



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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NEW ORLEANS LA 70112
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CITY CIVIL SERVICE COMMISSION

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DIRECTOR OF PERSONNEL

MITCHELL J. LANDRIEU
MAYOR

Thursday, August 18, 2016

Mr. Morris W. Reed
4919 Canal St. Ste 304
New Orleans, LA 70119

Re: **Corey Green VS.
Recreation Department
Docket Number: 8176**

Dear Mr. Reed:

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 - 8/18/2016 - 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 must conform to the deadlines established by the Commission's Rules and Article X, 12(B) of the Louisiana Constitution. Further, any 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: Victor N. Richard, III
Elizabeth S. Robins
Jim Mullaly
Corey Green

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MAYOR

Thursday, August 18, 2016

Mr. Morris W. Reed
4919 Canal St. Ste 304
New Orleans, LA 70119

Re: **Corey Green VS.
Recreation Department
Docket Number: 8179**

Dear Mr. Reed:

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 - 8/18/2016 - 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 must conform to the deadlines established by the Commission's Rules and Article X, 12(B) of the Louisiana Constitution. Further, any 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: Victor N. Richard, III
Elizabeth S. Robins
Jim Mullaly
Corey Green

iii



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MAYOR

Thursday, August 18, 2016

Mr. Morris W. Reed
4919 Canal St. Ste 304
New Orleans, LA 70119

Re: **Corey Green VS.**
Recreation Department
Docket Number: 8244

Dear Mr. Reed:

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 - 8/18/2016 - 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 must conform to the deadlines established by the Commission's Rules and Article X, 12(B) of the Louisiana Constitution. Further, any 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 cursive script, appearing to read "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Victor N. Richard, III
Elizabeth S. Robins
Jim Mullaly
Corey Green

file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

COREY GREEN vs. DEPARTMENT OF RECREATION	DOCKET NOs.: 8176, 8179, 8244
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I. INTRODUCTION

This matter comes before the Commission through the consolidation of three appeals filed by Appellant, Corey Green. Civil Service docket number 8176 arose out of a ten-day suspension issued to Appellant due to an allegation that Appellant failed to meet performance standards. Docket number 8179 relates to a thirty-day “emergency” suspension issued to Appellant based upon allegations of misconduct during the period of time when Appellant was serving his original ten-day suspension. The Appointing Authority, the Department of Recreation for the City of New Orleans (hereinafter “NORDC” or “Appointing Authority”), subsequently terminated Appellant for the same conduct that resulted in the emergency suspension. The docket number connected with Appellant’s termination is 8244.

On November 18, 2013, the Commission granted the Appointing Authority’s motion for summary disposition based upon Appellant’s premature filing of an appeal related to his termination. (A.A. Exh. 10). Specifically, the Commission found that Appellant filed an appeal challenging his termination four days prior to the effective date of his termination. Following the issuance of the Commission’s Order granting the motion for summary disposition, Appellant filed another appeal challenging his termination.

II. FACTUAL & PROCEDURAL BACKGROUND

A. Appellant's Performance Rating and Suspension

At all times relevant to the instant appeal, Appellant served as a Recreation Center Manager within NORDC assigned to the Behrman Recreation Center. Shawn Wyatt, the Recreation Center Director for the Appointing Authority, was responsible for the operations of recreational facilities across the City. (Tr. at 9:21-10:3). Mr. Wyatt also supervised Recreation Center Managers throughout the City, including Appellant. *Id.* at 10:20-11:2. As Appellant's supervisor, Mr. Wyatt was responsible for conducting an evaluation of Appellant's performance in 2012. (A.A. Exh. 1).

On February 25, 2013, Mr. Wyatt issued Appellant a rating of "needs improvement" and in the "areas of improvement" section of the evaluation, Mr. Wyatt indicated that Appellant needed to "improve the maintenance and upkeep of the center, provide leadership to the staff and improve programming." (A.A. Exh. 1). Out of the thirteen performance factors Mr. Wyatt rated Appellant AS "needs improvement" in eight of them. *Id.* Via letter dated March 5, 2013 Mary Jo Webster, chief operating officer of the Appointing Authority, notified Appellant that his final service rating for 2012 was "Needs Improvement." (A.A. Exh. 9).

The Civil Service Rules pertaining to Service Ratings in place at the time allowed employees to challenge a rating of "needs improvement" to the appointing authority and, ultimately, to the Personnel Director. Absent such a challenge, the service rating became final and an appointing authority must afford an employee a ninety-day "review period." If, after the conclusion of the review period, an employee's performance did not improve, the Rules required an appointing authority to take "appropriate disciplinary action."

Appellant did not challenge his “needs improvement” rating, and his rating became final, triggering a review period. According to Mr. Wyatt, he and Chief Program Officer Jerry Smith monitored Appellant’s performance during the review period. During this period, Mr. Wyatt alleged that Appellant’s performance actually worsened. (Tr. at 25:6-17). Among the problems observed by Mr. Wyatt included Appellant’s confrontations with staff, unprofessional behavior in front of citizens, poor attendance and tardiness. (Tr. at 25:25-26:6). Ms. Webster testified that Appellant’s attendance, punctuality and professionalism failed to improve during the review period and negatively impacted the operation of the facility. *Id.* at 159:4-161:18. As a result of Appellant’s allegedly deteriorating performance during his review period, the Appointing Authority suspended him for ten days effective May 15, 2013 through May 28, 2013. (Tr. at 27:10-28:21). On May 30, 2013, Appellant filed an appeal of his ten-day suspension. (App. Exh. 2). The address Appellant listed on his appeal form was LA. Ms. Webster testified that, while on suspension, Appellant was directed to return keys to the Behrman facility to Mr. Wyatt but never did. (Tr. at 163:22-164:7).

B. Unauthorized use of City-owned Facility

On Saturday, May 25, 2013 - during Appellant’s ten-day suspension - Mr. Wyatt received a phone call from Vic Richard, the Chief Operating Officer for the Appointing Authority regarding the facility for which Appellant was responsible. Mr. Richard testified that, on May 25th, he was in a City-owned vehicle visiting various locations managed by the Appointing Authority including the Behrman center. (Tr. at 227:2-8). When he arrived at the Behrman center, Mr. Richard found the facility crowded with basketball players but no City employees were on site. Mr. Richard asked Mr. Wyatt to report to the facility and determine what activities were taking place and who authorized such activities. (Tr. at 31:9-25). Based upon Mr.

Richard's request, Mr. Wyatt proceeded to the Behrman facility and found what he described as a basketball tournament. *Id.* at 32:3-11. Mr. Wyatt observed a full-court basketball game in progress complete with scoreboard and referees; there were no Appointing Authority personnel on site. Mr. Wyatt generated an email summarizing his interactions with several individuals at the Behrman center. (A.A. Exh. 2). One of the individuals with whom Mr. Wyatt spoke identified himself as Appellant's cousin and alleged that Appellant had organized the basketball game, provided the teams with access to the facility and collected money from participants.¹ Upon receiving this information, Mr. Wyatt spoke with Appellant and asked if Appellant had in fact arranged the basketball tournament. Appellant denied having any involvement with the basketball activity taking place at the Behrman center and told Mr. Wyatt that he was serving his ten-day suspension as directed. *Id.* During his testimony, Appellant denied being present at the Behrman facility on the day in question; he also denied opening the doors of the Behrman gym, conducting basketball games or collecting any money. (Tr. at 281:24-282:10).

Mr. Wyatt testified that the Appointing Authority has a well-established process citizens must follow for the rental of facilities operated by the Appointing Authority. This includes a rental form submitted to the "rentals department;" this department processes and collects fees related to facility rental. (Tr. 34:16-24). Employees who are suspended are not authorized to process rental requests for facility usage. *Id.* Mr. Wyatt testified that it would have been against the Appointing Authority's policy for Appellant to authorize after hours use of the Behrman center while on suspension.

¹ In his email to his supervisor, Mr. Wyatt alleges that the basketball game occurring at the Behrman center was an "AAU" tournament. He based this claim on statements made to him by individuals with whom he spoke. The Commission acknowledges that hearsay evidence is admissible in administrative proceedings, however, the weight afforded to such evidence is dependent upon its probative value and context. Here, Mr. Wyatt was unable to provide the Commission with any names of individuals who claimed that the game was an AAU tournament, nor did Mr. Wyatt attempt to contact the AAU and verify whether or not there was an AAU tournament sanctioned by the organization occurring that day. (Tr. at 65:4-23).

After discovering the unauthorized use of the Behrman center, the Appointing Authority placed Appellant on an emergency suspension and began the process of terminating Appellant's employment. On June 6, 2013, the Appointing Authority issued a pre-termination notice to Appellant via letter addressed to [REDACTED], --- 70131. (A.A. Exh. 4). Other than sending Appellant a certified letter, the Appointing Authority made no other attempts to contact Appellant prior to the pre-termination hearing.

On June 14, 2013, the Appointing Authority conducted a pre-termination meeting to address allegations that Appellant had facilitated unauthorized use of the Behrman facility during the term of his ten-day suspension. Appellant did not appear at the meeting. Following the meeting the Appointing Authority decided to terminate Appellant and issued a termination notice on June 17, 2013.

C. Timeliness of Appeal re: Termination

According to the Appointing Authority, Jerry Smith hand delivered the letter containing notice of Appellant's emergency suspension and notice of the pending pre-termination hearing directly to Appellant at the Behrman Center where Appellant regularly appeared to play basketball. (Tr. at 167:20-168:3). It is undisputed that the Appointing Authority sent the letters containing notice of Appellant's pre-termination hearing and termination to [REDACTED] in Court, New Orleans, Louisiana. Ms. Debra Calderon, the personnel supervisor for the Appointing Authority, sent the notices to that address because it was the address contained within Appellant's personnel records maintained by the Appointing Authority. *Id.* at 94:19-95:15. Ms. Calderon testified that she was not aware whether or not Appellant received a copy of his termination notice, only that the certified letters had been delivered to the Court. *Id.* at 125:12-19. Upon receiving the return receipt Ms. Calderon placed them in

Appellant's personnel file, she did not attempt to contact Appellant to confirm his receipt of the correspondence. *Id.* at 125:20-26.

Ms. Webster testified that she was present at the pre-termination meeting and waited for Appellant to appear. When Appellant failed to report to the hearing, Ms. Webster testified that she, along with Mr. Wyatt called the last known number they had on record for Appellant. *Id.* at 176:8-11. The phone call went unanswered and Mr. Wyatt, Mr. Smith, Ms. Webster and Mr. Richard proceeded with the hearing.

Appellant's appeal forms relating to his ten-day suspension, emergency suspension, and termination list his address as _____ (App. Exhs. 1, 2). This lends credibility to Appellant's claim that he no longer resides at the Valentine Street address and does not receive mail there. The appeal form for the 10-day suspension was received by Civil Service on May 30, 2013, one weeks prior to the notice of Appellant's emergency suspension and two weeks prior to the date on Appellant's termination notice. The cell phone number on the "emergency evacuation plan" entered into evidence as part of "Appointing Authority Exhibit 3" lists Appellant's cell phone number as 504-3**-***2. This is the same number that appears on all of Appellant's appeal forms.

Appellant acknowledged that an employee of the Appointing Authority hand delivered notices of the ten-day suspension and emergency suspension. (Tr. at 276-16-277:3). The address on these notices is _____, but Appellant never took any action to correct this apparent error, even though it is clear from the content of the notices that he faced serious discipline.

The Commission's earlier order in this matter found that Appellant's appeal of his termination was premature, not that any subsequent appeal would be untimely. The Appointing

Authority took the position that Appellant's argument - that he did not receive adequate notice of his per-termination hearing or his actual termination - was "without merit." However, the Commission did not issue an order or render a judgment with respect to this issue. The only issue the Commission addressed was the premature nature of Appellant's original appeal. Appellant represented that it was not until October 23, 2013 that he received notice of his termination from the Appointing Authority. During the Commission's November 18, 2013 meeting, it directed Appellant to file an appeal of his termination. Additionally, the Civil Service Department sent several correspondence to Appellant using the LeBoef address as early as July 16, 2013. The City Attorney's office and Mr. Richard at the Appointing Authority were copied on these correspondence. Given that the appeal forms and notice of hearing contained Appellant's address, the Commission finds that Appellant no longer resided at the Valentine address, the Appointing Authority had notice of Appellant's address change, and Appellant did not receive notice of his termination until October 23, 2013.

The Commission recognizes that the Appellant should have updated his address with the Appointing Authority, especially after receiving the hand delivered letters containing the wrong address. However, the Appointing Authority had access to Appellant's cell phone and could have contacted him prior to proceeding with a pre-termination meeting beyond Ms. Webster's one attempt to call Appellant's cell phone on the day of the pre-termination hearing. Alternatively, the Appointing Authority could have erred on the side of caution and continued the pre-termination hearing for a brief time in order to try and contact Appellant. Thus, the Parties share responsibility for Appellant's late receipt of the termination notice. However, the impact on Appellant of denying his appeal due to his failure to update his address with the Appointing Authority is a draconian result that would deprive him of an opportunity to present

his case. Therefore, the Commission will consider Appellant's appeal of his termination as timely.

III. LEGAL STANDARD

Employees in the classified service may only be disciplined for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that his/her discipline was issued without sufficient cause, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, 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 in which the appointing authority is engaged. *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 its initial burden and had sufficient cause to issue discipline, 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 analysis has three distinct steps with the appointing authority bearing the burden of proof at each step.

IV. ANALYSIS

A. Occurrence of the Complained of Activities

1. *Failure to Improve During Review Period*

Both Ms. Webster and Mr. Wyatt testified at length as to Appellant's deteriorating work performance after the issuance Appellant's "needs improvement" service rating. Their testimony

is based upon personal observation and buttressed by complaints made by fellow staff members and citizens. Appellant challenged the Appointing Authority's evidence by pointing out that his prior employment record was excellent and suggested that Mr. Wyatt and Ms. Webster bore him ill will.

Appellant's prior work history is of little import. Both the Appointing Authority and the citizens of New Orleans are entitled to expect a high level of performance and professionalism from City employees every day. NORDC presented two credible witnesses who testified to Appellant's failure to meet performance standards even after a 90-day review period. The Commission finds that the Appointing Authority has met its burden and established that Appellant failed to improve his performance during the 90-day review period that followed his Needs Improvement service rating.

2. Unauthorized Use of Behrman Center

It is not disputed that, on May 25, 2013 individuals were using the Behrman facility without authorization. However, the Commission's inquiry does not end there. The Appointing Authority must establish, by a preponderance of the evidence, that Appellant was responsible for or facilitated this unauthorized use.

The Appointing Authority's case against Appellant is based upon circumstantial evidence and hearsay. As far as the circumstantial evidence is concerned, witnesses for the Appointing Authority alleged that Appellant did not return the keys to the Behrman facility during his suspension and thus had the opportunity to provide unauthorized access. Further, the Appointing Authority alleged that Appellant was a regular participant of basketball games at the facility and coached at least one youth basketball team at the center. This, argues NORDC, shows Appellant had motive to use the Behrman facility during the term of his suspension.

Then, the Appointing Authority relies on the hearsay testimony of unidentified individuals who, when confronted by a City employee – be it Mr. Wyatt or Mr. Richard – claimed that they had permission to use the facility and pointed to Appellant as the source of that permission. No witness testified that they observed Appellant at the Behrman center on May 25, 2013. One NORDC employee, Makita Johnson, allegedly observed Appellant open the Behrman center doors, but Ms. Johnson did not testify and her statement came through Mr. Wyatt. (Tr. at 72:4-10).

The Appointing Authority seeks to end Appellant's career with the City of New Orleans with hearsay and circumstantial evidence. And, while hearsay is admissible in an administrative proceeding, the weight the Commission gives to such testimony depends upon its reliability and probative value. Appellant's testimony rebuts the hearsay testimony, and the Commission is inclined to give greater weight to testimony provided by a witness who is under oath and subject to cross-examination versus hearsay testimony that does not have such procedural safeguards.

Bearing the above in mind, the Commission finds that the Appointing Authority has failed to meet its burden of proof in establishing that Appellant was responsible for the unauthorized use of the Behrman Center on May 25, 2013.²

B. Impairment of Efficient Operation of Appointing Authority

Given that the Appointing Authority has failed to meet its burden with respect to the thirty-day emergency suspension and termination, the Commission shall only address whether or

² Too many questions were left unanswered by the Appointing Authority's witnesses. Were the unauthorized basketball players dispersed? If so, who coordinated the dispersal? Were the players provided with refunds? If so, who facilitated the refunds? Are there records from the AAU reflecting an AAU sanctioned tournament? What happened to the money? Were the police called regarding individuals who were allegedly trespassing at the Behrman center? Why was Ms. Makita Johnson not called or subpoenaed by the Appointing Authority?

not Appellant's failure to improve his performance during his 90-day review period impaired the efficient operation of NORDC.

It is axiomatic that an employee's poor performance negatively impacts his employer. The extent of such a negative impact increases with the employee's rank within the organizational chart. Here, Appellant was responsible for the day-to-day operations of the Behrman center and his failure to show up to work on time, conduct himself in a professional manner and maintain the facility in a clean and orderly fashion compromised NORDC's ability to provide services to the citizens of New Orleans. Therefore, the Commission finds that Appellant's failure to improve severely impaired NORDC's efficient operations.

C. Discipline Commensurate with Offense

In conducting its analysis, the Commission must determine if the Appellant's ten-day 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 *Staeble v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033). The Commission notes that recreation facilities are an essential element to any vibrant community and should provide citizens with a safe environment for playing, socializing and engaging in friendly competition. As a Recreation Center Manager, Appellant had the responsibility to ensure that the Behrman center was safe, clean, and in good operating condition for the citizens of New Orleans. Appellant failed to fully execute his responsibilities and did not respond to feedback issued by two of his supervisors. Furthermore, our Rules contemplate disciplinary action in the event that an employee fails to improve his/her performance following a review period. Therefore, the Commission finds that Appellant's 10-day suspension was commensurate with his offense.

V. CONCLUSION

Based upon the foregoing, the Commission hereby GRANTS IN PART and DENIES IN PART Appellant's appeal. Appellant's ten-day suspension shall remain in place. However, Appellant's termination is hereby overturned as is his thirty-day emergency suspension. The Appointing Authority is hereby directed to reinstate Appellant to his position as Recreation Center Manager with full back pay and emoluments of employment. All records of his thirty-day suspension and subsequent termination shall be rescinded.

Judgment rendered this 18 th day of August, 2016.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION



MICHELLE D. CRAIG, CHAIRPERSON

8/16/2016

DATE



RONALD P. McCLAIN, VICE-CHAIRMAN

8/17/16

DATE



TANIA TETLOW, COMMISSIONER

8/16/16

DATE