



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
SUITE 900 - 1340 POYDRAS ST.
NEW ORLEANS LA 70112
(504) 658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION
BRITTNEY RICHARDSON, CHAIRPERSON
JOHN KORN, VICE-CHAIRPERSON
MARK SURPRENANT
RUTH WHITE DAVIS
ANDREW MONTEVERDE

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Friday, April 25, 2025

Hon. Michael Bagneris
935 Gravier Street, Suite 2110
New Orleans, LA 70112

Re: **Brejean Balancier VS.
Sewerage & Water Board
Docket Number: 9102**

Dear Mr. Bagneris:

Attached is the action of the Civil Service Commission in accordance with the September 23, 2024 Remand from the Fourth Circuit Court of Appeal.

Either party may appeal this decision within 30 days of the date of the decision.

Yours very truly,

A handwritten signature in blue ink, reading "Doddie K. Smith", with a long horizontal flourish extending to the right.

Doddie K. Smith
Chief, Management Services Division

cc: Ghassan Korban
Ashley Ian Smith
Brejean Balancier

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**BREJEAN BALANCIER,
Appellant**

Docket No. 9102

v.

**SEWERAGE & WATER BOARD,
Appointing Authority**

ORDER ON REMAND FROM THE FOURTH CIRCUIT COURT OF APPEAL

On September 23, 2024, the Fourth Circuit Court of Appeal vacated the City of New Orleans Civil Service Commission's December 13, 2023, Order, and remanded the appeal to the Commission for further proceedings consistent with the Fourth Circuit's opinion.

Procedural History

The Commission granted Ms. Balancier's appeal of her termination on September 13, 2021, ordering backpay from October 25, 2019, to the date of the decision. The Sewerage & Water Board filed a motion for rehearing, and the Commission denied this motion on January 24, 2022. The Sewerage & Water Board appealed the Commission's decision to the Fourth Circuit Court of Appeal, and the Fourth Circuit affirmed the Commission's decision on October 19, 2022.

Following the Fourth Circuit decision, the parties disagreed about the calculation of her back pay award. Ms. Balancier moved for a determination of the correct calculation of backpay and emoluments of employment ordered by the Commission on September 13, 2021, in addition to a request for attorney's fees under Civil Service Rule II, § 11.1. The Commission heard oral argument at its regular meeting on November 13, 2023. One of the three Commissioners constituting the quorum recused himself. The Commission issued an Order on December 13, 2023 (later amended on July 31, 2024, to correct the amount of wages earned as an independent

contractor from \$2,529.05 to \$22,114.00) The Sewerage & Water Board timely appealed this Order to the Fourth Circuit Court of Appeal.

While the appeal was pending, Ms. Balancier appeared before the Commission again on March 8, 2024, asserting that the Sewerage & Water Board had failed to comply with the Commission's December 13, 2023, order. On June 12, 2024, the Commission ordered the Sewerage & Water Board to reimburse Ms. Balancier for private health insurance premiums in the amount of \$3,928.91. A copy of this order is attached. Neither party appealed this decision, and it is final.

The Sewerage & Water Board paid Ms. Balancier \$8,665.24 on July 17, 2024, including \$2,529 as reimbursement for the offset.

On September 3, 2024, the Sewerage & Water Board paid Ms. Balancier \$19,614.95 in compliance with the Commission's July 31, 2024, amended order correcting the amount of wages earned as an independent contractor.

The Commission's December 13, 2023, Order was vacated by the Fourth Circuit on September 23, 2024, as invalid because of a lack of a quorum and reversed as to a calculation of the offset to backpay by the Commission.

The Sewerage & Water Board stopped payment on the September 3, 2024, check in the amount of \$19,614.95.

All delays for appeal of the Fourth Circuit's September 23, 2024, decision have expired, and the Fourth Circuit decision is final. Pursuant to Civil Service Rule II, section 6.2, the Commission is considering Appellant's motion for enforcement on the briefs. The parties have agreed to consideration of this motion on the briefs. The undersigned Commissioners have

reviewed the record on appeal (2024-CA-0154) and the supplemental memoranda submitted by the parties.

The Commission is addressing all of the holdings in its December 13, 2023, Order because of the quorum infirmity.

Legal Analysis

The Sewerage & Water Board calculated Ms. Balancier's backpay amount for the time period October 25, 2019, to January 24, 2022. Ms. Balancier is not entitled to backpay after January 24, 2022, because she declined to return to work on that date.

Ms. Balancier argued that sums earned as an independent contractor in the amount of \$22,144.00 should not have been offset from the backpay calculation by the Sewerage & Water Board. On December 13, 2023, two Commissioners ruled that this offset (erroneously stated as \$2,529.05) was improper, but the Fourth Circuit has reversed this ruling. Therefore, these earnings are wages from private employment and were properly offset.

Ms. Balancier also claimed the Sewerage & Water Board failed to include longevity increases to which she would have been entitled in the absence of her termination. Two Commissioners issued an Order on December 13, 2023, to the Sewerage & Water Board to pay Ms. Balancier for the longevity increases. On July 17, 2024, the Sewerage & Water Board appropriately made Ms. Balancier whole for the time period October 25, 2019, to January 24, 2022, including any longevity increases to which she would have been entitled.

Ms. Balancier sought reimbursement for private health insurance premiums. As the Commission ruled on June 12, 2024, Ms. Balancier was entitled to reimbursement of \$3,928.91 for private health insurance premiums, which was paid by the Sewerage & Water Board on July 17, 2024.

Ms. Balancier had also requested attorney's fees under Civil Service Rule II, § 11.1. The Commission denies this request, as the Sewerage & Water Board has attempted to comply with the Commission's September 13, 2021, order in good faith.

The Sewerage & Water Board complied with all Commission Orders in this matter. The Sewerage & Water Board stopped payment on the check issued on September 3, 2024, following the Fourth Circuit ruling. Therefore, in effect, the Sewerage & Water Board has reimbursed Ms. Balancier for the offset in the amount of \$2,529.05 instead of \$22,144.00.

Ms. Balancier shall reimburse the Sewerage & Water Board for its overpayment of backpay in the amount of \$2,529.05.



Brittney Richardson (Apr 23, 2025 01:56 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON



JOHN KORN, VICE-CHAIRPERSON



Ruth Davis (Apr 17, 2025 17:57 CDT)

RUTH DAVIS, COMMISSIONER



Andrew Monteverde (Apr 17, 2025 10:23 CDT)

ANDREW MONTEVERDE, COMMISSIONER



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AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Wednesday, June 12, 2024

Hon. Michael Bageris
935 Gravier Street, Suite 2110
New Orleans, LA 70112

Re: **Brejean Balancier VS.
Sewerage & Water Board
Docket Number: 9102**

Dear Mr. Bagneris:

Attached is the action of the Civil Service Commission at the Commission's meeting on Thursday, 5/30/2024.

Yours very truly,

A handwritten signature in blue ink, reading "Stacie Joseph".

Stacie Joseph
Management Services Division

cc: Ghassan Korban
Ashley Ian Smith
Brejean Balancier

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**BREJEAN BALANCIER,
Appellant**

Docket No. 9102

v.

**SEWERAGE & WATER BOARD,
Appointing Authority**

ORDER

Following the Commission's ruling in favor of Ms. Balancier on September 13, 2021, and the denial of the Sewerage & Water Board's motion for rehearing in January of 2022, the Sewerage & Water Board complied with the Commission's ruling by paying Ms. Balancier \$75,691.11, based on its calculation of back pay and other emoluments from October 25, 2019, to January 24, 2022.

Ms. Balancier appeared before the Commission requesting additional back pay from the Sewerage & Water Board at its regular meeting on November 13, 2023. The Commission ruled on the disputed issues on December 13, 2023, and the Sewerage & Water Board appealed this decision to the Fourth Circuit Court of Appeal. That devolutive appeal is currently pending.

Ms. Balancier appeared before the Commission again on March 8, 2024, asserting that the Sewerage & Water Board had failed to comply with the Commission's December 13, 2023, order. The Commission issued an order on March 13, 2024, requesting post-hearing briefs, including the competing calculations of back pay. The Commission granted the parties additional time to provide the briefs, and the Commission received both parties' briefs on May 3, 2024. At the Commission's regular meeting on May 30, 2024, counsel for both parties requested that the Commission rule on the briefs.

The sole outstanding issue is whether Ms. Balancier may recover health insurance premiums, and if so, the calculation of these health insurance premiums. As the Commission noted in its December 13, 2023, order, Ms. Balancier is entitled to reimbursement of health insurance premiums if those premiums are less expensive than COBRA continuation coverage.

We have readily concluded that “restoration of all emoluments” includes restoration of health insurance coverage on the same basis that it would have been available had their employment not been interrupted. If appellants procured private insurance because COBRA insurance was unavailable or because it was more costly than private insurance, they are entitled to reimbursement for the private health insurance premiums they paid. If COBRA insurance was cheaper than private insurance, they are entitled only to the cost of COBRA insurance. If they procured no insurance at all, they are not entitled to any reimbursement.

Noya v. Dep't of Fire, City of New Orleans, 611 So. 2d 746, 748 (La. App. 4 Cir. 1992). Ms. Balancier has produced documentation of the cost of COBRA continuation coverage, which was more expensive than the cost of private insurance coverage through her spouse's employment. Therefore, Ms. Balancier is entitled to reimbursement of \$9,445.10, the cost of procuring private insurance. Because the award of back pay and emoluments of employment is equitable in nature, the award of emoluments of employment should not place Ms. Balancier in a more favorable position than if she had remained employed by the Sewerage & Water Board. *See Edmonds v. Dep't of Pub. Works*, 2023-0641 (La. App. 4 Cir. 5/7/24) (equitable nature of attorney's fees); *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 417, 95 S. Ct. 2362, 2371, 45 L. Ed. 2d 280 (1975) (equitable nature of back pay award in Title VII context). This amount shall be offset by the portion of the health insurance premium Ms. Balancier would have paid to the Sewerage & Water Board, \$5,516.19. The Sewerage & Water Board shall reimburse Ms. Balancier \$3,928.91, the increased cost of health insurance caused by the termination of her employment.



Brittney Richardson (Jun 7, 2024 13:43 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON



J H Korn (Jun 11, 2024 19:31 CDT)

JOHN KORN, VICE-CHAIRPERSON



Ruth Davis (Jun 6, 2024 21:19 CDT)

RUTH DAVIS, COMMISSIONER



Andrew Monteverde (Jun 5, 2024 16:43 CDT)

ANDREW MONTEVERDE, COMMISSIONER