



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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MITCHELL J. LANDRIEU
MAYOR

Tuesday, June 03, 2014

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Mr. James Gile

Re: **James Gile VS.
New Orleans Public Library
Docket Number: 8049**

Dear Mr. Gile:

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 - 6/3/2014 - 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 blue ink, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Charles Brown
Shawn Lindsay
Jay Ginsberg
file

JAMES GILE

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

NEW ORLEANS PUBLIC LIBRARY

NO. 8049

The Appointing Authority employs the Appellant as a Library Associate II with permanent status. His primary responsibility is to assist library patrons. The Appellant suspended the Appellant for five days after determining that he was rude and argumentative towards a patron of the library. The discipline is progressive. The Appellant received a written reprimand for similar behavior that occurred less than three months prior.

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 April 18, 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.

Certain facts are not in dispute. The Appellant concedes that he previously engaged in an inappropriate verbal exchange with a library patron on May 23, 2013. The Appellant received a written reprimand as a consequence on the incident. The Appellant also concedes that he had a telephone conversation with a patron on August 8, 2013 that resulted in complaints against him for rude behavior. There were no witnesses to the telephone conversation and the patron was not called as a witness. The Appellant denies that he was rude. He testified that he was direct and perhaps undiplomatic in his exchange. Apparently, the patron sought to reserve a large number of books by telephone, and at a certain point the Appellant suggested that she come to the library and

conduct her business in person. The Appellant stated that the telephone call was a misunderstanding and that he did not intend to offend. He acknowledged that his previous behavior was unacceptable, but that the incident for which he received discipline did not justify a five day suspension.

Betty Lou Strother testified that she received the complaint from the patron who was extremely upset by the Appellant's behavior towards her on the telephone. According to Ms. Strother, the patron found the Appellant to be rude in telling her that he was too busy to provide the service she requested.

LEGAL PRECEPTS

An employer cannot subject an employee who has gained permanent status in the classified city civil service to disciplinary action 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 of New Orleans 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 make an independent judgment, 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 established by a preponderance of evidence that it disciplined the Appellant for cause. By his own admission, the Appellant failed to provide service to a library patron in the manner expected of him by the Appointing Authority. Regarding the severity of the discipline, considering previous and recent acts of misconduct, we cannot say that the Appellant abused its authority by suspending the Appellant for five days.

J. Gile
#8049

Considering the foregoing, the appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 3rd DAY OF
June, 2014.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION


EDWARD P. COHN, COMMISSIONER

CONCUR:


MICHELLE D. CRAIG, COMMISSIONER


RONALD P. MCCLAIN, COMMISSIONER