



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

MICHELLE D. CRAIG, CHAIRPERSON
RONALD P. McCLAIN, VICE-
CHAIRPERSON

JOSEPH S. CLARK
TANIA TETLOW
CORDELIA D. TULLOUS

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Friday, April 01, 2016

Mr. George Blair, III
P.O. Box 3637
New Orleans, LA 70177

Re: **Michael Duplessis VS.
Sewerage & Water Board
Docket Number: 8269**

Dear Mr. Blair:

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 - 4/1/2016 - 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 "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Cedric S. Grant
George Simno
Jim Mullaly
Michael Duplessis

file



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Friday, April 01, 2016

Mr. George Blair, III
P.O. Box 3637
New Orleans, LA 70177

Re: **Michael Duplessis VS.
Sewerage & Water Board
Docket Number: 8280**

Dear Mr. Blair:

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 - 4/1/2016 - 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 "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Cedric S. Grant
George Simno
Jim Mullaly
Michael Duplessis

file

MICHAEL DUPLESSIS

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

SEWERAGE & WATER BOARD

NOS. 8280 & 8269

C/W

DEJOURIS DUPLESSIS

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

SEWERAGE & WATER BOARD

NOS. 8270 & 8281

These are the consolidated appeals of Michael and DeJouris Duplessis. The disciplinary letters dated May 1, 2014, allege that on December 17, 2013, appellants, Michael and DeJouris Duplessis misappropriated concrete belonging to the S&WB and used it at the home of Michael Duplessis located at 4822 Cerise Drive in New Orleans. It is alleged that on or about December 12, 2013, the Appellants used S&WB manpower to frame the project prior to pouring the concrete. The scope of the work allegedly performed using S&WB material and labor constituted a patch of concrete in front of a gate leading to the side of 4822 Cerise Drive and a concrete path leading to a side entrance on the property. There is no dispute that 4822 Cerise Drive serves as Appellant Michael DeJouris's primary residence and that his son, Appellant DeJouris Duplessis, often visited his parents' home and was familiar with the property. Following an investigation conducted by the S&WB, both Appellants were terminated.

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. Hearings were held on August 7, 2014 and July 9, 2015. The testimony presented at the hearings 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.¹

After a full review of the transcript of proceedings and the record evidence, we find that the Appointing Authority has met its burden of proof and the Appellants' appeals are DENIED.

FACTUAL BACKGROUND

A. Location of Contested Work

Appellant Michael Duplessis (hereinafter "M. Duplessis") was a supervisor in the pavement and asphalt department of the S&WB. As a Supervisor, he was responsible for ordering concrete and asphalt for paving and scheduling work for his concrete and asphalt crews. M. Duplessis would also routinely call concrete companies and arrange for purchase and delivery of concrete for S&WB paving jobs. Owens & Sons was concrete company that M. Duplessis most frequently used due to the dependability and availability of service.

Given that the alleged misappropriation of materials and labor occurred at M. Duplessis's residence (4822 Cerise Drive), there was a great deal of testimony regarding construction projects at that residence. One such construction project was the elevation of the property.

After Hurricane Katrina, M. Duplessis and his wife, Cheryl Howard Duplessis (hereinafter "Mrs. Duplessis") chose to take advantage of a hazard mitigation grant and raise his home to a higher elevation. Mrs. Duplessis testified that she purchased 4822 Cerise Drive in 1996, prior to her marriage to M. Duplessis. And, it was Mrs. Duplessis who filed an application to use funds from Hazard Mitigation Grant to elevate 4822 Cersie Drive. Records introduced at

¹ The undersigned Commissioners take this opportunity to encourage the representative of both the Appointing Authority and the Appellants to reflect upon their conduct during the course of the instant appeal hearing. While this matter was certainly a difficult one, there were times during the hearing where the Parties were less than civil to each other and the witnesses.

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hearing show that Wautashi Construction Inc., received the contract to elevate 4822 Cersie Drive. Funds used to pay Wautashi Construction Inc. came from the Hazard Mitigation Grant and totaled approximately \$100,000.

Pursuant to the requirements of the contract and federal grant program, Wautashi was obligated to repair any damaged caused by the elevation process and to restore the property to its original condition. Both M. Duplessis and Mrs. Duplessis testified that this work included a patch of concrete in front of a gate leading to the side of 4822 Cersi Drive as well as a concrete path leading to a side entrance. It is this area that is at issue in the instant appeal. Counsel for the S&WB showed Mrs. Duplessis photographs taken as part of the Hazard Mitigation Grant Program. Upon reviewing these photographs, Mrs. Duplessis acknowledged that the contested area was not covered with concrete at the time she applied for funds, but was subsequently paved by a contractor hired before the Wautashi corporation obtained the contract.

In addition to the construction performed at 4822 Cerise in connection with the Hazard Mitigation program, the S&WB performed work related to a sewerage issue. M. Duplessis testified that the S&WB dug up the concrete on the left side of his house in 2011 to replace a pipe and in the process, tore up the sidewalk and his mailbox. Work orders introduced as part of the Appellants' case in chief.

B. Work Allegedly Performed on December 17, 2013

M. Duplessis testified that on December 17, 2013, he ordered 9 yards of concrete from Owen & Sons to perform two jobs on two work orders he had received from the S&WB. He based his order on his understanding of how much concrete would be needed to complete the two jobs. It was M. Duplessis's understanding that the first job required his crew to pave a 4-by-8

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driveway cut; the second job was to pave a 12-by-12 street cut. Although Mr. Duplessis was not at the site while the crew performed the work, he testified that he visited the site afterward and determined that work actually performed did not match his original understanding of the size of the job. Thus, Mr. Duplessis testified that there would have been excess concrete when the jobs were completed.

Mr. Eugene Age, a Master Maintenance Tech I with the Sewage & Water Board, testified that on December 17, 2013, Michael Duplessis was the supervisor over the zone he was in and DeJouris Duplessis (hereinafter "D. Duplessis") was the supervisor over the crew truck to which he was assigned.

Mr. Age testified that concrete work is a three-step process. The first step is breaking up existing concrete, if that is needed, the second is forming up the site, that is, putting down rails and wire to outline where the concrete will be poured, and the last step is to pour the concrete, let it dry and drop sand. He testified that on December 17, 2013, D. Duplessis was the crew chief on the truck that took him to 6008 Warrington. Mr. Age testified that the crew chief drives the truck to the job and the crew performs the work the crew chief tells them to perform. The concrete truck follows behind.

Mr. Age testified that on December 17, 2013, after the two scheduled jobs, the crew was taken to 4822 Cerise to pour concrete. Mr. Age testified that he knew 4822 Cerise to be M. Duplessis's home because Mr. Age had been there several times in the past. In fact, prior to December 17, 2013, Mr. Age testified that the crew had gone to M. Duplessis's house to grade and form up the concrete job to ready it for pouring. Mr. Age testified that M. Duplessis was present and acted as Foreman for the job, directing the crew what to do. Mr. Age stated that they

poured concrete on the side of the house in front of, and behind, the fence. Mr. Age testified that they used “most of the concrete” from the truck to complete their third and final job at M. Duplessis’s residence.

Mr. Keith Morgan, a Technician I with the S&WB, testified that in December, 2013 he was a laborer with the paving department. He testified that M. Duplessis was his immediate supervisor and D. Duplessis was his foreman. Mr. Morgan testified that he and the crew had three jobs on December 17, 2013; one on Warrington Drive, one at Cerise and Dwyer, and the third at M. Duplessis’s home. Mr. Morgan testified that prior to December 17, 2013, the crew went to M. Duplessis’s home to begin a concrete job. On that occasion, Mr. Morgan testified that M. Duplessis operated a backhoe that dug up the dirt in his yard so that the crew could frame the space and put down the wire.

On December 17, 2013, Mr. Morgan testified that M. Duplessis directed the crew back to his house to pour the cement after finishing the jobs at Cerise and Dwyer. Mr. Morgan testified that an Owen & Sons cement truck followed the crew to M. Duplessis’s home to pour the concrete; the driver got out, a wheelbarrow was set up and the cement was poured. He testified that the crew began pouring cement at the back of the house, behind the fence and worked their way forward to the front of the house. Mr. Morgan testified that both M. Duplessis and D. Duplessis were present and supervising the operation. Mr. Morgan testified that he had been told by M. Duplessis that the job was approved by supervisors. He testified that sometime after December 17, M. Duplessis told him that if anyone asked him about the job at his house, he and the other crew members should deny doing it.

Mr. Dornell Green, a laborer at the S&WB, testified that on December 17, 2013, he was working on a crew supervised by M. Duplessis and D. Duplessis. He testified that on that day the crew performed three jobs; the first was on Warrington, the second was at Cerise and Dwyer and the third was at M. Duplessis' house.

Mr. Morgan testified that on December 17, 2013, he and the crew poured cement for M. Duplessis's driveway and a sidewalk behind a fence. According to Mr. Morgan, the whole space used about four and a half yards of concrete. Mr. Morgan testified that the Owen & Sons concrete truck drove from Cerise & Dwyer to the third job location at M. Duplessis's direction.

Mr. Michael August, a cement truck driver employed with Owen & Sons, testified that on December 17, 2013, he drove a cement truck with nine yards of cement and a work order with two different locations, 6009 Warrington and Cerise and Dwyer. Mr. August testified that after he was finished with the second job, he followed the S&WB crew to a residence further down Cerise away from the location of the second job. When he arrived at the residence on Cerise, he was directed to pour concrete into a wheelbarrow. Mr. August testified that he poured approximately 6 yards of concrete at the residence. He testified that when he was finished he presented the work order to D. Duplessis, who signed it. Mr. August then cleaned out the truck and returned to Owen & Sons with the signed work order. Some time after this job. Mr. August stated that M. Duplessis approached him at Mr. August's work place and asked him to testify in M. Duplessis's defense. Mr. August turned M. Duplessis down and indicated that he could only testify as to what he knew.

C. Hazard Mitigation Grant Program

Mr. Matthew Pangrazio testified that he was employed with the Hazard Mitigation Grant Program for the Division of Administration for the State of Louisiana as a Section Chief. Mr. Pangrazio testified that he reviewed the records relating to the grant application and grant documents for 4822 Cerise, and he went on to explain the process through which an applicant may secure funds through the program.

The first step in the process requires the homeowner, such as the Duplessis family, to sign a voluntary agreement in early 2010 stating their interest in the program. As funds were made available, the program's capacity grew and began to fund homeowners directly for mitigation activity. For the elevation work at 4822 Cerise, Mrs. Duplessis could use a contractor of her choosing so long as that contractor was qualified to perform the work in the State of Louisiana.

Once an applicant picks a contractor and the selection is approved, a program representative, the contractor and the homeowner meet at the construction site to go over what is allowable in the grant program. As part of this process, all parties review the contract documents, the scope of work to be performed and other programmatic details. Once that meeting is held, initial photographs are taken and an analyst from the program will review the documentation and arrange for payment and the contractor will begin work.

Mr. Pangrazio testified that the Hazard Mitigation Program would never allow a homeowner to use grant program funds to make additions/improvements to the subject property. This would include adding elements, such as paving, that were not present prior to the elevation of the residence unless such paving is a necessary element of the elevation work. Mr. Pangrazio testified that if a grant applicant or a grant awardee wanted to pave an area of their house that

had never been paved before, that applicant/awardee would have to make separate arrangements with the contractor.

In this case, Mr. Pangrazio reviewed the photographs that were taken near to the beginning of the elevation project for 4822 Cerise contained in the Hazard Mitigation Program file. These photographs speak for themselves and do not reflect any paving work on the side of 4822 Cerise in the disputed area. Mr. Pangrazio noted that the Hazard Mitigation Grant Program would measure any existing concrete and add that to the case file just as a matter of interest for the homeowner and the contractor for further dispute if there was an issue with the concrete. Thus, it would likely have been indicated somewhere in the contract documents how much concrete was pre-existing, and the file does not contain any information as to concrete being present on the side of 4822 Cerise or directly in front of the wooden side gate. As a result of the documentation Mr. Pangrazio reviewed, he testified that it was unlikely that the grant funding would have authorized the contractor to pour concrete in the area at issue in the instant appeal.

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 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 from 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.*

ANALYSIS

A. S&WB proved, by a preponderance of the evidence, that Appellants committed the alleged misconduct

The S&WB alleged that the Appellants misappropriated materials (in the form of concrete), and labor (in the form of work performed by the paving crew at 4822 Cerise). Based upon a thorough review of the evidence and testimony presented during the course of the appeal hearing, the Commission finds that the S&WB has proven, by a preponderance of the evidence that the Appellants engaged in the conduct for which they stood accused.

The testimony of S&WB employees Age, Morgan and Green establishes that those employees prepared forms for concrete at 4822 Cerise on or about December 12, 2013. Each individual testified that they knew that the residence was that shared by M. Duplessis and his wife. Then, on December 17, 2013, under the direction and immediate supervision of the Appellants, the paving crew returned to 4822 Cerise to pour the concrete that was ordered by M.

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Duplessis and paid for by the S&WB. The testimony of the paving crew employees is buttressed by that of Michael August (a.k.a. “Country”), who delivered the concrete to 4822 Cerise at the direction of M. Duplessis.

The defense offered by the Appellants is simply not credible. Appellants assert that Age, Morgan and Green fabricated the entire account of the concrete pour at 4822 Cerise in order to retaliate against M. Duplessis for cracking down on the employees for “goofing off.” As a preliminary matter, none of the employees were actually disciplined by M. Duplessis and the “goofing off” was facilitated by M. Duplessis as he supplied the location and began the practice. M. Duplessis was also in a position to order the concrete for jobs in the vicinity of 4822 residence and the testimony and evidence suggests that it is more than likely that M. Duplessis purposefully ordered an excessive amount of concrete in order to make it easier for him and his son to use the leftover concrete at 4822 Cerise. The Commission notes that the Appellants had no explanation as to why Mr. August would join in the paving crew’s deception since he was not a S&WB employee and had no known conflict with either one of the Appellants.

Moreover, the testimony and evidence presented by and through Mr. Pangrazio and Ms. Roberts from the State of Louisiana’s Hazard Mitigation Grant Program repudiates the Appellants’ central contention that the work performed at the Duplessis’ home was performed by the Wautashi Construction. The file for Mrs. Duplessis’s application for grant funding clearly shows that there was no concrete in the disputed area prior to the start of the construction. According to Mrs. Duplessis, a contractor who performed work at the house installed the concrete in the area in question and that the Wautashi Construction damaged and/or removed the concrete during the course of the elevation project. The Wautashi Construction then simply

replaced that concrete as part of the contract. Though they had every opportunity to do so, Appellants failed to produce any records that would reflect this work. Therefore, the Commission does not find Mrs. Duplessis's account credible.

The testimony also showed that D. Duplessis was complicit in the misappropriation. First, he was the foreman responsible for directing the work of the paving crew and directed them to perform unauthorized work at 4822 Cerise. While other members of the crew would not have been privy to the specific contents of the work orders, D. Duplessis, as foreman, would have been aware of what work the crew was authorized to perform. Certainly work at his parents' home was not authorized on December 17, 2013. Second, D. Duplessis completed paperwork that falsely reflected the events of December 17, 2013 in an attempt to cover up the misappropriation.

B. Appellants' actions impaired the quality of the public service provided by the S&WB

The Commission views this prong of the three-part test for discipline of permanent employees in the classified service to be a straightforward one. There can be no serious dispute that when employees take materials and labor intended for the citizens of New Orleans, and put those materials and that labor to their private use, he or she does a disservice to the entire City as well as to the Appointing Authority for whom he or she works. The public hopes/expects that City officials will use limited public funds in a wise manner. When employees engage in the type of conduct like that perpetrated by Appellants, the public's faith in its elected and appointed officials is severely compromised. Thus, the Appointing Authority clearly established that the Appellants' misappropriation of public resources impairs the quality of the public service and brings discredit to the organization.

C. The level of Appellants' discipline was commensurate with their offense

While there was limited testimony on this third and final prong, the Commission finds that termination for the misappropriation of public property and labor is an appropriate level of discipline. Such conduct must be strongly discouraged and there can be no greater deterrent in the field of employment than termination.

CONCLUSION

For the foregoing reasons, the consolidated appeals are DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 23rd DAY OF March, 2016.



TANIA TETLOW, COMMISSIONER

CONCUR:



MICHELLE D. CRAIG, CHAIRPERSON



JOSEPH S. CLARK, COMMISSIONER