



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

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MAYOR

Tuesday, May 16, 2017

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Chance Samoy

Re: **Chance Samoy VS.
Department of Public Works
Docket Number: 8435**

Dear Samoy:

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 - 5/16/2017 - 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, Sec.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 cursive script that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Mark D. Jernigan, P.E.
Elizabeth S. Robins
Victor Papai
file

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

CHANCE SAMOY vs. DEPARTMENT OF PUBLIC WORKS	DOCKET No.: 8435
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I. INTRODUCTION

Appellant, Chance Samoy, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Department of Public Works for the City of New Orleans, (hereinafter “DPW”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the DPW disciplined Appellant for sufficient cause. At all times relevant to the instant appeal, Appellant served as a Laborer for the DPW and had permanent status as a classified employee.

On Tuesday, May 31, 2016, a hearing examiner appointed by the Commission presided over the instant appeal hearing. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the hearing examiner’s report.¹ Based upon our review, we render the following judgment.

¹ The Commission points out that the hearing examiner who presided over the hearing, Victor Papi, did not prepare the report in this matter. Due to contractual restrictions, the Commission assigned the drafting of the report to another hearing examiner, Brendan Greene.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

Employees of the DPW are responsible for the upkeep, maintenance and repair of public infrastructure throughout the City of New Orleans. (Tr. at 60:9-12). As a Laborer, Appellant performed a wide range of manual work for the DPW, often on work crews consisting of several other DPW employees. Effective on or about June 29, 2015, the DPW terminated Appellant's employment citing her "continued insubordination and disrespect towards [her] supervisor and co-workers" as the reason for termination. (H.E. Exh. 1). Specifically, the DPW alleged that on May 13, 2015, Appellant; 1) refused a directive issued by a supervisor, 2) threw a piece of paving equipment, and 3) cursed at her supervisors and co-workers. (H.E. Exh. 1b).²

The DPW alleges that Appellant's actions violated both City of New Orleans policy and DPW procedures. DPW's employee handbook identifies "discourteous treatment of the public, a supervisor, or co-worker" as misconduct warranting disciplinary action. And, CAO Policy Memorandum No. 83, which contains standards of conduct for all City employees, requires that employees be "courteous, civil and respectful" and have "patience with the public and fellow employees." (H.E. Exh. 1).

Finally, the DPW noted that Appellant had previously received a three-day suspension for "engaging in a verbal altercation" with co-workers and calling a supervisor "stupid" in front of other co-workers. (H.E. Exh. 1b). The DPW argues that Appellant's prior discipline and alleged misconduct on May 13, 2015 rendered her unable or unwilling to continue to serve as a Laborer.

² Prior to terminating Appellant's employment, the DPW placed Appellant on an emergency suspension. The Commission deemed that Appellant's appeal of her emergency suspension was untimely and dismissed the appeal pursuant to Rule II, § 4.3.

B. May 13, 2015

On May 13, 2015, Appellant was assigned to a DPW work crew responsible for making repairs to a street on the West Bank. (Tr. at 84:1-25). Appellant's assigned task that morning was spreading asphalt on an area of the street. She performed the task by moving a long iron tool called a "loop" over asphalt dispensed from a truck. As she was attempting to smooth the asphalt, her supervisor, Joseph Sergeant, expressed dissatisfaction with the quality of Appellant's work and instructed her to turn the tool over to another member of the crew. *Id.* at 20:12-20, 84:14-20. Appellant, believing that she could complete the work in a satisfactory manner, refused Mr. Sergeant's direction. *Id.* at 84:14-20.

Another member of Appellant's work crew, Reginald Johnson, approached Appellant with the intent of relieving her of the loop. Instead, Appellant threw the loop. Mr. Johnson then engaged Appellant in a heated discussion regarding the impropriety of Appellant's actions. *Id.* at 33:10-34:6. Mr. Sergeant attempted to intervene, but when he did, Appellant directed inappropriate language towards him. *Id.* at 33:14-19. As a result, Mr. Sergeant requested that DPW Superintendent Jerome Casby relocate to the work site in order to render assistance. *Id.* at 20:12-20.

When Mr. Casby arrived at the work site, Appellant alleged that the other employees were against her, directed profanities at Mr. Casby and called Mr. Casby "stupid." *Id.* at 21:1-13. Mr. Casby relieved Appellant of further duties due to her "attitude and use of profanity." (H.E. Exh. 1a). Prior to the May 13th incident, Mr. Casby had counseled Appellant numerous times regarding her behavior towards fellow DPW employees and her general lack of professionalism. (Tr. at 25:22-26:7).

During the presentation of her case, Appellant denied engaging in any misconduct and attributed her coworkers' allegations as a product of their general disapproval of her status as a transgender person. Appellant, who identifies as a woman, testified that, at the time of the alleged incident, she was in the process of transitioning to her current gender identity. She testified that members of her work crew and Mr. Sergeant did not approve of her lifestyle choice. She also claimed that fellow employees engaged in a course of harassment and fabricated accounts of misconduct that cast Appellant in a negative light. *Id.* at 74:16-23, 76:4-23. Appellant alleged that Mr. Casby was biased against her due to her status as a transgender individual and fabricated the events of May 13th in order to terminate Appellant. *Id.* at 80:9-18.

As a result of the alleged harassment she received in the workplace, Appellant complained to the City's Human Services Department. *Id.* at 73:21-74:3. Larry Bagneris, Jr., the director of the City's Human Relations Commission, responded to Appellant's concerns and acknowledged that several of Appellant's co-workers appeared to be "uncomfortable" with Appellant's transition. *Id.* at 100:21-101:13.³ As a result, Mr. Bagneris conducted a training session for Appellant's co-workers that focused on Appellant's "right to exist" and work in an environment free of harassment. *Id.* at 96:6-22. Mr. Bagneris testified that the DPW's leadership was very supportive of the training and "responded well" to the meetings Mr. Bagneris conducted related to Appellant's transition.

III. LEGAL STANDARD

An appointing authority may discipline an employee with permanent status in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that an appointing authority issued discipline without sufficient cause, he/she may bring an appeal before this

³ Gender identity is covered by the City's nondiscrimination policy. Tr. at 97:11-14.

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 DPW based its decision to terminate Appellant on allegations that Appellant: 1) refused an instruction from her supervisor; 2) threw a tool; and 3) cursed at a supervisor and co-workers. Appellant acknowledged that she refused Mr. Sergeant’s directive to cease using the loop and to give the tool to another employee. While Appellant believed she could improve her “sluggish” approach to the job, her supervisor did not. The record supports DPW’s allegation that Appellant refused an appropriate and reasonable directive from her supervisor.

Appellant also admitted that she “tossed” the loop when Mr. Johnson approached her to relieve her of the tool as directed by Mr. Sergeant. Appellant’s attempted to justify her actions by claiming that Mr. Johnson aggressively approached her. The Commission finds that Mr. Johnson

approached Appellant to retrieve the loop at the direction of Mr. Sergeant. Appellant attempted explanation does not provide reasonable justification for throwing a tool on a DPW work site. Thus, by a preponderance of the evidence, the DPW has established that Appellant engaged in misconduct when she threw a work tool while on a DPW work site.

Both Mr. Johnson and Mr. Casby testified that Appellant cursed at Mr. Casby and called him stupid. Appellant strenuously denied that she directed inappropriate language at Mr. Casby on May 13, 2015. She claims that her co-workers and supervisors disapproved of her lifestyle choice and were determined to find a way to get rid of her. There is no support in the record for Appellant's allegation.

The only evidence in the record regarding Appellant's co-workers' attitude towards Appellant's status as a transgender person was Mr. Bagneris's observation that some of Appellant's co-workers were "uncomfortable" with Appellant's transition. There is simply not enough evidence in the record to bridge the gap between Appellant's coworkers' feelings of discomfort and a concerted effort on the part of Appellant's co-workers and supervisors to fabricate their accounts of Appellant's misconduct. Furthermore, Mr. Bagneris testified that Appellant's supervisors were supportive of the training regarding Appellant's rights in the work place.

Based upon the foregoing, the Commissioners find that Appellant engaged in the misconduct alleged by the DPW.

B. Impact on the DPW's Efficient Operations

Mark Jernigan, the DPW's Director, testified that Appellant's actions on May 13, 2015 disrupted the work site in several different ways. First, by refusing an instruction from her supervisor, Appellant compromised the supervisor's ability to efficiently and effectively direct work. And, by throwing a tool, Appellant engaged in unsafe and unprofessional behavior that

further compromised the efficiency of the crew assigned to repair the street. Finally, by directing profanity and insults towards her supervisors, Appellant compromised Mr. Jernigan's mandate to ensure that all DPW workers have a respectful and professional work environment.

The Commission finds that the DPW has established that Appellant's misconduct adversely impacted the DPW's efficient operations.

C. Was the Discipline Commensurate with Appellant's Offense

In conducting its analysis, the Commission must determine if Appellant's termination was "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).

Mr. Jernigan testified that all DPW employees receive copies of Departmental and City policies regarding appropriate conduct and standards of behavior. (Tr. at 58:2-11). Appellant was no exception. Yet, despite being aware of the standards of behavior required of city employees, Appellant engaged in disruptive, unsafe and unprofessional conduct. The Commission finds that the DPW appropriately viewed Appellant's earlier three-day suspension as an aggravating factor in its decision to terminate Appellant's employment. Especially given the fact that the earlier discipline was related to Appellant's inappropriate and unprofessional behavior towards co-workers.

The DPW has an obligation to establish clear guidance to its employees related to professional conduct. Failure to adhere to such guidelines should result in discipline. Here, the DPW attempted to address Appellant's misconduct with a suspension. When that failed, it had

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little choice but to pursue a more severe form of discipline. Based upon the record before us, we find that termination was an appropriate level of discipline for Appellant's misconduct.

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby DENIES the Appellant's appeal.

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C. Samoy
No. 8435

Judgment rendered this 15th day of May, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION



MICHELLE D. CRAIG, CHAIRPERSON

5-15-17

DATE



RONALD P. McCLAIN, VICE-CHAIRMAN

5-15-17

DATE



STEPHEN CAPUTO, COMMISSIONER

5-15-17

DATE