



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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MAYOR

Tuesday, July 21, 2015

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Mr. Donovan A. Livaccari
101 W. Robert E. Lee, Suite 402
New Orleans, LA 70124

Re: **Bennett Williams Sr. VS.**
Department of Police
Docket Number: 8148

Dear Mr Livaccari:

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 - 7/21/2015 - 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 cursive script that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Michael S. Harrison
Elizabeth S. Robins
Jim Mullaly
Bennett Williams

file

BENNETT WILLIAMS

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 8148

The Department of Police (“Appointing Authority”) employed Bennett Williams (“Appellant”) as a police officer with permanent status. The Appellant received a five-day suspension for violation of the Appointing Authority’s regulations concerning Performance of Duty and failing to properly care for Departmental property. As reflected in the disciplinary letter:

On April 4, 2012, at approximately 12:23 a.m., you were... manning marked New Orleans Police Department Vehicle #721 (A#10114). While on patrol, you were traveling west on Leon C. Simon Boulevard when you drove your assigned vehicle through standing water and caused water damage to the vehicle. Upon observing and being aware of the street flooding, you should have been more careful while operating the Departmental vehicle which could have prevented damage to the police vehicle. As such, you violated Rule 4: Performance of Duty, paragraph 4 – Neglect of Duty, to wit: subparagraph 9, c10, failing to properly care for the vehicle and other equipment used wherein damage results from carelessness or neglect.

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 October 10, 2013. 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.

Captain William Ceravolo was assigned to investigate the criminal charges. He testified that he sustained the violation of neglect of duty based on the fact that the Appellant admittedly drove into standing water.

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Commander Michael Harrison agreed with Captain Ceravolo's factual findings and recommended a five day suspension. Commander Harrison testified that it was his belief, based upon the Appellant's statement, that he had already observed dangerous weather conditions and, specifically, street flooding, that his awareness should have prompted him to be more careful in operating his police vehicle. Commander Harrison also testified that the police unit was a total loss, causing the Department to lose the use of a police vehicle, thereby directly impacting the efficient operation of the Police Department.

The Appellant testified that just prior to driving his police vehicle into standing water he had observed inclement weather, including heavy rain and hail. He also testified that he had just observed another vehicle lose control, prompting him to investigate. Lastly, Appellant testified that, just prior to driving his police vehicle into standing water, he had observed street flooding that required him to alter his route.

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

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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 it disciplined the Appellant for cause. The Appellant admits that there were inclement weather conditions and that he had observed street flooding just prior to driving his Departmental vehicle into standing water, which resulted in the total loss of the use of the

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vehicle. Regarding the penalty, we cannot say that the Appointing Authority abused its discretion.

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

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

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



RONALD P. MCCLAIN, COMMISSIONER

CONCUR:



TANIA TETLOW, COMMISSIONER



JOSEPH S. CLARK, COMMISSIONER