



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Thursday, April 25, 2024

Mr. Alexander Espadron

Re: **Alexander Espadron VS.
Sewerage & Water Board
Docket Number: 9522**

Dear Mr. Espadron:

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 - 4/25/2024 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, 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: Ghassan Korban
Chanelle Collins
Jay Ginsberg
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**ALEXANDER ESPADRON,
Appellant**

Docket No. 9522

v.

**SEWERAGE & WATER BOARD,
Appointing Authority**

DECISION

Appellant, Alexander Espadron, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from the Sewerage & Water Board's November 6, 2023, termination of his employment. (Ex. HE-1). At all relevant times, Appellant had permanent status as a Utility Trade Specialist I in the Sewerage & Water Board's Electrical Maintenance Department. (Ex. SWBNO-4). A Hearing Examiner, appointed by the Commission, presided over a hearing on December 19, 2023. At this hearing, both parties had an opportunity to call witnesses and present evidence.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the hearing, all exhibits submitted at the hearing, the Hearing Examiner's report dated March 6, 2024, and controlling Louisiana law.

For the reasons set forth below, Mr. Espadron's appeal is DENIED.

I. FACTUAL BACKGROUND

The Sewerage & Water Board's Substance Abuse Policy provides that "[t]he second time a regular employee tests positive for alcohol or illegal drug use under this policy, will result in termination of employment." (Ex. SWBNO-3 at 10). In 2019, while employed by the Sewerage & Water Board, Mr. Espadron tested positive for marijuana. In lieu of termination, the Sewerage &

Water Board required Mr. Espadron to complete a rehabilitation program. (Tr. at 8). On July 31, 2019, Mr. Espadron agreed that “I acknowledge that if I fail any subsequent substance abuse screening, I will be subject to dismissal.” (Ex. SWBNO-1).

On August 18, 2023, Mr. Espadron was operating a boom truck owned by the Sewerage & Water Board. (Tr. at 7-8). Mr. Espadron damaged the boom truck, so Timothy Hood, the supervisor in the Sewerage & Water Board’s electric shop, required Mr. Espadron to undergo drug testing under Civil Service Rule V, section 9.13. (Tr. at 11). Mr. Espadron failed the drug screening, and he does not contest the results of the drug test. (Tr. at 6). Although Mr. Espadron’s supervisors, Mr. Hood and Eric Mancuso, recommended a three-day suspension and rehabilitation (Tr. at 12, 14), the Appointing Authority determined that the Sewerage & Water Board Substance Abuse Policy required the termination of Mr. Espadron’s employment. (Tr. at 22).

II. ANALYSIS

A. Legal Standard for Commission’s Review of Discipline

1. The Appointing Authority must show cause for discipline

“Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A).” *Whitaker v. New Orleans Police Dep’t*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep’t of Police*, 2000-1682 (La. App. 4 Cir. 5/9/01)). “Legal cause exists whenever an employee’s conduct impairs the efficiency of the public service in which the employee is engaged.” *Id.* “The Appointing Authority has the burden of proving the impairment.” *Id.* (citing La. Const., art. X, § 8(A)). “The appointing authority must prove its case by a preponderance of the evidence.” *Id.* “Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the “efficient

operation” of the public service.” *Id.* “It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, the 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 (quoting *Cure v. Dep’t of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094).

2. The Appointing Authority must show the discipline was commensurate with the infraction

The Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance of evidence that it had good or lawful cause for suspending the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Durning v. New Orleans Police Dep’t*, 2019-0987 (La. App. 4 Cir. 3/25/20), 294 So. 3d 536, 538, *writ denied*, 2020-00697 (La. 9/29/20), 301 So. 3d 1195; *Abbott v. New Orleans Police Dep’t*, 2014-0993 (La. App. 4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d 106 (La. 1984). The Appointing Authority has the burden of showing that the discipline was reasonable and not arbitrary or capricious. *Neely v. Dep’t of Fire*, 2021-0454 (La. App. 4 Cir. 12/1/21), 332 So. 3d 194, 207 (“[NOFD] did not demonstrate . . . that termination was reasonable discipline”); *Durning*, 294 So. 3d at 540 (“the termination . . . deemed to be arbitrary and capricious”).

a. Factors considered by Commission

“In determining whether discipline is commensurate with the infraction, the Civil Service Commission considers the nature of the offense as well as the employee’s work record and previous disciplinary record.” *Matusoff v. Dep’t of Fire*, 2019-0932 (La. App. 4 Cir. 5/20/20), 2020 Westlaw 2562940, *writ denied*, 2020-00955 (La. 10/20/20), 303 So. 3d 313. The Commission considers the nature of the offense, the employee’s work ethic, prior disciplinary records, job evaluations, and any grievances filed by the employee.” *Honore v. Dep’t of Pub. Works*, 14-0986, pp. 8-9 (La. App. 4 Cir. 10/29/15), 178 So. 3d 1120, 1131, *writ denied*, 2015-2161 (La. 1/25/16), 185 So. 3d 749.

B. The Sewerage & Water Board has shown cause for the discipline of Mr. Espadron

The Sewerage & Water Board has shown cause for the termination of Mr. Espadron’s employment. Mr. Espadron does not challenge the results of the drug screen following the August 18, 2023, on-the-job accident. (Tr. at 6). Mr. Espadron failed a drug test in 2019, and he remained employed at the Sewerage & Water Board after he completed a rehabilitation program. (Tr. at 8). The Sewerage & Water Board’s Substance Abuse Policy required the termination of Mr. Espadron’s employment following a second failed drug test. (Ex. SWBNO-3 at 10). Employees operating Sewerage & Water Board equipment under the influence of illegal substances impairs the efficient operation of the Sewerage & Water Board.

C. The penalty is commensurate with the violation.

The penalty of termination is appropriate for a second failed drug test according to Sewerage & Water Board policy. (Ex. SWBNO-3 at 10). Mr. Espadron offered no mitigating circumstances for a deviation from the policy. Therefore, the penalty is commensurate with the violation.

WRITER:

Mark C. Surprenant

Mark C. Surprenant (Apr 24, 2024 17:13 CDT)

MARK SURPRENANT, COMMISSIONER

CONCUR:

blm

Brittney Richardson (Apr 24, 2024 15:00 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

Ruth White Davis

Ruth Davis (Apr 25, 2024 09:52 CDT)

RUTH DAVIS, COMMISSIONER