



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
BRITTNEY RICHARDSON, CHAIRPERSON
CLIFTON J. MOORE, VICE-CHAIRPERSON
JOHN KORN
MARK SURPRENANT
RUTH WHITE DAVIS

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Tuesday, April 13, 2021

Mr. Bobby Dantzler

Re: **Bobby Dantzler VS.
Department of Sanitation
Docket Number: 9014**

Dear Mr. Dantzler:

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 - 4/13/2021 - 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,


Stacie Joseph
Management Services Division

cc: Matt Torri
Elizabeth S. Robins
Jay Ginsberg
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

BOBBY DANTZLER
Appellant

v.

Docket No. 9014

DEPARTMENT OF SANITATION
Appointing Authority

DECISION

Appellant, Bobby Dantzler, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his one-day suspension imposed by the Department of Sanitation on March 29, 2019. (See Exhibit HE-1). At the time he was suspended, Appellant was employed as a Worker I and had permanent status as a classified employee. A Hearing Examiner, appointed by the Commission, presided over a hearing held on June 20, 2019. At this hearing, both parties had an opportunity to call witnesses and present evidence. The Hearing Examiner provided the Commission with his advisory report dated September 9, 2019.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the June 20, 2019, hearing, all exhibits submitted at the hearing, the Hearing Examiner's September 9, 2019, report, and controlling Louisiana law. For the reasons set forth below, we DENY the appeal.

I. ANALYSIS

It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, the appointing authority has the burden of proving by a preponderance of the evidence: 1) the occurrence of the complained of activity, and 2) that the conduct complained

of impaired the efficiency of the public service in which the appointing authority is engaged. *Gast v. Dep't of Police*, 2013-0781 (La. App. 4 Cir. 3/13/14), 137 So. 3d 731, 733 (quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094). The Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance of evidence that it had good or lawful cause for suspending the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d 106 (La. 1984).

Exhibit HE- 1, dated March 29, 2019, indicates that the Appellant received a one day suspension not only for leaving his assigned work area on March 16, 2019 without permission to use a hotel restroom, but also for then being disrespectful to a supervisor when discussing why he left the work area. Overall, the evidence presented at the June 20, 2019, hearing substantiates the information contained in Exhibit HE-1 and supports the recommendation of the Hearing Examiner as set forth in his September 9, 2019 advisory report.

More specifically, it is undisputed that the Appellant left his assigned work area to use a restroom at a local hotel. The Appellant testified that he went to use the restroom during a break and did not need anyone's permission to do so, since he was on one of his 15 minute breaks. (Tr. at 23, 25, and 94). He testified he was only gone for no more than 20 minutes. (Tr. at 115). He also denies being disrespectful to Raymond Toefield or to anyone upon his return to the work area. (Tr. at 123).

Appellant's above referred to testimony is contradicted by the testimony provided by Sanders Holmes, Raymond Toefield, and Cynthia Sylvain-Lear. Holmes and Sylvain-Lear both convincingly testified that Appellant could not just walk off a work area as he claims. Instead, for safety and other reasons, he needed to first communicate his request to leave the work area to a supervisor or lead crew person. (See Tr. at 30 and 73).

Moreover, Sylvain-Lear testified, as set forth in HE-1, that Appellant was away from the work area for about an hour. (Tr. at 72). Given what the Appellant testified to as to what he did from leaving the work area to his return after finally finding a restroom to use, the Appellant's estimate that he was only gone about 15-20 minutes is simply not believable.

Finally, both Holmes and Toefield clearly testified as to the inexcusable disrespect which Appellant showed to Toefield when Toefield asked Appellant where he had been upon his return to the work area. (Tr. at 30, 48-49). Given all the circumstances, the testimony of Sanders and Toefield is more believable than that of the Appellant.

Given the entire record in this matter, the undersigned Commissioners find that the Appointing Authority has proved by a preponderance of the evidence: 1) the occurrence of the complained of conduct (leaving the work area without permission and disrespectful conduct towards Toefield) as set forth in HE-1; 2) the proven complained of conduct impaired the efficiency of the Department of Sanitation and 3) the discipline (one day suspension) was appropriate and commensurate given the infractions committed by the Appellant. Appellant's appeal is DENIED.

This the 13th day of April, 2021

WRITER:

Mark C. Surprenant
Mark C. Surprenant (Mar 24, 2021 18:08 CDT)

MARK SURPRENANT, COMMISSIONER

CONCUR:

Brittney Richardson
Brittney Richardson (Apr 5, 2021 07:56 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

J. H. Korn
J. H. Korn (Apr 13, 2021 13:51 CDT)

JOHN KORN, COMMISSIONER

BOBBY DANTZLER

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF SANITATION

NO. 9014

HEARING EXAMINER'S REPORT

The Department of Sanitation ("Appointing Authority") employs Bobby Dantzler ("Appellant") as a Worker I with permanent status. The Appointing Authority suspended the Appellant for one (1) day. Specifically, the Appointing Authority determined that the Appellant left his assigned work area for an extended period of time without notifying anyone, and reacted in an insubordinate manner when questioned by his supervisor upon returning to his assigned work area.

Certain facts are not in dispute. On March 16, 2019, the Appellant was part of a work crew assigned to pick up trash underneath the North Claiborne Avenue overpass where garbage accumulates as a consequence of large concentrations of homeless people camping in the area. It was Saturday and the Appellant was not working his regular weekly assignment. Sometime in the morning, the Appellant left his tools underneath the overpass between Canal Street and Iberville Street and headed down Canal Street to use the bathroom. The Appellant did not inform anyone that he was taking a bathroom break and, upon his return to his work area, he was questioned by his supervisor, Raymond Toefield. As a result of the exchange that ensued between the Appellant and Mr. Toefield, the Appellant was taken off of the trash route for the remainder of

B. Dantzer
#9014

the day. Mr. Toefield reported the incident and, based upon its investigation, the Appointing Authority suspended the Appellant for one day.

The Appellant testified that he left his work area to use the bathroom at the Townplace Suites on Canal Street, which was very near his work location. However, the Doorman would not let him in because he was not a guest. As a consequence, the Appellant ventured further down Canal Street to the Roosevelt Hotel, which was approximately a half a mile from his work area.

While the Appellant was gone, the work crew's team leader, Sanders Holmes, received a call from Irene Taylor, a lead person, informing him that after driving up and down the work route, she could not find the Appellant, only his tools. Mr. Holmes contacted Raymond Toefield, a supervisor, and informed him that they could not find the Appellant. In response, Mr. Toefield drove to the location where the Appellant left his tools and waited. Eventually, Mr. Toefield and Mr. Holmes observed the Appellant walking down Canal Street towards them. The versions of events that resulted in disciplinary action diverge from this point forward.

According to the disciplinary letter, the Appellant was disciplined for two reasons. First, he left his assigned location for an extended period of time and, second, because of his reaction towards his supervisor when questioned about his extended absence. Mr. Toefield testified that he was contacted about the Appellant's absence at approximately 9:20 am and observed him returning approximately an hour later. When he questioned the Appellant regarding the

B. Dantzer
#9014

incident, the Appellant told him he left to go to the bathroom, describing his attempts to use one hotel bathroom, but ending up going to the Roosevelt Hotel. According to Mr. Toefield, when he attempted to counsel the Appellant regarding proper protocol, telling him that he needed to let someone know when he was taking a bathroom break, the Appellant reacted in a defiant and insubordinate manner, stating he could take a break when he wanted and that he did not have to tell Mr. Toefield "nothing" because "you're not my supervisor. Ms. Shavette is my supervisor."¹ At this point, Mr. Toefield removed the Appellant from the assignment. Mr. Holmes was also present during the exchange and confirmed Mr. Toefield's version of events.

The Appellant testified that he left to use the bathroom at approximately 9:20 am and returned to his work area at approximately 9:45 am. He acknowledged that Mr. Holmes and Mr. Toefield were waiting for him when he returned and questioned him regarding his whereabouts. The Appellant testified that he had a conversation with Mr. Toefield, explaining to him that it was an emergency and he had to take a break. He denies that he was disrespectful or that he told Mr. Toefield that he did not have to listen to him because he was not his supervisor. The Appellant acknowledged that Mr. Toefield was his supervisor on that day and that he would not have told him otherwise. The Appellant

¹ Shavette Joseph is the Appellant's assigned supervisor during the regular workweek. She was not working on the day in question and Mr. Toefield was the Appellant's supervisor as a consequence.

B. Dantzler
#9014

testified that he was taking a break and that he did not have to inform anyone that he was leaving his work location.

CONCLUSION

The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for cause and that the penalty was commensurate with the violation. The Appellant's contention that he was only gone for twenty-five minutes is not credible considering the described events and the distance (one mile) the Appellant walked to and from the Roosevelt Hotel. More importantly, after disappearing for almost an hour, the Appellant failed to listen to his supervisor and afford him the respect he deserved during their verbal exchange. Clearly, it is important that employees who are part of a working crew understand that they are part of a team and that when team members fail to fulfil their role and respect the chain of command, it impacts the efficiency of the entire operation.

Based upon the foregoing, the Appellant's appeal should be DENIED.

September 9, 2019

DATE

Jay Alan Ginsberg

HEARING EXAMINER