



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

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DIRECTOR OF PERSONNEL

MITCHELL J. LANDRIEU  
MAYOR

Friday, November 01, 2013

Mr. Eric Hessler  
PANO 2802 Tulane Avenue #101  
New Orleans, LA 70119

Re: **Karl Marshall VS.**  
**Department of Police**  
**Docket Number: 8087**

Dear Mr. Hessler:

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 - 11/1/2013 - 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 cursive script, reading "Germaine Bartholomew".

Germaine Bartholomew  
Chief, Management Services Division

cc: Ronal Serpas  
Shawn Lindsay  
Jay Ginsberg

**KARL MARSHALL**

**CIVIL SERVICE COMMISSION**

**VS.**

**CITY OF NEW ORLEANS**

**DEPARTMENT OF POLICE**

**NO. 8087**

The Department of Police (“Appointing Authority”) employs Karl Marshall (“Appellant”) as a Police Officer with permanent status. The Appellant received a three (3) day suspension after the Traffic Accident Review Board determined that he caused an avoidable accident. The factual basis for the determination is provided in the second and third paragraphs of the Appellant’s September 24, 2012 disciplinary letter, which provided:

The inquiry determined that on August 29, 2011, at approximately 2:09 p.m., while on duty and driving New Orleans Police Department vehicle APOL #05081, you were involved in a traffic accident at the location of the 2300 block of Esplanade, which was reported under N.O.P.D., Item number H-44723-11. You were operator of police vehicle number one traveling southbound monitoring school dismissal. You observed a group of juveniles congregating near a tree so you stopped the vehicle in the right travel lane to disperse the students. One of the students made remarks that warranted further actions so you opened the driver’s door and was struck by vehicle number two. After reviewing the facts and circumstances of the accident, the Board concluded that this accident was avoidable in that you were in violation of 17271 MCS Chapter 154, Section 383 relative to Careless Operation.

This accident/incident, as outlined above, has been classified by the Board as Category B1, Chart 2, Preventable/Chargeable, which the operator shared in a portion or all the responsibility for the accident/incident, you were not responding to an emergency call and disregarded traffic laws, safe driving practices or departmental regulations governing motor vehicles. The severity of the accident/incident is considered by the Board to be moderate in nature.

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 April 25, 2013. The testimony presented at the hearing

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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 Appellant acknowledged that the accident resulted from his opening of the driver's side door into the other lane of traffic resulting in damage to both his and the other driver's vehicle. However, he contends that because his emergency lights were on, the other vehicle should have exercised more caution.

Officer Anthony Pontiff assigned to the Traffic Division investigated the accident. He testified that the Appellant was at fault because he opened his door into the other lane of traffic.

Commander Otha Sandifer testified on behalf of the Accident Review Board, which recommended the disciplinary action. According to Commander Sandifer, the Appellant contributed to the accident, first by parking his vehicle in the right lane of traffic when there was no emergency, and then by opening his door into the other lane. He also noted that the accident resulted in \$770.48 in damages to the police unit and \$4,876.49 in damages to the other driver's vehicle. Based upon these factors, the Board sustained the violation and recommended a three day suspension, which is within the Appointing Authority's penalty guidelines.

#### 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

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

#### CONCLUSION

The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for legal cause. While the other driver could have been more

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careful, the Appellant bears some if not all responsibility for the accident.

Considering the foregoing, the Appellant's appeal is DENIED.


RENDERED AT NEW ORLEANS, LOUISIANA THIS 1st DAY OF  
NOVEMBER, 2013.

CITY OF NEW ORLEANS  
CIVIL SERVICE COMMISSION

  
AMY L. GLOVINSKY, COMMISSIONER

CONCUR:

  
JOSEPH S. CLARK, COMMISSIONER

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