speaking to the dispatcher.

Lt. John Deshotel testified that he heard the Appellant state to the dispatcher, “negative ma’am, I’m not going.” The Appellant recalls that he stated, “Ma’am you will not be assigning me any calls.” All parties agreed that the Appellant was the only supervisor on duty at the time of the call and that he was performing numerous tasks at the time of the call.

The Appellant testified without challenge that he was not angry, but merely very busy with other matters at the time. He contended that he acted appropriately under the circumstances and had no intent to demean anyone.

#### 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 the occurrence of the complained of activity by a preponderance of the evidence 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.*

The Appointing Authority has failed to establish by a preponderance of evidence that it disciplined the Appellant for cause. In the disciplinary letter, the Appointing Authority included embellishments not substantiated by its witnesses. There was no evidence to suggest that the Appellant demeaned the dispatcher. Contrary to the disciplinary letter, the Appellant never suggested to the dispatcher what she could or could not do. He merely reported to her that he was not personally going to respond to a call. The Appointing Authority's witnesses' vague references to the Appellant's alleged tone of voice does not establish unprofessional conduct.

Even assuming some dereliction, the Appointing Authority is still required to prove that the Appellant's dereliction impaired the efficient operation of the department. As recently stated in *Regis v. Department of Police* 2012-1692, p. 7 (La. App. 4 Cir. 4/17/13), in the absence of a blatantly obvious impairment, the Appointing Authority must present evidence that that the Appellant's dereliction bore a real and substantial relationship to the efficient operation of the department. In the instant case, the disciplinary action was brought as an afterthought when the primary complaint, which arguably had a real and substantial relationship to the operation of the department, was

S. Williams  
#8027

non-sustained. While courtesy is to be encouraged, its alleged absence in this instance was not of a nature as to impact the department's efficient operation.

Accordingly, the Appellant's appeal is GRANTED, and the Appointing Authority is directed to remove the letter of reprimand from the Appellant's disciplinary record.

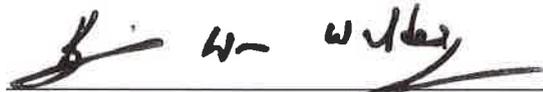
RENDERED AT NEW ORLEANS, LOUISIANA THIS 9th DAY OF AUGUST,  
2013.

CITY OF NEW ORLEANS  
CIVIL SERVICE COMMISSION

  
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JOSEPH S. CLARK, COMMISSIONER

CONCUR:

  
\_\_\_\_\_  
AMY L. GLOVINSKY, COMMISSIONER

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