



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Friday, July 22, 2022

Jhi Seals

Re: **Jhi Seals VS.
Sewerage & Water Board
Docket Number: 9341**

Dear Seals:

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 - 7/22/2022 - 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,


Stacie Joseph
Management Services Division

cc: Ghassan Korban
Ashley Ian Smith
Jim Mullaly
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**JHI SEALS,
Appellant**

Docket No. 9341

v.

**SEWERAGE & WATER BOARD,
Appointing Authority**

DECISION

Appellant, Jhi Seals, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his November 12, 2021, termination. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a Networks Maintenance Technician II. (Tr. at 7; Ex. HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on February 4, 2022. At this hearing, both parties had an opportunity to call witnesses and present evidence.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the hearing, all exhibits submitted at the hearing, the Hearing Examiner's report dated June 21, 2022, and controlling Louisiana law.

For the reasons set forth below, Mr. Seals' appeal is DENIED.

I. FACTUAL BACKGROUND

Mr. Seals began working at the Sewerage & Water Board as a laborer on November 7, 2011. (Tr. at 7). The last position Mr. Seals held was a Networks Maintenance Technician II. (Tr. at 7). Mr. Seals' job duties included digging holes, repairing pipe, and working with a crew. (Tr. at 8). Mr. Seals' supervisor, Byron Scott, testified that the job duties of a Maintenance Tech II included physical labor. (Tr. at 16-17). Mr. Scott explained that the Maintenance part of the

Sewerage & Water Board maintains the City's infrastructure for wastewater and water use. (Tr. at 16).

Mr. Seals took Family Medical Leave Act (FMLA) leave beginning on March 5, 2021, because of an ulcer on his foot. (Tr. at 8-9). Mr. Seals' FMLA leave extended until May 28, 2021. (Tr. at 9). Following his FMLA leave, Mr. Seals was absent on an authorized leave of absence, but this leave ended in late September. (Ex. HE-1). Mr. Seals testified he intended to return to work in September of 2021, but after Hurricane Ida hit on August 29, 2021, his ulcer recurred. (Tr. at 10). When Mr. Seals attended his pre-termination hearing on October 28, 2021, and at the time of his termination on November 11, 2021, Mr. Seals admittedly was unable to return to work because he could not perform his job duties. (Tr. at 12-13, 15). The Sewerage & Water Board stated in the November 11, 2021, letter of termination that Mr. Seals had been absent from work without resigning or providing any indication of a return date since September 29, 2021. (Ex. HE-1). Mr. Seals testified that he had been out of work for eight (8) months before the Sewerage & Water Board terminated his employment. (Tr. at 31).

Byron Scott, the Senior Zone Manager for Zone 6, testified that before Hurricane Ida, Mr. Seals informed Mr. Scott he could return to work, and Mr. Scott informed Mr. Seals that Mr. Seals should report to Human Resources. (Tr. at 19). To Mr. Scott's knowledge, Mr. Seals never reported to Human Resources. (Tr. at 19). The Sewerage & Water Board relied on its attendance policy and Civil Service Rule IX when terminating Mr. Seals' employment. (Ex. HE-1). Civil Service Rule IX provides that an employee in the classified service may be terminated if the employee is unable or unwilling to perform the duties of his position. According to Sewerage & Water Board policy, job abandonment occurs when an employee fails to report to work for three consecutive days

without approval from his supervisor. (Ex. S&WB-2; Tr. at 21). Mr. Scott testified that he considered Mr. Seals' job as abandoned. (Tr. at 21).

II. ANALYSIS

A. Legal Standard

1. The Appointing Authority must show cause for discipline

“Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A).” *Whitaker v. New Orleans Police Dep’t*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep’t of Police*, 2000-1682 (La. App. 4 Cir. 5/9/01)). “Legal cause exists whenever an employee’s conduct impairs the efficiency of the public service in which the employee is engaged.” *Id.* “The Appointing Authority has the burden of proving the impairment.” *Id.* (citing La. Const., art. X, § 8(A)). “The appointing authority must prove its case by a preponderance of the evidence.” *Id.* “Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the “efficient operation” of the public service.” *Id.* “It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, the 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 (quoting *Cure v. Dep’t of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094).

2. The Appointing Authority must show the discipline was commensurate with the infraction

The Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance of evidence that it had good or lawful cause for suspending the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Durning v. New Orleans Police Dep't*, 2019-0987 (La. App. 4 Cir. 3/25/20), 294 So. 3d 536, 538, *writ denied*, 2020-00697 (La. 9/29/20), 301 So. 3d 1195; *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d 106 (La. 1984). The Appointing Authority has the burden of showing that the discipline was reasonable and not arbitrary or capricious. *Neely v. Dep't of Fire*, 2021-0454 (La. App. 4 Cir. 12/1/21), 332 So. 3d 194, 207 (“[NOFD] did not demonstrate . . . that termination was reasonable discipline”); *Durning*, 294 So. 3d at 540 (“the termination . . . deemed to be arbitrary and capricious”).

B. Application of Legal Standard to Sewerage & Water Board’s termination of Mr. Seals

1. The Sewerage & Water Board has shown cause for Mr. Seals’ termination

The Sewerage & Water Board has carried its burden of showing the complained-of activity occurred. In this case, Mr. Seals admittedly was absent from work from at least September 29, 2021, without informing his supervisor of a return date. This absence and failure to communicate with the Sewerage & Water Board violates the Sewerage & Water Board’s attendance policy. Because the Sewerage & Water Board was unable to fill this position while Mr. Seals was on leave, Mr. Seals failure to communicate and his extended absence impaired to efficient operation

of the Sewerage & Water Board. (Tr. at 18). As Mr. Scott testified, maintenance is “all hands on deck.” (Tr. at 18).

2. The Sewerage & Water Board has shown the penalty is commensurate with the infraction

Termination was commensurate with the violation and in accord with Sewerage & Water Board policy and Civil Service Rule IX, especially since Mr. Seals was unable to return to work as of the date of his pre-termination hearing.

For the foregoing reasons, Mr. Seals’ appeal is DENIED.

This the 22nd day of July, 2022.

WRITER:

Ruth White Davis

Ruth Davis (Jul 14, 2022 13:19 CDT)

RUTH DAVIS, COMMISSIONER

CONCUR:

Brittney Richardson

Brittney Richardson (Jul 22, 2022 11:21 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

Mark C. Surprenant

Mark C. Surprenant (Jul 13, 2022 11:09 CDT)

MARK SURPRENANT, COMMISSIONER