



CITY OF NEW ORLEANS

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Friday, September 8, 2017

Joseph R. Casanova
650 Poydras, Suite 1400
New Orleans, La 70130

Re: **Leotis Johnson VS.
Sewerage & Water Board
Docket Number: 8425**

Dear Mr. Casanova:

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 - 9/8/2017 - 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, 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: Robert K. Miller
James E. Thompson, III
Brendan M. Greene
Leotis Johnson

file

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

LEOTIS JOHNSON vs. SEWERAGE & WATER BOARD	DOCKET No.: 8425
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I. INTRODUCTION

Appellant, Leotis Johnson, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Sewerage and Water Board for the City of New Orleans, (hereinafter the “S&WB”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the S&WB had sufficient cause to terminate Appellant. At all times relevant to the matter now before the Commission, Appellant was a classified employee with permanent status and worked as a Water Services Inspector II for the Appointing Authority.

On May 10, 2017 and June 13, 2017, a hearing examiner appointed by the Commission convened an appeal hearing related to the above-captioned matter. 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 AND PROCEDURAL BACKGROUND

A. Alleged Misconduct

The S&WB alleged that, on May 20, 2015, Appellant was responsible for reading water meters on the Westbank. (H.E. Exh. 1). During the course of the morning, Appellant's supervisor attempted to contact Appellant on numerous occasions but was unsuccessful. Eventually, Appellant contacted his supervisor and claimed that he was having difficulty reading water meters because the meters were "spread out." *Id.* After this incident, Appellant's supervisors conducted an analysis of the meter reader data collected by Appellant as well as the GPS data recorded by the S&WB vehicle used by Appellant on the 20th. A review of the data allegedly showed that Appellant did not begin reading meters until 12:10 p.m. on May 20, 2015 and attended to personal business on the Eastbank during the first half of the day. *Id.* According to the discipline notice issued by the S&WB, Appellant was untruthful when first confronted about his actions on May 20th. *Id.* As a result of Appellant's unauthorized use of a S&WB vehicle and untruthful response to his supervisor's inquiries, the S&WB terminated Appellant's employment effective June 26, 2015. *Id.*

B. S&WB's Company Vehicle Policy

On March 3, 2015, the S&WB circulated a revised policy regarding the use of "Company Vehicles" referred to in the record as "Policy Memorandum No. 94." (S&WB Exh. 13). In a separate memorandum to all S&WB employees, Cedric Grant, Executive Director of the S&WB, stated that it was mandatory that all S&WB employees "read and familiarize themselves with the revised policy to insure that all vehicles are handled responsibly." *Id.* The revised vehicle policy was effective immediately. *Id.* According to Policy Memorandum No. 94, all S&WB employees must keep personal use of S&WB vehicles "to an absolute minimum and only with the

authorization of the employee's supervisor." *Id.* at p. 1. Prior to Appellant's alleged misconduct, one of his supervisors, Monique Chatters, presented him with the S&WB's company vehicle policy and Appellant signed a form acknowledging his review of the policy. (S&WB Exh. 16).

C. The Meter Reading Division of the S&WB

During the relevant period of time, Appellant served as a Water Services Inspector II in the S&WB's Meter Reading Division. (Tr. v. 1 at 15:6-13). As a Water Services Inspector (hereinafter "WSI"), Appellant was responsible for reading the water meters of residential and commercial customers of the S&WB. *Id.* at 15:20-16:5. The work day for Appellant and his fellow WSIs began at 7:30 a.m. when they would report to the S&WB's facility located at 2900 Peoples Avenue in New Orleans East. *Id.* at 17:9-20. After "clocking in" WSIs received "route sheets" that contained a specific assigned location in which the WSI would read meters. *Id.* at 18:1-2.

WSI "read" water meters using an electronic hand-held piece of equipment referred to as a "processor." Ideally, when a WSI is in the field, he or she WSI locates a meter, opens the cover and enters the customer's usage data in the processor. Once a WSI has completed his or her route, he or she must contact a supervisor in order to verify that the route has been satisfactorily completed. *Id.* at 20:1-4. Occasionally, a WSI's route will contain meters that are far apart from each other. In such instances, supervisors may assign the WSI a S&WB vehicle to facilitate efficient meter reading. *Id.* at 120:7-14.

At the end of 2014 or the beginning of 2015, the S&WB installed GPS tracking equipment on all S&WB vehicles in the meter reading division. *Id.* at 236:21-237:3. Every S&WB employee in the meter reading division assigned to a vehicle has a "link tag" or electronic fob that he or she must use to activate the GPS tracking equipment when operating a vehicle. *Id.* at 237:4-10. Each

link tag has a specific electronic signature that identifies the S&WB employee operating the vehicle. (S&WB Exh. 11). If an operator fails to activate the GPS equipment using a link tag, an alarm in the GPS system emits an irritating noise akin to the alarm in a car when a passenger or driver does not have his or her seatbelt on. *Id.* at 236:21-237:10.

D. May 20, 2015

In summarizing the events of May 20, 2015, the Commission accepts the hearing examiner's assessment of Appellant's testimony. Namely that Appellant's numerous contradictions severely undermine his credibility. Therefore, the undersigned Commissioners find that Appellant was not credible and his self-serving testimony has very little, if any, weight.

On May 20, 2015 Appellant reported to the Central yard at approximately 7:15 a.m. (Tr. v. 1 at 137:13-22). Appellant's route on May 20, 2015 was #04-13 and encompassed parts of the English Turn neighborhood on the Westbank. (Tr. v.1 at 135:23-136:6; S&WB Exh. 12). Appellant's supervisor, Gaynell Smith, testified that Appellant was a proficient meter reader and should have been able to complete route #04-13 in about two-an-a-half hours. (Tr. v. 1 at 136:21-22). Due to the distance between the meters on route #04-13, Appellant's supervisor assigned him a S&WB vehicle, Truck #54. (S&WB Exh. 12).

During the course of the morning on May 20, 2015, Ms. Smith attempted to contact Appellant via radio and phone to determine if he needed any assistance. (Tr. v. 1 at 124:2-6). Appellant did not respond to Ms. Smith's attempts to reach him, but did eventually contact Ms. Smith at 12:58 p.m. in order to notify her that he was having difficulty locating certain meters on his route. *Id.* at 124:7-10. Ms. Smith then reviewed Appellant's meter reading activity for May 20, 2015 and discovered that he did not complete his route until about 3:30 p.m. This struck Ms. Smith as odd because it should not have taken any WSI, never mind one as proficient as Appellant,

an entire day to finish route #04-13. *Id.* at 124:10-13. As a result of Ms. Smith's concerns regarding Appellant's slow pace, she requested that Patricia Davenport, another supervisor within the meter reading division, produce GPS data for S&WB truck #54.

Ms. Smith had assigned Appellant processor #34 on May 20, 2015. (S&WB Exh. 12). As indicated earlier, each WSI is responsible for entering meter data into his or her processor while in the field. When Ms. Smith reviewed Appellant's May 20, 2015 processor activity, she discovered that he did not begin entering data until 12:10 p.m., more than four hours after his shift had started. (S&WB Exh. 12). The addresses for which Appellant was recording meter data was in the English Turn neighborhood on the Westbank. *Id.* Appellant's last entry on May 20th was at 3:10 p.m. *Id.* Thus, as Ms. Smith suspected, it only took Appellant about two-and-a-half hours to complete route #04-13.

The GPS data associated with S&WB truck #54 shows that Appellant left the Central Yard at approximately 8:30 and arrived on the Westbank at 8:47 a.m. (S&WB Exh. 11). However, beginning at approximately 9:00 a.m., Appellant began to travel from the Westbank to the Eastbank. (S&WB Exh. 11). Appellant arrived on the Eastbank at approximately 9:05 a.m. on May 20th and did not return to the Westbank – the location of his assigned route – until around noon. *Id.* At approximately 3:30 p.m. Appellant began to drive towards the Eastbank, and by 3:53 p.m. Appellant was back at the Central Yard. *Id.*

D. Disciplinary Hearing

Upon reviewing the processor and GPS data, Ms. Smith scheduled a pre-disciplinary hearing for Appellant to address the allegation that he engaged in the “unauthorized use of [a] company vehicle and fail[ed] to follow policies and procedures.” (S&WB Exh. 2). The pre-disciplinary hearing occurred on June 3, 2015. Ms. Smith along with two other supervisors in the

L. Johnson
No. 8425

meter reading division – Monique Chatters and Jaqueline Shine – were present at the June 3rd hearing along with Appellant. Ms. Chatters presented Appellant with the allegation that he had violated S&WB policy when he used his S&WB vehicle to conduct personal business during the work day. (Tr. v. 2 at 16:4-10). Appellant initially claimed that the reason it took him so long to complete his route on May 20, 2015 was that he had difficulty finding meters. (Tr. v. 1 at 124:17-125:1). After he made this claim, Ms. Smith and Ms. Chatters showed Appellant the GPS data for truck #54 that placed both Appellant and truck #54 on the Eastbank for a large part of the morning on May 20, 2015. *Id.* at 124:22-125:1.

Upon reviewing the GPS data, Appellant admitted that he had traveled to the Eastbank in order to eat breakfast, take medicine, look for his glasses and address other issues before returning to work. (Tr. v. 2 at 16:22-17:3, 22:6-23:4). It was only after Ms. Chatters and Ms. Smith presented Appellant with the processor and GPS data that Appellant admitted that he was not on his route. Appellant claimed that Ms. Smith had given him authorization to go to the doctor's appointment, but Ms. Smith denied granting Appellant permission to go to a doctor's appointment and Ms. Chatters recalled hearing Ms. Smith attempt to reach Appellant via radio on May 20, 2015. (Tr. v. 1 at 126:2-8; Tr. v. 2 at 35:4-16).

As a result of the pre-disciplinary hearing, Ms. Smith and her fellow supervisors recommended that Mr. Johnson receive a thirty-day suspension for his misuse of a S&WB vehicle on May 20, 2015. (S&WB Exh. 4). S&WB's Deputy Director, Robert Miller, reviewed the recommendation along with the allegations and investigation. Based upon this review, Mr. Miller rejected the initial disciplinary recommendation because he felt that a thirty-day suspension "did not match the facts of the case." (Tr. v. 2 at 78:5-12). An aggravating factor for Mr. Miller was

L. Johnson
No. 8425

Appellant's dishonesty when addressing the allegations during the pre-disciplinary hearing. *Id.* at 80:15-81:8.

The S&WB follows a general theory of progressive discipline when addressing employee misconduct. For a first offense, an employee typically receives some manner of counseling. *Tr. v. 2* at 88:15-25. However, because Appellant had already received a series of counseling sessions, reprimands and suspensions prior to his misconduct on May 20, 2015, Mr. Miller believed that a more severe form of discipline was appropriate. 89:16-90:24. In fact, Appellant had been counseled on numerous occasions regarding his improper use of a S&WB vehicle. (H.E. Exh. 1). Mr. Miller also testified that, due to the severity of Mr. Johnson's conduct, a lesser form of discipline would have been inappropriate. 90:15-24.

III. LEGAL STANDARD

Appointing authorities may only discipline employees who have achieved permanent status in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that his/her discipline was issued 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

The contradictions within Appellant's sworn testimony are so dramatic that Appellant either had no recollection of the events or simply hoped that the Commission and Hearing Examiner were not paying attention. In either case, we find that Appellant lacks credibility and discount his self-serving testimony. By way of example, the Commission recounts the following contradictions:

- Location of Route
 - Day 1: Appellant stated that his route on May 20, 2015 was on the Westbank. (Tr. v. 1 at 23:16-24:6).
 - Day 2: Appellant claims that his route was on the Eastbank in New Orleans East. (Tr. v. 2 at 314:14-23).
- Other S&WB Employees
 - Day 1: Appellant claimed that he was alone on his route. (Tr. v. 1 at 21:3-9).
 - Day 2: Appellant asserted that he was with fellow WSI Sam Francis. (Tr. v. 2 at 314:7-9).
- Contact with Gaynell Smith
 - Day 1: Appellant claimed that he finished his route on May 20, 2015 and then contacted Ms. Smith who gave him permission to attend a doctor's appointment related to a dog bite. (Tr. v. 1 at 23:7-10). Appellant asserted that his radio was not working on May 20, 2015. *Id.* at 21:24-22:6.
 - Day 2: Appellant testified that he and Mr. Francis finished their route and then waited over an hour for Ms. Smith to respond to a request to verify completion of the route. When Ms. Smith did not respond, Appellant returned to the Central Yard.

(Tr. v. 2 at 313:22-314:6). According to Appellant, his radio was in perfect working order. *Id.* at 317:13-15.

- Activities on Eastbank
 - Day 1: Appellant admitted that he drove, in a S&WB truck, from the Westbank to his home and then to his doctor's offices on the Eastbank. (Tr. v. 1 at 24:20-23, 25:2-7, 60:1-3).
 - Day 2: There was no doctor's appointment and Appellant's only activities were related to reading meters in New Orleans East.

There were numerous other examples of Appellant's contradictory testimony that the Commission will not recount here. It is sufficient to identify the inconsistencies above and note that there was no attempt by Appellant to explain his drastically different testimony. This is likely because Appellant had no explanation.

In contrast to Appellant's myriad contradictions, the S&WB introduced detailed records establishing that Appellant did not begin entering water meter data into his processor until 12:10 p.m. on May 20, 2015.¹ This, coupled with the GPS data showing Appellant moving from the Westbank to the Eastbank, more than satisfy the S&WB's burden in establishing that Appellant engaged in the improper use of a S&WB vehicle in violation of Policy Memorandum 94. The S&WB has also established that Appellant was dishonest to his supervisors during the pre-disciplinary hearing. The Commission also finds that Appellant engaged in contemptuous conduct

¹ Appellant attempted to make much of the fact that Ms. Smith did not keep minute-to-minute tabs on all of the employees under her supervision. Apparently, Appellant's line of questioning was intended to establish that Appellant was somehow singled out for punishment. However, the Commission finds that Ms. Smith and other supervisors in the meter reading department had ample reason to look into Mr. Johnson's whereabouts. As a primary matter, Ms. Smith was unable to reach Appellant for a prolonged period of time during May 20, 2015. Secondly, records of Appellant's meter reading activity establish that he did not begin his duties until approximately 12:10 p.m., even though he left the Central Yard around 8:30 a.m. Finally, under normal circumstances, Appellant would have been able to complete his route no later than 10:00 a.m. However, even if Ms. Smith had singled out Appellant for additional scrutiny, her decision to do so established that Appellant had conducted personal business using a S&WB vehicle during a time he was assigned meter reading duties.

in violation of Civil Service Rule II, §8.1 when he lied during the course of his testimony before our hearing examiner.

B. Impairment of Efficient Operation of Appointing Authority

When meter readers are not performing their duties, there is a cascading effect on the rest of the meter reading department and other water service inspectors may have to read meters at a premium overtime rate. And, as both Mr. Miller and Ms. Smith observed, if a meter reader completes his or her route prior to the end of a shift, he or she may be able to lend support to fellow meter readers. Appellant, who by all accounts was an adept meter reader² – did not even start reading meters on his route until 12:10 p.m., hours after his shift started. Thus, Appellant was not in a position to lend assistance to other readers. Appellant's actions clearly impacted the meter reading division's ability to efficiently perform an essential duty.

Additionally, the Commission accepts Mr. Miller's testimony that Appellant's use of a S&WB vehicle to conduct personal business exposed the S&WB to serious risk. *See* tr. v. 2 at 82:13-83:11. The S&WB has made the decision to accept a certain degree of risk by providing employees with access to vehicles in order to complete vital S&WB work, like reading meters. However, as evidenced by Policy Memorandum No. 94, providing employees with access to vehicles to run personal errands is an additional level of risk that the S&WB actively seeks to avoid. Appellant's actions introduced an unacceptable level of uncertainty and risk to the S&WB's operations.

² The Commission recognizes that Appellant received positive performance evaluations from his supervisors, including Ms. Smith, during the course of his employment with the S&WB. Had Appellant's misconduct and subsequent contemptuous actions have been less severe, his positive performance evaluations may have served as a mitigating factor in the Commission's assessment of the instant appeal.

Finally, Appellant's blatant dishonesty during the initial investigation and subsequent appeal hearing compromise any expectation that Appellant would perform his duties in a forthright and honest manner.

Based upon the foregoing, the S&WB has established that Appellant's misconduct compromised the efficient operations of the S&WB.

C. Discipline Commensurate with Offense

In conducting its analysis at this stage, the Commission must determine if Appellant's reprimands and suspension were "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 *Staehele v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

Appellant argues that employees in the water meter division regularly used S&WB vehicles to conduct personal business and that he was singled out for punishment. The S&WB revised its vehicle policy in March of 2015 and a fellow WSI testified that, once the S&WB installed GPS systems in the meter reading division's vehicles, the general practice of employees using S&WB vehicles for personal business stopped. (Tr. v. 2 at 141:11-15). Nevertheless, there are occasions when employees in the meter reading division may use a S&WB vehicle to grab a quick bite to eat or run a brief errand that is on or near a route. Appellant's four hour break on May 20, 2015 was not a "quick errand" or a brief stop for a bite to eat. It was a pre-planned, unauthorized deviation paid for by the residents of New Orleans. The Commission does not accept Appellant's argument that his eventual completion of the route mitigates his misconduct. As we observed earlier, Appellant could have been done with his route by 11:00 a.m. and rendered assistance to other WSIs. Instead he decided to attend to personal business.

Finally, the Commission agrees with the S&WB that Appellant's dishonesty during the course of the investigation is an aggravating factor when determining the level of discipline. All appointing authorities have an obligation to investigate allegations of misconduct against employees and must take every reasonable step to deter attempts to interfere with such investigations. The Commission also views Appellant's dishonesty during the course of his testimony as contemptuous behavior that would warrant sanctions even if the S&WB had not carried its burden.

Given the seriousness of Appellant's misconduct and his subsequent dishonesty, we find that termination is an appropriate level of discipline.³

V. CONCLUSION

The Commission hereby DENIES Appellant's appeal.

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³ During the course of the appeal hearing, Appellant displayed a very poor grasp of the concept of progressive discipline. In Appellant's mind, an appointing authority must issue each level of discipline every time an employee engaged in misconduct. For example, Appellant argues that he should have received counseling, a reprimand and a suspension for his actions on May 20, 2015 prior to the S&WB moving for termination. That is not progressive discipline, it is a waste of time and resources. As Mr. Miller and Ms. Smith noted, under the principle of progressive discipline, an employee receives a minor form of discipline the first time he or she engages in misconduct. For each **subsequent** instance of misconduct, the employee receives a "progressively" severe form of punishment. However, there are occasions that the employee's misconduct is so severe and damaging that an extreme form of discipline is appropriate. In Appellant's case, not only had he already engaged in similar misconduct, his actions were so deleterious to the operations of the S&WB that termination was warranted even in the absence of prior discipline.

L. Johnson
No. 8425

Judgment rendered this 8th day of September, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION



STEPHEN CAPUTO, COMMISSIONER

9-6-17
DATE

CONCUR


RONALD P. McCLAIN, VICE-CHAIRMAN

9-8-17
DATE


MICHELLE D. CRAIG, CHAIRPERSON

9-6-2017
DATE