



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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CLIFTON J. MOORE, VICE-CHAIRPERSON
JOHN KORN
MARK SURPRENANT
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AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Tuesday, April 13, 2021

Mr. David Lockett

Re: **David Lockett VS.
Sewerage & Water Board
Docket Number: 9072**

Dear Mr. Lockett:

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 - 4/13/2021 - 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
Management Services Division

cc: Ghassan Korban
Joseph Zanetti
Jim Mullaly
file

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

DAVID LOCKETT,
Appellant

vs.

DOCKET NO. 9072

SEWERAGE & WATER BOARD,
Appointing Authority

I. INTRODUCTION

Appellant, David Lockett (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 (hereinafter "Appointing Authority") did not have sufficient cause to issue a written reprimand to him. At all times relevant to the instant appeal, Appellant served as a Networks Planner and Scheduler and has permanent status as a classified employee.

By letter dated August 13, 2019, the Appointing Authority notified the Appellant of its decision to issue a letter of reprimand after determining Appellant violated Policy Memorandum No. 81, when he failed to obtain advance permission from his supervisor to accompany a subordinate to a Civil Service hearing. (Ex. B-4, Tr. at 10).

A Hearing Examiner, appointed by the Commission, presided over a hearing on October 23, 2019, during which both Parties had an opportunity to call witnesses and present evidence. The Hearing Examiner prepared a report and recommendation based

upon the testimony and evidence in the record. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing, as well as the Hearing Examiner's report. Based upon our review, we GRANT the appeal and render the following judgment.

II. FACTUAL BACKGROUND

A. Undisputed Facts

David Lockett transported Robert Oalman, his subordinate, to a civil service hearing on July 29, 2019, during work hours. (Tr. at 10). Lockett had emailed his superior about the absence at 8:00 AM on the day of the hearing, and had left the document reflecting the hearing in his supervisor's in-box at 6:00 AM. (Tr. at 17). Because Lockett's absence was for less than a day, Lockett was required to comply with Policy 81, which required his supervisor's approval. (Tr. at 40-41, 48). Lockett never received authorization from his superior to attend the hearing. (Tr. at 18).

The Sewerage & Water Board failed to comply with its progressive discipline policy by failing to provide Lockett with a notice of intent and an opportunity to provide a response to the allegations against him. (Tr. at 58). The letter of reprimand reflects that it is issued "[i]n accordance with Progressive Discipline." (Ex. B-4).

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.*

IV. ANALYSIS

The Appointing Authority has established by a preponderance of evidence that the Appellant violated Policy 81, and the penalty is commensurate with the infraction.

However, the Sewerage & Water Board failed to comply with its own progressive discipline policy. The Sewerage & Water Board is accountable for its failure to comply with its own June 15, 2019, policy requirement that the Appellant receive Written Notice of Intent to recommend disciplinary action and an opportunity to respond before the issuance of the August 13, 2019, letter of reprimand. (Tr. at 58-61). Classified employees are entitled to notice and a meaningful opportunity to be heard prior to the imposition of discipline:

We also note that civil service employment has been recognized by the United States Supreme Court as a property right and therefore protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. See *Evangelist v. Dep't of Police*, 2008-1375, p. 5 (La.App. 4 Cir. 9/16/09), 32 So.3d 815, 838. "No person who has gained permanent status in the classified ... city service shall be subjected to disciplinary action except for cause

expressed in writing.” La. Const., art. X, § 8(A). “The tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer’s evidence, and an opportunity to present his side of the story.” *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 546, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985). “[T]his right to notice and opportunity to be heard must be extended at a meaningful time and a meaningful manner.” *Moore v. Ware*, 2001-3341, p. 11 (La. 2/25/03), 839 So.2d 940, 949.

Matusoff v. Dep't of Fire, 2019-0932 (La. App. 4 Cir. 5/20/20), writ denied, 2020-00955 (La. 10/20/20), 303 So. 3d 313.

V. CONCLUSION

The Commission hereby GRANTS the Appellant’s appeal. The letter of reprimand shall be rescinded and removed from Appellant’s personnel file.

Judgment rendered this 13th day of April, 2021.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER:

J H Korn
J H Korn (Apr 13, 2021 13:59 CDT)

JOHN KORN, COMMISSIONER

CONCUR:

Mark C. Surprenant
Mark C. Surprenant (Apr 8, 2021 13:55 CDT)

MARK SURPRENANT, COMMISSIONER

CJ Moore
CJ Moore (Apr 13, 2021 13:58 CDT)

CLIFTON J. MOORE, JR., VICE-CHAIRPERSON