



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
SUITE 900 - 1340 POYDRAS ST.
NEW ORLEANS, LA 70112
(504)658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION
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DIRECTOR OF PERSONNEL

Wednesday, September 13, 2023

Ms. Anna Maltseva

Re: **Anna Maltseva VS.
Code Enforcement & Hearing Bureau
Docket Number: 9464**

Dear Ms. Maltseva:

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 - 9/13/2023 - 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,

A handwritten signature in blue ink that reads "Stacie Joseph".

Stacie Joseph
Management Services Division

cc: Thomas Mulligan
William R. H. Goforth
Jay Ginsberg
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**ANNA MALTSEVA,
Appellant**

Docket No. 9464

v.

**CODE ENFORCEMENT,
Appointing Authority**

DECISION

Appellant, Anna Maltseva, 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 May 5, 2023, 90-day suspension and demotion from Management Specialist II. (Ex. HE-1). At all relevant times, Appellant had permanent status as a Management Development Specialist II. (Tr. at 87-88; Ex. HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on July 18, 2023. 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 August 14, 2023, and controlling Louisiana law.

For the reasons set forth below, Ms. Maltseva's appeal is GRANTED in part and DENIED in part.

I. FACTUAL BACKGROUND

Ms. Maltseva, working in the position of Management Development Specialist II in Code Enforcement, had "financial, administrative budget-related functions." (Tr. at 5, 9). Her job duties included entering requisitions into the procurement and purchasing software, routing contracts, and uploading documents into the budget software (Questica). (Tr. at 10). Her supervisor is David

Grunberg, who reports to the Director of Code Enforcement, Thomas Mulligan. (Tr. at 9). Thomas Mulligan is also a Deputy Chief Administrative Officer. (Tr. at 42).

The Budget office and the Mayor's office were discussing the correct organization code and funding source for an Urban Policy Specialist IV position. (Tr. at 19; Ex. CE-1). In an email dated April 26, 2023, Brandye DeLarge stated that Fund 5110 was the only funding source the Budget office could approve. (Tr. at 19-20; Ex. CE-1).

On May 4, 2023, Mr. Mulligan had a conversation with Ms. Maltseva about the use of Fund 5110, where Code Enforcement fines and fees are deposited, and the Department's strategy for gaining more independence. (Tr. at 51, 62). In particular, Mr. Mulligan instructed Ms. Maltseva that he first wanted to "sit down and talk about our strategy moving forward" to be sure the Department had its "ducks in a row" before she contacted Budget about the use of this Fund. (Tr. at 51). Despite this instruction, Ms. Maltseva informed Brandye DeLarge in Budget that "code enforcement cannot approve this position." (Tr. at 21; Ex. CE-1). Ms. Maltseva testified that the position did not belong in Code Enforcement and that Fund 5110 was in the negative. (Tr. at 22). At 4:14 PM on May 4, Ms. Maltseva sent an email to Ms. DeLarge, the Chief Administrative Officer, the Finance Director, the City Attorney, and others, setting forth the reasons that Code Enforcement could not approve the Urban Policy Specialist IV position. (Ex. CE-1). In this email, Ms. Maltseva recommended pausing vacancies and suggested that Ms. DeLarge collaborate with the Law Department to find a new funding source for their personnel. (Ex. CE-1; Tr. at 28).

Mr. Mulligan immediately responded that the information in this email was incorrect and the email should not have been sent. (Ex. CE-1). Mr. Mulligan then emailed Ms. Maltseva to reiterate that she should not communicate with the Budget office or other outside departments without his permission. (Ex. CE-1).

Despite this instruction, Ms. Maltseva emailed the CAO, Finance Director, Ms. DeLarge, and others on May 5, 2023, at 9:01 AM to “clarify” her May 4 email and give more detail. (Ex. CE-2; Tr. at 31-33).

Ms. Maltseva was absent from work on May 5, and her direct supervisor did not receive the text message she sent on May 5. (Tr. at 41).

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 terminating 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. Code Enforcement failed to carry its burden of showing cause for disciplining Ms. Maltseva for failing to inform her supervisor of her absence

Ms. Maltseva offered testimony and the text message that she sent on May 5 to inform her supervisor of her absence. (Ex. Appellant-18). Therefore, Code Enforcement has failed to carry its burden of showing that the complained-of conduct occurred. Ms. Maltseva's appeal of this discipline is GRANTED.

C. Code Enforcement has shown cause for the suspension and demotion of Ms. Maltseva for insubordination

Code Enforcement has carried its burden of showing that the complained-of insubordination occurred. Ms. Maltseva disregarded her supervisor's instructions on two separate occasions, sending emails to high-ranking individuals in City government and informing them of decisions she did not have the authority to make.

D. The 85-day suspension and demotion are commensurate with the violation.

The 85-day suspension and demotion to Management Development Analyst II are commensurate with the violation. The emails Ms. Maltseva sent on May 4 and May 5 were not only in direct contravention of her supervisor's instructions, but the content of the emails reflects a lack of judgment, justifying the demotion to a lower position with less discretion. Ms. Maltseva has received earlier discipline for similar conduct. (Exs. CE-4-CE-6).

III. CONCLUSION

Ms. Maltseva's appeal of her demotion and 85-day suspension for insubordination is DENIED.

Ms. Maltseva's appeal of her five-day suspension for failing to inform her supervisor of an absence is GRANTED. The Department of Code Enforcement shall remove the discipline based on failing to inform her supervisor of an absence and reimburse Ms. Maltseva lost wages and other emoluments of employment for five days.

This the 13th day of September, 2023.

WRITER:


Brittney Richardson (Sep 12, 2023 23:29 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

CONCUR:

Mark C. Surprenant
Mark C. Surprenant (Sep 12, 2023 13:21 EDT)

MARK SURPRENANT, COMMISSIONER

Ruth White Davis
Ruth Davis (Sep 12, 2023 17:24 CDT)

RUTH DAVIS, COMMISSIONER