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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

Tuesday, July 02, 2013

Mr. Kevin Boshea
2955 Ridgelake Dr., Suite 207
Metairie, LA 70002

Re: **Keyalah Bell VS.
Department of Police
Docket Number: 8047**

Dear Mr. Boshea:

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 - 7/2/2013 - 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: Ronal Serpas
Elizabeth S. Robins
Jay Ginsberg

KEYALAH BELL

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

DOCKET NO. 8047

The Department of Police (“Appointing Authority”) employed Keyalah Bell (“Appellant”) as a police officer with permanent status. The Appointing Authority terminated the Appellant after its investigation determined that the Appellant violated internal rules concerning Adherence to Law. Specifically, the Appointing Authority found that on May 6, 2011 the Appellant violated La. R.S. 14:100 (“Hit and Run”) and La. R.S. 14:98 (“operating a vehicle while intoxicated”). A third violation for “using alcohol while off duty” was also sustained.

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 February 20, 2013 and February 28, 2013. 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 Form DI-1: Initiation of a Formal Disciplinary Investigation was completed on May 9, 2011. However, Sgt. Daryl Watson testified that he did not begin an administrative investigation until the Appellant received a *Nolle Prosequi* from the Traffic Court of New Orleans on October 3, 2011. On October 20, 2011, Sgt. Watson requested and received a 60 day extension of time to complete his investigation. On November 9, 2011, the Appointing Authority issued and the Appellant received notice of a pre-disciplinary hearing based upon Sgt. Watson’s recommended disposition.

The Appellant contends that the Commission should grant her appeal because the Appointing Authority failed to comply with the requirements contained in La. R.S. 40:2531(B)(7), routinely referenced as the “Sixty Day Rule”, which requires that the Appointing Authority complete its investigation within thirty (30) days of the initiation of the complaint . The Appellant relies upon *Robinson v. Department of Police*, 2012-CA-1039 (La. App. 4th Cir. 1/16/13). In *Robinson*, the appellate court rejected the Appointing Authority’s argument that the criminal investigation suspended the sixty-day period to complete the administrative investigation, finding that “nothing in La. R.S. 40-:2531 allows for the suspension of the time period for the administrative investigation to be completed once it begins to run.” *Id.* at 1279. The appellate court rejected the Appointing Authority’s interpretation of the statute finding that “to adhere to the [Appointing Authority’s] argument would disembowel the Police Officer’s Bill of Rights.” *Id.*

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 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.*

FINDINGS

The Appointing Authority failed to complete its administrative investigation within the statutory time period. The investigation began on May 9, 2011, and ended on November 9, 2011. Thus, we are compelled to grant the Appellant's appeal based upon the Appointing Authority's failure to follow the requirements of *La. R.S. 40:2531*.

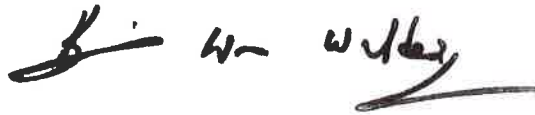
THEREFORE AND ACCORDINGLY, the appeal is GRANTED and the Appointing

K. Bell
#8047

Authority is ordered to reinstate the Appellant with all back pay, costs and emoluments of employment.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 2nd DAY OF JULY, 2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION

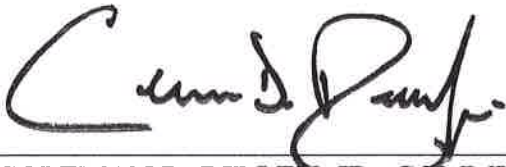


REV. KEVIN W. WILDES, S.J., CHAIRMAN

CONCUR:



JOSEPH S. CLARK, COMMISSIONER



COLEMAN D. RIDLEY, JR., COMMISSIONER