



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

MICHELLE D. CRAIG, CHAIRPERSON
CLIFTON J. MOORE, JR. VICE-
CHAIRPERSON

STEPHEN CAPUTO
BRITTNEY RICHARDSON

LISA M. HUDSON
DIRECTOR OF PERSONNEL

LATOYA CANTRELL
MAYOR

Thursday, April 11, 2019

Ms. Shanell Elphage

Re: **Shanell Elphage VS.
Department of Public Works
Docket Number: 8756**

Dear Ms. Elphage:

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 - 4/11/2019 - 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: Keith J. LaGrange, Jr.
Tanya Irvin
Jay Ginsberg
file



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

MICHELLE D. CRAIG, CHAIRPERSON
CLIFTON J. MOORE, JR. VICE-
CHAIRPERSON

STEPHEN CAPUTO
BRITTNEY RICHARDSON

LISA M. HUDSON
DIRECTOR OF PERSONNEL

LATOYA CANTRELL
MAYOR

Thursday, April 11, 2019

Ms. Shanell Elphage

Re: **Shanell Elphage VS.
Department of Public Works
Docket Number: 8775**

Dear Ms. Elphage:

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 - 4/11/2019 - 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: Keith J. LaGrange, Jr.
Tanya Irvin
Jay Ginsberg
file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

<p>Shanell Elphage, Appellant,</p> <p>vs.</p> <p>DEPARTMENT OF PUBLIC WORKS, Appointing Authority.</p>	<p>DOCKET Nos.: 8756, 8775</p>
--	--------------------------------

I. INTRODUCTION

Appellant, Shanell Elphage, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Department of Public Works for City of New Orleans, (hereinafter “DPW” or “Appointing Authority”) placed Appellant on an unpaid, emergency suspension and then subsequently terminated Appellant after substantiating allegations of misconduct against Appellant.¹

At all times relevant to the instant appeal, Appellant served as a Tow Truck Operator II for the DPW and had permanent status as a classified employee. A referee appointed by the Commission presided over one day of hearing on June 12, 2018. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the hearing examiner’s report. Based upon our review, we DENY the appeal and render the following judgment.

¹ The hearing examiner consolidated the cases as the appeals arose out of a common nucleus of operative fact.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

On March 2, 2018, the DPW issued Appellant a notice of termination. The cause for termination expressed in the notice was Appellant's "direct involvement in a physical altercation on January 24, 2018." (H.E. Exh. 1).² The DPW asserted that Appellant's alleged actions violated the DPW staff handbook which prohibits employees from "fighting, engaging in horseplay or acting in any manner that endangers the safety of oneself or others." *Id.* Additionally, the DPW alleged that Appellant violated its "Workplace Violence" policy which establishes a "zero tolerance policy regarding workplace violence by or against employees...." *Id.* The policy goes on to define an act of violence as "an intentional act that causes bodily harm, however slight, to another person or damage to the property of another person." *Id.* Appellant's termination was effective March 8, 2018.

B. January 24, 2018

The Commission observes that most of the material facts underlying the instant appeal are not in dispute. Not surprisingly, as a Tow Truck Operator II, Appellant spent most of her workday driving a DPW tow truck around the City of New Orleans as part of the DPW's parking enforcement branch. On the afternoon of January 24, 2018, Appellant drove to the City's refueling depot located at 500 North Broad Street. Typically, DPW tow truck drivers arrive at the refueling depot between 2:00 p.m. and 2:30 p.m. in order to ensure that their assigned vehicles have full gas tanks to start the following shift. (Tr. at 18:11-16). The first shift ends at approximately 3:00 p.m.

² The Commission observes that the DPW also placed Appellant on an unpaid emergency suspension for the same alleged misconduct.

At approximately 2:30 p.m. on the 24th, Ms. Gercia Green, another DPW tow truck driver, arrived at the fueling depot, pulled up to one of the two diesel fuel pumps, and began refueling her tow truck. As some point later, Appellant arrived and, pulled her vehicle behind Ms. Green's because there was an EMS vehicle using the other diesel pump. *Id.* at 108:16-25.

According to Appellant, Ms. Green had just completed refueling her tow truck and was getting back into her vehicle when Appellant arrived. *Id.* at 108:25-109:3. Appellant then began to refuel her vehicle when she heard Ms. Green "saying all kind[s] of things to [Appellant] out [of] the window of her tow truck." *Id.* at 109:3-8. Appellant stated that, initially, she did not believe that Ms. Green was directing comments at Appellant because Ms. Green was on her cell phone. *Id.* at 109:20-22. It was not until after Ms. Green exited her vehicle and approached Appellant that Appellant understood that Ms. Green was addressing her. Ms. Green told Appellant, "yeah, I'm talking to you," and Appellant responded "yeah, I'm talking to you." The dispute quickly escalated when Ms. Green put her finger in Appellant's face and Appellant bit Ms. Green's finger. *Id.* at 110:9-15. After Appellant bit Ms. Green's finger, Ms. Green struck Appellant who then struck back. *Id.* at 111:19-14. The two employees ended up fighting for about one or two minutes. *Id.* at 110:22-25.

Delisia Crayton served as Operation Chief in DPW's towing division and had general supervisory authority over all of DPW's tow truck drivers. *Id.* at 12:3-9. On the afternoon of the 24th, Ms. Crayton was working at a DPW facility located at 400 North Claiborne Avenue when another DPW employee entered the facility and excitedly stated that two "ladies" were fighting at the "gas pump." *Id.* at 15:2-7. In response, Ms. Crayton immediately relocated to 500 North Broad Street where she encountered Ms. Green who was pulling out of the refueling depot in a DPW tow truck. *Id.* at 16:10-13. Ms. Crayton observed that Ms. Green had severe swelling on

her forehead. Convinced that Ms. Green had sustained an injury and could not safely operate a vehicle, Ms. Crayton directed Ms. Green to park the truck. *See id.* at 17:6-10. As a result of the obvious injury Ms. Green had sustained, Ms. Crayton decided to drive Ms. Green to Concentra, a third-party medical provider for City employees. Ms. Crayton did not see Appellant at the refueling depot.

When Ms. Crayton arrived at Concentra's facility on Barone Street, she saw Appellant waiting with another DPW supervisor. According to Ms. Crayton, Appellant appeared to be "banged up" including a "bloodshot" eye and possibly some swelling around her face. *Id.* at 26:14-25. When a staff member at Concentra observed Ms. Green's injuries and indicated that X-rays would be necessary, Ms. Crayton brought Ms. Green to the Tulane Medical Center emergency room. *Id.* at 28:11-20. Another DPW brought Appellant to the Tulane Medical Center. After receiving treatment, both Ms. Green and Appellant were discharged. While at the hospital, NOPD Officers arrived and collected statements from both Appellant and Ms. Green. The officers issued summons to both Ms. Green and Appellant for simple battery since they could not determine who the aggressor was. (DPW Exh. 13).

III. LEGAL STANDARD

An appointing authority may discipline an employee with permanent status in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that an appointing authority issued discipline without sufficient cause, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, an 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 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094 (La. Ct. App. 2007)). If the Commission finds that an appointing authority has met its initial burden and had sufficient cause to issue discipline, it must then determine if that discipline “was commensurate with the infraction.” *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). Thus, the analysis has three distinct steps with the appointing authority bearing the burden of proof at each step.

IV. ANALYSIS

A. Occurrence of the Complained of Activities

Ms. Tamera Sylvain, served as the human resource administrator for the DPW and participated in the pre-termination meetings for both Ms. Green and Appellant. Ms. Sylvain testified that, after interviewing Ms. Green and Appellant, DPW could not determine who started the fight. (Tr. at 97:1-6). Ultimately, the DPW terminated both Ms. Green and Appellant w. *Id.* at 100:21-25. The Appointing Authority did not call Ms. Green as a witness, as a result, the entirety of Ms. Green’s statements are hearsay. The Commission is thus more inclined to accept Appellant’s version of events since she provided live testimony. Yet, Appellant’s own testimony establishes that she escalated a verbal exchange and initiated physical contact with Ms. Green when she bit Ms. Green’s finger. Both Appellant and Ms. Green sustained injuries from the fight that were severe enough to warrant trips to the emergency room. Given the extent of Ms. Green’s injuries, the Commission finds that it is likely that Appellant struck Ms. Green with a hard object.

As a result of the above findings, the Commission finds that the DPW established that Appellant engaged in a physical altercation with a fellow DPW employee.

B. Impact on the MYH's Efficient Operations

Appointing authorities go to great lengths in order to ensure that employees work in a safe and secure environment. When employees engage in physical altercations between themselves, they endanger themselves and others. Appellant's conduct compromised the efficient operations of the DPW in numerous ways. First, both Appellant and Ms. Green actively sought to injure each other and rendered the work environment unsafe. Then, they consumed the attention of several DPW supervisors who had to spend hours at medical facilities to supervise and monitor Ms. Green and Appellant. Finally, and perhaps most importantly, Appellant and Ms. Green acted in a stunningly unprofessional manner which undermined the DPW's ability to manage its operations and employees.

As a result of the above findings of fact, the Commission finds that the DPW has established that Appellant's misconduct compromised the efficient operations of the DPW.

C. Was the Discipline Commensurate with Appellant's Offense

In conducting its analysis, the Commission must determine if Appellant's discipline was "commensurate with the dereliction;" otherwise, the discipline would be "arbitrary and capricious." *Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d 976, 978 (citing *Staehle v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

On any continuum of unprofessional behavior, physical fights between employees ranks at or near the top. In past appeal decisions, the Commission has found that the only mitigating factor possibly present in such cases is self-defense. Here, Appellant claimed that she bit Ms. Green out of self-defense. The Commission does not find that the evidence supports Appellant's dubious claim. First and foremost, while certainly antagonistic and obnoxious, the placing of one's finger

S. Elphage
Nos. 8756, 8775

near the face of someone else does not justify biting or striking the offending digit. Appellant was not in a confined space, she was at a gas pump. She could have withdrawn from the situation until Ms. Green had left the facility. The Commission finds that Appellant was at least as culpable as Ms. Green for the altercation and the DPW acted appropriately when it terminated both individuals.

Appointing authorities have a responsibility to create a safe and secure environment for its employees. The DPW endeavored to fulfill that responsibility by establishing clear policies regarding workplace harassment and violence. Appellant and Ms. Green blatantly disregarded such policies to their own detriment.

Based upon the record before us, we find that termination was commensurate with Appellant's misconduct.

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby DENIES Appellant's appeal.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.

SIGNATURES APPEAR ON THE FOLLOWING PAGE.

S. Elphage
Nos. 8756, 8775

Judgment rendered this 11th day of April, 2019.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER

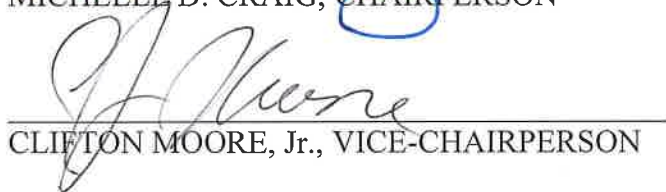

BRITTNEY RICHARDSON, COMMISSIONER

4-1-19
DATE

CONCUR


MICHELLE D. CRAIG, CHAIRPERSON

3/27/19
DATE


CLIFTON MOORE, Jr., VICE-CHAIRPERSON

3/19/19
DATE