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CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J.,
CHAIRMAN
AMY L. GLOVINSKY
JOSEPH S. CLARK
COLEMAN D. RIDLEY, JR.

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Friday, November 01, 2013

Ms. Vanessa Smith

Re: **Vanessa Smith VS.
New Orleans Museum of Art
Docket Number: 8097**

Dear Ms. Smith:

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 - 11/1/2013 - 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,

A handwritten signature in cursive script, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Susan M. Taylor
Gregory Brumfield
Jay Ginsberg
file

VANESSA SMITH

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

NEW ORLEANS MUSEUM OF ART NO. 8097

The New Orleans Museum of Art ("Appointing Authority") employs Vanessa Smith ("Appellant") as a Service Equipment Dispatcher with permanent status. The Appointing Authority suspended the Appellant for four (4) days. The Appellant received a two day suspension for leaving her post as the Console Operator without the prior authorization of her supervisor, Byron Williams, the Appointing Authority's Chief of Security, and a two day suspension for exiting the museum through an unauthorized door.

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 30, 2013. 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 Appellant has been employed by the Appointing Authority for twenty eight years and for eighteen years in her current position. She is employed to sit at a desk in the security office and view the art work on television monitors to guard its safety. She has no record of past disciplinary actions. On October 24, 2012, during the morning hours, the Appellant soiled her clothes after having an accidental bowel movement. Her supervisor Byron Williams was in a meeting. The Appellant immediately contacted the floor supervisor to relieve her, explained what happened, and exited the building from the door that was closest to her vehicle and furthest from the public. The Appellant lived nearby and would have been able to change

her clothes and return within approximately ten minutes, but on her way had an automobile accident. She contacted her supervisor, reported the accident and returned to work in approximately two hours.

One week later on October 31, 2012, the Appointing Authority presented the Appellant with the disciplinary letter that triggered this appeal. Prior to issuing the letter, the Appointing Authority never questioned the Appellant regarding her abrupt departure from her post, and knew nothing regarding the circumstances.

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, 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 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 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 legal cause. If the Appointing Authority had spoken to the Appellant prior to taking disciplinary action, it would have been aware of the circumstances that explained and justified her actions.

CONSIDERING THE FOREGOING, the Appellant's appeal is GRANTED, and the Appointing Authority is ordered to return to the Appellant four days of back pay and

V. Smith
#8097

emoluments of employment.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 1st DAY OF
NOVEMBER, 2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



JOSEPH S. CLARK, COMMISSIONER

CONCUR:



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



AMY J. GLOVINSKY, COMMISSIONER