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CITY CIVIL SERVICE COMMISSION

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JOSEPH S. CLARK

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Thursday, December 20, 2012

Ms. Elmaree Thomas

Re: **Elmaree Thomas VS.
Department of Police
Docket Number: 7838**

Dear Ms. Thomas:

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
Isaka Williams
Jay Ginsberg
file

ELMAREE THOMAS

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7838

Elmaree Thomas (“Appellant”) is employed by the Department of Police (“Appointing Authority”) as a Police Dispatcher with permanent status. The Appellant received a letter of reprimand for violation of the Appointing Authority’s internal rules regarding Neglect of Duty. Specifically, the Appointing Authority’s internal investigation determined that the Appellant was sleeping on the job. The Appellant denied that she was sleeping on the job and received an additional three day suspension for violation of internal rules regarding Truthfulness.

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 October 6, 2011 and April 5, 2012. 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.

Police Communications Supervisor Andrea Deal supervises police dispatchers in the 911 Center. She testified that on April 23, 2010, she observed the Appellant sleeping during her assignment as an emergency dispatcher. Ms. Deal stated that she remained standing next to the Appellant for one minute to make sure she was not just momentarily sitting with her eyes closed. After a minute, Ms. Deal spoke to another dispatcher and the Appellant opened her eyes and spoke.

The Appellant denies sleeping on the job. She contends that she was awake with her eyes open while Ms. Deal stood by her desk.

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, 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 both 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.*

E. Thomas
#7838

CONCLUSION

The Appointing Authority has established by a preponderance of evidence that it reprimanded and suspended the Appellant for cause. Ms. Deal testified credibly that the Appellant was sitting motionless with her eyes closed for a minute and did not move until Ms. Deal spoke to another employee. She had no reason to fabricate the complaint and the Appellant's testimony that she was fully alert with her eyes open is less reliable.

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

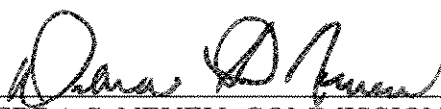
RENDERED AT NEW ORLEANS, LOUISIANA THIS 20th DAY OF
DECEMBER, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



JOSEPH S. CLARK, COMMISSIONER

CONCUR:



DEBRA S. NEVEU, COMMISSIONER



DANA M. DOUGLAS, VICE-CHAIRMAN