



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION  
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AMY TREPAGNIER  
DIRECTOR OF PERSONNEL

Friday, December 9, 2022

Mr. Paul Mitchell  
1616 Poydras St, Suite 900  
New Orleans, LA 70112

Re: **Leessa Augustine VS.  
Sewerage & Water Board  
Docket Number: 9337/9361**

Dear Mr. Mitchell:

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 - 12/9/2022 - 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  
Management Services Division

cc: Ghassan Korban  
Ashley Ian Smith  
Jay Ginsberg  
Leessa Augustine

file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**LEESA AUGUSTINE,  
Appellant**

**Docket Nos. 9337/9361**

v.

**SEWERAGE & WATER BOARD,  
Appointing Authority**

**DECISION**

Appellant, Leesa Augustine, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from her November 19, 2021, emergency suspension and her March 21, 2022, termination of employment. (Exhibits HE-1, HE-2). At all relevant times, Appellant had permanent status as a Senior Special Agent in the Sewerage & Water Board's Security Department. (Tr. at 10; Exs. HE-1, HE-2). A Hearing Examiner, appointed by the Commission, presided over a hearing on May 6, 2022. At this hearing, both parties had an opportunity to call witnesses and present evidence.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the hearing, all exhibits submitted at the hearing, the Hearing Examiner's report dated September 7, 2022, and controlling Louisiana law.

For the reasons set forth below, Ms. Augustine's appeal is DENIED.

**I. FACTUAL BACKGROUND**

Alvin Flint, the Utility Services Manager of Security, manages the Security Department of the Sewerage & Water Board. (Tr. at 156). Following an anonymous call from the New Orleans Police Department about Ms. Augustine "double dipping," or receiving wages for work at the Sewerage & Water Board during the same time she was working paid details as a reserve New

Orleans Police Department employee, Mr. Flint investigated Ms. Augustine's work hours in each capacity. (Tr. at 164).

Ms. Augustine testified she would work details for the Downtown Development District about three times per week. (Tr. at 36). The Office of Police Secondary Employment paid Ms. Augustine for the details, usually by direct deposit. (Tr. at 66).

Mr. Flint also served as Ms. Augustine's direct supervisor. (Tr. at 157). Ms. Augustine's job duties included conducting investigations and serving as a point of contact with he contracted guards. (Tr. at 157-58). Ms. Augustine was an hourly employee, and her work hours at the Sewerage & Water Board were 7:00 AM – 3:00 PM. (Tr. at 158). Ms. Augustine would complete time sheets and forward these documents to a Sewerage & Water Board employee. (Tr. at 167). After the Public Integrity Bureau of the New Orleans Police Department conducted an investigation and ended Ms. Augustine's service as a reserve officer, PIB provided the documents from the Office of Police Secondary Employment to Mr. Flint. (Tr. at 164-66). In addition, Mr. Flint obtained the Call-In Detail from the New Orleans Police Department through a public records request. (Tr. at 198). Mr. Flint prepared a detailed report showing that on 72 occasions from January to August 2021, Ms. Augustine was paid for working at the Sewerage & Water Board during the time she also received pay from the Office of Police Secondary Employment (for a total of 218 hours). (Tr. at 206).

## II. ANALYSIS

### A. Legal Standard for Commission's Review of Discipline

#### 1. The Appointing Authority must show cause for discipline

“Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A).” *Whitaker v. New Orleans Police*

*Dep't*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep't of Police*, 2000-1682 (La. App. 4 Cir. 5/9/01)). “Legal cause exists whenever an employee’s conduct impairs the efficiency of the public service in which the employee is engaged.” *Id.* “The Appointing Authority has the burden of proving the impairment.” *Id.* (citing La. Const., art. X, § 8(A)). “The appointing authority must prove its case by a preponderance of the evidence.” *Id.* “Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the “efficient operation” of the public service.” *Id.* “It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, the 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 (quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094).

**2. The Appointing Authority must show the discipline was commensurate with the infraction**

The Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance of evidence that it had good or lawful cause for suspending the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Durning v. New Orleans Police Dep't*, 2019-0987 (La. App. 4 Cir. 3/25/20), 294 So. 3d 536, 538, *writ denied*, 2020-00697 (La. 9/29/20), 301 So. 3d 1195; *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d

106 (La. 1984). The Appointing Authority has the burden of showing that the discipline was reasonable and not arbitrary or capricious. *Neely v. Dep't of Fire*, 2021-0454 (La. App. 4 Cir. 12/1/21), 332 So. 3d 194, 207 (“[NOFD] did not demonstrate . . . that termination was reasonable discipline”); *Durning*, 294 So. 3d at 540 (“the termination . . . deemed to be arbitrary and capricious”).

**a. Factors considered by Commission**

“In determining whether discipline is commensurate with the infraction, the Civil Service Commission considers the nature of the offense as well as the employee’s work record and previous disciplinary record.” *Matusoff v. Dep't of Fire*, 2019-0932 (La. App. 4 Cir. 5/20/20), 2020 Westlaw 2562940, *writ denied*, 2020-00955 (La. 10/20/20), 303 So. 3d 313. The Commission considers the nature of the offense, the employee’s work ethic, prior disciplinary records, job evaluations, and any grievances filed by the employee.” *Honore v. Dep't of Pub. Works*, 14-0986, pp. 8-9 (La. App. 4 Cir. 10/29/15), 178 So. 3d 1120, 1131, *writ denied*, 2015-2161 (La. 1/25/16), 185 So. 3d 749

**B. The Sewerage & Water Board has shown cause for the discipline of Ms. Augustine**

The Sewerage & Water Board has shown that Ms. Augustine engaged in fraud by receiving payment from two different entities for work during the same hours on 72 occasions. (Ex. E to Ex. SWBNO-1). This conduct impairs the efficient operation of the Sewerage & Water Board, as Ms. Augustine cannot serve in a position of trust if she is committing fraud. (Tr. at 289).

**C. The penalty is commensurate with the violation.**

The penalty of termination is appropriate for any employee engaging in fraudulent conduct, but especially for an employee serving in a position of trust. The Commission finds that the emergency suspension and the termination are commensurate with the violation.

This the 9<sup>th</sup> day of December, 2022.

WRITER:

J H Korn  
J H Korn (Dec 7, 2022 10:37 CST)

JOHN KORN, VICE-CHAIRPERSON

CONCUR:

BKR  
Brittney Richardson (Dec 9, 2022 09:58 CST)

BRITTNEY RICHARDSON, CHAIRPERSON

CJ Moore  
CJ MOORE (Dec 7, 2022 09:36 CST)

CLIFTON J. MOORE, JR., COMMISSIONER