CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

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CHAIRMAN
AMY L. GLOVINSKY
JOSEPH S. CLARK
COLEMAN D. RIDLEY, JR.

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Friday, August 09, 2013

Mr. Donovan A. Livaccari
101 W. Robert E. Lee, Suite 402
New Orleans, LA 70124

Re: **Kenneth Polite Sr. VS.**
Department of Police
Docket Number: 8001

Dear Mr Livaccari:

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,

Germaine Bartholomew

Germaine Bartholomew
Chief, Management Services Division

cc: Ronal Serpas
Elizabeth S. Robins
Jay Ginsberg

KENNETH POLITE	**CIVIL SERVICE COMMISSION**
VERSUS	**CITY OF NEW ORLEANS**
DEPARTMENT OF POLICE	**NO. 8001**

Kenneth Polite ("Appellant") is employed by the Department of Police ("Appointing Authority") as a Police Officer with permanent status. The Appellant received a two day suspension for violation of the Appointing Authority's internal rules concerning Instructions from an Authoritative Source (one day), and Professionalism (one day). The factual basis for the violation is contained in the fourth and fifth paragraphs of the May 1, 2012 disciplinary letter[1], which provides as follows:

> After continuously calling the Seventh District Police Station for assistance from her cell phone, with no answer, Ms. Urquidi then relocated to the station. She witnessed you refusing to answer the telephone call coming from her cell phone. Ignoring, or refusing to answer the ringing telephone is not acceptable behavior and work practice…
>
> You claimed that you were not watching television and it was on the channel showing the "Price is Right", because the television had been left on by the previous watch. If the television had been left on the previous watch that would be 6:25 am, four hours later the channel should have been changed or the television shut off…

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 October 4, 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 material facts are not in dispute. Ms. Urquidi called the Appellant on the day in question while he was working as the district desk officer – an assignment he had

[1]Apparently, the individual that prepared the disciplinary letter for the Appointing Authority included an allegation that was non-sustained. Paragraph 3 of the disciplinary letter should be disregarded.

performed without incident since Hurricane Katrina. In his thirty five years of service, his record reflects no disciplinary record. It was established at the hearing on this matter that Ms. Urquidi was abusive and irrational on the telephone when the Appellant attempted to assist her. When she refused to conduct herself in a civil manner on the telephone, the Appellant let her know that he was hanging up. Thereafter, Ms. Urquidi persisted in calling the Appellant. He testified that he did not answer the telephone because he wanted to avoid further abuse from Ms. Urquidi. He further testified that his supervisor was not at the station and there was no one to whom he could refer the call. When Ms. Urquidi came to the station, he tried to remedy the situation by referring her to his supervisor who had just arrived, and by making arrangements for her to give a statement to another police officer. Instead, Ms. Urquidi left the station and filed a complaint that included an allegation that the Appellant was watching the "Price is Right" instead of doing his job.

The Appellant testified that he was not watching the television and was not aware of what was being broadcast because he was busy answering the telephone and performing other duties. Faith Berthey, who serves as a police chaplain, confirmed the Appellant's testimony. She stated that she was watching the "Price is Right" while the Appellant was working. She also testified that Ms. Urquidi was loud and abusive while the Appellant was calm and patient as he attempted to address Ms. Urquidi's issues.

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.*

CONCLUSIONS

The Appointing Authority has failed to establish by a preponderance of evidence that it disciplined the Appellant for good cause. The Appointing Authority often states that he considers the totality of the circumstances when considering disciplinary action against a subordinate. In the instant case, considering all of the circumstances, the

Appellant was not unprofessional. He used his best efforts to do his job, but was prevented from performing his duties by an uncooperative citizen. Regarding the television, the Appellant's oversight did not warrant any disciplinary action.

Considering the foregoing, the Appellant's appeal is GRANTED, and the Appointing Authority is ordered to return to the Appellant two days of back pay and emoluments of employment.

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

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION

COLEMAN D. RIDLEY, JR., COMMISSIONER

CONCUR:

AMY L. GLOVINSKY, COMMISSIONER

JOSEPH S. CLARK, COMMISSIONER