

MICHELLE JOHNSON

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

DOCKET NO. 7777

Michelle Johnson ("Appellant") is employed by the Department of Police ("Appointing Authority") as a Complaint Operator. The Appointing Authority suspended her for forty-two days for violation of internal rules regarding neglect of duty (7 counts).

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 on November 11, 2010. The testimony presented at the hearing was transcribed by a court reporter. Appellant was represented pro se. The three undersigned members of the Civil Service Commission have reviewed a copy of the transcript and all documentary evidence.

Appellant is employed by the Police Department as a "complaint operator." She receives calls from the public for police assistance with various complaints and then forwards the calls to a "dispatcher." The dispatcher then forwards the call to the police officers in the area who make a decision as to what type of follow up, if any, is needed.

From May 4, 2009 through May 8, 2009 her Supervisor Zolite Caliste investigated Appellant to determine her performance in forwarding calls to the dispatcher.

Ms. Caliste listened to the tapes of Appellant's conversations with callers and concluded that during this period Appellant failed to forward seven calls. Appellant was suspended six working days for each of the seven alleged violations for neglect of duty. The transcripts of those seven calls were introduced into the record as Exhibits D-J.

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We have reviewed each of the transcripts of the seven calls and have reached several conclusions. First, Appellant clearly misunderstood the responsibilities of her job. She was supposed to forward citizen *complaints* (including requests for police assistance) to the dispatcher and not utilize her own judgment as to which ones should be disregarded.

Secondly, we find that the Appointing Authority has proven that Appellant neglected her duty in not forwarding the calls transcribed in Exhibits D, E, F, I and J. Each of those calls involved complaints about possible criminal activity which might require a response from the police.

Thirdly, as to the calls transcribed in Exhibits G and H, we do not think that the Appointing Authority has sufficiently proven a basis for discipline.

Exhibit G reflects only an unintelligible call from an apparent intoxicated caller. Because the caller was unable to even identify any type of complaint requiring police assistance before hanging up, we conclude that there was not really an articulated need for police involvement that required further action by the Appellant. In her testimony Ms. Caliste admitted that this alleged violation was "borderline." (Tr. at 19).

As to the alleged violation reflected in Exhibit H, it shows a call-in about two individuals temporarily begging for money outside a convenience store. However, the transcript reflects that before the call ended the caller indicated that the offending individuals were leaving the scene on a bike and in a car. From this transcript we think a reasonable inference was that the caller was in effect withdrawing any complaint because the problem had become moot and no harm had occurred.

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LEGAL PRECEPTS

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer 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).

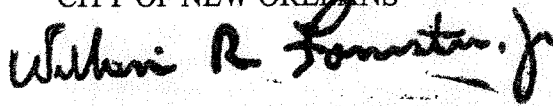
The civil service commission has a duty to decide independently from the facts presented whether the appointing authority has good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. Walters v. Department of Police of New Orleans, 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.

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Accordingly, the Appeal is denied as to discipline imposed for the response to the calls transcribed in Exhibits D, E, F, I, and J. However, discipline for the calls in Exhibits G and H was not sufficiently proven. Accordingly, the appeal is granted as to these two calls and Appellant's total suspension is reduced by twelve days.

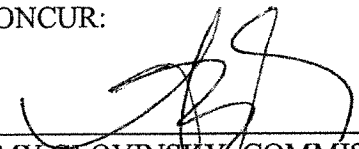
RENDERED AT NEW ORLEANS, LOUISIANA THIS 14TH DAY OF FEBRUARY,
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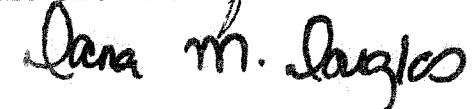
CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS



WILLIAM R. FORRESTER, JR.,
CHAIRMAN

CONCUR:



AMY GLOVINSKY, COMMISSIONER

DANA M. DOUGLAS, COMMISSIONER