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MAYOR

CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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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

Tuesday, July 02, 2013

Ms. Mary Jones-Williams

Re: **Mary Jones-Williams VS.
Department of Property Management
Docket Number: 7989**

Dear Ms. Jones-Williams:

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 - 7/2/2013 - 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, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: George Patterson
Gregory Brumfield
Jay Ginsberg
file

MARY JONES-WILLIAMS

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

**DEPARTMENT OF PROPERTY
MANAGEMENT**

NO. 7989

The Department of Property Management (“Appointing Authority”) employs Mary Jones-Williams (“Appellant”) as a Senior Support Specialist with permanent status. The Appointing Authority suspended the Appellant by letter dated March 29, 2012, for three days following a determination that she failed to follow a directive from her supervisor to provide a doctor’s certificate in advance of a scheduled appointment and that she disregarded departmental policies as it relates to calling in sick. The Appointing Authority characterized the penalty as progressive discipline.

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 October 25, 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 Appointing Authority offered evidence that the Appellant had received previous warning for improper use of sick leave. However, whether the Appellant had previously used sick leave improperly is not relevant to this matter. She was disciplined for failing to provide proof of a scheduled appointment in advance of the leave. It is undisputed that she requested two days of sick leave several days in advance for an out-patient medical procedure. After returning from sick leave, she provided medical documentation confirming that the use of sick leave was for a legitimate purpose.

The Appointing Authority suspended the Appellant because she was unable to obtain documentation in advance of the absence. The Appellant testified that she made numerous attempts to contact the medical provider in advance of the procedure to satisfy her supervisor's request; however, as she informed her supervisor, she was unable to make contact and obtain the documentation. As detailed above, she provided a doctor's certificate upon her return to work.

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

The Appointing Authority has failed to establish that it disciplined the Appellant for good cause. Contrary to the disciplinary letter, the Appointing Authority's Sick Leave Policy (*Appointing Authority Exhibit 1*) does not require a doctor's certificate in advance of a medical procedure. It allows for a supervisor to require a subordinate to bring a physician's certificate upon return to work if the supervisor believes the employee is using sick leave improperly. In the instant case, the Appellant complied with the policy. The Appointing Authority unreasonably denied the Appellant's request to use earned sick leave for a legitimate medical purpose and acted arbitrarily by suspending her after she complied with the Appointing Authority's written policy.

Accordingly, the Appellant's appeal is GRANTED, and the Appointing Authority

M. Jones-Williams
#7989

is ordered to pay the Appellant three days of back pay with all emoluments of employment.

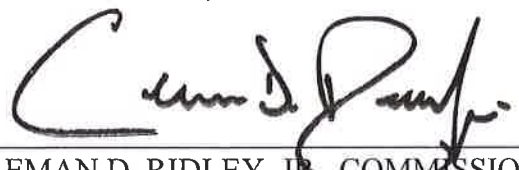
RENDERED AT NEW ORLEANS, LOUISIANA THIS 2nd DAY OF JULY,
2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION


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

CONCUR:


JOSEPH S. CLARK, COMMISSIONER


COLEMAN D. RIDLEY, JR. COMMISSIONER