



MITCHELL J. LANDRIEU
MAYOR

CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
SUITE 900 – 1340 POYDRAS ST.
NEW ORLEANS LA 70112
(504) 658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J.,
CHAIRMAN
DEBRA S. NEVEU
AMY L. GLOVINSKY
JOSEPH S. CLARK

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Tuesday, May 07, 2013

Mr. Darvel Burgess

Re: **Darvel Burgess VS.
Sewerage & Water Board
Docket Number: 7988**

Dear Mr. Burgess:

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 - 5/7/2013 - 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, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Marcia St. Martin
Yolanda Grinstead
Jay Ginsberg
file

DARVEL BURGESS

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

SEWERAGE & WATER BOARD

DOCKET NO. 7988

The Sewerage & Water Board (“Appointing Authority”) employed Darvel Burgess (“Appellant”) as a Network Maintenance Technician I with permanent status. The Appointing Authority terminated the Appellant after determining that he was unwilling or unable to perform the duties of his position.

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 4, 2012. 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 relevant facts are not in dispute. The Appellant suffered a work related injury on October 13, 2008 and was on unpaid workers’ compensation leave until his termination by letter dated March 6, 2012. The Appellant contends that he is totally disabled and unable to perform his duties. The Appointing Authority contends that the Appellant was released to return to work in a light duty capacity and unwilling to perform his duties.

The Appellant would like the Commission to direct the Appointing Authority to place him on disability leave and facilitate the authorization of a medical retirement.

LEGAL PRECEPTS

An employer cannot subject an employee who has gained permanent status in the classified city civil service to disciplinary action 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 make an independent judgment, 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.*

CONCLUSION

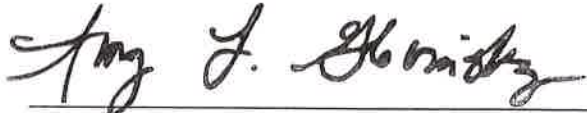
The Appellant seeks a remedy that the Commission cannot provide. Issues of retirement are not within the jurisdiction of this body. The only issue before the Commission is whether the Appointing Authority terminated the Appellant for cause. The Appointing Authority has established by a preponderance of evidence that it terminated the Appellant because the Appellant was either unable or unwilling to perform the duties of his position.

D. Burgess
#7988

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

RENDERED AT NEW ORLEANS, LOUISIANA THIS 7th DAY OF MAY, 2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION

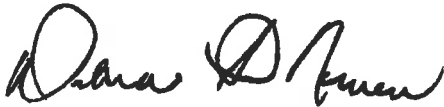


AMY L. GLOVINSKY, COMMISSIONER

CONCUR:



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



DEBRA S. NEVEU, COMMISSIONER