



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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NEW ORLEANS LA 70112  
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## CITY CIVIL SERVICE COMMISSION

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MAYOR

Thursday, December 20, 2012

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Mr. Raymond C. Burkart, III  
19407 Front Street  
Covington, LA 70433

Re: **Beau Gast VS.  
Department of Police  
Docket Number: 7847**

Dear Mr. Burkart, III:

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 - 12/20/2012 - filed in the Office of the Civil Service Commission in Room 7W03, City Hall, 1300 Perdido Street, 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 cursive script, reading "Germaine Bartholomew".

Germaine Bartholomew  
Chief, Management Services Division

cc: Ronal Serpas  
Eraka Williams  
Jay Ginsberg

BEAU GAST

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7847

The Department of Police (“Appointing Authority”) employed Beau Gast (“Appellant”) as a Police Officer I with permanent status. By letter dated March 25, 2011, the Appointing Authority terminated the Appellant’s employment for violation of internal rules regarding Adherence to Law. Specifically, the Appointing Authority determined that the Appellant intentionally and falsely arrested Quanetia Davis and Kyana Boykins for prostitution loitering – solicitation of sex for money without legal authority, causing them to spend the weekend in jail prior to the court’s dismissal of the charge. (MCS 17271: 54:99 False Imprisonment).

Additionally, the Appointing Authority suspended the Appellant for forty days for violation of internal rules regarding Neglect of Duty (20 days) and False and Inaccurate Reports (20 days). The Appointing Authority’s investigation determined that the Appellant neglected his duty by failing to check the arrested individuals’ names via Appointing Authority’s computer system to determine whether either of them had a previous prostitution arrest and conviction. An element of the crime for which the individuals were arrested requires a prior prostitution conviction. Neither Ms. Davis nor Ms. Boykins had a previous arrest or conviction. The Appointing Authority also determined that the Appellant made false statements in Ms. Davis’ affidavit of arrest to justify the actions that he took. The affidavit of arrest provided:

Arrested subject was observed by undercover officer Marshall Scallon approaching and stopping several males in the 200 block of Bourbon. Arrested subject approached undercover officer but turned and walked away when she observed arresting officer approach.

The Appointing Authority's investigation determined that Officer Scallon was not working undercover and that he did not give the Appellant the justification for the arrest provided in the affidavit.

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 August 24, 2011. 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.

Both Ms. Davis and Ms. Boykins testified that they were walking down Bourbon Street when the Appellant arrested them without justification. Ms. Davis testified that the Appellant informed her that she was under arrest because an undercover police officer told him that she and her friend were soliciting. Ms. Davis and Ms. Boykins were handcuffed and left sitting on the curb until they were taken to Central Lockup, where they spent the weekend prior to their release the following Monday. Neither Ms. Davis nor Ms. Boykins had prior arrests or convictions for prostitution.

Officer Scallon testified that he worked in the Eighth District on the Bourbon Street promenade during the period that the incident occurred. Officer Scallon had no specific recall of the event that resulted in the Appellant's termination. However, Officer Scallon testified that he did not work undercover except for one occasion that did not involve prostitution. He also stated that he reviewed an incident report that he signed on the same night, along with his partner Officer Jacob Lathrop, involving a report of a lost or stolen wallet. Officer Scallon testified that if he was working with Officer Lathrop he

would have been in uniform and not working undercover. Thus, Officer Scallon concluded that he could not have reported to the Appellant that he observed Ms. Davis and Ms. Boykins engaged in criminal activity while working undercover.

The Appellant testified that he did not observe Ms. Davis and Ms. Boykins soliciting for prostitution. The Appellant insisted that Officer Scallon was in plain clothes working undercover on the night that he arrested Ms. Davis and Ms. Boykins and that he relied upon what he was told by Officer Scallon. He testified that his affidavit was true and accurate; otherwise he would not have arrested the subjects. The Appellant admitted that he failed to check whether Ms. Davis or Ms. Boykins had any prior prostitution convictions prior to arresting them. He testified that he did not know that a prior conviction was a prerequisite for the crime of prostitution loitering.

Supt. Ronal Serpas testified that he determined that termination was the appropriate penalty because the Appellant failed to properly enforce the law and deprived two citizens of their freedom.

#### 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 from 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.*

There is no evidence that Ms. Davis and Ms. Boykins engaged in any activity that would have caused the Appellant to arrest them for prostitution loitering. The Appellant testified that he relied upon another police officer's observations to effectuate the arrest. However, the other officer credibly testified that he was not in a position on the night in question to observe and report the crime for which the subjects were arrested. Thus, the Appointing Authority has established by a preponderance of evidence that the Appellant

B. Gast  
#7847

filed a false arrest affidavit to justify a false arrest and imprisonment. Consequently, the Appointing Authority had just cause to terminate the Appellant's employment.

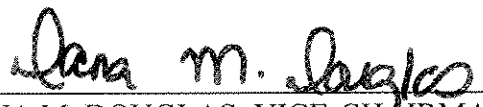
Accordingly, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 20th DAY OF  
DECEMBER, 2012.

CITY OF NEW ORLEANS  
CIVIL SERVICE COMMISSION

  
AMY L. GLOVINSKY, COMMISSIONER

CONCUR:

  
DANA M. DOUGLAS, VICE-CHAIRMAN

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