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CITY CIVIL SERVICE COMMISSION

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Monday, October 01, 2012

LISA M. HUDSON
DIRECTOR OF PERSONNEL

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

Re: **Sean Carrigan VS.**
Department of Police
Docket Number: 7931

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 - 10/1/2012 - filed in the Office of the Civil Service Commission in Room 7W03, City Hall, 1300 Perdido Street, 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
Victor Papai
Jay Ginsberg

SEAN CARRIGAN

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

DOCKET NO. 7931

Sean Carrigan ("Appellant") is employed by the Department of Police ("Appointing Authority") as a Police Officer with permanent status. The Appellant received a one-day suspension for violation of the Appointing Authority's internal regulations concerning Instructions from an Authoritative Source. Specifically, the Appointing Authority determined that the Appellant failed to appear in Criminal District Court in response to a subpoena. A more detailed account of the violation is found in the second paragraph of the September 19, 2011 disciplinary letter, which provided as follows:

This investigation determined that on January 28, 2011, at about 9:00 a.m., you failed to appear in Criminal District Court, Section "I", under case number 497-393. You admitted that you received a subpoena via email and acknowledged your date to attend court. You also admitted that you did not attend your scheduled court appearance. Lastly, you failed to contact CDC, Section "I" to inform the Judge of your inability to attend the required court hearing...

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 January 12, 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.

The material facts are not in dispute. Police officers receive subpoenas for court appearances via the Appointing Authority's computer system program "CourtNotify". Police Officers are required to log into the system regularly with their personal password

to accept and acknowledge receipt of subpoenas. CourtNotify maintains a witness notification history so that all police officers can track receipt and acknowledgement of their subpoenas. Police Officers are expected to print their subpoenas from the system to present when they appear in court.

Sgt. Byron Mitchell investigated the complaint initiated against the Appellant. He testified that he reviewed the witness notification history for the Appellant and found that the Appellant acknowledged receipt of the subpoena, but failed to report for court at the specified time. Based upon this information, Sgt. Mitchell sustained the violation.

On cross-examination, Sgt. Mitchell agreed that the Appellant may have had challenges printing his subpoena as the printers at the First Police District Station are often not working. He also acknowledged that CourtNotify creates and maintains a calendar for each police officer that is designed to record each court appearance once a police officer acknowledges receipt. Sgt. Mitchell did not review the Appellant's calendar as part of his investigation. Upon review of the Appellant's calendar, Sgt. Mitchell confirmed that the court appearance the Appellant missed was not on the calendar. Sgt. Mitchell could not explain why the system did not enter the court appearance after the Appellant acknowledged receipt, but contended that the Appellant should not have relied solely on the calendar to keep track of his court appearances.

The Appellant testified that he receives numerous subpoenas and could not recall whether he acknowledged the subpoena for the court appearance that he missed. He testified that he normally prints the subpoenas at the time he receives them, but, because the printers are often not working, he may have failed to print the subpoena in question on the date that the printout says he acknowledged it. The Appellant also stated that he

relies on the system's calendar, which reflected accurately all court appearances except the one court appearance that he missed.

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, from 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.*

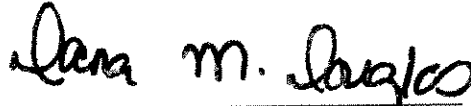
CONCLUSIONS

The Appointing Authority has established that the Appellant failed to appear in court after acknowledging the receipt of a subpoena. Although the Appellant provided evidence that may have mitigated the violation, the Appointing Authority determined that disciplinary action was still justified. We cannot say that the Appointing Authority abused its discretion by discounting the Appellant's reasons for missing court. Ultimately, the Appellant is responsible for keeping up with his court appearances even if the support system designed to help him keep track fails.

Accordingly, the Appellant's appeal is DENIED.

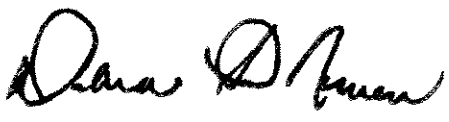
RENDERED AT NEW ORLEANS, LOUISIANA THIS 1 st DAY OF
OCTOBER, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



DANA M. DOUGLAS, VICE-CHAIRMAN

CONCUR:


JOSEPH S. CLARK, COMMISSIONER
DEBRA S. NEVEU, COMMISSIONER