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

Tuesday, June 27, 2017

Mr. Glenn Wilson

Re: **Glenn Wilson VS.**
Department of Human Services
Docket Number: 8443

Dear Mr. Wilson:

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 - 6/27/2017 - 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,

Doddie K. Smith
Chief, Management Services Division

cc: Germaine Simon
Isaka Williams
Victor Papai
file

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MITCHELL J. LANDRIEU
MAYOR

CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON
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JOSEPH S. CLARK
TANIA TETLOW
STEPHEN CAPUTO

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Tuesday, June 27, 2017

Mr. Glenn Wilson

Re: **Glenn Wilson VS.**
Department of Human Services
Docket Number: 8507

Dear Mr. Wilson:

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 - 6/27/2017 - 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,

Doddie K. Smith
Chief, Management Services Division

cc: Germaine Simon
Elizabeth S. Robins
Victor Papai
file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

GLEN WILSON vs. DEPARTMENT OF HUMAN SERVICES	DOCKET Nos.: 8443 & 8507

I. INTRODUCTION

Appellant, Glen Wilson, brings the instant appeal pursuant to Article X, §8(B) of the Louisiana Constitution and this Commission's Rule II, §4.5. Both the Louisiana State Constitution and Civil Service Rules provide appeal rights to any employee in the classified service – permanent or probationary – who feels he/she has been the victim of discrimination. The relevant Civil Service Rule reads as follows:

> Employees in the classified service who allege that they have been discriminated against because of their ***political or religious beliefs, sex, race, age, disability or sexual orientation***[1] shall have the right to appeal to the Commission.

Rule II, § 4.5. (emphasis added)

The Commission has established a heightened pleading requirement for appeals based upon discrimination:

> Persons alleging discrimination under Sections 4.5 and 4.6 of this Rule shall file an appeal with the Civil Service Commission within thirty (30) calendar days of the alleged discriminatory act. This appeal shall contain the following information:

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[1] Both case law and prior Commission decisions establish that the Commission overstepped its constitutional authority by adding the protected classes of "age, disability, and sexual orientation." *See* La. Con. Art. X, § 8(B)("Discrimination. No classified employee shall be discriminated against because of his political or religious beliefs, sex, or race."); *see also, Louisiana Dep't of Agric. & Forestry v. Sumrall*, 98-1587 (La. 3/2/99, 12), 728 So.2d 1254, 1262–63; see also *Tennessee v. Dep't of Police*, 2009-1461 (La.App. 4 Cir. 2/24/10, 7), 33 So.3d 354, 357–58.

(a) The type of alleged discrimination.

(b) The name(s) of the person(s) alleged to have committed the discriminatory act(s).

(c) The date(s) of such act(s).

(d) Where and in what manner such act(s) occurred.

Rule II, § 4.7.

On June 26, 2016, a hearing examiner appointed by the Commission presided over an appeal hearing. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the hearing examiner's report. Based upon our review, we render the following judgment.

II. FACTUAL & PROCEDURAL BACKGROUND

A. Alleged Discrimination

Via an order issued on March 21, 2016, the Commission granted Appellant the opportunity to amend his appeal by incorporating an "addendum" to the initial appeal form. In Appellant's amended appeal, he alleged that he was the victim of gender discrimination in the form of disparate treatment. Specifically, Appellant alleges that the Department of Human Services for the City of New Orleans (hereinafter the "Appointing Authority") terminated his employment due to an incident involving a female co-worker. Appellant alleged that the female co-worker engaged in similar conduct as the conduct the Appointing Authority attributed to Appellant, but was not terminated. Appellant was a probationary employee at the time of his termination.

B. Factual Background

On or about September 10, 2015, the Appointing Authority terminated Appellant's employment based upon an allegation that Appellant had engaged in misconduct. (H.E. Exh. 1).

Specifically, the Appointing Authority alleged that Appellant violated "policy 3.8" which is "knowingly providing [a] false statement during an investigation." *Id.* At the time of his termination, Appellant was serving as a "Senior Food Service Worker" within the New Orleans Youth Study Center (hereinafter "YSC"). *Id.* The YSC serves an at risk population of juveniles who face some manner of adjudication through the criminal justice process.

During the presentation of his case, Appellant testified that, as part of his duties as Senior Food Service Worker, he supervised Rondera Brown a female food service worker at the YSC. According to Appellant, Ms. Brown frequently engaged in inappropriate and/or insubordinate behavior. (Tr. at 22:1-17). During one incident on Saturday, September 5, 2015, Appellant attempted to correct the manner in which Ms. Brown was slicing tomatoes, and Ms. Brown allegedly told Appellant that he should "cut the mother fucking tomatoes" himself. *Id.* at 22:24-23:4. Due to Ms. Brown's actions, Appellant sent her home for the day. *Id.* at 23:5-8. Appellant claims that, as he was escorting Ms. Brown out of the facility, she continued to curse at him and tried to "attack" him. *Id.* at 23:12-15.

Between September 7, 2015 and September 10, 2015, Stephanie Mills, Deputy Superintendent of the Department of Human Services, conducted an investigation into the September 5th incident. During the course of her investigation, she interviewed Appellant, Ms. Brown and several other Appointing Authority employees. (A.A. Exhs. 2-4d). Prior to asking for a statement from employees, Ms. Mills issued each employee a document labeled "YSC Staff Investigation Cooperation Form." *Id.* This form contains Policy 3.8 reproduced below:

> Employees shall cooperate with any department investigation. Employees failing to cooperate or who make an intentional false statement to an investigator shall be terminated. In addition, any person who knowingly makes or utters a materially false statement either verbally or in writing will be terminated.

(A.A. Exh. 2). Each employee interviewed as part of Ms. Mills investigation signed the form and acknowledged receiving Policy 3.8.

Superintendent Glen Holt explained that the Appointing Authority issued such forms to its employees during any investigation into misconduct. The reason for this stems from a 2009 lawsuit in which a group of plaintiffs alleged that staff members had made false and/or untruthful statements regarding interactions with juvenile detainees at the YSC. (Tr. at 82:16-83:11). Mr. Holt made it clear that he viewed the honesty of staff members as an imperative part of the Appointing Authority's operations.

In his statement to Ms. Mills, Appellant denied cursing at Ms. Brown, but admits to using inappropriate language when he told Ms. Brown "why would I fucking lie on you?" (A.A. Exh. 2). Appellant made this profanity-laced comment during a follow-up meeting between himself, Ms. Brown, and Appellant's direct supervisor on September 6, 2015.

In the statement she provided to Ms. Mills, Ms. Brown stated that Appellant repeatedly cursed at her on September 5, 2015 and that she cursed back at him. (A.A. Exh. 3). Ms. Lenore Thomas, another employee who was working at the YSC on September 5th provided Ms. Mills with a statement in which Ms. Thomas alleges that Appellant repeatedly cursed at Ms. Brown and Ms. Brown cursed at Appellant. (A.A. Exh. 4a).

Ms. Mills also collected a statement from Gary Jones. (A.A. Exh. 4b). Mr. Jones claimed to have witnessed Appellant confronting Ms. Brown about reporting to work late on September 5th. According to Mr. Jones, when Ms. Brown told Appellant that she thought her start time was 10:00 a.m. as opposed to 9:00 a.m., Appellant replied "you should fucking know what time the paper say (sic) you should come in." *Id.*

When Mr. Holt reviewed the statements collected by Ms. Mills, he believed that Ms. Brown had been consistent throughout the investigation. He also noted that Ms. Brown had acknowledged her use of inappropriate language and "took ownership for her actions." (Tr. at 84:1-10). However, Mr. Holt did put Ms. Brown on notice that her behavior was unprofessional and any subsequent misconduct could result in termination. *Id.* at 84:10-14.

Based upon the statements collected by Ms. Mills – including Appellant's own statement in which he acknowledges directing profanity at Ms. Brown – Mr. Holt did not find Appellant's account credible. *Id.* at 85:13-19. Mr. Holt went on to testify that, if Appellant had taken responsibility for his behavior like Ms. Brown had, he would not have faced termination. *Id.* at 84:15-85:5.

III. LEGAL STANDARD

An employee who brings an appeal before this Commission alleging that he/she was the victim of discrimination bears the burden of proof as to the facts. La. Con. art X, § 8(B); Rule II, § 4.8. Both the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the Louisiana State Constitution provide individuals with equal protection under the law. And, in order to prove a violation of the equal protection clause, an appellant "must show an appointing authority acted with discriminatory intent or purpose." *Moore v. Ware*, 2001-3341 (La. 2/25/03, 14), 839 So.2d 940, 949.

When an appellant does not introduce any direct evidence of discrimination, the Commission finds it appropriate to apply the burden-shifting framework established in *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). The first step in the Commission's analysis under such a framework is to determine whether or not an appellant has established a prima facie case of discrimination. *See Turner v. Kansas City S. Ry. Co.*, 675

F.3d 887, 892 (5th Cir. 2012), *as revised* (June 22, 2012); *More,* 839 So.2d at 950 (citing *Hargrove v. New Orleans Police Dept.,* 01–659 (La.App. 4 Cir. 5/22/02), 822 So.2d 629). In cases where an appellant alleged disparate treatment, he/she must show:

> (1) he is a member of a protected class; (2) he was qualified for his job; (3) he suffered an adverse employment action; and, (4) he was treated less favorably than employees outside the protected class

Richardson v. Prairie Opportunity, Inc., 470 Fed.Appx. 282, 285 (5th Cir.2012)(unpublished). Employees offered as comparators must be similarly situated and the misconduct at issue must be "nearly identical" to the misconduct perpetrated by the plaintiff. *Perez v. Texas Dep't of Criminal Justice, Institutional Div.*, 395 F.3d 206, 213 (5th Cir.2004)

If the Commission determines that an appellant has established such a prima facie case, the burden shifts to the appointing authority to prove that the adverse employment action at issue resulted from a "legitimate, nondiscriminatory reason." *Id.* An appellant would then have an opportunity to show that the appointing authority's stated reason for the adverse employment action was pretext for discriminatory treatment. *Id.*

IV. ANALYSIS

A. Prima Facia Case of Discrimination

During the course of the underlying appeal hearing, Appellant failed to introduce any direct evidence of discrimination. Therefore, the Commission's analysis proceeds along the *McDonnell Douglas* burden shifting framework. Under this framework, the Appellant must first establish that he is a member of a protected class. Given that discrimination based upon sex is prohibited by our Rules and the Louisiana Constitution, Appellant has met this burden. Similarly, Appellant was qualified for the position of Senior Food Service Worker since he was serving as a probationary employee at the time of his termination. There is also no dispute that termination constitutes an

"adverse employment action." Thus, the remaining question is whether or not the Appointing Authority treated Appellant less favorably than similarly situated employees outside of his protected class.

Appellant's proffered comparator in support of his disparate treatment claim is Ms. Brown. However, the Commission finds that Ms. Brown is not an appropriate comparator for the purposes of Appellant's claim of disparate treatment. Appellant did not introduce any evidence showing that the Appointing Authority had substantiated "nearly identical" allegations of misconduct against Ms. Brown. In fact, the Appointing Authority specifically accused Appellant of violating "Policy 3.8" by providing his supervisor with a false statement during the course of an internal investigation. The misconduct Ms. Brown allegedly perpetrated was the use of unprofessional language and insubordination. (A.A. Exh. 3). Appellant failed to provide any evidence or testimony that providing a false statement during the course of an internal investigation was equal in severity to the use of inappropriate language and insubordination. In fact, during the course of his testimony, Mr. Holt provided a compelling reason why the Appointing Authority views violations of Policy 3.8 as extremely serious misconduct. Based upon the foregoing, the Commission finds that Ms. Brown did not engage in "nearly identical" misconduct as Appellant and is therefore not an appropriate comparator. As a result, Appellant has failed to establish a prima facie case of discrimination.

In the end, Appellant is left with an allegation that, by finding Ms. Brown's account of the September 5th incident more credible than his own, the Appointing Authority discriminated against him. Yet, at no point in time did Appellant provide evidence of animus based upon Appellant's sex present during the Appointing Authority's investigation. Indeed, the statements

introduced into evidence provide ample justification for the Appointing Authority's conclusions with respect to Appellant's credibility.

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby DENIES the underlying appeal and finds no evidence of discrimination in the Appointing Authority's decision to terminate Appellant.

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SIGNATURES APPEAR ON THE FOLLOWING PAGE.

Judgment rendered this 26th day of June, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

JOSEPH S. CLARK, COMMISSIONER — DATE 6/26/17

STEPHEN CAPUTO, COMMISSIONER — DATE 5/26/17

MICHELLE D. CRAIG, COMMISSIONER — DATE 5/25/2017