



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
SUITE 900 – 1340 POYDRAS ST.
NEW ORLEANS LA 70112
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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 that reads "Doddie K. Smith".

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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MARK SURPRENANT
RUTH WHITE DAVIS
ANDREW MONTEVERDE

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 that reads "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



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CITY CIVIL SERVICE COMMISSION

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

Monday, September 13, 2021

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

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 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 - 9/13/2021 - 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, 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: Ghassan Korban
Joseph Zanetti
Christina Carroll
Brejean Balancier

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**BREJEAN BALANCIER,
Appellant**

Docket No. 9102

v.

**SEWERAGE & WATER BOARD,
Appointing Authority**

DECISION

Appellant, Brejean Balancier, brings this appeal pursuant to Article X, § 8 of the Louisiana Constitution and this Commission's Rule II, § 10.1 (whistleblower) and Rule II, § 4.6 (sex discrimination based on pregnancy) seeking relief from her October 25, 2019, termination. (Ex. HE-1). At all relevant times, Appellant was a probationary employee serving as a Developmental Analyst I in the Purchasing Department of the Sewerage & Water Board. (Tr. at 18; Ex. HE-1)). A Hearing Examiner, appointed by the Commission, presided over a hearing on November 10, 2020. 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 February 1, 2021, and controlling Louisiana law.

For the reasons set forth below, Balancier's appeal is GRANTED in part and DENIED in part.

I. FACTUAL BACKGROUND

The Sewerage & Water Board terminated the employment of Brejean Balancier on October 25, 2019, because of Balancier's insubordination, inability to work as part of a team, and her disruptive behavior. (Ex. HE-1).

The Sewerage & Water Board hired Ms. Balancier on February 4, 2019 to work in the Purchasing Department. (Ex. HE-1). Ms. Balancier's job duties included receiving requisitions, completing purchase orders, advertising bids, and hosting bid meetings. (Tr. at 18). Ms. Balancier's supervisor was Conestler Green. (Tr. at 19). Ms. Green gave Ms. Balancier a positive three-month evaluation. (Tr. at 113-114). On August 6, 2019, Ms. Green completed the Three Month Performance Assessment form, and stated under "strengths" the following: [expediting] all work assignments requisitions and purchase orders assign[ed] to her." (Appellant Ex. 6; Tr. at 114). In "Areas for Improvement," Ms. Green stated "Need to learn the bidding process for contracts, and advertisement of a contract." (Appellant Ex. 6). Ms. Green testified Balancier was a "good employee" and that she had no problems with Balancier. (Tr. at 115).

Patti Wallace, the Purchasing Manager, began supervising Balancier on June 24, 2019. (Tr. at 19, 147). On July 30, 2019, Ms. Wallace directed Balancier to issue a purchase order to Piccadilly in accordance with a spreadsheet prepared by Wallace outlining meals ordered during Hurricane Barry and the invoices. (Ex. Appellant-1; Tr. at 158). The invoices were prepared by Piccadilly, and a Sewerage & Water Board employee signed each invoice when the employee accepted the meals from Piccadilly. (See Tr. at 98; Ex. Appellant-2C). This Sewerage & Water Board expense was FEMA reimbursable. (Tr. at 104).

The Sewerage & Water Board Accounting Department informed Balancier that the supporting documentation did not match the purchase order. (Tr. at 26). An employee in the Accounting Department also emailed Wallace to inform her of the discrepancy. (Tr. at 159). According to Ms. Wallace, the purchase order, invoice, and the record of the Sewerage & Water Board employee who received the meals should match. (Tr. at 173). Each employee who received a meal was required to sign for the meal. (Tr. at 99).

On August 16, 2019, Ms. Wallace directed Balancier to obtain a corrected invoice related to the Piccadilly purchase order with the number of meals reduced from 591 to 590. (Ex. Appellant-1; Tr. at 28). Balancier tried to contact Piccadilly to obtain a corrected invoice, but she had difficulty getting in touch with Piccadilly Accounts Receivable. (Tr. at 29). Between August 16, 2019, and August 20, 2019, Balancier and Wallace corresponded by email about Balancier's inability to reach Piccadilly Accounts Receivable. (Tr. at 160; Ex. Appellant-2G, Ex. Appellant-2H, Ex. Appellant 2I).

Balancier also contacted the employees who had signed off on the invoices, including Joe Ladetz, Janell Jones, and Angie Johnson, to ascertain the error in the meal count. (Tr. at 30-33; Tr. at 103-08). During her investigation, Balancier became concerned that the meals for Sunday were missing. (Tr. at 37). When the "numbers didn't add up," Balancier began to suspect the purchase order was fraudulent. (Tr. at 41). Balancier emailed Wallace about her concern that the purchase order was fraudulent. (Tr. at 43). According to Wallace, Balancier told Wallace that Balancier was uncomfortable issuing a purchase order because of a discrepancy in the meal count. (Tr. at 161). After Balancier had a conversation with Wallace about the purchase order, Wallace emailed Balancier and instructed Balancier to correct the invoice, not to investigate accuracy of the information (Tr. at 45). Wallace viewed Balancier's failure to have Piccadilly adjust the invoice and her investigation into the discrepancy as insubordinate. (Ex. B-1 at 2; Tr. at 163).

Following her termination, through a public records request, Balancier requested the names of all employees who were working on the dates in question from the Emergency Operations Center, and the information Balancier received differs from the spreadsheet provided by Ms. Wallace. (Tr. at 45-46; Ex. Appellant-2B; Ex. Appellant-4).

Balancier complained to Chante Powell in the Internal Audit department of the Sewerage & Water Board and to a Sewerage & Water Board attorney, Erica Latham. (Tr. at 41). Latham testified that Balancier reported to her that she thought the purchase order was illegal and that the Board was requesting payment for employees who were not present at work. (Tr. at 89). Balancier expressed a concern to Latham that Balancier's credentials were on the purchase order. (Tr. at 90). Latham and Balancier had a conversation with Ed Morris, another Sewerage & Water Board attorney, who instructed Balancier to bring this concern to Balancier's supervisor. (Tr. at 91).

Balancier also filed an internal grievance against Ms. Wallace on September 4, 2019, and described Wallace's conduct as harassing on September 27, 2019. (Tr. at 241-42). Wallace criticized Balancier for declining a second monitor on September 5, 2019, and, when recommending termination, characterized this behavior as insubordinate. (Tr. at 51; Ex. B-1). Wallace also claimed Balancier was leaving work without authorization. (Tr. at 52). After a staff meeting on July 29, 2019, Ms. Balancier requested a copy of her job duties. (Tr. at 152-53). Wallace viewed Balancier's behavior as disruptive. (Tr. at 150). In a subsequent staff meeting, Balancier complained about her workload to Wallace, but the employee who distributed the assignments testified that Balancier received "a lot of the work." (Ex. B-1; Tr. at 130, 156). Wallace testified that Balancier was on leave periodically because of Balancier's pregnancy, and Wallace would re-assign Balancier's work back to her when Balancier returned. (Tr. at 156).

The Employee Relations Manager testified that Balancier refused to attend the mediation of her grievance because Balancier was upset about the number of attendees. (Tr. at 208). Balancier informed the Employee Relations Manager that she was going to contact her attorney and civil service. (Tr. at 208). The Employee Relations Manager determined that Balancier was

uncooperative with the process. (Tr. at 210). Balancier's grievance was closed due to a failure to participate. (Tr. at 204).

The Disciplinary Specialist, Byron Iverson, participated in the harassment claim investigation, and he determined that Balancier filed the harassment complaint to shield her from disciplinary action. (Tr. at 247). Iverson testified Balancier was unprofessional in tone and manner during the process. (Tr. at 244).

Sewerage & Water Board Policy for Probationary Employees provides that probationary employees who have at least three months of tenure should be placed on a Performance Improvement Plan prior to termination. (Ex. Appellant-10). The Employee Relations Manager testified that she was not aware of a document called a Performance Improvement Plan for Balancier. (Tr. at 226). Patti Wallace testified that the planning session on August 7, in which each employee participated, along with the counseling she provided Balancier constituted a Performance Improvement Plan. (Tr. at 194, 196).

II. ANALYSIS

Civil Service Rule II, § 10.1 provides as follows:

No employee shall be subjected to discipline or discriminatory treatment by an appointing authority because he or she gives information, testimony or evidence in a prudent manner to appropriate authorities concerning conduct prohibited by law or regulation which he or she reasonably believes to have been engaged in by any person(s). If the employee incurs such treatment despite this admonition, he or she shall have a right of appeal to this Commission.

The Commission applies the same standard to "whistleblower" action under Rule II, § 10.1 as to other discrimination appeals. *East v. Office of Inspector Gen.*, 2011-0572 (La. App. 4 Cir. 2/29/12), 87 So. 3d 925, 927. In disciplinary actions where the classified employee alleges discrimination,

the burden of proof on appeal, **as to the factual basis for the discrimination**, is on the employee. La. Const. art. X, § 8(B); *East v. Office of Inspector Gen.*, 2011-0572 (La. App. 4 Cir. 2/29/12), 87 So. 3d 925, 927 (quoting *Goins v. Dep't of Police*, 570 So.2d 93, 94 (La. App. 4th Cir.1990)). *See also* Civil Service Rule II, §§ 4.4, 4.8. In 1983, the Fourth Circuit Court of Appeal held the Commission erred by relying on the Title VII *McDonnell-Douglass* burden-shifting framework for discrimination claims under Article X, Section 8(B) of the Louisiana Constitution. *Mixon v. New Orleans Police Dep't*, 430 So. 2d 210, 212 (La. App. 4 Cir. 1983) (“we conclude the Commission erred in applying the federal burden of proof standard instead of the burden specified in LSA–Const. Art. 10 § 8(B).”).

The Commission finds that Balancier gave information in a prudent manner to appropriate authorities about conduct prohibited by law under Rule II, § 10.1. She complained to her supervisor, the internal auditor, and in-house counsel about potential fraud, which is prohibited by law. The Commission finds that Balancier reasonably believed the purchase order she was directed to request was fraudulent. In this case, Balancier’s supervisor treated her questions about the discrepancy between the purchase order and the invoice as insubordinate behavior, and based her termination, in part, on this claimed insubordination. This point of view undermines Wallace’s conclusion that Balancier was “disruptive” and had “inability to work as part of a team” - - both given as reasons for Balancier’s termination. Wallace’s opinion of Balancier in these respects was likely influenced by Balancier’s complaint of suspected illegal activity. Based on the totality of the evidence, including Balancier’s positive evaluation by her former supervisor, the failure of the Sewerage & Water Board to follow its own policy by placing Balancier on a Performance Improvement Plan prior to deciding to terminate her employment, and the Sewerage & Water Board’s conclusion that Balancier was “uncooperative” and “unprofessional” because she did not

want to meet with Sewerage & Water Board managers about *her own grievance*, the Commission finds that Balancier has shown that her complaints of potential illegal activity caused her termination of employment.

The Commission finds that Balancier has failed to carry her burden of proof as to sex discrimination based on pregnancy under Rule II, § 4.6.

The Commission grants Balancier's appeal based on Rule II, § 10.1. The Sewerage & Water Board shall reinstate Balancier with back pay and all other emoluments of employment from October 25, 2019, to the present. The Commission denies Balancier's appeal based on Rule II, § 4.6.

This the 13th day of September, 2021

WRITER:

J H Korn
J H Korn (Jul 28, 2021 12:25 CDT)

JOHN KORN, COMMISSIONER

CONCUR:

BRD
Brittney Richardson (Aug 5, 2021 16:51 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

CJ Moore
CJ MOORE (Sep 13, 2021 12:27 CDT)

CLIFTON J. MOORE, JR., VICE-CHAIRPERSON