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CITY CIVIL SERVICE COMMISSION

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JOSEPH S. CLARK
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LISA M. HUDSON
DIRECTOR OF PERSONNEL

Thursday, January 19, 2017

Mr. Carnell Collier

Re: **Carnell Collier VS.
Sewerage & Water Board
Docket Number: 8492**

Dear Mr. Collier:

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 - 1/19/2017 - 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: Cedric S. Grant
George R. Simno III
Brendan M. Greene
file

CIVIL SERVICE DEPARTMENT
CITY OF NEW ORLEANS

CARNELL COLLIER	
vs.	DOCKET NO.: 8492
SEWERAGE AND WATER BOARD	

DECISION AND ORDER

I. INTRODUCTION

Appellant, Carnell Collier, was a permanent employee in the City’s classified service. At all relevant times, Appellant occupied the position of Networks Quality Assurance & Safety Inspector for the New Orleans Sewerage and Water Board (hereinafter “S&WB”). On or about January 7, 2016, the S&WB notified Appellant that, due to misconduct, he would receive a forty-eight (48) day suspension. The misconduct identified by the S&WB that led to Appellant’s suspension was a violation of S&WB Policy #94 regarding the use of S&WB vehicles. The S&WB also identified prior discipline issued to Appellant as an aggravating factor warranting the 48-day suspension. (H.E. Exh. 1).

II. FACTUAL BACKGROUND

The Parties entered into the follow stipulation with respect to the allegations against Appellant that led to his suspension:

On or about August 27, 2015, Mr. Cornell Collier violated Sewerage and Water Board policy number 94 [vehicle use policy] in the manner alleged in the letter dated January 7, 2016 and marked as Hearing Examiner Exhibit 1.

Tr. at 41:10-25.

Through the above stipulation and throughout his testimony, Appellant admitted that he used S&WB vehicles to transport construction debris from his home to a S&WB facility. (Tr. at 13:2-11). When Appellant transported the construction debris from his house to the S&WB facility on August 27, 2015, he used a S&WB backhoe to move the debris from a S&WB pick-up truck to a S&WB dumpster. *Id.* 13:22-14:17. Appellant engaged in this activity even though he was generally aware that using S&WB vehicles for personal matters was prohibited by S&WB policy. *Id.* at 13:12-21, 34:3-12.¹

Appellant defended his actions and alleged that, while S&WB policy prohibited it, disposal of personal trash/debris was a common “practice.” *Id.* Nevertheless, Appellant admitted that he did not have authorization from S&WB management to dispose of his trash at S&WB facilities. *Id.* at 15:1-14.

The S&WB called Steven Bass as a witness during its case-in-chief. Mr. Bass is an engineering division manager within the S&WB who recommended to the director of the S&WB that Appellant receive a 48-day suspension. *Id.* at 44:8-17. This recommendation was based, in part, upon Appellant’s “prior history of violations and progressive discipline.” *Id.* at 44:18-24. Mr. Bass familiarized himself with Appellant’s prior disciplinary history using records supplied to him by S&WB staff. *Id.* at 48:1-13. Cedric Grant, the Executive Director of the S&WB received Mr. Bass’s recommendation and accepted it. (H.E. Exh. 1). Appellant acknowledged that he had been disciplined by the S&WB prior to the matter now before the Commission. In fact, Mr. Collier admitted that he received a three-day suspension in March of 2011 for violating S&WB’s vehicle

¹ Appellant assumed that S&WB policy prohibited disposal of personal debris/trash at S&WB facilities. Tr. at 14:18-25.

policy. Tr. at 22:19-22. Appellant also acknowledged he was suspended on at least two other occasions for violating various S&WB policies. *Id.* at 23:1-16.

Appellant admits to engaging in the misconduct, but argues that the length of the suspension was arbitrary and capricious and based only on circumstances unrelated to his misconduct. *Id.* at 27:1-13. Specifically, Appellant points to the delay in the holding of his pre-disciplinary hearing as the driver of his suspension length. Had the pre-disciplinary meeting occurred earlier, Appellant argues that his suspension would have been shorter. The Commission does note that Appellant's suspension spanned October 23, 2015 through December 29, 2015 for misconduct that occurred in late August 2015. (H.E. Exh. 1).

III. STANDARD

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. Alleged Misconduct

Bearing the above stipulation and testimony in mind, there can be no dispute that Appellant engaged in the misconduct alleged by the S&WB. Therefore, the undersigned Commissioners find that the S&WB has satisfied its burden with respect to this first element.

B. Interference with Appointing Authority's Operations

The S&WB has developed a lengthy policy regarding the use of its vehicles by employees. Due to the continuous nature of the S&WB's operations, several employees take home S&WB vehicles in case there is a need to respond to an emergency situation. However, these vehicles represent a valuable asset intended to be used for the benefit of the citizens of New Orleans, and there are strict and clear expectations contained within the S&WB's policy regarding the use of S&WB vehicles. The policy reminds employees that any violation of the policy may lead to discipline up to and including dismissal.

The undersigned Commissioner find that violation of the policy necessarily impairs the provision of services by the S&WB. Furthermore, the public perception of S&WB employees using public resources for private benefit casts the S&WB, and City services in general, in a bad light.

Additionally, Mr. Bass testified that the S&WB contracts with a third party for the disposal of debris. If employees use S&WB facilities to dispose of personal trash, it interferes with the S&WB's construction activities. *See* Tr. at 50:22-51:7. The Commission finds that Appellant's misconduct interfered with the S&WB's ability to efficiently deliver services to the citizens of New Orleans.

C. Appropriateness of Discipline

Appellant attempted to suggest that the S&WB treated him differently that it would have other employees accused of the same misconduct. To demonstrate this point, Appellant attempted to pose a scenario to Mr. Bass in which an employee brings a couple of bags of trash to the S&WB and attempts to dispose of them in a S&WB dumpster. While this surely would have violated S&WB policy, it does not come close to the degree of misconduct perpetrated by Appellant. The volume of garbage Appellant brought to the S&WB required the use of a backhoe to move it from one location to another. Unfortunately for Appellant, he presents a very specific set of facts and identified no appropriate comparator. In order to establish that he was treated differently, Appellant would have to identify another employee who not only disposed of a substantial amount of personal construction debris using S&WB facilities and vehicles, but also had a lengthy history of prior misconduct. There is no evidence on the record that suggests that any other employee similarly situated to Appellant received a more lenient penalty.

Bearing the above in mind, the S&WB has established that the 48-day suspension was commensurate with Appellant's misconduct.

V. CONCLUSION

Upon considering the testimony and evidence submitted in connection with the instant appeal, the Commission finds that there was sufficient cause to discipline Appellant. Therefore, his appeal is DENIED.

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C. COLLIER
No. 8492

Judgment rendered this 18th day of January, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION



JOSEPH S. CLARK, COMMISSIONER

1-18-2017

DATE



RONALD P. McCLAIN, VICE-CHAIRMAN

1/18/17

DATE



MICHELLE D. CRAIG, CHAIRPERSON

1/18/2017

DATE