



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
BRITTNEY RICHARDSON, CHAIRPERSON
JOHN H. KORN, VICE-CHAIRPERSON
CLIFTON J. MOORE, JR.
MARK SURPRENANT
RUTH WHITE DAVIS

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Monday, March 28, 2022

Mr. Marcus Magee

Re: **Marcus Magee VS.
Department of Property Management
Docket Number: 9331**

Dear Mr. Magee:

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 - 3/28/2022 - 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: Martha Griset
Eraka Williams Delarge
Jay Ginsberg
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

MARCUS MAGEE,
Appellant

Docket No. 9331

v.

**DEPARTMENT OF PROPERTY
MANAGEMENT,**
Appointing Authority

DECISION

Appellant Marcus Magee brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from a 30-day emergency suspension imposed on November 10, 2021. (Exhibit HE-1). At all relevant times, Marcus Magee had permanent status as a Senior Plumber. (Tr. at 7). A Hearing Examiner, appointed by the Commission, presided over a hearing on January 25, 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 March 3, 2022, and controlling Louisiana law.

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

I. FACTUAL BACKGROUND

Marcus Magee brought a gun in his vehicle to the Department of Property Management facility maintenance warehouse at 534 Tchoupitoulas Street on November 8, 2021. (Tr. at 9). His vehicle was parked in the warehouse on City property. (Tr. at 22). After work, he showed the gun to his co-worker Darren Harris in the warehouse, and admittedly stated, "if they keep fucking with

me, I am going to take all of them out.” (Tr. at 10). Darren Harris testified he was “scared somebody might get hurt.” (Tr. at 18). Harris reported the threat to his supervisor. (Tr. at 17).

Department of Public Works policy and CAO Memorandum 83R prohibit the possession of firearms at work. (Tr. at 26, 31; Exs. DPM-3, DPM-4). The Department of Property Management placed Mr. Magee on emergency suspension on November 10, 2021. (Ex. HE-1). The Department of Property Management terminated Mr. Magee’s employment on or about November 30, 2021, following the pre-termination hearing, but Mr. Magee did not appeal the termination. (Tr. at 35).

II. 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 disciplining 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 Department of Property Management has carried its burden of showing that the complained-of conduct occurred. Appellant admitted bringing a gun on City property, showing the

gun to a co-worker, and making threatening statements. Threats of workplace violence impair the efficiency of the Department of Public Works. The Director testified that “[e]mployees have to feel safe in the workplace.” (Tr. at 36).

The penalty is commensurate with the violation. Bringing a gun to work and making threatening statements are serious offenses, and the 30-day suspension (20 days of which were served) is commensurate with the violation.

Mr. Magee’s appeal is DENIED.

This the 28th day of March, 2022

WRITER:

Ruth White Davis
Ruth Davis (Mar 21, 2022 10:37 CDT)

RUTH DAVIS, COMMISSIONER

CONCUR:

Brittney Richardson
Brittney Richardson (Mar 27, 2022 10:00 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

J H Korn
J H Korn (Mar 21, 2022 10:10 CDT)

JOHN KORN, VICE-CHAIRPERSON