

ALDEN MOTON

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7812

Alden Moton ("Appellant") is employed by the Department of Police ("Appointing Authority") as a Police Officer II with permanent status. The Appellant received a ten day suspension for violation of the Appointing Authority's internal rules concerning Instructions from an Authoritative Source. The penalty was enhanced because it was the Appellant's third violation within a thirty-six month period. The Appellant also received a letter of reprimand for violation of the Appointing Authority's internal rule regarding Courtesy. The factual basis for the violation is contained in the second paragraph of the December 29, 2010 disciplinary letter, which provides as follows:

The investigation determined that on Thursday, April 1, 2010, at approximately 5:45 a.m., you were involved in a verbal altercation with Officer Elif Oliver. During the argument you violated radio protocol when you called Officer Oliver "lazy" via your Departmental radio.

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 May 11, 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.

The undisputed facts establish that the Appellant did not have a verbal altercation with Officer Oliver via his departmental radio. Apparently, Officer Felicia Billy who was working as the First Police District desk officer asked the Appellant via department radio to go to the Communications Division and pick up the "Repo 5" file which is a log

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of all the reports that were handled that particular day. The reports were used for COMSTAT and Officer Oliver was the COMSTAT officer. The Appellant reacted to the request from by stating to Officer Billy over the radio, "Why can't Officer Oliver go get the repo herself. She has to a take home car and she needs to stop being lazy." Apparently Officer Oliver overheard the Appellant's radio communication and confronted him when she returned to the station.

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

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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.*

The Appointing Authority has established by a preponderance of evidence that it reprimanded and suspended the Appellant for cause and that the penalty was commensurate with the violation because it was his third violation which carries an enhanced penalty. Instructions from an Authoritative Source, Chapter 81.1.11 Radio Protocol, paragraph 4 provides that, "...Employees shall not use obscene language or degrading remarks on the radio." The Appellant's remark that a fellow officer was lazy was degrading and violated the internal policy.

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

RENDERED AT NEW ORLEANS, LOUISIANA THIS 27TH DAY OF APRIL,

2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



JOSEPH S. CLARK, COMMISSIONER

CONCUR:



AMY L. GLOVINSKY, COMMISSIONER



DEBRA S. NEVEU, COMMISSIONER