



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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JOHN H. KORN
MARK SURPRENANT
RUTH WHITE DAVIS

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Monday, January 24, 2022

Mr. Herbert Braggs

Re: **Herbert Braggs VS.
Recreation Department
Docket Number: 9226**

Dear Mr. Braggs:

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 - 1/24/2022 - 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 purple ink that reads "Stacie Joseph".

Stacie Joseph
Management Services Division

cc: Larry Barabino
Darren Tyus
Jay Ginsberg
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**HERBERT BRAGGS,
Appellant**

Docket No. 9226

v.

**RECREATION DEPARTMENT,
Appointing Authority**

DECISION

Appellant, Herbert Braggs, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his October 5, 2020 termination of employment (rescinded by letter dated December 22, 2020) and his January 4, 2021, termination of employment. (Ex. NORDC-2, NORDC-3). At all relevant times, Appellant had permanent status as a Recreation Center Assistant I. (Tr. at 9; 26). A Hearing Examiner, appointed by the Commission, presided over a hearing on January 5, 2021. 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 27, 2021, and controlling Louisiana law.

For the reasons set forth below, Mr. Braggs' appeal is DENIED IN PART and GRANTED IN PART.

I. FACTUAL BACKGROUND

The Department of Recreation hired Herman Braggs in February of 2017. (Tr. at 26). At the time of his termination, he was working as a Recreation Center Assistant I at the Stallings

Recreation Center located at Poland and St. Claude. (Tr. at 9, 27). Braggs worked part-time Monday through Friday from 5:00 PM to 9:00 PM. (Tr. at 10).

Beginning on March 23, 2020, Braggs received civil leave because of the stay-at-home order associated with the Covid-19 pandemic. (Tr. at 7, 16). The Department of Recreation offered to allow Braggs to return to work in July 2020, but Braggs informed the Department he did not want to return at that time and wished to use annual leave. (Tr. at 17). Braggs has exhausted his annual leave. (Tr. at 8).

In Phase II, the Appointing Authority attempted to contact Braggs so that he could return to work, but he failed to respond. (Tr. at 18). Therefore, the Appointing Authority proceeded with termination. The Appointing Authority scheduled a pre-termination hearing on October 2, 2020, and informed Braggs of this hearing by letter dated September 24, 2020. (Ex. NORDC-1). Braggs testified he received notice of his pre-termination hearing “late.” (Tr. at 29). Braggs failed to appear. (Tr. at 19). After Braggs failed to appear, the Department of Recreation terminated Braggs’ employment on October 5, 2020. (Ex. NORDC-2). However, the reason given for the termination was Braggs’ failure to appear at his pre-termination hearing, not job abandonment. (Ex. NORDC-2; Tr. at 20). Therefore, because in the error in the reason for the termination, the Department rescinded this termination by letter dated December 22, 2020, and informed Braggs that he could report to work on or before January 4, 2021. (Ex. NORDC-3). As of the date of the hearing, Braggs had failed to contact the Department about returning to work and had failed to report to work. (Tr. at 22). Braggs testified on January 5, 2021, that he is not ready to return to work at this time. (Tr. at 30).

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 Appointing Authority has carried its burden of proving that Braggs abandoned his job as of January 4, 2021. However, the Appointing Authority has failed to prove the underlying termination on October 5, 2020, was for good cause.

The appeal is DENIED as to the termination as of January 4, 2021. The appeal is GRANTED as to the October 5, 2020, termination. Therefore, Braggs is entitled to back wages and emoluments of employment from October 5, 2020, to January 4, 2021.

This the 24th day of January, 2022

WRITER:

J. H. Korn
J. H. Korn (Jan 12, 2022 12:26 CST)

JOHN KORN, VICE-CHAIRPERSON

CONCUR:

CJ Moore
CJ MOORE (Jan 24, 2022 05:40 CST)

CLIFTON J. MOORE, JR., COMMISSIONER

Ruth White Davis
Ruth Davis (Jan 10, 2022 19:02 CST)

RUTH DAVIS, COMMISSIONER