



MITCHELL J. LANDRIEU
MAYOR

CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
ROOM 7W03 CITY HALL
NEW ORLEANS LA 70112
(504) 658-3500
FAX NO. (504) 658-3599

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DIRECTOR OF PERSONNEL

Friday, September 21, 2012

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

Re: **Steven Lewis Jr. VS.**
Department of Police
Docket Number: 7874

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 - 9/21/2012 - 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
Victor Papai
Jay Ginsberg

STEVEN LEWIS

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7874

Steven Lewis ("Appellant") is employed by the Department of Police ("Appointing Authority") as a Police Officer III with permanent status. The Appellant received a five day suspension for violation of the Appointing Authority's internal regulation concerning Instructions from an Authoritative Source and Neglect of Duty. Specifically, the Appointing Authority determined that the Appellant failed to follow his supervisor's instructions on three occasions, and by failing to do so, neglected his duty.

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 4, 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 Appointing Authority states in the second paragraph of the disciplinary letter that on Sunday September 26, 2010 and Tuesday October 26, 2010, the Appellant failed to obey a verbal instruction from his supervisor, Sgt. Sterling Williams, to correct a traffic accident report and issue a traffic citation to the at-fault driver. The Appellant testified that, while he and his supervisor disagreed as to the assessment of fault in the traffic accident investigation, he made the corrections once instructed to do so. Sgt. Andre LeBlanc investigated the complaint and confirmed that the Appellant followed this instruction.

The Appellant also testified that he made efforts to issue a citation to one of the drivers that his supervisor determined was at fault. However, Sgt. LeBlanc stated that the Appellant could have made additional efforts. This failure to do more was the only violation found by Sgt. LeBlanc. A review of the record confirms that the Appellant made reasonable efforts to issue the citation. The disciplinary letter suggests that the Appellant's failure in this regard was an act of defiance by the Appellant towards his supervisor. However, the record confirms that this was a minor matter that was not closely supervised. The Appellant reported his efforts to issue the citation in his report and he received no further instructions. Nonetheless, a formal investigation ensued.

The third paragraph of the disciplinary letter alleges that the Appellant failed to follow written instructions regarding the same investigation. The written instructions memorialized the verbal instructions conveyed to the Appellant by Sgt. Williams. As noted above, the Appellant followed those instructions. The Appellant testified without contradiction that he followed the instructions and submitted the report in a timely manner.

The fourth paragraph of the disciplinary letter states that Sgt. Williams reviewed the report and discovered the corrections were not completed and a citation was not issued. It appears that the additional correction was to complete a diagram consistent with Sgt. Williams' conclusions as to how the accident occurred. The Appellant made those corrections. He completed his report and, while he did not place the report in Sgt. Williams' hands, he followed proper procedure and submitted his report through proper channels. The report was reviewed and approved by another supervisor. Sgt. Williams testified that he did not see the report and had no knowledge of the Appellant's efforts.

LEGAL PRECEPTS

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer 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 that the complained of activity occurred 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.

The disciplinary letter contains allegations not supported by the record. The investigator found that the Appellant violated internal rules despite a clear record of reasonable efforts to follow those rules. Sgt. Williams acted precipitously by filing a

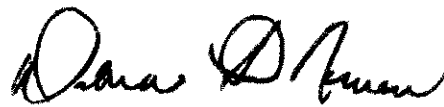
S. Lewis
#7874

formal complaint against the Appellant without first making reasonable efforts to confirm his belief that a complaint was justified. While Sgt. Williams' actions were based upon his good faith belief that the Appellant disobeyed his instructions, he was mistaken and efforts could and should have been made to confirm this belief before filing the complaint. Better communications by all parties involved would have saved the time and effort of an internal investigation and a formal hearing.

Considering the foregoing, the Appellant's appeal is GRANTED. The Appointing Authority is ordered to return to the Appellant five days of back pay and emoluments of employment.

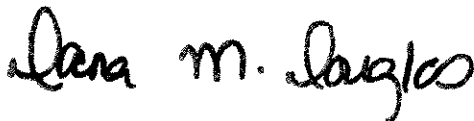
RENDERED AT NEW ORLEANS, LOUISIANA THIS 21st DAY OF
SEPTEMBER, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



DEBRA S. NEVEU, COMMISSIONER

CONCUR:



DANA M. DOUGLAS, VICE-CHAIRMAN



AMY L. GLOVINSKY, COMMISSIONER