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CITY CIVIL SERVICE COMMISSION

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Friday, May 06, 2016

Clarence Roby, Jr.
3701 Canal St., Suite U
New Orleans, La. 70119

Re: **Lichelle Adams VS.
Facilities, Infrastructure & Communit
Docket Number: 8440**

Dear Mr. Roby:

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 - 5/6/2016 - 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 "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Cedric S. Grant
Elizabeth S. Robins
Jim Mullaly
Lichelle Adams

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

LICHELLE ADAMS

vs.

DEPT. FACILITIES, INFRASTRUCTURE
AND COMMUNITY

DOCKET NO.: 8440

I. INTRODUCTION

Appellant, Lichelle Adams, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission's Rule II, §4.1. The Appointing Authority, the Department of Facilities, Infrastructure and Community for the City of New Orleans, (hereinafter the "Appointing Authority") does not allege that the instant appeal is procedurally deficient. Therefore, the Commission's analysis will be limited to whether or not the Appellant was disciplined for sufficient cause.

According to a letter issued by Ellen M. Lee, Director of Housing Policy and Community Development, on August 20, 2015, the Appointing Authority suspended Appellant for three (3) days due to Appellant's unprofessional and insubordinate behavior. Ms. Lee's letter specifically references a meeting held on July 31, 2015 as the setting for Appellant's allegedly unprofessional and insubordinate conduct. After reviewing the transcript and exhibits, and after considering the hearing examiner's report, the undersigned Commissioners render the following decision.

II. FACTUAL BACKGROUND

On July 31, 2015, Appellant attended a meeting with Pamela Davis and Paulette Learson during which Ms. Learson reviewed some areas of concern regarding Appellant's work. (Tr. at 7:10-19). The main focus of the meeting was the difficulty other staff members were having in

locating certain contracts Appellant was to have entered into the Appointing Authority's computer system. *Id.* at 7:21-8:1. In order to illustrate the difficulty to Appellant, Ms. Learson testified that she asked Appellant to locate closer to a computer monitor in order to follow Ms. Learson's steps. *Id.* at 8:8-13. Appellant allegedly refused this request and stated that she could follow Ms. Learson's actions from where she was sitting. When Ms. Learson attempted to demonstrate the problem with locating specific files for which Appellant was responsible on the Appointing Authority's internal drive, Appellant allegedly got up from her seat, stated that she "was tired of this," "didn't have time for this," and that Ms. Learson needed to take care of her adopted son. *Id.* at 9:4-14. After making these statements, Appellant left the room. However, Appellant allegedly remained in the vicinity of Ms. Learson's office. When Ms. Learson went to close her office door, Appellant allegedly said "with your ugly ass." *Id.* at 9:21-10:1. Via stipulation, Ms. Davis's testimony was substantially similar to that of Ms. Learson. *Id.* at 17:1-8.¹

Appellant's account of the July 31st meeting differs significantly from Ms. Learson's and Ms. Davis's. According to Appellant, the meeting began with her offering to discuss a contract with Ms. Davis; they both then relocated to Ms. Learson's office. *Id.* at 68:5-10. Appellant then testified that she attempted to assist Ms. Learson with an issue related to a particular contract, but Ms. Learson responded to these attempts with curt and dismissive statements. *Id.* at 69:3-21. Appellant took issue with Ms. Learson's attitude and tone and informed Ms. Learson that she "was not a child" and to "stay in a secretary's place." *Id.* at 69:22-24. Appellant then stated she felt threatened by what she perceived to be a hostile situation and left Ms. Learson's office to calm down. *Id.* at 70:9-17.

¹ According to Ms. Davis, her testimony would have been "identical" to that of Ms. Learson. *Id.* at 18:25. Appellant chose not to challenge the extent of this claim.

III. POSITION OF PARTIES

A. Appointing Authority

The Appointing Authority asserts that Appellant has a history of insubordination and disrespectful behavior and that prior attempts by managers to counsel Appellant regarding her professionalism have failed. The Appointing Authority argues that the time for counseling has past and discipline is the next appropriate step to take in its attempt to modify Appellant's conduct at work.

B. Appellant

Appellant denies that she acted in an unprofessional or disrespectful manner towards her co-workers during the July 31, 2015 meeting. In fact, Appellant claims that she was attempting to address Ms. Learson's concerns but was met with brusque and dismissive behavior. Appellant emphasizes that no member of the Appointing Authority has documented any counseling sessions regarding Appellant's alleged insubordination or professionalism.

IV. STANDARD

It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A), an appointing authority has the burden of proving, by a preponderance of the evidence: 1) the occurrence of the complained of activity, and 2) that the conduct complained of impaired the efficiency of the public service. *Gast v. Dep't of Police*, 2013-0781 (La. App. 4 Cir. 3/13/14), 137 So. 3d 731, 733 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094 (La. Ct. App. 2007)). If the Commission finds that an appointing authority has met this initial burden, it must then determine if that discipline "was commensurate with the infraction." *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106, 113

(La. 1984)). Thus, the Commission's analysis is a three-pronged one with the appointing authority bearing the burden of proof for each prong.

V. ANALYSIS

A. The Complained of Activity

Appellant acknowledges meeting with Ms. Learson and Ms. Davis on July 31, 2015, and to making an insensitive comment to Ms. Learson regarding her role as a secretary in the face of allegedly insulting and disrespectful comments made by Ms. Learson. Both Ms. Learson and Ms. Davis (via stipulation) testified that Appellant was disrespectful and directed insensitive comments at Ms. Learson regarding Ms. Learson's family before leaving the meeting. Based upon the record before us, we find that Ms. Davis and Ms. Learson's account of the July 31st meeting more credible than Appellant's. Therefore, we find that the Appointing Authority has established, by a preponderance of the evidence, that Appellant engaged in the conduct alleged in the August 20th discipline letter.

B. Appellant's Misconduct Impaired the Efficiency of the Appointing Authority

Anthony Faciane, Director of Neighborhood Stabilization for the Office of Community Development, testified that, Appellant's department is a small one that works under very stressful deadlines. (Tr. at 49:13-21). Due to the pressures upon the department, it is vital that employees maintain positive working relationships and work collaboratively to address challenges. *Id.* at 49:22-50:2. The Commission finds that disrespectful and unprofessional behavior adversely impacts the moral and operations of any department, but is magnified when the department, crew, or team is small and forced to work together in close quarters. Based upon the testimony from Ms. Learson, Ms. Davis and Mr. Faciane, the Commission finds that Appellant's unprofessional behavior on July 31, 2015 did impair the efficient operation of the Appointing Authority.

C. Appellant's Discipline was Commensurate with her Offense

Since the facts presented establish that Appellant engaged in the misconduct alleged by the Appointing Authority and that such misconduct compromised the efficient operation of the Appointing Authority, the Commission now addresses whether or not a three-day suspension reflects an appropriate level of discipline. In conducting its analysis, the Commission must determine if the Appellant's suspension was "commensurate with the dereliction;" otherwise, the discipline would be "arbitrary and capricious." *Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d 976, 978 (citing *Staehle v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

Mr. Faciane, stated that, under the former director, managers convened a meeting, with Appellant, to address concerns regarding Appellant's interactions with others. *Id.* at 48:14-24. Mr. Faciane attended this meeting during which managers in the Appointing Authority counseled Ms. Adams regarding her interactions with co-workers; Mr. Faciane has also personally counseled Ms. Adams on the same topic. *Id.* at 52:4-8. Mr. Faciane testified that Appellant "was not receptive" to his attempts at verbal counseling. *Id.* at 59:7-14. The Commission finds Mr. Faciane's testimony credible and appreciates his candor in emphasizing that Appellant generally performs her job well, but needs to work on her interpersonal skills in order to better serve the citizens of New Orleans. Due to the nature of Appellant's misconduct and the fact that verbal counseling has been ineffective to date, the Commission finds that the three-day suspension is commensurate with Appellant's misconduct.²

² The Appointing Authority addressed several past instances of Appellant's allegedly insubordinate conduct as an aggravating factor in justifying the three-day suspension at issue here. However, in reaching this conclusion, this Commission does not rely upon any of the emails in evidence as Appellant Exhibits 1, 2 or Appointing Authority Exhibits 3, 4. These emails do not represent progressive discipline or documented counselling sessions specifically related to the conduct cited as the reason for Appellant's three-day suspension.

V. CONCLUSION

Upon considering the testimony and evidence presented in connection with the instant appeal, the Commission finds that the Appointing Authority had sufficient cause to discipline Appellant. Therefore, the appeal is DENIED.

Judgment rendered this 6 th day of May, 2016

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION



MICHELLE D. CRAIG, CHAIRPERSON

May 6, 2016

DATE

CONCUR


CORDELIA D. TULLOUS, COMMISSIONER

May 5, 2016

DATE



JOSEPH S. CLARK, COMMISSIONER

May 4, 2016

DATE