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CITY CIVIL SERVICE COMMISSION

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LISA M. HUDSON
DIRECTOR OF PERSONNEL

Thursday, December 01, 2016

Mr. Alex Smith

Re: **Alex Smith VS.**
Department of Parks & Parkways
Docket Number: 8315

Dear Mr. Smith:

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 - 12/1/2016 - 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,

A handwritten signature in blue ink that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Ann McDonald
Elizabeth S. Robins
Victor Papai
file

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

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| ALEX SMITH vs. DEPARTMENT OF PARKS & PARKWAYS | DOCKET No.: 8315 |
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I. INTRODUCTION

Appellant, Alex Smith, 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 Department of Parks & Parkways for City of New Orleans, (hereinafter “DPP”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not DPP disciplined Appellant for sufficient cause. The undersigned Commissioners have reviewed the transcript of the appeal hearings that occurred on October 21, 2014 as well as the exhibits accepted into the record by the hearing examiner. After reviewing such testimony and evidence, we render the following decision and judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

Appellant, was a permanent, classified employee at all times relevant to the instant appeal. DPP issued Appellant a letter of reprimand for “having profanely threatened another Parks and Parkways employee on June 11, 2014.” (H.E. Exh. 1). DPP further alleges that

“threatening co-workers with violence and directing clearly abusive language toward fellow employees will not be tolerated.” *Id.*

First to testify on behalf of DPP was Terry Smith, a Grounds Keeper III within the DPP; Mr. Smith testified that he has approximately seven years of experience with the DPP. (Tr. at 9:13-18). Mr. Smith then proceeded to recount an incident that occurred on June 11, 2014 involving his girlfriend and Appellant. According to Mr. Smith, his girlfriend encountered Appellant on June 11, 2014, and, during this encounter, Appellant told Mr. Smith’s girlfriend that Mr. Smith was having a sexual relationship with another woman. (Tr. at 10:5-12:25).¹ Mr. Smith’s claimed that his girlfriend called him repeatedly following the encounter but he did not have an opportunity to speak with her until later in the day. After hearing his girlfriend’s account of her conversation with Appellant, Mr. Smith decided to confront Appellant. *Id.* at 13:8-11.

When Mr. Smith confronted Appellant about the comments Appellant allegedly made to Mr. Smith’s girlfriend, Appellant allegedly threatened Mr. Smith with bodily harm and in doing so used vulgar and offensive language. *Id.* at 13:11-14. Mr. Smith denies that he approached Appellant in a “hostile” manner. Following this interaction, Mr. Smith claims he approached a supervisor to report Appellant’s inappropriate and threatening conduct. *Id.* at 14:8-12.

Layman Thomas, a ground maintenance worker III for the DPP, testified that he witnessed the confrontation between Appellant and Mr. Smith. *Id.* at 18:16-19. Mr. Thomas stated that Mr. Smith approached Appellant at a DPP-operated site and confronted Appellant regarding the conversation Appellant had with Mr. Smith’s girlfriend. *Id.* at 18:20-20:22. This

¹ The Commission notes that, to the extent that the DPP intended to introduce Mr. Smith’s account of his girlfriend’s encounter with Appellant on June 11, 2014 for the truth of the matter asserted, such testimony is hearsay and we assign it no value as we do not view it as reliable. However, to the extent that Mr. Smith’s girlfriend’s claims prompted action on Mr. Smith’s part and impacted his choices on June 11, 2014, the veracity of the claims does not matter. Therefore, we will accept the testimony for the impact it had on Mr. Smith’s behavior.

confrontation quickly escalated after, according to Mr. Thomas, Appellant directed a racial slur at Mr. Smith at which time Mr. Smith “leaped over a trailer” and continued the confrontation. *Id.* at 20:15-22.

Timothy Lavelle, chief of operations for DPP, provided testimony regarding the DPP’s investigation into the alleged misconduct perpetrated by Appellant. As a preliminary matter, Mr. Lavelle acknowledged that “coarse language is not uncommon” and that “there’s heated exchanges from time to time” but that threats of violence are beyond the language or actions tolerated by DPP. *Id.* at 30:11-20.² Mr. Lavelle stated that he interviewed Mr. Smith and Mr. Thomas regarding the alleged incident and he found both men to be credible. Finally, Mr. Lavelle observed that Appellant’s threatening behavior compromised the working relationships within DPP as well as the general work environment. This in turn impaired the morale and efficiency of the workers. *Id.* at 31:23-32:14, 33:17-22, 34:16-25.

Appellant took the stand and denied making any threats towards Mr. Smith. Instead, Appellant alleged that Mr. Smith was the aggressor and physically pushed Appellant during the confrontation. *Id.* at 42:8-20. Appellant further alleged that he informed his supervisor, Mike D’Anastasio, about Mr. Smith’s violent confrontation, but neither Mr. D’Anastasio nor Mr. Lavelle ever followed up on this report. Mr. Lavelle could not confirm whether or not he interviewed Appellant as part of his investigation. *Id.* at 47:1-48:14.

III. LEGAL STANDARD

An appointing authority may only discipline a permanent classified employee if there exists sufficient cause for such discipline. La. Con. Art. X, § 8(A). If an employee believes that

² The Commission would encourage the DPP and all appointing authorities to strive for a higher level of professionalism than what Mr. Lavelle testified was common “coarse” language. While standards of conduct must be uniformly applied, the citizens of New Orleans and all city employees deserve to work in an environment that is civil and respectful.

his/her discipline is not supported by 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

DPP alleged that Appellant used vulgar and inappropriate language towards a co-worker and threatened to do violence to that co-worker. In support of its contention, DPP produced two witnesses, Mr. Smith and Mr. Thomas. The Commission is troubled by Mr. Smith’s decision to confront Appellant during work hours and on DPP-property regarding a personal matter. While inappropriate, Appellant’s reaction to this confrontation was foreseeable. In fact, the Commission is inclined to find that Mr. Smith’s actions constitute poor judgment at best and threatening behavior at worst. Nevertheless, two witnesses testified that Appellant used

inappropriate language and the Commission finds this testimony credible. Therefore, we find that the Appointing Authority has carried its burden with respect to this part of our analysis.

B. Impairment of Efficient Operation of Appointing Authority

Even though the DPP appears to tolerate a certain level of profanity in the workplace, the Commission finds that threats of violence rise above the level of typical “shop talk.” When employees do not feel safe in the workplace, an employer cannot expect a high level of performance. More importantly, the morale and general environment suffers as a result of such reckless and inappropriate conduct. Therefore, we find that Appellant’s threatening behavior impaired the efficient operation of OPP.

C. Discipline Commensurate with Offense

In conducting its analysis, the Commission must determine if the Appellant’s letter of reprimand was “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 *Staehle v. Dept. of Police*, 98–0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

A letter of reprimand is the lowest level of discipline an appointing authority can issue to a classified employee. Given the nature of Appellant’s misconduct, DPP contemplated a range of options before settling on a letter of reprimand. The Commission recognizes Mr. Lavelle’s testimony regarding the prevalence of “coarse” language and gives credit to Mr. Lavelle and the DPP for apparently taking this into account when issuing the discipline at issue here. Clearly, all appointing authorities have an interest in deterring any form of workplace violence. Given the totality of the circumstances before us, we find that a letter of reprimand was commensurate with Appellant’s misconduct.

V. CONCLUSION

Based upon the foregoing, the Commission hereby DENIES Appellant's appeal.

Judgment rendered this 30 th day of November, 2016.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION


MICHELLE D. CRAIG, CHAIRPERSON

11/15/2016
DATE


JOSEPH S. CLARK, COMMISSIONER

11/30/16
DATE


RONALD McCLAIN, VICE-CHAIRMAN

11/15/16
DATE