



MITCHELL J. LANDRIEU
MAYOR

CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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NEW ORLEANS LA 70112
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CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON
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LISA M. HUDSON
DIRECTOR OF PERSONNEL

Thursday, December 01, 2016

Ms. Rowena Jones
1010 Common, Suite 1400A
New Orleans, LA 70112

Re: **Marion Louis VS.
Recreation Department
Docket Number: 8322**

Dear Ms. Jones:

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 - 12/1/2016 - 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 must conform to the deadlines established by the Commission's Rules and Article X, 12(B) of the Louisiana Constitution. Further, any 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 that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Victor N. Richard, III
Elizabeth S. Robins
Victor Papai
Marion Louis

file



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CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

<p>MARION LOUIS</p> <p>vs.</p> <p>DEPARTMENT OF RECREATION</p>	<p>DOCKET NOs.: 8322 c/w 8336</p>
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I. INTRODUCTION

Appellant, Marion Louis, brings the instant appeal challenging a suspension and subsequent termination effectuated by the New Orleans Department of Recreation (hereinafter “NORDC” or “Appointing Authority”). At all times relevant to the matter now before the Commission, Appellant was a classified employee with permanent status and worked as an Office Assistant Trainee for the Appointing Authority.

II. FACTUAL BACKGROUND

A. Issuance of Discipline

On or about July 29, 2014, NORDC placed Appellant on a twenty-day suspension without pay. (H.E. Exh. 1). The reason NORDC identified for Appellant’s suspension was Appellant’s failure to improve her performance during a ninety-day review period following Appellant’s receipt of a “needs improvement” evaluation rating. *Id.* The notice to Appellant regarding the twenty-day suspension also invited Appellant to attend a pre-termination meeting at which Appellant would have an opportunity to address the allegation that her performance had

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not improved during the ninety-day review period. Appellant attended the pre-termination meeting on August 13, 2014. (H.E. Exh. 2).

According to NORDC, Appellant failed to introduce any “examples of work” or new information that dissuaded NORDC from moving forward with termination. And, effective August 18, 2014 NORDC terminated Appellant’s employment. Appellant appealed both the suspension and her termination.

B. Appellant’s Job Performance

At all times relevant to the instant appeal, Appellant served in the classification of Office Assistant Trainee. As an Office Assistant Trainee, Appellant frequently fielded calls from citizens regarding NORDC facilities or programs. It was essential that Appellant demonstrate a high degree of professionalism and competence in this role. Appellant also processed work orders regarding repairs or maintenance for NORDC’s 127+ facilities throughout the City. NORDC depended upon administrative staff, like Appellant, to accurately track and process work orders in order to ensure that NORDC facilities remained “safe and presentable to the public.” (Tr. at 44:10-16).

During the period of time relevant to the instant appeal, Corey Johnson, director of facilities and maintenance for NORDC, directly supervised Appellant. (Tr. at 9:9-13). In January 2013, Mr. Johnson evaluated Appellant’s job performance using a form prescribed the Civil Service Department. 10:14-17, 10:22-11:6. On February 26, 2014, Mr. Johnson issued a performance rating of “needs improvement” to Appellant. (A.A. Exh. 1). Among the areas rated as “needs improvement” were: Job Knowledge, Quality of Work, Volume of Work, Dependability, Communication, Planning and Organization and Decision Making. *Id.*

During the course of his testimony, Mr. Johnson provided some additional details regarding his observations of Appellant's performance and why, in his estimation, she failed to meet certain performance standards. These included Appellant's frequent errors on invoices (Tr. at 14:10-14), frequent absenteeism and tardiness (Tr. at 15:1-7), poor communication skills (Tr. at 15:18-24), and Appellant's struggle with "just basic skill[s] that we needed as an office assistant [Appellant]." (Tr. at 16:9-11). After issuing the evaluation to Appellant, Mr. Johnson met with Appellant for approximately fifteen minutes and discussed the ratings. *Id.* at 17:14-18.

Via letter dated March 6, 2014, Mary Jo Webster, Chief Operating Officer of NORDC, notified Appellant that Appellant had the right to appeal the "needs improvement" rating but that Appellant had to exercise that right within thirty days after receiving notice of the rating. (A.A. Exh. 2). Appellant did not appeal her evaluation and the rating became final.

Appellant's ninety-day review period began immediately upon the issuance of the evaluation. During this period, Mr. Johnson observed that Appellant still struggled with many of the areas noted as deficient in evaluation, including communication and accuracy. *Id.* at 20:7-15. Mr. Johnson summarized his concerns regarding Appellant's performance in an email to his supervisor, Ms. Webster, on July 16, 2014. (A.A. Exh. 3). In Mr. Johnson's opinion, Appellant had failed to sufficiently improve her performance during the ninety-day review period. (Tr. at 24:3-7).

During Appellant's pre-termination meeting, Mr. Johnson offered Appellant the opportunity to accept a demotion to the classification of Laborer in lieu of termination. *Id.* at 25:6-11. However, due to Appellant's medical condition, she did not believe she could perform the duties of a laborer and declined the offer. *Id.* at 25:12-15.

Ms. Webster testified that, in addition to relying upon Mr. Johnson to formally evaluate Appellant, she had insight into Appellant's performance based upon professional interactions. *Id.* at 37:3-10. Frequently, when identifying problems within the department, Ms. Webster and Mr. Johnson determined that the root cause was the poor quality work at the administrative level. *Id.* at 37:15-22. Ms. Webster also had the opportunity to review Appellant's work product in the course of discussing Appellant's performance with Mr. Johnson as well as in her own capacity as COO and noted that Appellant "did not demonstrate the ability to write well or professionally." *Id.* at 42:12-24, 43:7-9. Specifically, Ms. Webster testified that Appellant appeared to be unfamiliar with the common Microsoft Office application Excel, which allows users to generate spreadsheets and reports using data from a variety of sources. *Id.* at 44:20-25. Ultimately, Ms. Webster agreed with Mr. Johnson's assessment of Appellant's performance.

Appellant testified that she was surprised by the "needs improvement" service rating issued by Mr. Johnson. She also expressed concern that Mr. Johnson had not been her supervisor for a long enough period of time to issue an evaluation. Further, Appellant observed that Mr. Johnson had assigned Appellant a new task related to the logging and tracking of NORDC vehicles that initially presented a challenge to Appellant. *Id.* at 67:9-19. Appellant also denied Mr. Johnson's claim that she was frequently absent and late. According to Appellant, she had a serious medical condition that necessitated visits to her medical provider, but denied regularly missing work.

III. LEGAL STANDARD

Appointing Authorities may only discipline employees in the classified service may only for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that an appointing authority did not have sufficient cause to issue discipline, he/she may bring an appeal before this

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Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, an 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 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094 (La. Ct. App. 2007)). If the Commission finds that an appointing authority has met its initial burden, and had sufficient cause to issue discipline, it must then determine if that discipline “was commensurate with the infraction.” *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). Thus, the analysis has three distinct steps with the appointing authority bearing the burden of proof at each step.

IV. ANALYSIS

A. Occurrence of the Complained of Activities

The Appointing Authority alleged that Appellant’s performance did not adequately improve during the course of her 90-day review period. (H.E. Exh. 2). In support of this contention, the Appointing Authority introduced testimony from Mr. Johnson who bore the responsibility of monitoring Appellants improvement, or lack thereof. Mr. Johnson offered several examples of Appellant’s unsatisfactory performance specifically tied to her poor communication skills and work quality. Ms. Webster also offered specific examples of Appellant’s work failing to meet the level of professionalism expected of an Office Assistant.

Appellant presented as an earnest individual who had accepted an Office Assistant Trainee position after working for NORDC as a laborer. However, it appears that the transition

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to a new classification with new responsibilities posed a substantial challenge for Appellant. Based upon the record before us, the undersigned Commissioners find that NORDC has satisfied its burden in establishing that Appellant failed to adequately improve her performance following her ninety-day review period.

B. Impairment of Efficient Operation of Appointing Authority

Ms. Webster noted that Appellant was often the public's first line of communication with NORDC. Thus, it was essential that Appellant demonstrate a high degree of professionalism and competence in both her written and oral communications. Unfortunately, Appellant was unable to meet a satisfactory standard of performance in this regard. Not only did Appellant's unsatisfactory performance reflect poorly upon NORDC, it hindered the staff's ability to efficiently respond to the public's concerns. Therefore, the Commission finds that NORDC has established that Appellant's poor performance adversely impacted NORDC's efficient operation.

C. Discipline Commensurate with Offense

In conducting its analysis at this stage, the Commission must determine if Appellant's suspension and subsequent termination were "commensurate with the dereliction;" otherwise, the discipline would be "arbitrary and capricious." *Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d 976, 978 (citing *Staehle v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

The Civil Service Rules provide the Appointing Authority with substantial discretion in determining the appropriate response to employees who fail to improve following a 90-day review period. And, the Rules in effect at the relevant period of time mandated that NORDC take some manner of disciplinary action. However, that discipline could have been a reprimand, demotion, or suspension. Instead, NORDC terminated Appellant's employment. NORDC's

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decision to terminate Appellant was based upon both Mr. Johnson's and Ms. Webster's observations of Appellant's performance and the adverse impact that performance had on NORDC's operations. In light of the evidence and testimony in the record, the Commission does not find that NORDC's decision was arbitrary or capricious.

V. CONCLUSION

Based upon the foregoing, the Commission DENIES the appeal.

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M. Louis
Nos. 8322 c/w 8336

Judgment rendered this 30th day of November, 2016.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION


MICHELLE D. CRAIG, CHAIRPERSON

11/15/2016
DATE


RONALD McCLAIN, VICE-CHAIRPERSON

11/15/16
DATE


JOSEPH CLARK, COMMISSIONER

11/30/16
DATE