



MITCHELL J. LANDRIEU
MAYOR

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

MICHELLE D. CRAIG, CHAIRPERSON
RONALD P. McCLAIN, VICE-
CHAIRPERSON
JOSEPH S. CLARK
TANIA TETLOW
CORDELIA D. TULLOUS

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Tuesday, May 24, 2016

Mr. Jason Miller

Re: **Jason Miller VS.
Department of Public Works
Docket Number: 8323**

Dear Mr. 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 - 5/24/2016 - 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,

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
Jim Mullaly
file

JASON MILLER

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF PUBLIC WORKS

NO. 8323

The Appellant was a Parking Control Officer on probationary status. Appellant's employment was terminated by letter dated July 15, 2014, based upon what the Appointing Authority described as his inability to complete the probationary period satisfactorily. The Appellant appeals his dismissal alleging that his dismissal was an act of discrimination. He alleges that he was discriminated against on the basis of his gender.

The matter was assigned by the Civil Service Commission to a Hearing Examiner pursuant to Article X, Section 12 of the Constitution of the State of Louisiana, 1974. The hearing was held on July 16, 2015. The testimony presented at the hearing was transcribed by a court reporter. The three undersigned members of the Civil Service Commission have reviewed a copy of the transcript and all documentary evidence.

After a full review of the transcript of proceedings and the record evidence, we find that the Appellant has failed to show that his dismissal was an act of discrimination.

LAW AND ANALYSIS

The only issue before the Commission is whether the Appointing Authority's decision to dismiss the Appellant, that is to not offer him permanent employment, was an act of discrimination based upon the Appellant's gender.

Civil Service employees who have reached permanent status cannot be terminated without a lawful cause. *Barquet v. Department of Welfare*, 620 So. 2d 501, 504 (La. App. 4 Cir. 1993); Louisiana Constitution Article X, Sec. 8. However, there is no such guarantee for probationary employees. Nevertheless, all employees have a right not to be subject to discipline

based on discrimination. *Goins v. Department of Police*, 570 So. 2d 93, 94 (La. App. 4 Cir. 1990). As noted in *Scott v. New Orleans Dep 't of Fin.*, 804 So.2d 836, 838 (La. App. 4th Cir. 2001), permanent status is an extraordinary employee benefit. A probationary period provides the Appointing Authority with an opportunity to train and observe a new employee without having to justify in a formal proceeding its decision not to retain that individual.

The Appellant did not provide evidence sufficient to meet the burden of proving that the Appointing Authority's decision not to accept him for permanent employment status was motivated by discrimination based upon his gender. In fact, other than the Appellant's own testimony, which is subjective and speculative, there was no evidence that the Appellant was dismissed for discriminatory reasons or subjected to disparate treatment based upon his gender.

The decision to dismiss the Appellant was made by Col. Mark Jernigan. Ms. Zepporah Edmonds, Parking Operations Chief, testified that the decision to terminate the Appellant was based on the Appellant's overall work performance, which was not satisfactory to the Appointing Authority. Ms. Edmonds testified that the Appellant's gender had nothing to do with the decision not to offer the Appellant permanent employment. She explained that there are other male Parking Control Officers, and that male Officers are not treated differently than their female counterparts.

Ms. Sherida Emery, who was the parking operations supervisor during the relevant time period, testified that Appellant frequently voiced complaints regarding a variety of perceived wrongs during his probationary period. However, Appellant never once complained to her that he believed he was the target of unlawful discrimination because he is male. And, while there

was testimony regarding favoritism and differing treatment in the Department, there was no testimony that any employee was singled out as a result of his or her gender.

Appellant testified that the only person who allegedly treated him disparately was his direct supervisor, Mr. Carl Bridgewater. Yet, it is uncontested that Mr. Bridgewater was not involved in the decision to terminate the Appellant. Appellant also testified that he only became a target of Mr. Bridgewater's after he inappropriately questioned Mr. Bridgewater's personal integrity over the issue of a cell phone use while at work. Even if Appellant had established that his termination resulted from his comments regarding Mr. Bridgewater's cell phone use, any personal animus Mr. Bridgewater bore towards Appellant was clearly not based upon Appellant's gender. In fact, there was no evidence that Appellant was dismissed as an act of discrimination based upon his gender. Therefore, Appellant failed to establish that his dismissal was discriminatory.

CONCLUSION

For the foregoing reasons, the appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 23rd DAY OF May, 2016.



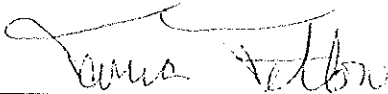
JOSEPH S. CLARK, COMMISSIONER

CONCUR:



RONALD P. McCLAIN, VICE-CHAIRMAN

J.Miller
#8323

Handwritten signature of Tania Tetlow in cursive script.

TANIA TETLOW, COMMISSIONER