



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON
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MITCHELL J. LANDRIEU
MAYOR

Thursday, August 24, 2017

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Marc L. Frischhertz
1130 St. Charles Avenue
New Orleans, La 70130

Re: **Terrie Doyle VS.
Sewerage & Water Board
Docket Number: 8549**

Dear Mr Frischheretz:

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 - 8/24/2017 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal must conform to the deadlines established by the Commission's Rules and Article X, 12(B) of the Louisiana Constitution. Further, any 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 "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Cedric S. Grant
James E. Thompson, III
Brendan M. Greene
Terrie Doyle

file



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1130 St. Charles Avenue
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Re: **Terrie Doyle VS.
Sewerage & Water Board
Docket Number: 8550**

Dear Mr Frischheretz:

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For the Commission,


Doddie K. Smith
Chief, Management Services Division

cc: Cedric S. Grant
James E. Thompson, III
Brendan M. Greene
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CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

TERRIE DOYLE vs. SEWERAGE & WATER BOARD	DOCKET Nos.: 8549 & 8550
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I. INTRODUCTION

Appellant, Terrie Doyle, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Sewerage and Water Board for the City of New Orleans, (hereinafter the “S&WB”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the S&WB had sufficient cause to suspend Appellant for five-days and subsequently terminate her. At all times relevant to the matter now before the Commission, Appellant was a classified employee with permanent status and worked as an Office Assistant Trainee for the Appointing Authority.

On May 3, 2017, a hearing examiner appointed by the Commission convened an appeal hearing related to the above-captioned matter. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the hearing examiner’s report. Based upon our review, we render the following judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. S&WB's Attendance Policy & Appellant's Prior Discipline

Appellant's discipline resulted from her alleged violation of the S&WB's attendance policy. That policy establishes the following progressive discipline track for employees who are frequently late and/or absent:

1. Any unexcused absence shall result in an immediate verbal reprimand by the responsible supervisor to the employee upon his return to work.
2. The second unexcused absence and all subsequent unexcused absences within a six (6) month period shall result in a written reprimand, from the supervisor to the employee. This reprimand is to include a warning of further disciplinary action if the record does not improve and a copy should be sent to the Personnel Dept. to be filed in the employee's record.
3. Any employee who has received three written reprimands for attendance within a six (6) month period shall receive a formal written reprimand from the Department Head notifying the employee that subject employee will receive a three (3) working day suspension for the next additional written reprimand incurred by the employee.
4. Any employee who is charged with one additional unexcused absence within a six (6) month period following a formal reprimand shall be suspended for three (3) working days, at the discretion of the responsible supervisor. A Pre-Disciplinary Hearing form shall be completed by the supervisor at the time of the suspension hearing with the employee. A new employee, who is within his probationary period, may be recommended for dismissal.
5. Any employee who is charged with an additional unexcused absence within a six (6) month period of the three (3) day attendance suspension shall be suspended for five (5) working days, at the discretion of the responsible supervisor. A Pre-Disciplinary Hearing form shall be completed by the supervisor at the time of the suspension hearing with the employee.
6. Any employee who is charged with an additional unexcused absence within a six (6) month period of the five (5) day attendance suspension shall be recommended for dismissal. A Pre-Termination Hearing form shall be completed by the supervisor at the time of the hearing with the employee.

(App. Exh. 1 at pp. 12-13)(emphasis added).

During the presentation of its case, the S&WB introduced the following prior reprimands issued to Ms. Doyle for violations of the S&WB's attendance policy:

1. Verbal Reprimand – Issued March 3, 2016: Appellant was thirty-four minutes late on Wednesday, March 2, 2016. (S&WB Exh. 6).
2. First Written Reprimand – Issued March 3, 2016: Appellant was sixty-one minutes late on Thursday, March 3, 2016. *Id.*
3. Second Written Reprimand – Issued March 7, 2016: Appellant was fifteen minutes late on Friday, March 4, 2016. *Id.*
4. Third Written Reprimand – Issued March 15, 2016: Appellant was fourteen minutes late on Monday, March 14, 2016. *Id.*
5. Formal Written Reprimand – Issued March 16, 2016: Appellant had amassed four reprimands well within a six-month period. (S&WB Exh. 7).
6. Fifth Written Reprimand – Issued April 11, 2016: Appellant was eight minutes late on April 4, 2016. (S&WB Exh. 6).
7. Sixth Written Reprimand – Issued April 11, 2016: Appellant failed to report to work on April 11, 2016. *Id.*
8. Seventh Written Reprimand – Issued April 12, 2016: Appellant was two hours late on April 12, 2016. *Id.*

In a prior case involving the same Parties, *Doyle v. the Sewerage and Water Board of New Orleans*, C.S. No. 8511 (Sept. 27, 2016)(hereinafter “*Doyle I*”), the Commission found that the S&WB did not have sufficient cause to issue a written reprimand and three-day suspension related to Appellant's absence on March 18, 2016. In rendering its decision, the Commission observed that Appellant had a dismal record of punctuality and attendance, but that the incident that led to the issuance of the three-day suspension should have been classified as an excused absence pursuant to the S&WB's own attendance policy. While it ordered the S&WB to vacate Appellant's three-day suspension, it held that the S&WB could rely upon the earlier reprimands in issuing future discipline.

B. Five-Day Suspension

The S&WB issued Appellant a five-day suspension on April 18, 2016. (H.E. Exh. 1). As justification for the suspension, the S&WB cited to the three-day suspension vacated by *Doyle I* and three additional written reprimands issued to Appellant following the three-day suspension. *Id.* Appellant did not contest the facts leading to the issuance of the five-day suspension but alleged that the S&WB's attendance policy mandates that employees receive a three-day suspension before being issued a five-day suspension for violations of the attendance policy.

The S&WB takes the position that the "discretion" contained within the penalty matrix pertains to the length of suspension and allows for a more severe penalty than what is described in the matrix. (Tr. at 119:17-25). Thus, argues the S&WB, its attendance policy does not require that an employee receive a three-day suspension prior to receiving a five-day suspension. *Id.* at 130:3-21. According to Sharon Judkins, the S&WB's Deputy Director of Administration, supervisors may consider an employee's length of service and job classification as factors when determining the appropriate level of discipline for violations of the attendance policy. *Id.* at 134:8-18. For example, an employee in the field with numerous unexcused absences may face stiffer discipline than an employee who works primarily in an office setting with the same number of unexcused absences. During her Testimony, Ms. Judkins also appeared to suggest that there was a spectrum of severity for attendance policy violations. *Id.* at 136:1-9.

C. May 2, 2016

Via letter dated May 19, 2016, the S&WB notified Appellant that it was terminating her employment. The notice of termination asserted that Appellant had received a written reprimand on May 3, 2016 following the issuance of a five-day suspension and that Appellant's repeated violations of the S&WB's attendance policy warranted termination. The May 3, 2016 reprimand

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referenced in Appellant's termination notice is among the reprimands in evidence as "S&WB Exhibit 7." The S&WB issued Appellant the May 3rd reprimand because she allegedly "left work without informing [her] supervisor" on May 2, 2016. The Parties generally do not dispute the relevant facts pertaining to Appellant's departure on May 2, 2016.

May 2, 2016, was a particularly busy day within the S&WB's Human Resources department because staff were "on-boarding" several new call center employees. (Tr. at 189:23-190:22). Both of Appellant's supervisors, Natika Vassel and Ms. Judkins, were meeting with the new employees as part of an orientation exercise. *Id.* At some point in the late morning, a representative of the school Ms. Doyle's daughter attended called the HR department and notified Ms. Doyle that her daughter had a temperature of one hundred and two. Due to her daughter's fever, school policy required Ms. Doyle to remove her daughter from school until she no longer had a fever or was released to return to school by a physician. *Id.* at 190:24-191:5.

Ms. Doyle could not rely upon another family member to pick up her daughter and had to do so herself. *Id.* at 191:6-13. When she realized she had to leave work and pick up her daughter, Ms. Doyle walked across a hallway to the room in which Ms. Vassel and Ms. Judkins were conducting the orientation for new employees. Ms. Doyle did not enter the room but instead tried to get Ms. Judkins's attention by waving through a small window in the door. *Id.* at 191:13-21. Ms. Doyle was unsuccessful in effectively getting Ms. Judkins's attention and decided to notify Janice Staves of her need to pick up her daughter from school. *Id.* at 191:25-192:5. Ms. Doyle chose to notify Ms. Staves because, while not her supervisor, Ms. Staves (an Office Assistant III at the time) was a higher-ranking employee. *Id.* at 192:6-8. Ms. Staves agreed to let Ms. Vassel and Ms. Judkins know that Ms. Doyle had left work to pick up her daughter from school.

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After speaking with Ms. Staves, Ms. Doyle “clocked out” at 10:29 a.m., picked up her daughter from school, dropped her off at her boyfriend’s residence and returned to work at 11:17 a.m. (App. Exh. 2). Ms. Doyle then worked through her lunch break in order to make up the time she lost while picking up her daughter. *Id.* Ms. Doyle acknowledged that her supervisors did not give her explicit authorization to use her lunch break to make up for the time Ms. Doyle missed when she picked up her daughter from school. *Id.* at 198:12-199:11. However, Ms. Doyle claims that it was her understanding that, while she could not use her lunch period to make up for tardiness, she could still use it to make up for time missed dealing with family emergencies. *Id.* at 202:16-19.

III. LEGAL STANDARD

Appointing authorities may only discipline employees who have achieved permanent status in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that his/her discipline was issued without sufficient cause, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, an 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 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094 (La. Ct. App. 2007)). If the Commission finds that an appointing authority has met its initial burden and had sufficient cause to issue discipline, it must then determine if that discipline “was commensurate with the infraction.” *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of*

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New Orleans, 454 So.2d 106, 113 (La. 1984)). Thus, the analysis has three distinct steps with the appointing authority bearing the burden of proof at each step.

IV. ANALYSIS

A. Occurrence of the Complained of Activities

1. *Five-Day Suspension*

According to its April 18, 2016 notice of discipline, the S&WB based Appellant's five-day suspension on "three attendance reprimands within six (6) months of [her] three (3) day suspension" and a review of her "entire work record." (H.E. Exh. 1). Appellant did not contest the facts pertaining to the "three attendance reprimands" but argued that, because the Commission's decision in *Doyle I* vacated the three-day suspension, the S&WB should convert the five-day suspension into a three-day suspension. This is an argument for the Commission's third prong of analysis – whether the discipline was commensurate with the misconduct – rather than the initial prong. Therefore, the Commission finds that Appellant did engage in the misconduct that led to the issuance of her five-day suspension.

2. *Termination*

Appellant challenges both the substance of the allegations that led to her termination as well as the procedure. The procedural challenge to Appellant's termination is similar to the one regarding her five-day suspension. Namely, that the Commission's decision in *Doyle I* pushes each disciplinary action back one step in the S&WB's progressive discipline policy. Therefore, Appellant argues that, even if her actions on May 2, 2016 constituted a violation of the S&WB's attendance policy, the appropriate level of discipline would be a five-day suspension rather than termination. As we have noted earlier, this is an argument for the Commission's final step in analysis. The Commission must first determine if the S&WB has established, by a preponderance

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of evidence, that Appellant violated the S&WB's attendance policy when she left work on May 2, 2016. As explained below, we do not.

With respect to the substantive challenge to Appellant's termination, the Commission makes the following findings of fact:

1. Appellant had to pick up her daughter from school on May 2, 2016 because her daughter had a fever and could not remain at school.
2. S&WB employees are permitted to leave work to address family emergencies but must notify a supervisor before leaving.
3. On May 2, 2016, Appellant's supervisors were in an orientation meeting at the time Appellant realized she had to leave work.
4. Appellant chose not to interrupt the meeting attended by her supervisors and instead asked a co-worker to inform her supervisors that she left.
5. Appellant was gone for forty-eight minutes.

Appellant's direct supervisor, Natika Vassel, testified that, if Appellant had spoken to her directly and indicated a need to briefly leave work to address a family emergency, she would have granted Appellant permission to do so. Thus, it was Appellant's decision to ask a co-worker to notify Ms. Vassel and Ms. Judkins of her need to address a family emergency rather than interrupt the orientation meeting and notify them herself, that led to Appellant's final written reprimand and eventual termination.

Unlike her numerous prior violations of the S&WB's attendance policy, Appellant took reasonable and appropriate actions in light of the family issue she had to address on May 2, 2016. While interrupting the orientation meeting was an option for Appellant, given her urgent need to act quickly the Commission does not find it unreasonable for her to have asked a co-worker to inform her supervisors of the family emergency. In making this finding, the Commission is careful to point out that this is the exception rather than the rule. Normally, it is a prudent measure to

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require employees have a direct conversation with a supervisor before leaving work during a regularly-scheduled shift. Such a requirement allows the supervisor to ask follow-up questions, deters abuse and promotes candor. However, in the matter now before the Commission, there is no dispute that Appellant faced a serious child-care issue and had to act accordingly.

Based on the foregoing, we do not find that Appellant's actions on May 2, 2016 constitute misconduct.

B. Impairment of Efficient Operation of Appointing Authority

As we have observed many times before, it is axiomatic that when an employee is late the productivity and effective operations of the employer suffer. Appellant served as an Office Assistant Trainee for the Recruitment and Training Divisions of the S&WB's Human Resources Department. Part of her responsibilities involved coordinating a calendar of events and training activities for S&WB staff. During Appellant's frequent instances of tardiness, other employees had to take on additional responsibilities. Further, when a co-worker is habitually late to work, the morale of other employees suffers. Therefore, the Commission finds that the S&WB has established that Appellant's tardiness adversely impacted the efficient operation of the S&WB's Human Resources Department.

C. Discipline Commensurate with Offense

In conducting its analysis at this stage, the Commission must determine if Appellant's reprimands and suspension were "commensurate with the dereliction;" otherwise, the discipline would be "arbitrary and capricious." *Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d 976, 978 (citing *Staehle v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

The Commission has commented on the lenient nature of the S&WB's attendance policy in prior decisions. Appellant has benefited from this lenient policy by being late to her assignment on three separate occasions after being suspended for attendance violations and receiving numerous warnings regarding her unacceptable attendance pattern.

The Commission is not bound by the S&WB's attendance policy when determining if the discipline issued to Appellant was commensurate with her misconduct. The Commission must make an independent determination, based upon the facts presented, whether there was sufficient cause for the discipline imposed. The S&WB has developed a specific progressive discipline policy that is replete with the word "shall" which established that the penalties contained therein are mandatory. But, in Appellant's case, if the S&WB had strictly adhered to the policy, Appellant's tardiness on April 12, 2016 likely should have led to Appellant's termination. This is true even without the three-day suspension rescinded by the Commission in *Doyle I*.

Based upon Appellant's work record and the parameters of the S&WB's progressive discipline policy, Appellant was on notice that her continued tardiness would result in substantial discipline. Therefore, we find that the S&WB had ample justification to issue the five-day suspension. In fact, Appellant's argument that the S&WB should strictly adhere to its attendance policy cuts both ways. As we have already pointed out, the S&WB could have moved for termination after Appellant's April 12, 2016 instance of tardiness. Therefore, we find that, while the S&WB did not have sufficient cause to terminate Appellant's employment based on the May 2, 2016 incident, we will not order the S&WB to remit to Appellant any back pay or emoluments of employment.¹

¹ The Commission acknowledges the S&WB's argument that it terminated Appellant based upon a review of her "entire work history" rather than just the May 2, 2016 incident. However, the S&WB relied upon the same "work history" in issuing Ms. Doyle the five-day suspension. The only addition to Appellant's work history between her termination and five-day suspension was the written reprimand for Appellant's unauthorized departure from work on

V. CONCLUSION

Based upon the foregoing, the Commission hereby GRANTS IN PART and DENIES IN PART Appellant's appeal. The Commission DENIES Appellant's appeal regarding her five-day suspension (8549). However, the Commission GRANTS her appeal regarding her termination (8550). In doing so, the Commission holds that Appellant's next substantiated violation of the S&WB's attendance policy will serve as sufficient cause for termination. Furthermore, we order that Appellant be reinstated but without back pay and emoluments.

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May 2, 2016. Therefore, the May 2nd incident was clearly the S&WB's motivation for terminating Appellant's employment.

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Judgment rendered this 24 th day of August, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION



RONALD P. McCLAIN, VICE-CHAIRMAN

8/18/17

DATE



TANIA TETLOW, COMMISSIONER

8/18/17

DATE



STEPHEN CAPUTO, COMMISSIONER

8/21/17

DATE