



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J.,
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DEBRA S. NEVEU
AMY L. GLOVINSKY
JOSEPH S. CLARK

MITCHELL J. LANDRIEU
MAYOR

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Thursday, April 11, 2013

Mr. Donovan A. Livaccari
101 W. Robert E. Lee, Suite 402
New Orleans, LA 70124

Re: **Toka Clark VS.**
Department of Police
Docket Number: 7891

Dear Mr Livaccari:

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 - 4/11/2013 - 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,


Germaine Bartholomew
Chief, Management Services Division

cc: Ronal Serpas
Victor Papai
Jay Ginsberg

TOKA CLARK

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7891

Toka Clark ("Appellant") is employed by the Department of Police ("Appointing Authority") as a Police Officer with permanent status. The Appellant received a letter of reprimand for violation of the Appointing Authority's internal regulation concerning Instructions from an Authoritative Source and Neglect of Duty. Specifically, the Appointing Authority determined that the Appellant failed to follow her supervisor's instructions on three occasions and by failing to do so neglected her duty. The factual basis for the disciplinary action is contained in the second paragraph of the June 16, 2011 disciplinary letter, which provides as follows:

Lieutenant Cary determined that on Monday, July 5, 2010, at approximately 12:35 p.m., you responded to the scene of an Aggravated Battery Domestic violence. You neglected to consult with your supervisor and assigned the incorrect disposition of Unfounded for an aggravated domestic incident. You failed to follow the verbal and written instructions from Sergeant Sterling Williams as it relates to completing the investigation and retrieving the evidence from the scene. You failed to follow those oral and written instructions on three separate occasions....

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 September 8, 2011. 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.

Lt. Iris Cary, one of the officers that reviewed the internal investigation and changed its disposition from exonerated to sustained, did not testify. However, Sgt. Irma Regis, the officer assigned to investigate the incident, testified that she exonerated the

Appellant of charges of misconduct based upon her determination that the Appellant lacked reasonable cause to effectuate an arrest for simple battery. She interviewed the complainant, who stated to her that his girlfriend did not strike him with a pipe. She also interviewed the Appellant's partner, who corroborated the Appellant's version of events.

The Appellant testified that she was dispatched to a residence in response to a report by the male occupant that his girlfriend struck him in the face with an iron pipe. When the Appellant and her partner arrived, the complainant wanted his girlfriend removed from his home. She observed no evidence of any injuries to the complainant's face. When specifically questioned, the complainant stated that he was not struck in the face with a pipe and what he wanted was his girlfriend removed from his residence. As requested, she escorted the complainant's girlfriend from the premises and the matter appeared resolved. Based upon what she observed, the Appellant classified the complaint of simple battery domestic as unfounded and reported the incident as a domestic disturbance.

The Appellant further testified that her supervisor, Sgt. Sterling Williams, instructed her to change the report back to a simple battery domestic. Although she disagreed with the instruction, she complied. Sgt. Williams gave the Appellant a second instruction to issue an arrest warrant and effectuate an arrest. As instructed, the Appellant prepared an arrest warrant, but the judge would not issue the warrant based upon the Appellant's version of events. The Appellant was eventually instructed by Lt. Darrel Haydel to reclassify the matter back to a domestic disturbance.

Sgt. Sterling Williams testified that the Appellant should have followed his instructions to prepare an incident report for simple battery domestic and arrest the

alleged perpetrator. He contends that she should have also removed her opinions from the report that there was no probable cause for an arrest. He also wanted the Appellant to include a notation that the complainant was struck in the head with a pipe. On cross-examination, Sgt. Williams conceded that he did not conduct the investigation and was not on the scene. He acknowledged that the Appellant complied with his instruction to change the signal to a simple battery domestic, and that she took steps to obtain an arrest warrant.

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 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, based on 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 that the complained of activity occurred and that the conduct complained

of impaired the efficiency of the public service. Id. The Appointing Authority must also prove the actions 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 failed to establish by a preponderance of evidence that it disciplined the Appellant for cause.

The record supports the Appellant's contention that she complied with her supervisor's instruction to change the signal. She also complied with her supervisor's instruction to seek an arrest warrant. There is no evidence that the Appellant failed to complete the investigation or retrieve evidence from the scene. Most importantly, the Appointing Authority did not provide any evidence that the Appellant failed to report the facts accurately as determined by her investigation.

Lt. Cary was not called to testify, so we do not know as to why she disagreed with Sgt. Regis' conclusion that the Appellant lacked reasonable cause to effectuate an arrest for simple battery. The Appointing Authority also failed to provide the testimony of Capt. Rannie Mushatt, the Commander of the Seventh Police District, who recommended the disciplinary action. Finally, if the complainant actually contended that he was struck in the face with a pipe, the Appointing Authority should have made an effort to call him as a witness so that he could have been cross-examined on this subject.

T. Clark
#7891

Considering the foregoing, the Appellant's appeal is GRANTED. The Appointing Authority is ordered to remove the letter of reprimand from the Appellant's employment records.

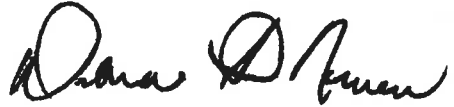
RENDERED AT NEW ORLEANS, LOUISIANA THIS 11th DAY OF APRIL,
2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION

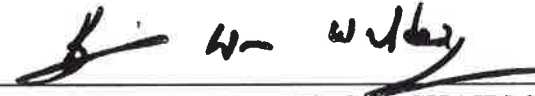


JOSEPH S. CLARK, COMMISSIONER

CONCUR:



DEBRA S. NEVEU, COMMISSIONER



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