



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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JOHN H. KORN, VICE-CHAIRPERSON
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ANDREW MONTEVERDE

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Monday, January 8, 2024

Mr. Stephen M. Smith
1425 N Broad Street
New Orleans, LA 70119

Re: **Alvin Crusto III VS.**
Department of Fire
Docket Number: 9433

Dear Mr. Smith:

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 - 1/8/2024 - 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, 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: Roman Nelson
James M. Roquemore
Imtiaz A. Siddiqui
Alvin Crusto

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**ALVIN CRUSTO,
Appellant**

Docket No. 9433

v.

**DEPARTMENT OF FIRE,
Appointing Authority**

DECISION

Appellant, Operator Alvin Crusto, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from the New Orleans Fire Department's December 15, 2022, termination of his employment. (Ex. HE-1). At all relevant times, Appellant had permanent status as an Operator. (Ex. HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on June 29, 2023. 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 December 21, 2023, and controlling Louisiana law.

For the reasons set forth below, Operator Crusto's appeal is DENIED.

I. FACTUAL BACKGROUND

On November 20, 2022, while on duty at the Louis Armstrong International Airport, Captain Daniel Strickland noticed that Operator Crusto was unstable on his feet and had slurred speech. (Tr. at 128). Capt. Strickland notified his District Chief, Al Facine, Jr. (Tr. at 132). Chief Facine took Operator Crusto out of service. (Tr. at 149). At the direction of Chief Facine, Capt. Strickland or Capt. Armelin arranged for the drug testing of Operator Crusto. (Tr. at 132-33).

David Golz, an expert in forensic toxicology, testified that the drug test of Operator Crusto was positive for amphetamine, methamphetamine, and a metabolite of cocaine. (Tr. at 31). Operator Crusto testified that he had methamphetamines and cocaine in his system on November 20, 2022, because took these drugs by nasal inhalation. (Tr. at 102-03, 121-22).

Capt. Strickland also testified that Operator Crusto informed NOFD of a drug problem in July of 2023, and he was back at work at full duty on his next scheduled shift. (Tr. at 137). Capt. Strickland testified that the Employee Assistance Program was a failure in Operator Crusto's case. (Tr. at 139-40). Operator Crusto testified that after he entered the Employee Assistance Program, he was never offered rehabilitation services or psychiatric services. (Tr. at 225). Instead, he met with a counselor on a couple of occasions. (Tr. at 226). After he informed NOFD of depression and drug use on July 25, 2022, he was cleared to return to work his next regularly scheduled shift. (Tr. at 225). Operator Crusto entered the Veterans' Administration Hospital Substance Abuse Program on December 2, 2022. (Tr. at 227).

II. ANALYSIS

A. Legal Standard for Commission's Review of Discipline

“Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A).” *Whitaker v. New Orleans Police Dep't*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep't of Police*, 2000-1682 (La. App. 4 Cir. 5/9/01)). “Legal cause exists whenever an employee's conduct impairs the efficiency of the public service in which the employee is engaged.” *Id.* “The Appointing Authority has the burden of proving the impairment.” *Id.* (citing La. Const., art. X, § 8(A)). “The appointing authority must prove its case by a preponderance of the evidence.” *Id.* “Disciplinary action against a civil service employee will be deemed arbitrary and capricious

unless there is a real and substantial relationship between the improper conduct and the “efficient operation” of the public service.” *Id.* “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).

1. The Appointing Authority must show the discipline was commensurate with the infraction

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. *Durning v. New Orleans Police Dep't*, 2019-0987 (La. App. 4 Cir. 3/25/20), 294 So. 3d 536, 538, *writ denied*, 2020-00697 (La. 9/29/20), 301 So. 3d 1195; *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 the burden of showing that the discipline was reasonable and not arbitrary or capricious. *Neely v. Dep't of Fire*, 2021-0454 (La. App. 4 Cir. 12/1/21), 332 So. 3d 194, 207 (“[NOFD] did not demonstrate . . . that termination was reasonable discipline”); *Durning*, 294 So. 3d at 540 (“the termination . . . deemed to be arbitrary and capricious”).

B. The Department of Fire has carried its burden of showing cause for the termination of Operator Crusto’s employment

The Department of Fire has shown the occurrence of the complained-of activity. Operator Crusto admitted that he had inhaled cocaine and methamphetamines, and that these substances were in his system on November 20, 2022. Captain Strickland testified that Operator Crusto was unstable on his feet and exhibiting slurred speech while on duty on November 20, 2022. (Tr. at 128). A forensic toxicologist testified about the positive drug test. (Tr. at 102-03, 121-22).

Operator Crusto's conduct impaired the efficient operation of the Department of Fire. Chief Facine testified that an impairment because of the use of substances would affect a firefighter's ability to respond effectively in an emergency, including a reduced response time and a negative effect on decision-making. (Tr. at 154). Deputy Chief Terry Hardy testified that Operator Crusto's impairment placed the public and the firefighters on duty that day at risk, as he might have been required to drive on the tarmac of the airport to respond to an emergency.

1. The penalty imposed by the Department of Fire is commensurate with the violation

Civil Service Rule V, Section 9.15, gives the Appointing Authority to take appropriate disciplinary action when an employee tests positive for drugs. Based on Operator Crusto's safety sensitive position and his impairment on duty, the penalty of termination is appropriate.

Operator Crusto's appeal is DENIED.

New Orleans, Louisiana, this the 8th day of January, 2024.

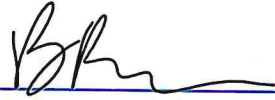
WRITER:



Ruth Davis (Dec 28, 2023 16:42 CST)

RUTH DAVIS, COMMISSIONER

CONCUR:



Brittney Richardson (Jan 4, 2024 14:26 CST)

BRITTNEY RICHARDSON, CHAIRPERSON



J H Korn (Jan 5, 2024 12:10 CST)

JOHN KORN, VICE-CHAIRPERSON