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LISA M. HUDSON
DIRECTOR OF PERSONNEL

Monday, May 09, 2016

Ms. Latrica Miller

Re: **Latrica Miller VS.**
Sewerage & Water Board
Docket Number: 8335

Dear Ms. Miller:

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 - 5/9/2016 - 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 shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,

Doddie K. Smith

Doddie K. Smith
Chief, Management Services Division

cc: Cedric S. Grant
Yolanda Grinstead
Victor Papai
file

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Monday, May 09, 2016

Ms. Latrica Miller

Re: **Latrica Miller VS.**
Sewerage & Water Board
Docket Number: 8347

Dear Ms. Miller:

Attached is the decision of the City Civil Service Commission in the matter of your appeal.

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CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

LATRICA MILLER vs. SEWERAGE AND WATER BOARD	DOCKET NO.: 8335 & 8347

I. INTRODUCTION

Appellant, Latrica Miller, 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 Sewerage and Water Board for the City of New Orleans, (hereinafter the "S&WB") does not allege that the instant appeal is procedurally deficient. Therefore, the Commission's analysis will be limited to whether or not the Appellant was disciplined for sufficient cause. According to a letter issued to Appellant by the S&WB, Appellant's emergency suspension and subsequent termination resulted from Appellant's violation of the S&WB's policy against workplace harassment. (H.E. Exh. 1). Specifically, the S&WB alleges that Appellant used social media to "threaten co-workers" and continued to post threatening messages even after a supervisor instructed Appellant to cease such conduct. *Id.*

II. FACTUAL BACKGROUND

Appellant, a permanent employee in the classified service, has been with the S&WB for approximately four years; at the time of the alleged events that led to her suspension and termination, Appellant was working as a Water Inspector I. (Tr. at 9:24-10:6).[1] Appellant reported

[1] The S&WB did not introduce any evidence that Appellant had any prior discipline on her record. Furthermore, there was no testimony that the forty-five-day suspension and subsequent termination at issue in the instant appeal was progressive in nature or that prior discipline was an aggravating factor warranting a higher level of discipline.

to Ms. Monique Chatters who is a meter-reading administrator and supervises approximately sixty-four (64) other meter readers. *Id.* at 102:9-14.

Appellant acknowledged that she maintained a Facebook account during the relevant period of time and understood that individuals who were her "friends" on Facebook had access to her Facebook posts. *Id.* at 17:1-19. Several of Appellant's co-workers at the S&WB were "friends" with Appellant via Facebook. During the course of the instant appeal hearing, the S&WB introduced screen shots of Appellant's Facebook page. (S&WB Exhs. 1-8). The Commission finds that Appellant made the Facebook postings captured in S&WB Exhibits 3-6 on August 13, 2014. There are no dates on Appellant's postings in S&WB Exhibits, 2, 7 or 8, but the Commission makes the reasonable conclusion that they were also posted in August of 2014.

Appellant's postings have several references to individuals with whom she works and refers to an "office." (S&WB Exh. 2). The postings also contain vulgar language along with threats to do bodily harm against others. (S&WB Exhs. 2, 6, 7, 8). While she did not deny that the postings were directed at her co-workers at the S&WB, Appellant suggests that the postings ***could*** also refer to her co-workers at her second job. (Tr. at 24:16-25:13).

As its first witness, the S&WB called Catina Braxton who worked with Appellant as a meter reader on an occasional basis. (Tr. at 60:17-25). Ms. Braxton testified that she was a "friend" of Appellant via Facebook and thus had access to Appellant's postings. *Id.* at 62:7-10. In fact, Ms. Braxton had viewed all but the posting marked as S&WB Exhibit 5. *Id.* at 63:24-64:6. Upon reading Appellant's posts, Ms. Braxton became very uncomfortable at work. *Id.* at 68:15-25. Ms. Braxton also recounted an incident in 2013 outside of work during which Appellant and Ms. Braxton were involved in a verbal altercation. During that altercation, Appellant threatened to "pull" a gun on Ms. Braxton. *Id.* at 69:16-25. This threat bothered Ms. Braxton enough that

reported the threat to her S&WB supervisor, Ms. Chatters. *Id.* at 70:1-3. Yet, there was no discipline issued as a result of this threat nor was there testimony that Appellant issued other threats towards co-workers until Appellant's Facebook posts in August of 2014.

The S&WB's next witness was Lakesha Steward, who served the S&WB in the classification of Water Service Inspector II. (Tr. at 84:17-19). Ms. Stewart testified that she was "friends" with Appellant via Facebook and thus had access to Appellant's posts and was familiar with S&WB Exhibits 2-8. *Id.* at 85:22-86:13, 86:21-87:13. Upon reviewing the posts, Ms. Stewart testified that she felt threatened by them and reported the posts to Ms. Chatters. *Id.* at 89:17-90:8, 91:5-9.

Ms. Chatters testified that she became aware of Appellant's posts when Ms. Braxton and Ms. Stewart emailed the posts to her via email. *Id.* at 103:17-25. According to Ms. Chatters, several employees, including Ms. Braxton and Ms. Stewart, expressed concerns about the posts and represented to Ms. Chatters that they felt threatened. *Id.* at 107:12-22. Ms. Chatters scheduled a meeting with Appellant after reviewing the posts and receiving complaints from Appellant's co-workers. At this meeting, Appellant indicated that her postings on Facebook were personal and she alone had control over the content of her Facebook page. *Id.* at 108:4-7.

Finally, Ms. Chatters testified that, while Appellant was a productive employee and a "great meter reader," the reinstatement of Appellant would likely cause a great deal of disruption within the meter reading department of the S&WB. *Id.* at 110:10-12, 111:2-5.

III. POSITION OF PARTIES

A. Appointing Authority

The S&WB argued that there was sufficient cause to discipline Appellant under Rule IX, §1.1 because Appellant violated the S&WB's "Work Place Harassment Policy" by; 1) utilizing

social media to threaten co-workers, and 2) continuing to post threatening messages after being instructed not to do so by a supervisor. (H.E. Exh. 1). Due to the nature and severity of Appellant's conduct, the S&WB argues that the forty-five-day suspension and termination was appropriate.

B. Appellant

Appellant represented herself during the hearing and claimed that her Facebook posts were not directed at her co-workers at the S&WB but rather were general comments that reflected mere "venting."

IV. STANDARD

It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A), 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. *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, we 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 Commission's analysis is a three-pronged one with the appointing authority bearing the burden of proof for each prong.

V. ANALYSIS

A. The Complained of Activity

There is no dispute that Appellant's Facebook posts contain inappropriate language and unambiguous threats of violence. (S&WB Exhs. 2-8). Furthermore, Appellant's posts contain images of her wearing her S&WB uniform. (S&WB Exh. 1). Appellant suggested that her posts "could" have been targeted to her co-workers at Walmart but also admits that the posting could have been aimed at her co-workers at the S&WB. (Tr. 24:16-25:13).

Throughout her testimony, Appellant's was evasive, misleading and insincere. For example, Appellant suggested that fist "emojis" in one of her posts were clouds despite the fact that the fists follow a post in which Appellant states, "I WON'T GIVE [ZERO] FUCKS WHEN MY FIST MEETS YO MOUTH HOE! STRAIGHT LIKE THAT!" (S&WB Exh. 2; Tr. at 33:22-23). Later in her testimony, Appellant addressed the threatening language she wrote in a post in evidence as S&WB Exh. 6:

> Why you talk to me knowing you don't like me? You really think you believe when they say keep your friends close and your enemies closer?? Chile if I was you I'll rethink that! You don't want me close cause ***I'll kill ya!*** And no one won't even know!

(S&WB Exh. 6)(emphasis added)

Appellant claims that the phrase "I'll kill ya!" in this post meant "I could kill you with kindness," but testified that "I didn't feel like typing [kindness] in at the time I guess." *Id.* at 46:11-47:1. Appellant's response is so disingenuous that it borders on insulting. Thus, Appellant's denials that her posts were not directed at her S&WB co-workers are simply not credible.

The Commission finds that Appellant was aware that coworkers had access to her posts and that she posted a picture of herself wearing a S&WB uniform. The Commission finds that Appellant engaged in inappropriate, off-duty activity on her social media account through which

she threatened to do violence against her co-workers at the S&WB. Thus, the S&WB proved by a preponderance of the evidence that Appellant engaged in misconduct.

However, the S&WB did not introduce its Workplace Violence Policy, nor did it establish through testimony or evidence that Appellant was aware of the policy or the consequences of violating that policy. *See Royal v. Sewerage & Water Bd.*, 2013-1528 (La.App. 4 Cir. 4/30/14, 5); 139 So.3d 1039, 1042 (the La. Fourth Circuit Court of Appeal declined to consider S&WB policies because those policies were not introduced during the appeal hearing).

Additionally, the S&WB alleged that a supervisor spoke to Appellant about her threatening posts, but Appellant "continued to post threatening messages." (H.O. Exh. 1). There was no testimony from Appellant or Ms. Chatters that any of the posts in evidence as S&WB Exhibits 2-8 were posted following a conversation between Ms. Chatters and Appellant. (*See* Chatter's Testimony Tr. 102-111). Therefore, the S&WB did not meet its burden in establishing that Appellant continued to post threatening comments towards her co-workers at the S&WB after a supervisor instructed her to cease such behavior.

B. **Did Appellant's Misconduct Impair the Efficiency of the S&WB?**

Obviously, the Commission recognizes the impact of workplace violence, and employers have a responsibility to take seriously all instances of threatening behavior, even those perpetrated in social media. However, those same employers also have the responsibility of educating employees on what behavior is acceptable and what behavior will carry with it serious discipline. During the course of the hearing, the S&WB did not introduce any evidence as to the Workplace Harassment Policy referred to in Appellant's termination letter or any training Appellant received in connection with that policy.

Nevertheless, the Commission finds that there are certain things that an employee should understand regardless of whether or not there is a policy governing a particular infraction. Here, Appellant admitted that several of her co-workers at the S&WB had access to Appellant's Facebook posts by function of being "friends" on Facebook. The posts in evidence are coarse, violent and inappropriate. The Commission finds that Appellant intended those co-workers who were her Facebook "friends" to see these posts and the threats directed at the "messy bitches that [Appellant] work[s] with" were directed at Appellant's S&WB co-workers. (*See* S&WB Exh. 2). Furthermore, the Commission accepts the testimony of Ms. Stewart, Ms. Braxton and Ms. Chatters that Appellant's threatening posts created an atmosphere of fear and tension in the workplace. Therefore, the S&WB has satisfied its burden in establishing that Appellant's misconduct negatively impacted the services provided by the S&WB.

C. Was the Discipline Commensurate with Appellant's Offense

Since the facts presented establish that Appellant engaged in misconduct and that such misconduct compromised the efficient operation of the Department, the Commission now turns to whether or not a forty-five-day suspension and termination reflect an appropriate level of discipline for such misconduct. In conducting its analysis, the Commission must determine if the Appellant's suspension and 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). As noted above, the S&WB satisfied the first two prongs of the three-prong test for discipline under a civil service system but failed to establish that Appellant's behavior violated S&WB policy or that Appellant disregarded a directive from her

supervisor. The Commission must decide, based upon the facts presented at the hearing, whether or not Appellant's termination was commensurate with her misconduct.

V. CONCLUSION

The duty of the Commission in deciding the disposition of appeals is clear:

> The commission or board has a duty to independently decide, ***from the facts presented***, whether the appointing authority had good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed was commensurate with the dereliction.

Morris v. City of Minden, 50,406 (La.App. 2 Cir. 3/2/16)(citing *Walters v. Dept. of Police of New Orleans,* 454 So.2d 106 (La.1984); *City of Bossier City v. Vernon,* 12–0078 (La.10/16/12), 100 So.3d 301)(emphasis added).

Upon considering the testimony and evidence presented in connection with the instant appeal, the Commission finds that Appellant engaged in serious misconduct. And, the undersigned Commissioners strongly believe that such misconduct must be discouraged through serious discipline. However, because the Commission did not have the S&WB's Workplace Violence Policy before it, the undersigned Commissioners are unable to determine if Appellant's misconduct violated that policy. Similarly, as there was no testimony that Appellant disregarded an instruction issued by a supervisor regarding her inappropriate social media postings, we are unable to substantiate that allegation against Appellant.

What the Commission is left with is an allegation that Appellant's misconduct warrants discipline pursuant to the Commission's own Rule IX, § 1.1. And, among the reasons identified by Rule IX as warranting discipline, include when an employee is unable to perform the duties of her position in a satisfactory manner or commits an act to the prejudice of the service provided by the appointing authority.

Based upon the degree and nature of Appellant's misconduct, it is clear that her coarse and threatening Facebook posts had an adverse effect on the water meter reading division and thus prejudiced the S&WB. Furthermore, Appellant's behavior demonstrates that she is unwilling or unable to perform the duties of a water meter reader in a satisfactory manner. Therefore, pursuant to Rule IX, § 1.1, Appellant's Appeal is DENIED.

Judgment rendered this 6th day of May, 2016

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON — 5/6/2016 DATE

CONCUR

TANIA TETLOW, COMMISSIONER — 5/6/2016 DATE

CORDELIA TULLOUS, COMMISSIONER — 5/5/16 DATE