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CITY CIVIL SERVICE COMMISSION

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

Wednesday, December 21, 2016

Ms. Tamica Turner

Re: **Tamica Turner VS.
Department of Public Works
Docket Number: 8536**

Dear Ms. Turner:

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 - 12/21/2016 - 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, 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 blue ink that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Mark D. Jernigan, P.E.
Elizabeth S. Robins
Brendan M. Greene
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

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| TAMICA TURNER vs. DEPARTMENT OF PUBLIC WORKS | DOCKET No.: 8536 |
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I. INTRODUCTION

Appellant, Tamica Turner, 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 City of New Orleans, (hereinafter the “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 had sufficient cause to discipline Appellant. The undersigned Commissioners have reviewed the transcript of the appeal hearing that occurred on August 30, 2016, the exhibits accepted into the record by the hearing examiner, and the hearing officer’s report. After reviewing such testimony, evidence, and recommendation we render the following decision and judgment.

II. FACTUAL BACKGROUND

Appellant, was a permanent, classified employee serving the DPW in the capacity as a Parking Control Officer (hereinafter “PCO”) at all times relevant to the instant appeal. The DPW suspended Appellant for one day in connection with Appellant’s alleged failure to report to work at her designated time. The letter notifying Appellant of her suspension identifies twelve (12)

separate incidents on which Appellant was either late in reporting to work or failed to report at all. (H.E. Exh. 1). Appellant stipulated to the accuracy of the allegations identified in the disciplinary letter but alleged that her one-day suspension was procedurally deficient and not in keeping with DPW policy. (Tr. at 16:13-21, 17:24-18:4).

Linda Copeland was the Administrator of the DPW during all times relevant to the instant appeal. In her capacity as Administrator, Ms. Copeland was responsible for developing policies and standard operating procedures; she was also responsible for overseeing enforcement of these policies. *Id.* at 11:6-11. Through Ms. Copeland, the DPW introduced the progressive discipline policy that applied to DPW employees during the time in question. (DPW Exh. 1). This policy is a guide for supervisors within DPW and recommends a course of action when addressing problematic employee behavior including:

1. Counseling
2. Verbal Warning
3. Letter of Reprimand
4. Suspension Without Pay
5. Demotion
6. Termination

(DPW Exh. 1).

Ms. Copeland testified that DPW supervisors had verbally counseled Appellant regarding attendance issues on two occasions prior to the issuance of the suspension in accordance with the progressive discipline policy. (Tr. at 19:5-17). Carl Bridgewater, a “Supervisor II” within the DPW directly supervised Appellant and confirmed that he met with Appellant regarding Appellant’s poor attendance and punctuality. *Id.* at 28:17-23. Unfortunately, these counseling sessions did not appear to have an impact on Appellant’s attendance or punctuality. Ms. Copeland viewed Appellant’s failure to modify her conduct following the two earlier counseling sessions as an aggravating factor warranting discipline beyond a letter of reprimand.

Ms. Copeland claimed that Ms. Turner's absenteeism and tardiness had an adverse impact on the performance of the parking enforcement division of the DPW as a whole. On a very basic level, Ms. Copeland believed that Ms. Turner's tardiness set a bad example for other employees and adversely impacted employee morale. *Id.* at 20:15-21. Mr. Bridgewater echoed Ms. Copeland's testimony and observed that Appellant's poor attendance decreased the productivity of the parking enforcement division as a whole since fewer employees would have to cover the same amount of ground. *Id.* at 29:7-16. Cammie Carroll, another supervisor within the parking division, concurred with Mr. Bridgewater's assessment of the negative impact Appellant's misconduct had on the parking division. *Id.* at 39:4-40:4.

On cross-examination, Ms. Copeland denied Ms. Turner's assertion that DPW has a policy that "wipes the slate clean" for employees involved in various misconduct. Instead, Ms. Copeland testified that an employee's "instances of tardiness or absenteeism are cumulative." *Id.* 22:6-9. Finally, Ms. Copeland observed that the DPW attempts to give employees the "benefit of the doubt" but certain repeated misconduct must result in discipline.

III. LEGAL STANDARD

An appointing authority may only discipline a permanent classified employee if there exists sufficient cause for such discipline. La. Con. Art. X, § 8(A). If an employee believes that his/her discipline is not supported by sufficient cause, he/she may bring an appeal before this 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

In its letter notifying Appellant of the one-day suspension, the DPW identifies a dozen examples of tardiness and absenteeism. The DPW, like every other City Department, tracks employee attendance through a computerized system known as ADP. This system records the time “non-exempt” employees (like Appellant) “clock-in” and “clock-out.” A report regarding Appellant’s attendance, lends support to each of the instances of tardiness/absenteeism identified in the suspension letter. For her part, Appellant did not object to the introduction of her attendance record. In fact, she stipulated to its accuracy as well as the accuracy of the incidents absenteeism or tardiness identified in the disciplinary letter in evidence as “Hearing Examiner Exhibit 1.”

Therefore, we find that the DPW has established the fact that Appellant engaged in the misconduct identified in the notice of discipline.

B. Impairment of Efficient Operation of Appointing Authority

The impairment of the efficient operation of the DPW when a PCO fails to report to his or her assignment on time is undeniable. As a preliminary matter, an absent PCO cannot issue citations for parking violations, thus the City’s ability to enforce municipal parking ordinances

suffers. Of equal concern is the impact such frequent absenteeism and tardiness has on other PCOs. The DPW's own progressive discipline policy succinctly describes this potential impact; "Being overly lenient or overlooking rules altogether invites disrespect and over a period of time the rules become dormant and unenforceable." (DPW Exh. 1). We find that Appellant's misconduct set a bad example for other PCOs and the DPW had to act in order to make clear to other employees that such conduct was unacceptable.

Based upon the above findings, we hold that the DPW has carried its burden in establishing that Appellant's misconduct impaired its efficient operations.

C. Discipline Commensurate with Offense

In conducting its analysis, the Commission must determine if the Appellant's suspension 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).

The Commission recognizes that all appointing authorities must deter tardiness and unanticipated absences that are not related to illness or other exigent personal circumstance. Through her actions, Appellant proved that mere counseling sessions were insufficient motivation when it came to reporting to work on time. Therefore, we find that the one-day suspension the DPW issued to Appellant was commensurate with Appellant's misconduct.

V. CONCLUSION

Based upon the foregoing, the Commission hereby DENIES Appellant's appeal.

Judgment rendered this 19th day of December, 2016.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION



MICHELLE D. CRAIG, CHAIRPERSON

DATE



JOSEPH S. CLARK, COMMISSIONER

12-19-16

DATE



RONALD McCLAIN, VICE-CHAIRMAN

12-19-16

DATE