



CITY OF NEW ORLEANS

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CITY CIVIL SERVICE COMMISSION

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LATOYA CANTRELL
MAYOR

Thursday, April 11, 2019

Mr. Corey Green

Re: **Corey Green VS.
Recreation Department
Docket Number: 8731**

Dear Mr. Green:

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 - 4/11/2019 - 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: Larry Barabino
Elizabeth S. Robins
Jay Ginsberg
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

<p>COREY GREEN, Appellant,</p> <p>vs.</p> <p>RECREATION DEPARTMENT, Appointing Authority.</p>	<p>DOCKET No.: 8731</p>
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I. INTRODUCTION

Appellant, Corey Green, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Recreation Department for City of New Orleans, (hereinafter “NORD” or “Appointing Authority”) terminated Appellant after substantiating allegations of misconduct against Appellant.

At all times relevant to the instant appeal, Appellant served as a Recreation Center Manager I for NORD and had permanent status as a classified employee. A referee appointed by the Commission presided over one day of hearing on February 28, 2018. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the hearing examiner’s report. Based upon our review, we DENY the appeal and render the following judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

On October 20, 2017, NORD issued Appellant a notice of termination. The cause for termination expressed in the notice was Appellant's production of allegedly fraudulent medical documentation regarding numerous absences. (H.E. Exh. 1). NORD cited Civil Service Rule VIII, Section 2.5(c) in the termination letter. This provision of the rules addresses a scenario in which an appointing authority determines that an employee has attempted to charge an absence against his/her accumulated sick leave even though there was no actual illness or injury. In such a scenario, an appointing authority must deduct the value of misused sick leave from an employee's available annual leave and may take disciplinary action. C.S. Rule VIII, § 2.5(c).

B. Appellant's Absences

Debra Calderon, NORD's HR manager, was responsible for supervising NORD's personnel and payroll functions during all times relevant to the instant appeal. (Tr. at 7:23-8:3). As part of her duties, Ms. Calderon monitored leave usage by NORD employees. Ms. Calderon became aware of Appellant's sick leave usage through emails between Appellant and his immediate supervisor, Shonnda Smith. *Id.* at 9: 7-22. During June, July, and August 2017, Appellant missed numerous days of work allegedly due to a variety of ailments including "severe" migraine headaches, fever, and generally feeling terrible. (NORD Exh. 1). Some of Appellant's alleged illnesses required a hospital visit. *Id.* Following Appellant's frequent absences, Ms. Smith requested that he produce medical documentation verifying that Appellant was unable to work due to illness. (Tr. at 17:23-18:2).

In response to Ms. Smith's request, Appellant produced several documents that purported to be documentation of Appellant's visits to doctors' offices. (NORD Exh. 2). According to the

documents, Appellant saw either Dr. Selim Krim or Dr. Hamang Patel.¹ Each document was allegedly signed by a registered nurse and Dr. Krim or Dr. Patel. *Id.* Ms. Calderon received and reviewed the medical documentation in her role as NORD HR Manager. During her review, Ms. Calderon became concerned that the documents were not authentic based upon how similar the doctors' signatures were. (Tr. at 23:3-18). Ms. Calderon reported her concerns to Maya Wyche, who was NORD's Chief Operating Officer at the time. Ms. Wyche instructed Ms. Calderon to reach out to the doctors' offices in order to confirm the authenticity of the documentation Appellant produced. *Id.* at 24:10-13.

At Ms. Wyche's direction, Ms. Calderon reached out to Dr. Krim and Dr. Patel via their offices.² After speaking with Dr. Krim and Dr. Patel's staff members over the phone, Ms. Calderon sent the documents produced by Appellant for authentication. (NORD Exh. 3). In response, one of the members of Dr. Krim and Dr. Patel's staff indicated that no staff member employed by the clinic signed the documents in question. *Id.* The staff member was unable to confirm whether or not another employee of Ochsner Health Systems signed the documents. *Id.* Ms. Calderon reported her findings to Ms. Wyche.

After reviewing the documents produced by Appellant and the response to Ms. Calderon's inquiry, Ms. Wyche drafted a letter to Dr. Krim and Dr. Patel requesting additional information regarding the nature of the treatment they provided to Appellant. (Tr. at 44:23-45:8; NORD Exhs. 4, 5). Attached to the letter were the notes produced by Appellant. (NORD Exhs. 4, 5). An individual who represented that she was the Administrative Coordinator for Ochsner's Advanced

¹ As explained below, Appellant disputes the spelling of the first names contained in the medical documentation he produced. The documents speak for themselves.

² Ms. Calderon testified that she contacted Dr. Krim and Dr. Patel's offices through publically available contact information provided by Ochsner Health System. Further, she based her inquiry on the spelling contained in the documents Appellant produced. The Commission finds that the documents clearly contain the spelling of the doctors' last names, to wit, P-A-T-E-L and K-R-I-M.

Heart Failure/Heart Transplantation clinic indicated that neither Dr. Krim nor Dr. Patel had ever seen Appellant as a patient. (NORD Exh. 6).

Following receipt of the follow-up emails from Dr. Krim and Dr. Patel's staff, Ms. Wyche issued Appellant a pre-termination notice. (NORD Exh. 7). The notice alleged that the documentation produced by Appellant purporting to be signed by Dr. Patel and Dr. Krim were "fraudulent." Attached to the notice were each of the doctors' notes produced by Appellant in June, July and August 2017. The pre-termination specifically invited Appellant to "bring copies of any documents, including medical records, to the pre-termination hearing that [Appellant] want[s] the department to consider." *Id.* Appellant signed an acknowledgment that he received the pre-termination notice on October 12, 2017. *Id.* The pre-termination meeting occurred on October 20, 2017, but Appellant did not attend nor did he provide NORD with any information or documents in response to the pre-termination notice.

Appellant testified that Ms. Wyche and Ms. Ms. Calderon had reached out to the wrong Dr. Krim and Dr. Patel. (Tr. at 70:19-23). He went on to claim that he did not attend the pre-termination meeting or provide NORD with a response to the allegations against him because he felt "the writing was already on the wall they wanted to fire me." *Id.* at 71:3-7. Appellant believed that a NORD representative should have given him an opportunity to respond to the allegations **before** scheduling a pre-termination meeting. Had they done so, he would have ensured that NORD reached the correct doctors. Appellant did not introduce any documentation to support his claim that a different Dr. Krim and Dr. Patel (working at Ochsner) saw him on the dates in question. During his testimony, Appellant claimed that he did not know the first names of his doctors, but later stated that the Dr. Krim that treated him had a first name that began with an "S" and the Dr. Patel that treated him had a first name that began with an "M." *Id.* at 82:2-83:10.

III. LEGAL STANDARD

An appointing authority may discipline an employee with permanent status in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that an appointing authority issued discipline without sufficient cause, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, an 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 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094 (La. Ct. App. 2007)). If the Commission finds that an appointing authority has met its initial burden and had sufficient cause to issue discipline, it must then determine if that discipline “was commensurate with the infraction.” *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). Thus, the analysis has three distinct steps with the appointing authority bearing the burden of proof at each step.

IV. ANALYSIS

A. Hearsay Evidence

There are several aspects of NORD’s case that rely upon hearsay evidence. Hearsay evidence is admissible in appeal hearings, however, the mere fact that such evidence is admissible does not mean that it is “competent.” It is for the Commission to determine if such evidence is “competent” or “of the type a reasonable person would rely upon.” *Taylor v. New Orleans Police Dep't*, 2000-1992 (La.App. 4 Cir. 12/12/01, 5); 804 So.2d 769, 773, *writ not considered*, 2002-

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0139 (La. 3/22/02); 811 So.2d 935; *see also, Johnson v. Dep't of Police*, 2008-0467 (La.App. 4 Cir. 12/10/08, 13); 2 So.3d 501, 510 (out of court victim statement supported by cell phone records, other eye witness accounts and NOPD Officer statements).

Here, NORD introduced out of court statements from individuals who purported to be members of Dr. Krim and Dr. Patel's professional staff. Each statement contains elements that suggest competency. First, the email addresses suggest that the emails are from and to Ochsner employees. Further, there are two separate sources (Nurse Bobbett and Ms. Balot-Luce) that confirm that neither Dr. Krim nor Dr. Patel signed the documents in question. Further, each is a direct response to documents supplied by Appellant.

Finally, the Commission observes that the communications introduced by NORD put Appellant on notice that he would have to produce documents that explained why Dr. Krim and Patel had no record of seeing and/or treating him. In fact, NORD specifically put Appellant on notice that Dr. Krim and Dr. Patel indicated that they had no record of treating him as a patient in 2017. (NORD Exh. 7). The pre-termination notice NORD issued to Appellant instructed Appellant to "bring copies of any documents, including medical records" that he wanted NORD to consider. *Id.* Appellant explained that he did not attend the pre-termination meeting or bring any documents because he "saw the writing on the wall." (Tr. at 77:19-21). He went on to claim that he could have had one of his doctors come and testify on his behalf, but that he was not given the opportunity to do so. The Commission disagrees. Appellant had every opportunity to call witnesses on his behalf and introduce evidence that would explain or otherwise address NORD's exhibits. He did neither.

Bearing the above in mind, the Commission finds that the hearsay evidence introduced by NORD is competent and will be given probative value.

B. Occurrence of the Complained of Activities

Appellant missed several days of work over the course of June, July, and August of 2017. To support his use of sick leave, he produced what purported to be doctors' notes signed by physicians working for Ochsner Health Systems. NORD alleged that the documents were forged or otherwise fraudulent. To support its allegation, NORD introduced competent hearsay evidence that seriously undermined the veracity of the documents in question. The evidence and testimony introduced by NORD was sufficient to shift the burden to Appellant to explain why Dr. Krim and Dr. Patel had no record of treating Appellant during the summer of 2017.

To put it mildly, the Commission is underwhelmed by Appellant's presentation. Appellant's entire case is based upon the hope that the Commission will accept his representation that a different Dr. S. Krim and a different Dr. Patel (along with a different set of support staff) were involved in his health care during the time in question. Appellant did not disclose the clinic or area of specialty for the Dr. Krim and Dr. Patel he saw due to concerns about confidentiality. He also did not produce for the hearing examiner the first names of the medical doppelgangers. Appellant's claim that he would have "preferred to talk to [his] doctors" prior to producing any evidence that would support his case is disingenuous. Due to the nature of the allegations against him, as well as the ample documentation issued to him by NORD, Appellant was on notice that his career with the City of New Orleans was at stake. This apparently did not prompt Appellant to seek out the "correct" doctors who actually saw Appellant during the summer of 2017. Appellant made the dubious assertion that he was not under the impression that he needed to secure any information from his treating physicians. Based upon the unambiguous nature of the allegations against Appellant, the Commission is at a loss to determine the source of Appellant's mistaken impression.

As a result of the foregoing findings of fact, the Commission holds that the NORD has established that Appellant abused sick leave by producing forged documents that purported to be signed by medical professionals.

C. Impact on the MYH's Efficient Operations

Ms. Wyche estimated that the forged medical documentation produced by Appellant covered approximately 263 hours of sick leave totaling \$3,652 given Appellant base pay rate. (Tr. at 56:5-11). Thus, there was a real financial impact from Appellant's fraudulent use of sick leave. And, it should go without saying that employers pay employees for working. Appellant, as a recreation center manager, was responsible for ensuring that a specific recreational facility had adequate resources to run in an efficient and effective manner. *Id.* at 59:22-60:6. By missing work and justifying his absence with fraudulent documentation, Appellant deprived NORD of a key resource in the management of a recreational facility. When Appellant is not present, there is added strain on other NORD staff. Additionally, Appellant is responsible for supervising other NORD employees and accurately recording time and attendance. NORD must trust that Appellant will execute his supervisory duties with integrity. Due to Appellant's actions, NORD leadership understandably lost confidence in Appellant's trustworthiness.

As a result of the foregoing, we find that Appellant's conduct had an adverse impact on the efficient operations of NORD.

D. Was the Discipline Commensurate with Appellant's Offense

In conducting its analysis, the Commission must determine if Appellant's discipline was "commensurate with the dereliction;" otherwise, the discipline would be "arbitrary and capricious." *Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d

976, 978 (citing *Staehele v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

The Commission accepts the stipulation by the Parties that the submission of forged or otherwise fraudulent medical documentation related to a classified employee's sick leave use is sufficient grounds for termination. (Tr. at 68:8-25). The Commission further observes that sick leave is a common benefit but one that is subject to abuse. Sick leave provides employees with compensation even though they are unable to work. Due to the nature of the benefit and the expenditure of public funds related to the benefit, it is important that appointing authorities monitor employees' use of sick leave and strongly deter abuse.

Based upon the record before us, we find that termination was commensurate with Appellant's misconduct.

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby DENIES Appellant's appeal.

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SIGNATURES APPEAR ON THE FOLLOWING PAGE.

Judgment rendered this 14th day of April, 2019.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER



CLIFTON MOORE, Jr., VICE-CHAIRPERSON

3/19/19

DATE

CONCUR



MICHELLE D. CRAIG, CHAIRPERSON

3/22/19

DATE



BRITTNEY RICHARDSON, COMMISSIONER

4/11/2019

DATE