



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

MICHELLE D. CRAIG, CHAIRPERSON
RONALD P. MCCLAIN, VICE-
CHAIRPERSON
JOSEPH S. CLARK
TANIA TETLOW
STEPHEN CAPUTO

MITCHELL J. LANDRIEU
MAYOR

Monday, March 27, 2017

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Deril Valdery

Re: **Deril Valdery VS.
Sewerage & Water Board
Docket Number: 8468**

Dear Valdery:

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 - 3/27/2017 - 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, 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: Cedric S. Grant
George R. Simno III
Victor Papai
file

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

DERIL VALDERY vs. SEWERAGE & WATER BOARD	DOCKET No.: 8468
--	------------------

I. INTRODUCTION

Appellant, Deril Valdery, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. At all times relevant to the instant appeal, Appellant served as a Networks Maintenance Technician I for the Sewerage & Water Board of New Orleans (hereinafter “S&WB” or “Appointing Authority”) and had permanent status as a classified employee. The undersigned Commissioners have reviewed the testimony and evidence from the January 12, 2016 appeal hearing. We have also taken into consideration the hearing examiner’s report.¹ Based upon our review of these materials, we render the following judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

The S&WB suspended Appellant for fifteen (15) days in connection with allegations that Appellant, 1) was insubordinate when he failed to follow directives issued by Appellant’s

¹ The Commission points out that the hearing examiner who presided over the hearing, Victor Papi, did not prepare the report in this matter. Due to contractual restrictions, the Commission assigned the drafting of the report to another hearing examiner, Brendan Greene.

supervisors during August and September 2015, and 2) left his work assignment without authorization on October 19, 2015. (H.E. Exh. 1).

1. Insubordination

There are two separate alleged instances of insubordination covered by the disciplinary notice the S&WB issued to Appellant. *Id.* The first instance allegedly involved Appellant disregarding several directives to train “Mr. Wheeler,” a fellow S&WB employee. The second alleged act of insubordination occurred when Appellant failed to follow directives regarding the use of S&WB equipment.

Mr. Joseph Clark, a Senior Master Technician I, supervised Appellant at all times relevant to the instant appeal. (Tr. at 25:1-9). During August 2015, Mr. Clark directed Appellant to train Mr. Wheeler on the operation of excavation equipment. *Id.* at 26:17-25. Mr. Clark issued this direction due in part to Appellant’s request to transfer to a different work group/shift. Due to a shortage of personnel trained to operate certain equipment, Mr. Clark could not address Appellant’s request until more employees gained the skills necessary to operate specific types of equipment. *Id.* at 27:18-24. To facilitate the training, Mr. Clark arranged to have Appellant bring a basic piece of excavating equipment to all work sites in order to provide Mr. Wheeler with the “feel” of excavation work typically performed by S&WB work crews. *Id.* at 31:13-20.

In September 2015, Mr. Clark learned that Appellant had failed to provide any training to Mr. Wheeler. *Id.* at 27:5-16. At that time, Mr. Clark directed Appellant to bring excavating equipment to every work site so that Mr. Wheeler would have an opportunity to use the equipment. Yet, later in September 2015, Mr. Clark and another supervisor observed Appellant leaving the S&WB “yard” without the excavating equipment. *Id.* at 31:11-32:5.

Appellant denies that any supervisor directed him to train Mr. Wheeler. In fact, Appellant asserts that it was not until his October 2015 disciplinary hearing that he received notice that his supervisors expected him to train another S&WB employee. *Id.* at 13:4-10.

2. Leaving Work without Authorization

All crew members, including Appellant reported to a central “yard” prior to the start of each work day. These employees would then proceed to a building known as the “annex” to sign in, receive assignments and retrieve keys to S&WB vehicles. (Tr. at 33:1-4).

Mr. Clark testified that he had grave concerns about any employee leaving the central yard after signing in due to questions of legal liability for injuries or accidents involving such employees. *Id.* at 33:4-12. The Parties agree that Appellant reported to work on or about 3:00 p.m. on October 19, 2015. During the afternoon of October 19th, Mr. Clark received notice of several emergencies that required immediate attention from S&WB work crews. *Id.* at 34:22-25. One of the work crews Mr. Clark was relying upon to address these emergencies was Appellant’s.

However, Mr. Clark was unable to locate Appellant in the yard or annex and was unsuccessful in reaching Appellant via cell phone and radio. Mr. Clark did observe that members of Appellant’s work crew were sitting idle in the yard without assignments. Eventually, Mr. Clark abandoned his attempt to find Appellant and instead assigned the emergency work to an employee coming off of an earlier shift. By assigning work to a member of the day shift, Mr. Clark had to authorize overtime work at an additional cost to the S&WB. *Id.* at 35:18-24.

At approximately 4:20 p.m., after he had already assigned work to various crews, Mr. Clark observed Appellant returning to the yard in his personal vehicle. *Id.* at 36:14-17, 38:17-22. At that point in time, Mr. Clark believed that Appellant had violated earlier directives by leaving the yard in a personal vehicle, and as a result, had been unavailable to receive emergency assignments.

Therefore, Mr. Clark sent Appellant home for the rest of the day without pay and initiated disciplinary proceedings. *Id.* at 36:17-21.

During the course of the appeal hearing, Appellant denied leaving the yard and claims that he missed Mr. Clark's call while retrieving a phone charger from a S&WB vehicle that was on site. *Id.* at 22:5-16. Yet, both Mr. Clark and Mr. Eddie Williams claim that Appellant admitted to leaving the yard during the disciplinary hearing. *Id.* at 38:11-16, 56:9-15.

III. LEGAL STANDARD

An appointing authority may discipline an employee with permanent status in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that an appointing authority issued discipline 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. Insubordination

The Parties agree that Appellant sought a promotion from the night crew to which he was assigned in September/August 2015. However, the S&WB did not have sufficient staffing in order to accommodate Appellant's promotion at the time. As a result, Mr. Clark instructed Appellant to train Mr. Wheeler on specific excavation equipment. Mr. Clark even arranged to have a relatively small piece of equipment available to Appellant's crew in order to facilitate the training. Appellant claimed that Mr. Clark never issued an instruction regarding Mr. Wheeler's training and further claims that the necessary piece of equipment was rarely, if ever, available. The Commission credits the testimony of Mr. Clark given his clear recollection of the circumstances surrounding the initial directive. As a result, we find that the S&WB has met its burden in establishing Appellant was insubordinate.

2. Leaving Work without Authorization

Mr. Clark testified that he observed Mr. Valdery operating his personal vehicle after Mr. Valdery had already "punched in" on October 19, 2015. This represented a clear violation of Mr. Clark's earlier directives that prohibited S&WB employees from operating personal vehicle while on duty. Furthermore, Mr. Clark was unable to locate Appellant for approximately one hour and was unable to reach Appellant via radio or cell phone. This prompted Mr. Clark to assign emergency work to another foreman. Given these series of events, we find that it is more likely than not that Appellant left the central yard during the afternoon of October 19, 2015.

Finally, both Mr. Clark and Mr. Williams testified that Appellant admitted to leaving the central yard during the October 22, 2015 disciplinary hearing. In light of such testimony, the undersigned Commissioners do not find Appellant's denial credible.

B. Impact on Appointing Authorities Efficient Operations

The Commission finds that, when an employee disregards lawful instructions issued by a supervisor, he or she necessarily impairs the efficient operations of the respective department. The question then becomes the extent of the impairment. Here, Appellant's refusal not only served to disrupt the chain of command, but deprived an employee of important training that would have added capacity to the S&WB's operations.

Furthermore, Mr. Clark testified extensively as to the adverse impact Appellant's unauthorized leave from work had on the S&WB's operations. Specifically, Mr. Clark was unable to efficiently assign emergency work to various crews on October 19, 2015. This in turn forced him to pay an employee overtime in order to cover all of the work.

Based upon the record before us, we find that the S&WB has met its burden in establishing that Appellant's actions compromised the S&WB's efficient operations.

C. Discipline Commensurate with Offense

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).

The S&WB asserts that Appellant's prior discipline warranted an increased level of discipline for the misconduct Appellant perpetrated in the fall of 2015. We agree. The prior case, *Valdery v. S&WB*, C.S. No. 8437, 9/24/2016, involved a three-day suspension issued to Appellant based upon allegations of insubordination and harassment. And, while the Commission found that the S&WB failed to carry its burden in establishing that Mr. Valdery acted in an insubordinate

manner towards a supervisor, it did find substance to the allegation that Mr. Valdery addressed a supervisor in an inappropriate and unprofessional manner. *Id.* at 6.² Thus, Mr. Valdery's conduct on May 11, 2015 serves as an appropriate aggravating factor in the matter now before us as it reflects Appellant's dismissive and disrespectful approach towards his supervisors. Furthermore, as a result of his previous discipline, Mr. Valdery was certainly on notice that any failure to follow directives from his supervisors constituted insubordination and could lead to discipline.

The S&WB has a clear interest in deterring any conduct that serves to compromise its efficient operations. Given that Mr. Valdery's conduct represents three separate incidents of insubordination, we find that a fifteen-day suspension is appropriate and commensurate with Appellant's misconduct.

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby DENIES the Appellant's appeal.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

SIGNATURES APPEAR ON THE FOLLOWING PAGE.

² The inappropriate and unprofessional behavior at issue in the prior appeal was Appellant's use of the phrase "fuck you" towards his supervisor. C.S. No. 8437 at 6.

D. Valdery
No. 8468

Judgment rendered this 27th day of March, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION



STEPHEN CAPUTO, COMMISSIONER

3-24-17

DATE



RONALD P. McCLAIN, VICE-CHAIRMAN

3-27-17

DATE



TANIA TETLOW, COMMISSIONER

3/24/17

DATE