



MITCHELL J. LANDRIEU
MAYOR

CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
SUITE 900 - 1340 POYDRAS ST.
NEW ORLEANS LA 70112
(504) 658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J.,
CHAIRMAN
AMY L. GLOVINSKY
JOSEPH S. CLARK
COLEMAN D. RIDLEY, JR.

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Friday, August 09, 2013

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

Re: **Jerome Laviolette VS.**
Department of Police
Docket Number: 7994

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 - 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,

A handwritten signature in blue ink that reads "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Ronal Serpas
Victor Papai
Jay Ginsberg

JEROME LAVIOLETTE

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7994

The Department of Police (“Appointing Authority”) employed Jerome Laviolette (“Appellant”) as a Police Captain with permanent status. By letter dated March 29, 2012, the Appointing Authority Involuntary Retired the Appellant after determining that he was currently, and would be for the foreseeable future, unable to perform full duties expected of his position.

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 July 5, 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.

There are no material facts in dispute. The Appellant was injured in 2008 while off duty. He was diagnosed with bulging discs, likely resulting from degenerative joint disease. The Appellant returned to work sometime in 2009 and remained on the job until he reinjured his back on April 20, 2011. He remained on sick leave until the Appointing Authority terminated his employment.

The Appointing Authority introduced into evidence a series of Physician’s Examination Certificates that are referenced as New Orleans Police Department Form 50. The Appointing Authority utilized Form 50 to track the Appellant’s medical progress in order to gauge when the Appellant would be able to return to work and in what capacity. A review of the Appellant’s Form 50 submissions reflects that, prior to his involuntary

retirement, the Appellant provided neither a Form 50 releasing him to full duty nor a Form 50 releasing him to limited duty, with an estimated date for his return to full duty.

The Appointing Authority conducted a "Rule IX" Hearing on March 27, 2012. Dep. Supt. Stephanie Landry of the Management Services Bureau conducted the Appellant's hearing. She testified that her review of the Form 50 submissions provided by the Appellant reflected no progress indicating that the Appellant could return to work in a full time or limited duty capacity. Dep. Supt. Landry stated that the Appellant informed her that he was unable to return to work because of the injury, but that he had a doctor's appointment in May. He stated that he might be able to return to work in May after he saw his doctor.

Notwithstanding the Appellant's representations that he hoped to return to work in the foreseeable future, Dep. Supt. Landry recommended the Appellant's involuntary retirement based upon the Form 50 submissions indicating that the Appellant was unable to return to work, with no indication of a future date for his return.

After making her recommendation and the Appointing Authority taking action, Dep. Supt. Landry received a Form 50 dated June 19, 2012 from the Appellant's treating physician, which provided that the Appellant was able to return to full duty as tolerated. Dep. Supt. Landry testified that, because the Appellant was already terminated, it was too late to change her recommendation. She stated that, had she received the document prior to the Rule IX hearing, she would have postponed taking action and requested additional medical information.

The Appellant testified that, prior to his involuntary retirement, he was employed by the Appointing Authority for 27 years. Prior to his re-injury in April of 2011, the Appellant had not used a sick day since 1994 and still had earned sick leave available at the time of his removal. He testified that he had been under the care of Dr. Donald Dietz, a neurosurgeon, since early 2009 and that, after all surgical options were rejected, he relied upon epidural injections and physical therapy.

The Appellant testified that he was between doctors at the time of his Rule IX Hearing because his health insurance provider no longer carried Dr. Dietz as one of its medical providers. As a consequence, the Appellant was forced to find a new treating physician. He explained his circumstances to Dep. Supt. Landry during his hearing, indicating he still wanted to return to work, but that he could not obtain a release until he was examined by his new doctor, Dr. Saucier. He presented Dr. Saucier's medical release to Dep. Supt. Landry, but no action to return him to work was taken because he was already involuntarily retired.

The Appellant testified that his physical therapy was working and that with the assistance of non-narcotic medication he could have returned to work if the Appointing Authority had not forced him to retire.

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 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.*

CONCLUSIONS

In order to prevail, the Appointing Authority must establish by a preponderance of evidence that the Appellant was either unwilling or unable to perform his duties as a police captain. *See Marziale v. Department of Police*, 2006-0459 (La. App. 4th Cir. 11/08/06); 944 So.2d 760. In the instant case, the Appointing Authority has failed to meet its burden of proof. The Appellant never stated or otherwise indicated that he was unwilling to return to work. In fact, a review of the record reveals that the Appellant

indicated he was hopeful that he would return to work in the foreseeable future, but that he was delayed because of difficulties with a doctor's appointment. Because of his many years of uninterrupted service, the Appellant had ample sick leave available while taking affirmative steps to return to work. Finally, there has been no medical determination that the Appellant's injuries would prevent him from returning to full duty in the future.

Based upon the foregoing, The Appellant's Appeal is GRANTED and the Appointing Authority is ordered to return the Appellant to his previous position with all back pay and emoluments of employment.

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

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION

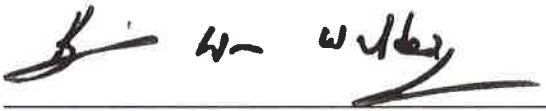


JOSEPH S. CLARK, COMMISSIONER

CONCUR:



AMY L. GLOVINSKY, COMMISSIONER



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