



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION  
BRITTNEY RICHARDSON, CHAIRPERSON  
JOHN H. KORN, VICE-CHAIRPERSON  
CLIFTON J. MOORE, JR.  
MARK SURPRENANT  
RUTH WHITE DAVIS

Tuesday, December 27, 2022

AMY TREPAGNIER  
DIRECTOR OF PERSONNEL

Mr. Jeremiah Tobias

Re: **Jeremiah Tobias VS.**  
**Department of Public Works**  
**Docket Number: 9373**

Dear Mr. Tobias:

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 - 12/27/2022 - 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". The signature is written in a cursive style.

Doddie K. Smith  
Chief, Management Services Division

cc: Sarah McLaughlin Porteous, Int  
Elizabeth S. Robins  
Jay Ginsberg  
file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**JEREMIAH TOBIAS,  
Appellant**

**Docket No. 9373**

**v.**

**DEPARTMENT OF PUBLIC WORKS,  
Appointing Authority**

**DECISION**

Appellant, Jeremiah Tobias, brings this appeal pursuant to Article X, § 8 of the Louisiana Constitution seeking relief from a five-day suspension imposed by the Department of Public Works on May 4, 2022. (Ex. HE-1). DPW reduced this discipline to a three-day suspension by letter dated June 10, 2022. (Ex. HE-1). At all relevant times, Appellant was a permanent employee working as an Operator III. (Tr. at 8; Ex. HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on June 30, 2022. 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 October 13, 2022, and controlling Louisiana law.

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

**I. FACTUAL BACKGROUND**

On Saturday, February 2, 2022, Mr. Tobias was loading furniture into a truck in front of City Hall with two co-workers, Kennan Mitchell and James Montgomery. (Tr. at 8). Frustrated with the competing instructions about moving a desk, Mr. Tobias admitted he stated, "eat my dick." (Tr. at 8-9). Mr. Mitchell also testified that when Mr. Tobias said, "eat my dick," he was

“popping his penis in [Mitchell’s] direction.” (Tr. at 14). Kennan Mitchell testified that Mr. Tobias also stated that Mitchell and Montgomery could “bring [their] of asses upstairs and move it yourselves.” (Tr. at 14). Mr. Tobias testified that he felt bullied by his co-workers. (Tr. at 23).

DPW disciplined Mr. Tobias for violating CAO Police Memorandum #83, which requires employees to be courteous, civil, and respectful. (Ex. HE-1).

## 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

**3. DPW has shown cause for the discipline of Mr. Tobias**

Mr. Tobias has admitted making an offensive comment to his co-workers. This comment violates CAO Policy Memorandum #83. The Director of DPW testified that Mr. Tobias' conduct was disrespectful and negatively affected morale, impairing the efficient operation of DPW. (Tr. at 18).

**4. The penalty is commensurate with the violation.**

DPW's imposition of a three-day suspension is commensurate with the violation. Because Mr. Tobias offered no evidence of his work record or disciplinary record, the Commission declines to mitigate the penalty.

Therefore, Mr. Tobias' appeal is DENIED.

This the 27<sup>th</sup> day of December, 2022.

WRITER:

CJ Moore  
CJ MOORE (Dec 25, 2022 09:37 CST)

CLIFTON J. MOORE, JR., COMMISSIONER

CONCUR:

m c s  
Mark C. Surprenant (Dec 22, 2022 12:24 CST)

MARK SURPRENANT, COMMISSIONER

Ruth White Davis  
Ruth Davis (Dec 22, 2022 13:09 CST)

RUTH DAVIS, COMMISSIONER