



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

BRITTNEY RICHARDSON,
CHAIRPERSON
CLIFTON J. MOORE, JR, VICE-
CHAIRPERSON
JOHN KORN
MARK SURPRENANT
RUTH WHITE DAVIS

Monday, April 19, 2021

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Mr. Anthony McGuire

Re: **Anthony McGuire VS.
Department of Sanitation
Docket Number: 9104**

Dear Mr. McGuire:

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 - 4/19/2021 - 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: Matt Torri
Michael J. Laughlin
Jay Ginsberg
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

ANTHONY McGUIRE
Appellant

v.

Docket No. 9104

DEPARTMENT OF SANITATION
Appointing Authority

DECISION

Appellant, Anthony McGuire, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his demotion effective October 6, 2019. (See Exhibit HE-1). The Department of Sanitation demoted Appellant from Equipment Operator II to Maintenance Worker for medical reasons. At all relevant times, Appellant had permanent status as a classified employee. A Hearing Examiner, appointed by the Commission, presided over a hearing held on January 7, 2020. 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 June 15, 2020, and controlling Louisiana law. For the reasons set forth below, we DENY the appeal.

I. FACTUAL BACKGROUND

Anthony McGuire, an Equipment Operator II, had an ischemic stroke on the job on April 17, 2019. (Ex. City-4; Tr. at 11). The Department of Sanitation determined that the stroke contributed to a vehicle accident. (Tr. at 11). Following the stroke, the Department of Sanitation accommodated McGuire's disability by allowing McGuire to work light duty at the Mosquito Board. (Tr. at 17). On May 24, 2019, McGuire's treating physician stated McGuire could return

to work “without driving responsibilities.” (Ex. City-4). On June 12, 2019, McGuire’s treating neurologist, Derek Neupert, M.D, stated that McGuire was released from lifting restrictions, but that driving was “on hold” because of vision deficits. (Ex. City-3 at 5). The neurologist stated that McGuire’s license would be suspended for one year. (Ex. City-3 at 5). The City’s physician at Concerta also advised the Department of Sanitation on May 10, 2019, that McGuire would be unable to drive for one year. (Tr. at 27). According to the Director of the Department of Sanitation, McGuire never provided information from his treating physician that McGuire was released to drive. (Tr. at 34).

Following the release from lifting restrictions, the Department of Sanitation put McGuire in a Maintenance Worker position at the rate of pay of an Equipment Operator. (Tr. at 17).

A physician at Daughters of Charity opined that McGuire was released to return to work on May 1, 2019. (Tr. at 49). McGuire’s license was never revoked. (Tr. at 68). McGuire testified that he obtained a release to return to work from Daughters of Charity because he could no longer afford the fee to return to Concerta. (Tr. at 71-72, 79-80).

II. ANALYSIS

“An employee with permanent status in the classified city service may only be terminated, or otherwise subjected to disciplinary action, in writing and for good cause.” *Laviolette v. Dep’t of Police*, 2016-0095 (La. App. 4 Cir. 8/24/16), 200 So. 3d 962, 966 (citing La. Const. art. X, § 8(A) and *Walters v. Dept. of Police of New Orleans*, 454 So.2d 106, 113 (La.1984)). “Good ‘cause’ for the dismissal of such a person includes conduct prejudicial to the public service involved or detrimental to its efficient operation. *Id.* The appointing authority has the burden of proving, by a preponderance of the evidence, that the complained-of activity or dereliction occurred, and that

such dereliction bore a real and substantial relationship to the efficient operation of the appointing authority. *Id.* (citing *Cittadino v. Department of Police*, 558 So.2d 1311, 1315 (La.App. 4 Cir.1990)).

Rule IX, § 1.1 of the Commission's rules provides that "[w]hen an employee in the classified service is unable . . . to perform the duties of his/her position in a satisfactory manner . . . the appointing authority shall take action warranted by the circumstances to maintain the standards of effective service." The action may include demotion to a lower classification. Rule IX, § 1.1(d).

When reviewing termination decisions under Rule IX based on physical inability to return to work, the Louisiana Court of Appeal for the Fourth Circuit has held in more than one decision that the Appointing Authority failed to meet its burden of proving that an employee was permanently unable to return to work. *See, e.g., Laviolette*, 200 So. 3d at 966 ("Captain Laviolette never stated or otherwise indicated that he was unwilling to return to work . . . Most importantly, there was never any medical determination that Captain Laviolette's injuries would prevent him from returning to work in the future).; *Wilson v. Dep't of Prop. Mgmt.*, 2016-1124 (La. App. 4 Cir. 5/10/17), 220 So. 3d 144, 148 ("[n]either Ms. Wilson nor her physician suggests that she is unable to return to work"). In an earlier decision concerning the termination of a police officer under Rule IX for medical reasons, the Fourth Circuit concluded that "in the case *sub judice* the Commission heard all of the testimony, including the appellant's testimony in which he admitted that he was not able to return to his duties as a police officer." *Muhammad v. New Orleans Police Dep't*, 2000-1034 (La. App. 4 Cir. 7/11/01), 791 So. 2d 788, 792. Likewise, a police officer's failure to provide information to the New Orleans Police Department about when he could return to work was fatal to his appeal of his Rule IX termination: "Officer Adams was told he could supplement

the Rule IX hearing record with medical evidence that he could return to work in September 2009, as he claimed. He did not do so.” *Adams v. Dep’t of Police*, 2012-1268 (La. App. 4 Cir. 2/20/13), 109 So. 3d 1003, 1006.

In this case, the Sanitation Department has not terminated McGuire’s employment. After accommodating his need for light-duty for approximately six months following his stroke on April 17, 2019, by placing him at a desk job in another department and then in a lower classification in the Department of Sanitation, the Department of Sanitation demoted McGuire to a Maintenance Worker. (Tr. at 17; Ex. HE-1). The Department of Sanitation based the demotion on the medical information from McGuire’s treating physician that McGuire would not be able to drive. (Tr. at 30). McGuire’s job as an Equipment Operator II was to drive a truck. (Tr. at 18). The position requires a CDL license. (Tr. at 18). Medical records from his treating neurologist dated May 24, 2019, and June 12, 2019, that McGuire provided to the Department of Sanitation, state that McGuire is unable to drive. (Ex. City-2, Ex. City-3; Tr. at 29-30, 39). The City’s physician also opined that McGuire would be unable to drive for a year following a stroke. (Tr. at 27). The Director of the Department of Sanitation testified that McGuire never provided medical information from his treating physician that McGuire is able to drive. (Tr. at 34). The Department of Sanitation rejected a letter from the Daughters of Charity dated May 1, 2019, releasing McGuire to full duty because the physician was not a neurologist, had not treated McGuire for the stroke, and exhibited no familiarity with McGuire’s medical records. (Tr. at 37). The Director of the Department of Sanitation testified that McGuire may re-apply for an open Equipment Operator II position if and when he is released by his treating physician to drive. (Tr. at 59-60). McGuire could have obtained a release from Concerta or his treating neurologist to drive between June 12 and October 9, but McGuire failed to do so. The Department of Sanitation has met its burden of

showing through medical evidence that McGuire is unable to perform the job duties of an Equipment Operator II, and that the safety of McGuire and the public would be impaired if the Department of Sanitation allowed McGuire to drive a truck. (Tr. at 50). Therefore, McGuire's appeal is DENIED.

This the 19th day of April, 2021

WRITER:

CJ Moore
CJ Moore (Apr 19, 2021 05:40 CDT)

CLIFTON J. MOORE, JR., VICE-CHAIRPERSON

CONCUR:

BR
Brittney Richardson (Apr 13, 2021 10:28 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

Mark C. Surprenant
Mark C. Surprenant (Apr 13, 2021 11:19 CDT)

MARK SURPRENANT, COMMISSIONER