



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
AMY L. GLOVINSKY
JOSEPH S. CLARK
COLEMAN D. RIDLEY, JR.

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Friday, August 09, 2013

Mr. Robert H. Urann
2540 Severn Avenue, Suite 400
Metairie, LA 70002

Re: **John Klumpp III VS.
Department of Fire
Docket Number: 8056**

Dear Mr. Urann:

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 - 8/9/2013 - 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: Charles Parent
Shawn Lindsay
Jay Ginsberg

JOHN KLUMP

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF FIRE

NO. 8056

John Klump (“Appellant”) was employed by the Department of Fire (“Appointing Authority”) as a Fire Captain with permanent status. The Appointing Authority demoted the Appellant to an Apparatus Operator following a determination that he violated internal rules of the New Orleans Fire Department requiring that employees act reasonably and not commit any act that brings reproach upon themselves or the Department. More specifically, as set forth in the August 17, 2012 disciplinary letter, the Appointing Authority determined that the Appellant failed to expeditiously provide medical assistance to a thirteen (13) year old girl who was having breathing difficulties.

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 21, 2013. 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 material facts are not in dispute. Prior to his demotion, the Appellant served as a Fire Captain for twelve years. On June 8, 2012, the Appellant and his crew were dispatched to a medical call concerning a thirteen year old girl complaining of shortness of breath. As his truck approached the dispatched location, he observed a female citizen standing by her vehicle waving her arms. At approximately the same time, he received an unusual warning from the dispatcher advising him that the address was a “No Code 4”

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call. "Code 4" means the location is safe. A "No Code 4" means that the location is not safe and to wait for the police before proceeding.

The Appellant parked his vehicle across the street from the dispatched location and left his crew in order to investigate. A female identified as the grandmother was standing by a vehicle containing the young girl who was in distress. The Appellant informed the grandmother that they had received a "No Code 4" dispatch and was attempting to explain to her what that meant when he spotted a police vehicle approaching from four or five blocks away. As soon as he observed the police vehicle approaching, he instructed his subordinates who were waiting by their vehicle to examine the young girl. The Appellant estimated that the entire sequence of events took less than two minutes. However, the grandmother, who was already agitated, refused medical treatment, drove away from the scene to a hospital, and filed a complaint alleging that the Appellant refused to provide treatment.

The Appointing Authority concluded that the Appellant should have determined without hesitation that the area was safe and immediately began treating the young girl. While acknowledging that the circumstances were ambiguous and unusual, the Appointing Authority concluded that the Appellant's actions brought reproach upon the department and justified demoting the Appellant from his supervisory position. The Appointing Authority acknowledged that the Appellant had no previous command issues and was not aware of whether the Appellant had previously been faced with circumstances where he was dispatched to a "No Code 4" dispatch.

The reason that the circumstances were ambiguous and unusual was that the "No Code 4" dispatch resulted from dispatcher error. According to the testimony of Barbara

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Ireland, the Director of Communications / 911 Center, a relatively new and inexperienced dispatcher received the distress call from the grandmother. She testified further that the grandmother was confrontational on the telephone and the dispatcher mistakenly determined that the scene was not safe and communicated by radio that the scene was “No Code 4”. Generally, a “No Code 4” designation is reserved for circumstances where someone is armed or where gun fire was present. Also, the “No Code 4” designation is usually communicated during the initial dispatch, not as the responder is arriving on the scene.

The Appellant testified that, although there was no apparent danger when he arrived on the scene, he was still responsible for his subordinates’ safety. Thus, he wanted to make sure the scene was safe before potentially exposing them to an unknown danger.

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

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derelection. *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 the occurrence of the complained of activity by a preponderance of the evidence 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.*

CONCLUSIONS

The Appointing Authority has failed to establish by a preponderance of evidence that it disciplined the Appellant for good cause. The Appointing Authority failed to consider mitigating circumstances before taking disciplinary action. The Appellant acted with appropriate caution, having received a "No Code 4" signal from a dispatcher. The signal turned out to be erroneous, resulting in minimal delay. While, in the instant case, the citizen did not receive services in the manner or in as timely a fashion as she should have expected, every failure does not warrant a punishment; particularly one as draconian as demoting someone who has otherwise performed his duties acceptably during his entire tenure.

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Considering the foregoing, the Appellant's appeal is GRANTED. The Appointing Authority is ordered to retroactively return the Appellant to his position as a Fire Captain with all emoluments of employment and costs of litigation.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 9th DAY OF AUGUST,
2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



JOSEPH S. CLARK, COMMISSIONER

CONCUR:



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



AMY L. GLOVINSKY, COMMISSIONER