



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

BRITNEY RICHARDSON,
CHAIRPERSON
CLIFTON J. MOORE, JR, VICE-
CHAIRPERSON
JOHN KORN
MARK SURPRENANT
RUTH WHITE DAVIS

Friday, April 23, 2021

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Mr. Nello Shay

Re: **Nello Shay VS.
New Orleans Aviation Board
Docket Number: 9011**

Dear Mr. Shay:

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 - 4/23/2021 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, 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: Kevin Dolliole
Alexa L. R. Strong
Jay Ginsberg
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

NELLO SHAY
Appellant

v.

Docket No. 9011

NEW ORLEANS AVIATION BOARD
Appointing Authority

DECISION

Appellant, Nello Shay, 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 April 11, 2019 letter of reprimand. (See Exhibit HE-1). At all relevant times, Appellant was employed as a Ground Transportation Officer at the New Orleans Aviation Board and had permanent status as a classified employee. A Hearing Examiner, appointed by the Commission, presided over a hearing. 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, and controlling Louisiana law. For the reasons set forth below, we DENY the appeal.

I. ANALYSIS

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). 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. *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 Commission adopts the reasoning of the hearing officer. A copy of the hearing officer's report is attached. In short, Mr. Shay's conduct -- using endearments such as "honey," "sweetheart," and "baby" to address a female co-worker -- may not have risen to the level of sexual harassment. Nevertheless, the Appointing Authority has an obligation to address offensive conduct in order to prevent sexual harassment in the workplace. Continued inappropriate conduct by Shay after complaints by his female co-worker is detrimental to the efficient operation of NOAB. A reprimand is the least severe form of discipline, and this discipline was commensurate with the infraction in this case.

Appellant's appeal is denied.

This the 23rd day of April, 2021

WRITER:

Mark C. Surprenant
Mark C. Surprenant (Apr 14, 2021 17:00 CDT)

MARK SURPRENANT, COMMISSIONER

CONCUR:

brd

Brittney Richardson (Apr 14, 2021 14:16 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

J H Korn

J H Korn (Apr 23, 2021 11:04 CDT)

JOHN KORN, COMMISSIONER

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

NELLO SHAY

DOCKET NO. 9011

VERSUS

NEW ORLEANS AVIATION BOARD

REPORT OF THE HEARING EXAMINER s

The New Orleans Aviation Board ("Appointing Authority") employs Nello Shay ("Appellant") as a Grounds Transportation Officer. The Appointing Authority reprimanded the Appellant by letter dated April 11, 2019, after determining that he violated the department's policy forbidding sexual harassment. The first paragraph of the second page of the disciplinary letter provide the basis for the determination. It states as follows:

This letter is to notify you that the sexual harassment investigation, in which you were named, has been completed...We have concluded that you did use names such as baby, honey, sweetheart, and other terms of endearment...The complainant indicated, and a witness concurred, that she asked you to call her by her name and not to use terms of endearment...

The complainant, Shemika Tinson, who is also a Grounds Transportation Officer, testified that the Appellant was in the habit of using the terms "honey", "baby", and "sweetheart" when addressing her. She stated that she had confronted the Appellant on two occasions and asked him to call her by her name and not to use terms of endearment. According to Ms. Tinson, the

Appellant would agree to her request and comply for a while, but after a few weeks revert back to his old habits.

Ms. Tinson filed a formal complaint on February 21, 2019, alleging that on February 20, 2019, the Appellant commented about her hair color and called her "baby". She testified that she had asked the Appellant on two prior occasions to stop calling her by the aforementioned names and that because the Appellant failed to comply with her prior requests, she determined that making a formal complaint was the only way to get him to stop.

Sebastian Taylor, a Transportation Supervisor, testified that he was present on February 21, 2019 and overheard the exchange between the Appellant and Ms. Tinson. He stated that the Appellant commented about Ms. Tinson's hair and called her baby. He testified that Ms. Tinson did not say anything, but clearly seemed annoyed by the comment. Mr. Taylor was the only fact witness other than Ms. Tinson. No witness confirmed Ms. Tinson's testimony that she previously asked the Appellant to only call her by her name.

The Appellant testified that on February 20, 2019, he noticed that Ms. Tinson had changed the tint of her hair. He stated that he told her that her new hair color looked good. He does not recall using the term "baby" but he may have said, "your hair looks good baby." He testified that he may have used the term out of habit but he meant no offense. The Appellant strongly denied that Ms. Tinson had ever previously asked him not call her baby, sweetheart, or honey. He also stated

N. Shay
#9011

that he was not in the habit of using those terms with other female employees and would certainly stop if they asked him. He complained that the discipline was not appropriate because the Appointing Authority had never discussed his behavior with him or warned him prior to taking formal disciplinary action.

Alexandra Tassiello, the Deputy Director of Aviation, determined that a letter of reprimand was warranted. She testified that the comment alone was not sufficient to justify disciplinary action, but explained that the Appellant violated policy by disregarding Mr. Tinson's previous requests to modify his behavior and cease using the offending references. According to Ms. Tassiello, the purpose of the letter was to get the Appellant's attention and to correct bad habits that others may find offensive.

CONCLUSION

The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for cause. It is more likely than not that Ms. Tinson had previously asked the Appellant to stop the offending behavior and that the Appellant persisted. While a verbal warning may have been sufficient after receiving the first formal complaint, the Appointing Authority did not abuse its authority by taking formal disciplinary action.

Considering the foregoing, the Appellant's appeal should be DENIED.

September 11, 2019
DATE

BY: Jay Ginsberg
Hearing Examiner