



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
BRITTNEY RICHARDSON, CHAIRPERSON
JOHN H. KORN, VICE- CHAIRPERSON
CLIFTON J. MOORE
MARK SURPRENANT
RUTH WHITE DAVIS

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Wednesday, December 21, 2022

Ms. Jacqueline Goff

Re: **Jacquelle Goff VS.
New Orleans Public Library
Docket Number: 9369/9370**

Dear Ms. Goff:

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 - 12/21/2022 - 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 "Stacie Joseph".

Stacie Joseph
Management Services Division

cc: Emily Painton
Jonathan Adams
Jay Ginsberg
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**JACQUELLE GOFF,
Appellant**

Docket No. 9369/9370

v.

**NEW ORLEANS PUBLIC LIBRARY,
Appointing Authority**

DECISION

Appellant, Jacqueline Goff, brings this appeal pursuant to Article X, § 8 of the Louisiana Constitution and this Commission's Rule II, § 10.1 (whistleblower) seeking relief from her April 26, 2022, two-day suspension.¹ (Ex. HE-1). At all relevant times, Appellant was a permanent employee working as a Library Associate I. (Tr. at 8; Ex. HE-1)). A Hearing Examiner, appointed by the Commission, presided over a hearing on June 7, 2022. At this hearing, both parties had an opportunity to call witnesses and present evidence.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the hearing, all exhibits submitted at the hearing, the Hearing Examiner's report dated October 5, 2022, and controlling Louisiana law.

For the reasons set forth below, both of Ms. Goff's appeals are DENIED.

I. FACTUAL BACKGROUND

On April 26, 2022, the New Orleans Public Library disciplined Ms. Goff with a five-day suspension for leaving work early without permission on February 18, 2022; reporting to work early without permission on April 7, 2022; leaving work early without permission on April 22,

¹ NOPL originally suspended Ms. Goff for five days, but during the course of the hearing, NOPL withdrew the discipline based on Ms. Goff's complaints about co-employees.

2022, failing to follow the instructions of her supervisor on April 20, 2022; and for making unsubstantiated complaints about fellow employees. (Ex. HE-1). During the hearing, NOPL withdrew the discipline of three days for making inflated accusations against co-workers. (Tr. at 82). Therefore, the only issues before the Commission relevant to the disciplinary appeal are whether NOPL had cause to discipline Ms. Goff for leaving work early without permission on February 18, 2022, and April 22, 2022; clocking in early on April 7, 2022; and failing to follow the instructions of her supervisor on April 20, 2022. (Ex. HE-1).

NOPL imposed a one-day suspension against Ms. Goff for “flexing” her schedule on February 18, April 7, and April 22, and a second one-day suspension for failing to follow the instruction of her supervisor to re-shelve books. (Tr. at 74). Ms. Goff admitted she left work without permission on February 18, 2022. (Tr. at 162). Ms. Goff’s supervisor explained that she had initially granted this request, but ultimately denied permission to leave early two weeks before February 18 because of the needs of NOPL. (Tr. at 9, 30). On February 21, 2022, NOPL gave Ms. Goff a non-disciplinary counseling for leaving early on February 18. (Ex. NOPL-1). As for clocking in early on April 7, 2022, Ms. Goff testified that she understood an email announcing a visit by the Director on April 7, 2022, as a directive to clock in early. (Tr. at 165-66). Ms. Goff’s supervisor also testified that Ms. Goff left early without permission on April 22. (Tr. at 12). Ms. Goff testified she was “flustered” and misunderstood the schedule on April 22. (Tr. at 167-68).

As for the insubordinate behavior, Ms. Goff also admitted that the person acting as her supervisor, Luke Sirinides, instructed her to shelve books on April 20, 2022. (Tr. at 169). Ms. Goff testified that she failed to shelve books because of a competing instruction from her absent supervisor and because her pain level prevented her from shelving books. (Tr. at 174). Ms. Goff had a contemporaneous text exchange with her supervisor, who directed her to follow Mr.

Sirinides' instruction to re-shelve books. (Ex. NOPL-2; Tr. at 20). Although NOPL accommodates Ms. Goff's lifting restriction, Ms. Goff admitted she can lift six to eight books to re-shelve. (Tr. at 172). Ms. Goff's supervisor testified that shelving books does not require heavy lifting or frequent bending. (Tr. at 23).

Ms. Goff alleges that she complained of illegal activity when she accused her supervisor of spreading the supervisor's legs open during a meeting about a performance improvement plan on April 19, 2022. (Tr. at 174). Ms. Goff's supervisor denies the accusation that she spread her legs. (Tr. at 27).

II. ANALYSIS

A. Legal Standard for Commission's Review of Discipline

1. The Appointing Authority must show cause for discipline

“Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A).” *Whitaker v. New Orleans Police Dep't*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep't of Police*, 2000-1682 (La. App. 4 Cir. 5/9/01)). “Legal cause exists whenever an employee's conduct impairs the efficiency of the public service in which the employee is engaged.” *Id.* “The Appointing Authority has the burden of proving the impairment.” *Id.* (citing La. Const., art. X, § 8(A)). “The appointing authority must prove its case by a preponderance of the evidence.” *Id.* “Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the “efficient operation” of the public service.” *Id.* “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).

2. The Appointing Authority must show the discipline was commensurate with the infraction

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. *Durning v. New Orleans Police Dep't*, 2019-0987 (La. App. 4 Cir. 3/25/20), 294 So. 3d 536, 538, *writ denied*, 2020-00697 (La. 9/29/20), 301 So. 3d 1195; *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). The Appointing Authority has the burden of showing that the discipline was reasonable and not arbitrary or capricious. *Neely v. Dep't of Fire*, 2021-0454 (La. App. 4 Cir. 12/1/21), 332 So. 3d 194, 207 (“[NOFD] did not demonstrate . . . that termination was reasonable discipline”); *Durning*, 294 So. 3d at 540 (“the termination . . . deemed to be arbitrary and capricious”).

a. Factors considered by Commission

“In determining whether discipline is commensurate with the infraction, the Civil Service Commission considers the nature of the offense as well as the employee’s work record and previous disciplinary record.” *Matusoff v. Dep't of Fire*, 2019-0932 (La. App. 4 Cir. 5/20/20),

2020 Westlaw 2562940, *writ denied*, 2020-00955 (La. 10/20/20), 303 So. 3d 313. The Commission considers the nature of the offense, the employee's work ethic, prior disciplinary records, job evaluations, and any grievances filed by the employee." *Honore v. Dep't of Pub. Works*, 14-0986, pp. 8-9 (La. App. 4 Cir. 10/29/15), 178 So. 3d 1120, 1131, *writ denied*, 2015-2161 (La. 1/25/16), 185 So. 3d 749

3. NOPL has shown cause for the discipline of Ms. Goff

NOPL has shown that Ms. Goff "flexed" her work schedule without permission by clocking in early on April 7 and leaving early on April 22. Even though these actions may not have been intentional on the part of Ms. Goff, NOPL had put Ms. Goff on notice to follow the published schedule. Because NOPL issued a non-disciplinary counseling to Ms. Goff for the February 18 incident, NOPL cannot use that incident as a basis for discipline. Ms. Goff's failure to follow the published schedule impairs the efficient operation of NOPL, as NOPL must comply with applicable laws concerning overtime compensation while ensuring appropriate staffing levels. (Tr. at 12-13).

NOPL has also shown that Ms. Goff refused to follow the instruction of her supervisor to shelve books. Ms. Goff's refusal to shelve books also impairs the efficient operation of NOPL, as patrons must be able to locate books on the shelves. (Tr. at 25).

4. The penalty is commensurate with the violation.

A one-day suspension for each type of infraction is commensurate with the violation.

B. Legal standard for Whistleblower Appeal

Civil Service Rule II, § 10.1 provides as follows:

No employee shall be subjected to discipline or discriminatory treatment by an appointing authority because he or she gives information, testimony or evidence in a prudent manner to appropriate authorities concerning conduct prohibited by

law or regulation which he or she reasonably believes to have been engaged in by any person(s). If the employee incurs such treatment despite this admonition, he or she shall have a right of appeal to this Commission.

The Commission applies the same standard to “whistleblower” action under Rule II, § 10.1 as to other discrimination appeals. *East v. Office of Inspector Gen.*, 2011-0572 (La. App. 4 Cir. 2/29/12), 87 So. 3d 925, 927. In disciplinary actions where the classified employee alleges discrimination, the burden of proof on appeal, **as to the factual basis for the discrimination**, is on the employee. La. Const. art. X, § 8(B); *East v. Office of Inspector Gen.*, 2011-0572 (La. App. 4 Cir. 2/29/12), 87 So. 3d 925, 927 (quoting *Goins v. Dep't of Police*, 570 So.2d 93, 94 (La. App. 4th Cir.1990)). *See also* Civil Service Rule II, §§ 4.4, 4.8. In 1983, the Fourth Circuit Court of Appeal held the Commission erred by relying on the Title VII *McDonnell-Douglass* burden-shifting framework for discrimination claims under Article X, Section 8(B) of the Louisiana Constitution. *Mixon v. New Orleans Police Dep't*, 430 So. 2d 210, 212 (La. App. 4 Cir. 1983) (“we conclude the Commission erred in applying the federal burden of proof standard instead of the burden specified in LSA–Const. Art. 10 § 8(B).”).

Ms. Goff has failed to carry her burden of showing that she was subjected to discipline because she complained of conduct prohibited by law or regulation. The Commission credits the testimony of Ms. Goff’s supervisor that she did not “spread her legs” while wearing pants during a meeting on April 19. (Tr. at 27). Even if this bizarre conduct had occurred, the action may not be prohibited by law or regulation. Further, Ms. Goff has failed to show that the suspension was caused by her complaint about her supervisor. Notably, the Director testified she does not think she was aware of the complaint against the supervisor when she drafted the disciplinary letter. (Tr. at 78).

Therefore, Ms. Goff’s disciplinary appeal and her whistleblower appeal are both DENIED.

This the 21st day of December, 2022.

WRITER:

Ruth White Davis

Ruth Davis (Dec 20, 2022 13:39 CST)

RUTH DAVIS, COMMISSIONER

CONCUR:

J H Korn

J H Korn (Dec 20, 2022 17:53 CST)

JOHN KORN, VICE-CHAIRPERSON

mark c. surprenant

mark c. surprenant (Dec 20, 2022 13:11 CST)

MARK SURPRENANT, COMMISSIONER