



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J.,  
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MITCHELL J. LANDRIEU  
MAYOR

Tuesday, June 03, 2014

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Mr. Eric Hessler  
PANO 2802 Tulane Avenue #101  
New Orleans, LA 70119

Re: **Carey Dykes VS.  
Department of Police  
Docket Number: 7822**

Dear Mr. Hessler:

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 - 6/3/2014 - 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 blue ink that reads "Germaine Bartholomew".

Germaine Bartholomew  
Chief, Management Services Division

cc: Ronal Serpas  
Victor Papai  
Jay Ginsberg  
Carey Dykes

CAREY DYKES

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7822

The Department of Police (“Appointing Authority”) employed Carey Dykes (“Appellant”) as a police officer with permanent status. The Appointing Authority disciplined the Appellant for multiple violations of internal regulations that resulted in forty (40) days of suspension and ultimately in termination. The parties stipulated that the Appellant did in fact engage in all of the activities for which he was disciplined. The parties further stipulated that the uncontested facts supported the sustained violations of the internal regulations. The Appellant contends termination is not an appropriate penalty.

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 May 11, 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.

#### STIPULATIONS

The following violations are uncontested.

- I. Truthfulness (four counts): The Appointing Authority sustained four counts of violating the rule regarding Truthfulness that resulted in dismissal:
  - (1) The daily activity report submitted for the Appellant’s tour of duty which began on July 4, 2010 is false. The Appellant admitted its falsity in his statement given to the investigating officer, Sgt. Daniel Wharton of the Public Integrity Bureau. The Appellant failed to accurately notate his activities, which included having sex while on duty with a female at the London Lodge Motel.

- (2) The daily activity report submitted for the Appellant's tour of duty, which began on August 1, 2010, is false. The Appellant admitted its falsity in his statement given to the investigating officer, Sgt. Daniel Wharton of the Public Integrity Bureau.
- (3) The daily activity report submitted for the Appellant's tour of duty, which began on September 23, 2010, is false. The Appellant admitted its falsity in his statement given to the investigating officer, Sgt. Daniel Wharton of the Public Integrity Bureau. The Appellant was sleeping on the job and, as a consequence, missed a call.
- (4) The Appellant was untruthful in his November 3, 2010 statement when he denied having sex with a woman at the London Lodge Motel.

## II. Devoting Entire Time to Duty – 10 day suspension

On September 22, 2010 the Appellant was outside of his assigned area talking to a female for approximately one hour and fifty minutes. The Appellant does not contest the penalty.

## III. Devoting Entire Time to Duty – Category 3 offense resulting in dismissal.

On July 4, 2010, while on duty, the Appellant was engaged in sexual activities with a woman at the London Lodge Motel.

## IV. Leaving Assigned Area (Five Counts) 2 days suspension for each count. Appellant does not contest the penalty. The dates of the offenses are as follows:

- a. July 5, 2010
- b. August 1, 2010
- c. August 2, 2010
- d. September 22, 2010
- e. September 23, 2010

## V. Neglect of Duty – Sleeping on Duty – Category 3 offense resulting in a fifteen day suspension.

Violation occurred on September 23, 2010.

## VI. Neglect of Duty – Failure to Respond to Call for Service –five day suspension.

Relates to the violation V; as the Appellant was sleeping, he failed to respond to a call for service.

- VII. Instructions from an Authoritative Source – Transporting a Civilian Without Proper Authorization – (Two Counts) – Third violation within twenty-four month period resulting in termination.

On July 4, 2010 and August 1, 2010, the Appellant transported in his departmental vehicle the woman with whom he had sex to the London Lodge Motel.

- VIII. Instructions from an Authoritative Source – Failure to Notify Dispatcher of Activities – (Two Counts) – Third violation within twenty-four month period resulting in termination.

This violation relates to the violation VII. The Appellant failed to notify the dispatcher of his activities at the London Lodge Motel.

#### TESTIMONY

The only witness called by the Appointing Authority was Asst. Supt. Marlon Defillo, who conducted the pre-termination hearing and recommended the disciplinary action that was taken against the Appellant. Asst. Supt. Defillo testified that termination was the appropriate penalty because the Appointing Authority cannot employ an officer that is untruthful regarding his whereabouts and does not devote his entire time to duty. Asst. Supt. Defillo also stated that he would have no confidence placing an officer on the streets who transports women for purposes of having sex when he is being paid to protect the public.

The Appellant did not testify.

#### LEGAL PRECEPTS

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

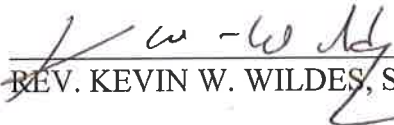
Based upon the stipulations of the parties, the Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for good cause. Further, termination was an appropriate penalty, commensurate with the violation. The Appellant provided no evidence that would mitigate or excuse his behavior.

C. Dykes  
#7822

Considering the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 3rd DAY OF  
June, 2014.

CITY OF NEW ORLEANS  
CIVIL SERVICE COMMISSION

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

CONCUR:

  
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JOSEPH S. CLARK, COMMISSIONER

  
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MICHELLE D. CRAIG, COMMISSIONER