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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

Thursday, August 22, 2013

Mr. Wayne Johnson

Re: **Wayne Johnson VS.
Sewerage & Water Board
Docket Number: 8035**

Dear Mr. Johnson:

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 - 8/22/2013 - 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 that reads "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Marcia St. Martin
Yolanda Grinstead
Jay Ginsberg
file

WAYNE JOHNSON

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

SEWERAGE & WATER BOARD

DOCKET NO. 8035

The Sewerage & Water Board (“Appointing Authority”) employs Wayne Johnson (“Appellant”) as a Networks Senior Maintenance Technician I with permanent status. The Appointing Authority suspended the Appellant for sixty (60) day after its investigation determined that he directed an employee under his supervisor to perform an unsafe task that resulted in his injury.

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 November 8, 2012. 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.

Certain facts are not in dispute. On March 30, 2012, the Appellant was supervising a crew repairing a sewer line. To perform the work, a trench over five feet deep was excavated. For a trench that deep, the Appointing Authority requires that the crew sheet the hole, which means that wooden planks are mounted into the sides of the hole to create stable walls. The purpose of this procedure is to prevent the hole from collapsing. As a safety measure, no one is allowed in a trench over five feet deep that is not sheeted.

James Lewis testified that he was a member of the crew and that upon his arrival on the site the Appellant instructed him to go into the unsheeted trench to clean out a sewer pipe. While performing this task, the trench caved in on top of him causing injury. As of the date of the hearing, Mr. Lewis had not yet returned to work due to his injuries. Fred Washington was also

working on the crew and the only other person present besides the Appellant. He corroborated Mr. Lewis version of events; specifically stating that Mr. Lewis got into the trench at the direction of his supervisor.

The Appellant testified that Mr. Lewis got into the hole without his knowledge and that he never instructed Mr. Lewis to enter an unsheeted trench. He offered no explanation as to why the two crew members on the job would testify untruthfully.

LEGAL PRECEPTS

An employer cannot subject an employee who has gained permanent status in the classified city civil service to disciplinary action 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 make an independent judgment, 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.*

CONCLUSION

The Appointing Authority has established by a preponderance of evidence that it suspended the Appellant for just cause. Mr. Lewis and Mr. Washington testified credibly that the Appellant instructed Mr. Lewis to enter the trench knowing that the hole was not sheeted. As a consequence of the Appellant's failure to follow proper safety procedures, an employee under his supervision suffered injuries serious enough to prevent his return to work for an extended period of time.

W. Johnson
#8035

Considering the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 22nd DAY OF AUGUST, 2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION


AMY L. GLOVINSKY, COMMISSIONER

CONCUR:


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


JOSEPH S. CLARK, COMMISSIONER