



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Monday, December 18, 2023

Mr. Steven Ware

Re: **Steven Ware VS.
Sewerage & Water Board
Docket Number: 9501**

Dear Mr. Ware:

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 - 12/18/2023 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, 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, Sec.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 blue ink that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Ghassan Korban
Ashley Ian Smith
Jay Ginsberg
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**STEVEN WARE,
Appellant**

Docket No. 9501

v.

**SEWERAGE & WATER BOARD,
Appointing Authority**

DECISION

Appellant, Steven Ware, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from the Sewerage & Water Board's three-day suspension, communicated to him by letter dated August 9, 2023. (Ex. HE-1). At all relevant times, Appellant had permanent status as a Water Purification Operator III at the Sewerage & Water Board. (Tr. at 54). A Hearing Examiner, appointed by the Commission, presided over a hearing on October 20, 2023. At this hearing, both parties had an opportunity to call witnesses and present evidence.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the hearing, all exhibits submitted at the hearing, the Hearing Examiner's report dated November 12, 2023, and controlling Louisiana law.

The Commission grants Mr. Ware's appeal because the Sewerage & Water Board failed to carry its burden of showing the occurrence of the complained-of conduct.

I. FACTUAL BACKGROUND

The Sewerage & Water Board suspended Mr. Ware on August 14-16, 2023, but failed to provide notice of the dates of the suspension to him until August 22, 2023. (Ex. Appellant-1; Tr. at 10).¹

The Sewerage & Water Board suspended Mr. Ware based on his participation in payroll fraud related to his approval of his own and other employees' timesheets, including "stacking" of chlorine pay and overtime hours worked. (Ex. HE-1). The Sewerage & Water Board called as its first witness Mr. Ware's current supervisor, Chad Lavoie. (Tr. at 6). Mr. Lavoie testified he reviewed Mr. Ware's timesheets and payroll records and determined Mr. Ware did not receive any unearned compensation. (Tr. at 24). Kurt Coulon, a Sewerage & Water Board security officer, testified generally about his investigation of payroll fraud of Greg Herbert and Mr. Ware, authenticating a security report about Mr. Ware.² (Tr. at 44-47). On direct examination, Mr. Coulon conceded he was unable to testify about the accuracy of the report without the lab reports, documents in the possession of the Sewerage & Water Board. (Tr. at 50).

II. ANALYSIS

A. Legal Standard for Commission's Review of Discipline

"Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A)." *Whitaker v. New Orleans Police Dep't*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep't of Police*,

¹ The testimony is unclear about whether Mr. Ware also failed to receive the August 9, 2023, letter of discipline from Ghassan Korban, Exhibit HE-1. The face of this letter states that it was delivered by U.S. Mail. (Ex. HE-1). Mr. Lavoie testified that he hand-delivered the August 9, 2023, letter from David Callahan informing Mr. Ware of the dates of the suspension (Ex. Appellant-1) on August 22, 2023, or later. (Tr. at 10).

² The attachment to the investigative report was admitted as a business record under La. C. Evid. art. 803(6). (Tr. at 50; Ex. B-4).

2000-1682 (La. App. 4 Cir. 5/9/01)). “Legal cause exists whenever an employee’s conduct impairs the efficiency of the public service in which the employee is engaged.” *Id.* “The Appointing Authority has the burden of proving the impairment.” *Id.* (citing La. Const., art. X, § 8(A)). “The appointing authority must prove its case by a preponderance of the evidence.” *Id.* “Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the “efficient operation” of the public service.” *Id.* “It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, the 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 (quoting *Cure v. Dep’t of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094).

B. The Sewerage & Water Board has failed to carry its burden of showing cause for the discipline of Mr. Ware

The Sewerage & Water Board has failed to show that the complained-of conduct occurred. Mr. Ware’s current supervisor testified Mr. Ware received no unearned compensation. The Sewerage & Water Board security officer was unable to testify that the report he authenticated was correct without additional documents which were not available to him at the hearing.

Exhibit HE-1 states the discipline of Mr. Ware is also based on “falsification of timesheets . . . of departmental employees,” but the Sewerage & Water Board offered little admissible evidence at the hearing about this basis for discipline. Mr. Coulon, the security officer, testified that the investigation began as an investigation of Greg Herbert, following an anonymous

complaint that Greg Herbert received pay for time he was not at work. (Tr. at 44-45). Mr. Coulon acknowledged that Mr. Herbert said Mr. Ware manipulated Mr. Herbert's time. (Tr. at 47).

The Sewerage & Water Board terminated the employment of Greg Herbert following local news coverage of Herbert's receipt of about 50 hours/week of overtime. (*See Herbert* Transcript, Exhibit B-4). During the *Herbert v. Sewerage & Water Board*, No. 9107, hearing, on September 8, 2020, Jason Higginbotham, the Chief of Security for the Sewerage & Water Board, a current employee, testified that Steven Ware completed Mr. Herbert's timesheets. (*Herbert* transcript at 200). Kurt Coulon testified during this hearing that Steven Ware completed timesheets for Greg Herbert *before* the work was performed. (*Herbert* transcript at 17-20). Mr. Coulon also testified that Mr. Ware entered excessive overtime for Mr. Herbert as Mr. Herbert's direct supervisor, including time Mr. Herbert was not present. (*Herbert* transcript at 26, 37, 40). Mr. Coulon also testified that Steven Ware was responsible for supervising Mr. Herbert and ensuring the timesheets were accurate. (*Herbert* transcript at 23). Inexplicably, the Sewerage & Water Board failed to elicit this testimony from Mr. Coulon during the instant hearing. The Sewerage & Water Board also failed to call the Chief of Security as a witness at this hearing. Further, even though the Sewerage & Water Board settled with Mr. Herbert on April 26, 2023, and one condition of the settlement was that Mr. Herbert would testify truthfully at any Sewerage & Water Board hearing about the discipline of employees, the Sewerage & Water Board failed to call Mr. Herbert as a witness.

The Commission may not take judicial notice of the testimony in the related hearing when Mr. Ware was not present and had no opportunity to cross-examine the witnesses. *See* La. C. Evid. art. 201-202.

Based on the evidence presented at the hearing on October 20, 2022, the Sewerage & Water Board has failed to carry its burden of proof.

C. Timeliness of Letter of Discipline

Because the Sewerage & Water Board has failed to carry its burden of proof to show cause, it is not necessary for the Commission to address the issue of whether Mr. Ware received timely notice of his discipline under Civil Service Rule IX, § 1.3.

Mr. Ware's appeal is GRANTED. The Sewerage & Water Board shall reimburse Mr. Ware for the lost wages from the three-day suspension, along with all emoluments of employment.

DATE: December 18, 2023

WRITER: *Mark C. Surprenant*
Mark C. Surprenant (Dec 14, 2023 18:58 CST)
MARK SURPRENANT, COMMISSIONER

CONCUR: *Ruth White Davis*
Ruth Davis (Dec 14, 2023 21:19 CST)
RUTH DAVIS, COMMISSIONER


Andrew Monteverde (Dec 14, 2023 18:10 CST)
ANDREW MONTEVERDE, COMMISSIONER