



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J.,
CHAIRMAN
JOSEPH S. CLARK
MICHELLE D. CRAIG
EDWARD PAUL COHN
RONALD P. MCCLAIN

MITCHELL J. LANDRIEU
MAYOR

Wednesday, April 23, 2014

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Ms. Janice Porter

Re: **Janice Porter VS.
Sewerage & Water Board
Docket Number: 8119**

Dear Ms. Porter:

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 - 4/23/2014 - 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, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Robert K. Miller
Yolanda Grinstead
Jay Ginsberg
file

JANICE PORTER

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

SEWERAGE & WATER BOARD

DOCKET NO. 8119

The Sewerage & Water Board (“Appointing Authority”) employs Janice Porter (“Appellant”) as a Water Service Inspector II with permanent status. The Appointing Authority suspended the Appellant for three days by letter dated January 3, 2013.

The Appointing Authority determined that the Appellant failed to perform her required job functions. The specific allegations are found in third paragraph of the disciplinary letter which provides as follows:

During the week of November 26-29, 2012 you were assigned delinquent account (dc) work orders to turn off. However, you failed to turn off accounts as required. Your actions violated the Meter Reading Department’s policy on turning off delinquent accounts. Additionally, your actions caused the Board a loss of revenue and time.

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 August 15, 2013. 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.

At the time of the incident, Antoinette Jenkins supervised the Meter Reading Department. She received a report from customer services that approximately five to seven customers made the same complaint during the same one week period. Each complained that they were sent delinquency notices for failure to pay their water bills, requiring a payment of seventy five dollars (\$75.00) to have their water turned back on, when according to the customers, their water was never turned off.

Further investigation established that the Appellant had received work orders to turn off water service for all of the complaining customers. Ms. Jenkins testified that she was concerned that the Appellant had failed to turn off the water at the complaining residences. As explained by Ms. Jenkins, while it is not uncommon for a small number of customers to turn their water back on after it is turned off for failure to pay for the service, it made no sense for a customer who had illegally turned his or her water back on to complain about a delinquency bill stating that his or her water was never turned off. Ms. Jenkins stated that there were too many customers making the same complaint to not suspect the Appellant.

Ms. Jenkins instructed the Appellant's immediate supervisor, Patricia Davenport, to pull the Appellant's work orders for November 26, 2012 through November 29, 2012 to determine whether she had turned off water services for the customers on her route who had failed to pay their bills. Ms. Davenport found that the Appellant failed to turn off water on forty four work orders during the relevant period. Following procedure, she turned off the water service on all forty four households and left a tag informing the customer of what had happened. Ms. Davenport testified that upon her return the next day four customers had illegally turned their water back on – some after paying their delinquent bill.

The Appellant denied that she failed to turn off the water service for the complaining customers or for the additional forty four customers that Ms. Davenport uncovered. The Appellant maintained that the customers either turned the water back on themselves or that Ms. Davenport was untruthful in her investigation and testimony. The Appellant also called several witnesses that work as water service inspectors who testified that customers turn their water back

on after the inspectors turn it off. The witnesses offered unsupported and speculative estimates of the number of customers that engage in this activity.

LEGAL PRECEPTS

An employer cannot subject an employee who has gained permanent status in the classified city civil service to disciplinary action 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 make an independent judgment, 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

J. Porter
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service. *Id.* While these facts must be clearly established, they need not be established beyond a reasonable doubt. *Id.*

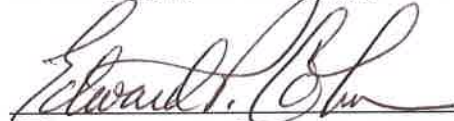
CONCLUSION

The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for just cause. The Appointing Authority provided compelling testimony and documentary evidence that the Appellant failed to do her job costing the Appointing Authority time and revenue. The Appellant's claim that she performed her duties is not credible in light of the Appointing Authority's evidence.

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

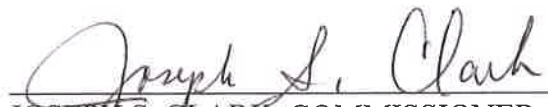
RENDERED AT NEW ORLEANS, LOUISIANA THIS 23rd DAY OF April, 2014.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION


EDWARD P. COHN, COMMISSIONER

CONCUR:


RONALD P. MCCLAIN, COMMISSIONER


JOSEPH S. CLARK, COMMISSIONER