

PHIL JOHNSON

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

SEWERAGE AND WATER BOARD

NO. 8157

The Sewerage and Water Board (“Appointing Authority”) employed Phil Johnson (“Appellant”) as a Utilities Plant Worker with permanent status. The Appointing Authority terminated the Appellant on March 29, 2013 pursuant to Rule IX of the Civil Service Rules determining that he was unable or unwilling to return to work. The City of New Orleans Civil Service Commission Rule IX, Section 1: Maintaining Standards of Service provides:

1.1 When an employee in the classified service is unable or unwilling to perform the duties of his/her position in a satisfactory manner, or has committed any act to the prejudice of the service, or has omitted to perform any act it was his/her duty to perform, or otherwise has become subject to corrective action, the appointing authority shall take action warranted by the circumstances to maintain the standards of effective service. The action may include one or more of the following:

- 1) removal from the service.*
- 2) involuntary retirement.*
- 3) reduction in pay within the salary range for the employee’s classification, subject to the provision of Rule IV, Section 8.*
- 4) demotion to a position of a lower classification that the employee is deemed by the appointing authority and the Director to be competent to fill, accompanied by a reduction in pay, which is within the salary range for the lower classification, subject to the provisions of Rule IV, Section 8.*
- 5) suspension without pay not exceeding one hundred twenty (120) calendar days.*
- 6) fine.*

The Appellant timely appealed his termination. The appeal 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 May 7, 2014. 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.

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The appellant was injured at work on November 28, 2012. Injuries sustained were head bruises and strains to his back and shoulder. The appellant also complained of headaches. The appellant was sent for medical treatment of his injuries with an initial visit after his injury, and subsequent visits on December 4, 7, and 12. The appellant missed his appointment on December 28 because he said he slept through it. The appellant did not contact the medical provider or the appointing authority's Worker's Compensation manager to reschedule the appointment that he missed. The appellant also did not contact his employer or medical provider to schedule appointments during January and February of 2013. The appellant denied that he knew he was supposed to contact anyone and make appointments. The appellant admitted that he did not receive any medical treatment for his injuries after December 12, 2012.

Ms. Linda Paisant, the Appointing Authority's Workers' Compensation coordinator, stated that she managed all of the compensation files, including the appellants. Her duties included communicating with physicians and employees, as well as coordinating medical appointments. After being injured, the appellant was placed on Workers' Compensation, and he was provided monetary benefits as well as medical and therapy treatment. Ms. Paisant discussed the appellant's medical treatment, and stated that his projected MMI date (Maximum Medical Improvement) was December 25, 2012.

Ms. Paisant received information from the medical provider that the appellant had missed his appointment set for December 28. Ms. Paisant stated that she attempted to contact the appellant by phone several times in January and February of 2013 regarding his medical status. Ms. Paisant stated that she left detailed messages asking the appellant to contact her. The appellant did not respond to her contact attempts. Ms. Paisant then

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sent a registered letter to the appellant on February 20. In response to the letter, the appellant called the office and spoke to Ms. Paisant on March 4 stating that he wanted to return to work. The appellant was told that he had to be medically cleared by his doctor before he could return to work. The appellant then scheduled a medical appointment for March 13. The appellant did not go to that appointment. Ms. Paisant said that the appellant never rescheduled the March 13 appointment.

Mr. Kevin Burfect was called and stated that he was the appellant's senior supervisor. Mr. Burfect requested a Pre-Termination hearing to determine the appellant's ability to return to work. The hearing was held on March 15, 2013, and the appellant appeared. The appellant did not provide any explanation for his lack of action, other than saying he had "personal problems".

Mr. Burfect stated that the appellant's absence from his job impacted the agency and his fellow workers in several different ways. The appellant had to have other workers substitute for him and take his place. This placed a strain on the other workers, and resulted in a financial impact on the agency because overtime had to be paid. After a period of time the coworkers turned down opportunities to work in the appellant's place because of fatigue. At that point, higher level employees had to be used, and this was an additional impact on the agency payroll.

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).

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The employee may appeal from such a disciplinary action to the 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.*

CONCLUSION

The Appointing Authority has established by a preponderance of evidence that the appellant was unable or unwilling to return to work. The appellant did not go to any medical appointment after December 12, 2012 until after his termination. Even when informed that he needed to be medically cleared in order to return to work, the appellant did not see his doctor. It is clear that the appellant did not follow up with his medical treatment, and made no effort to determine what treatment was needed. The Appellant

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failed to pursue medical treatment that could have allowed his return to work. Even when given an appointment on March 13, prior to his Pre-Termination hearing, the appellant failed to go to or reschedule his medical appointment. The Appointing Authority established that the appellant's absence had a deleterious effect upon his colleagues who had to work during his absence, as well as a financial impact on the agency because of overtime pay. The Appointing Authority disciplined the Appellant for cause. Regarding the termination, we cannot say that the Appointing Authority abused its discretion by terminating the appellant.


Based upon the foregoing, the Appellant's appeal is DENIED.


RENDERED AT NEW ORLEANS, LOUISIANA THIS 20th DAY OF October, 2015.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION


MICHELLE D. CRAIG, CHAIRMAN

CONCUR:


TANIA TETLOW, COMMISSIONER


JOSEPH S. CLARK, COMMISSIONER