

CORCHERRIE ALLEN

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

OFFICE OF COMMUNITY DEVELOPMENT

DOCKET NO. 7908

The Office of Community Development ("Appointing Authority") employs Corcherrie Allen ("Appellant") as the Manager of its compliance unit with permanent status. The Appointing Authority suspended the Appellant for five day after determining that her failure to report for work on July 25 and 26, 2011 was an act of insubordination. The Appellant's supervisor had previously denied her request for leave for those particular days. The Appointing Authority also determined that the Appellant's absence resulted in inadequate coverage for her unit.

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 December 1, 2011. 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.

Natasha Muse, Director of Administrative Support, was the Appellant's immediate supervisor. The Appellant and her staff were responsible for monitoring contractors on City projects to confirm their compliance with Davis Bacon prevailing wage requirements. The Appellant requested annual leave for the week of July 25, 2011. Ms. Muse denied the leave request because she was concerned there would be inadequate coverage for the Appellant's unit for the first two days of the requested annual leave (Monday and Tuesday). The Appellant had previously approved a leave request for one of her subordinates, Mary Allen, for those two days. Ms. Muse informed the Appellant that her other subordinate, Jaymee Lewis, a relatively new hire

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lacked the experience to handle matters that could potentially arise during the two day period where both employees were absent. In response, the Appellant submitted an annual leave request for Wednesday through Friday only.

The Appellant informed Ms. Muse that she still intended to take the entire week off, but was prepared to be carried leave without pay for the first two days of the week. The Appellant explained to Ms. Muse that her husband had surprised her with a trip to New York for that week and that the trip was non-refundable. She assured Ms. Muse that everything was in order and that Ms. Lewis was well trained and prepared to handle any situation that might arise during the two day period. The Appellant left her telephone number in case of an emergency. She also informed Ms. Muse that there was no HUD monitoring scheduled during that period.¹ Ms. Muse informed the Appellant that her failure to report for work could result in disciplinary action in addition to the two days of leave without pay.

Ms. Muse acknowledged that no HUD monitoring occurred during the week of the Appellant's absence. She also acknowledged that there were no problems or indications of inadequate coverage during the Appellant's absence.

The Appointing Authority employed the Appellant in her current position for seven years at the time of the disciplinary action. The Appointing Authority has taken no previous disciplinary action against the Appellant and there is no evidence that the Appellant is a malingerer or someone who has an attendance problem. All indications are that the Appellant is a responsible, hardworking employee.

LEGAL PRECEPTS

¹ The disciplinary letter alleges that a motivation for denying the leave was a scheduled HUD monitoring visit.

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An employer cannot discipline an employee who has gained permanent status in the classified city civil service 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 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 decide independently, 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 provided no evidence that the Appellant's unapproved two day absence undermined the efficient operation of the department. Contrary to the allegations contained in the disciplinary letter, there was no evidence of inadequate coverage or a scheduled HUD monitoring visit. Further, the Appellant provided credible testimony that she took all

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necessary precautions to make sure there was adequate coverage for her unit during her absence. The Appellant was the unit supervisor and knew best what was occurring on her watch and what was necessary to make sure her unit ran smoothly during her absence.

The Appointing Authority can deny annual leave requests and carry an employee leave without pay if they fail to report for work. In most cases, we would agree that an employee's failure to report for work without approved leave would justify disciplinary action. However, in this case, we are compelled to conclude that the denial of approved leave was unjustified and cannot form the basis for disciplinary action.

Accordingly, the appeal is GRANTED, and the Appointing Authority is ordered to return to the Appellant five days of back pay and emoluments of employment.

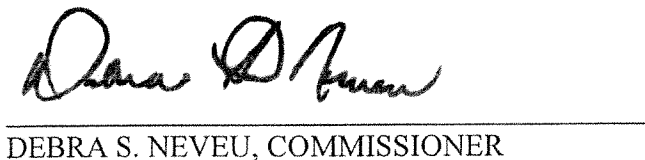
RENDERED AT NEW ORLEANS, LOUISIANA THIS 10TH DAY OF MAY, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



REV. KEVIN W. WILDES, S.J., CHAIRMAN

CONCUR:


JOSEPH S. CLARK, COMMISSIONER
DEBRA S. NEVEU, COMMISSIONER