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CITY CIVIL SERVICE COMMISSION

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DEBRA S. NEVEU
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JOSEPH S. CLARK

Thursday, December 20, 2012

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Mr. Vincent Beverly

Re: **Vincent Beverly VS.
Department of Human Services
Docket Number: 7977**

Dear Mr. Beverly:

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 - 12/20/2012 - filed in the Office of the Civil Service Commission in Room 7W03, City Hall, 1300 Perdido Street, 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, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Seung Hong
Victor Papai
Jay Ginsberg
file

VINCENT BEVERLY

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF HUMAN SERVICES DOCKET NO. 7977

The Department of Human Services ("Appointing Authority") employs Vincent Beverly ("Appellant") at its Youth Study Center as a Maintenance Worker with permanent status. The Appointing Authority suspended the Appellant for three (3) days for insubordination. Specifically, the Appellant left work two hours early on January 31, 2012, February 1, 2012, and February 3, 2012 without the authorization of his immediate supervisor.

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 May 3, 2012. 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.

The facts are not in dispute. The Appointing Authority employs three maintenance workers, including the Appellant. Glen Holt, the Appointing Authority's superintendent, testified that he created a new three week rotating schedule for the three maintenance employees to assure that someone was on duty during the early evening hours when maintenance problems seemed to occur. He gave the employees approximately ten days notice of the schedule change. However, the Appellant, who had always worked from 7:00 am to 3:00 pm, had problems with the new schedule that had him working until 6:00 pm because it interfered with his second job that he worked from 4:00 pm to 11:00 pm as a parking lot attendant. Mr. Holt gave the Appellant a written warning when he left before the end of his shift on January 30, 2012. He

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recommended a three day suspension after the Appellant left early on three subsequent occasions.

The Appellant admitted that he left work early to report for his second job. He testified that with more time he could have worked things out with his second job supervisor. He stated that the new schedule went into effect at a particularly busy time when he could not modify his schedule. He felt as though he had no choice but to leave early because he needed both jobs.

LEGAL PRECEPTS

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer except for cause expressed in writing. LSA Const. Art. X, sect. 8(A); Walters v. Department of Police of New Orleans, 454 So. 2d 106 (La. 1984). The employee may appeal from such a disciplinary action to the city civil service commission. The burden of proof on appeal, as to the factual basis for the disciplinary action, is on the appointing authority. Id.; Goins v. Department of Police, 570 So 2d 93 (La. App. 4th Cir. 1990).

The civil service commission has a duty to decide independently, from the facts presented, whether the appointing authority has good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. Walters, v. Department of Police of New Orleans, supra. Legal cause exists whenever the employee's conduct impairs the efficiency of the public service in which the employee is engaged. Cittadino v. Department of Police, 558 So. 2d 1311 (La. App. 4th Cir. 1990). The appointing authority has the burden of proving by a preponderance of the evidence the occurrence of the complained of activity and that the conduct complained of impaired the efficiency of the public service. Id. The appointing authority must also prove the actions

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complained of bear a real and substantial relationship to the efficient operation of the public service. Id. While these facts must be clearly established, they need not be established beyond a reasonable doubt. Id.

CONCLUSION

The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for just cause. While the Appellant provided an explanation for his actions, his difficult circumstances did not justify his disregard for explicit instructions regarding his hours of work.

Considering the foregoing, the appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 20th DAY OF DECEMBER,
2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION


JOSEPH S. CLARK, COMMISSIONER

CONCUR:


REV. KEVIN W. WILDES, S.J., CHAIRMAN


DEBRA S. NEVEU, COMMISSIONER