



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE
BRITTNEY RICHAF
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Monday, February 8, 2021

Mr. Robert Brown

Re: **Robert Brown VS.
Sewerage & Water Board
Docket Number: 9050**

Dear Mr. Brown:

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 - 2/8/2021 - 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,
Stacie Joseph
Stacie Joseph
Management Services Division

cc: Ghassan Korban
Ashley Ian Smith
Jay Ginsberg
file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

ROBERT BROWN.,
Appellant

vs.

DOCKET NO. 9050

SEWERAGE & WATER BOARD,
Appointing Authority

DECISION

Appellant, Robert Brown, (hereinafter “Appellant”), brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission's Rule II, §4.1, asking this Commission to find that the Sewerage & Water Board did not have sufficient cause to terminate his employment on June 5, 2019. (Tr. at 6). At all times relevant to the instant appeal, Appellant served as an Operator at the Claiborne Pumping Station for the Sewerage & Water Board (“Appointing Authority”) and had permanent status as a classified employee.

A Hearing Examiner, appointed by the Commission, presided over a hearing on August 21, 2019, during which both Parties had an opportunity to call witnesses and present evidence. The Hearing Examiner prepared a report and recommendation dated July 22, 2020, based upon the testimony and evidence in the record. The undersigned Commissioners have reviewed the transcripts and exhibits from this hearing, as well as the Hearing Examiner’s report, which is advisory in nature. Based upon our review, we

DENY the appeal and render the following judgment.

I. FACTUAL BACKGROUND

Mr. Brown reported to work early at the Claiborne Pumping Station on April 8, 2019, because he had transportation problems and had taken the bus to work. (Tr. at 14-15). Brown testified he had been drinking on April 7, 2019. (Tr. at 19). Samuel Lewis, Brown's supervisor, discovered Mr. Brown locked in the battery room, and after gaining access to the room, Lewis was unable to wake Brown up. (Tr. at 22-23). Lewis called EMS. (Tr. at 23). In the meantime, S&WB Security was able to awaken Brown, although the security officer smelled alcohol. (Tr. at 25). EMS arrived and evaluated Brown, clearing him to return to work. (Ex. B-3; Tr. at 25). After management arranged for a drug test, Lewis informed Brown he was required to take a drug test. (Tr. at 25-27). Instead, Brown left work. (Tr. at 27-28). The S&WB treats Brown's failure to comply with the directive to undergo a drug test a failed test. (Tr. at 28).

The Sewerage & Water Board required Brown to complete rehabilitation program in May of 2018 to retain his employment. (Ex. B-2). Brown successfully completed the program in 2018. (Ex. B-2).

II. ANALYSIS

III. Legal Standard

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer except for cause expressed in writing. La. 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 that the complained of activity occurred 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.*

The Sewerage & Water Board has met its burden of proof. It is undisputed that Brown was unresponsive in a locked room at the Claiborne Pumping Station after drinking the day before. The security officer smelled alcohol on Brown's breath, so management arranged for a drug test. Before Brown could undergo the drug test, he left work, so the effect is a failed drug test. Substance abuse on the job impairs the efficient operation of the Sewerage & Water Board. Termination is commensurate with the infraction, especially since the Sewerage & Water Board offered Brown rehabilitation in 2018 instead of terminating his employment at that time.

Judgment rendered this 8th day of February 2021.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER:

BRB
Brittney Richardson (Jan 23, 2021 13:37 CST)

BRITTNEY RICHARDSON, COMMISSIONER

CONCUR:

J H Korn
J H Korn (Feb 5, 2021 18:38 CST)

JOHN KORN, COMMISSIONER

Mark C. Surprenant
Mark C. Surprenant (Jan 21, 2021 13:11 CST)

MARK SURPRENANT, COMMISSIONER