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CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J.,
CHAIRMAN
AMY L. GLOVINSKY
JOSEPH S. CLARK
COLEMAN D. RIDLEY, JR.

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Friday, August 09, 2013

Graham Bosworth
700 Camp Street
New Orleans, La. 70130

Re: **Matthew Spector VS.
Department of Fire
Docket Number: 7947**

Dear Mr. Bosworth:

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 - 8/9/2013 - 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, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Charles Parent
Shawn Lindsay
Jay Ginsberg

MATTHEW SPECTOR

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF FIRE

NO. 7947

Matthew Spector (“Appellant”) is employed by the Department of Fire (“Appointing Authority”) as an Apparatus Operator with permanent status. The Appellant received a forty eight (48) hour suspension – two tours of duty - for violation of the Appointing Authority’s internal rules concerning lawful orders from a superior. The factual basis for the violation is contained in the first paragraph of the November 11, 2011 disciplinary letter, which provides as follows:

On November 8, 2011, you were charged with violating Article 5, Section 5.2.10 of the Rules and Regulations of the New Orleans Fire Department which states, “No member shall refuse to obey a lawful order from a Superior Officer.” This charge was filed by your Company Officer Captain Peter Lindblom on November 8, 2011 because you failed to attend Airport Rescue and Fire Fighting (ARFF) Training at Mississippi State Fire Academy on November 7, 2011. You refused participation after having received direct orders to attend the training from both Captain Lindblom and Human Resources Chief Terry Hardy. You were notified of the importance of the training and that your participation in the program was deemed mandatory since you are assigned to the Louis Armstrong International Airport. You were also informed of your enrollment well in advance of the actual training dates, as substantiated by your signature on the admission application form dated October 24, 2011.

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. The hearing was held on August 9, 2012 and November 15, 2012. 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.

All of the facts contained in the disciplinary letter that resulted in the disciplinary action are acknowledged by the Appellant. However, the Appellant contends that he was lead to believe that the Appointing Authority intended to transfer him to another assignment causing him to think that the training was no longer required. The Appellant testified that he discussed the training with his supervisor Captain Lindblom on October 29, 2011, and he assumed that someone else was attending the training in his place because he was going to be transferred.

However, based upon the testimony of Capt. Lindblom and Asst. Supt. Joseph Matthews, and upon the record as a whole, it was not reasonable for the Appellant to believe that a transfer was forthcoming or that he was released from his obligation to attend training. Capt. Lindblom credibly testified that he did not have the authority to approve the Appellant's transfer request or to excuse him from attending training. In fact, transfer requests are not considered until after an employee has served one year in his or her current assignment, and the Appellant had been assigned to the airport for far less than a year. The requirement is contained in the collective bargaining agreement between the Appointing Authority and the Firefighters Union. Capt. Lindblom stated that he forwarded the Appellant's request up the chain of command and discussed with the Appellant the potential of someone else attending in his place. However, he never informed the Appellant that he was excused from attending training.

Asst. Supt. Matthews also credibly testified that only the Appointing Authority has the ability to approve transfers and that nothing was presented to him that would justify recommending a transfer to the Appointing Authority. According to Asst. Supt.

Matthews, the Appellant's dissatisfaction with his current position and his desire to transfer did not matter. Like all other employees, he would have to wait until he served a full year in the position to request a transfer.

The Appellant also contended that he was prevented from attending the training because the Appointing Authority waited to the last minute to tell him he was still required to attend the training. The Appellant testified that he had to supervise renovations on his home and that he had dogs and cats requiring his care.

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 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 the occurrence of the

complained of activity by a preponderance of the evidence 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.*

CONCLUSIONS

The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for good cause. The Appellant had no justifiable reason to believe that he was ever relieved from his responsibility to attend training. No one ever told him that he was relieved. No one ever told him that he was going to get a transfer during a period when transfers were not allowed. He disobeyed a direct order and his personal reasons for refusing the order did not excuse his insubordination.

M. Spector
#7947

Considering the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 9th DAY OF AUGUST,

2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



REV. KEVIN W. WILDES, S.J., CHAIRMAN

CONCUR:


AMY J. GLOVINSKY, COMMISSIONER
JOSEPH S. CLARK, COMMISSIONER