CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J., PHD, CHAIRMAN
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CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
ROOM 7W03 CITY HALL
NEW ORLEANS LA 70112
(504) 658-3500
FAX NO. (504) 658-3599

MITCHELL J. LANDRIEU
MAYOR

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Wednesday, October 03, 2012

Ms. Hester R. Hilliard, Esq.
7809 Airline Drive, Suite 200
Metairie, LA 70003

Re: **Marion Edwards VS.**
Sewerage & Water Board
Docket Number: 7775

Dear Ms. Hilliard:

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 - 10/3/2012 - filed in the Office of the Civil Service Commission in Room 7W03, City Hall, 1300 Perdido Street, 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,

Germaine Bartholomew
Chief, Management Services Division

cc: Marcia St. Martin
Yolanda Grinstead
Jay Ginsberg

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Wednesday, October 03, 2012

Ms. Hester R. Hilliard, Esq.
7809 Airline Drive, Suite 200
Metairie, LA 70003

Re: **Marion Edwards VS.**
Sewerage & Water Board
Docket Number: 7776

Dear Ms. Hilliard:

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 - 10/3/2012 - filed in the Office of the Civil Service Commission in Room 7W03, City Hall, 1300 Perdido Street, 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,

Germaine Bartholomew
Chief, Management Services Division

cc: Marcia St. Martin
Yolanda Grinstead
Jay Ginsberg

MARION EDWARDS	**CIVIL SERVICE COMMISSION**
VERSUS	**CITY OF NEW ORLEANS**
SEWERAGE & WATER BOARD	**DOCKET NOS. 7775 c/w 7776**

(AMENDED)

The Sewerage & Water Board ("Appointing Authority") employed Marion Edwards ("Appellant") as a Pumping Plant Operator with permanent status. He was first hired on January 6, 2003, and was promoted to his current class on September 3, 2004. The Appellant was placed on emergency suspension and then terminated for job abandonment. The factual basis for the termination is summarized in the third paragraph of the August 18, 2010 termination letter which provides as follows:

> On Thursday August 5, 2010 at 9:10 pm Bobbie Bolden, your immediate supervisor was informed after an extensive search that you abandoned your work site at the Old River Station D without permission for more than an hour. When Mr. Bolden called the Hi-Lift office to report the station abandoned, the Hi-Lift office called you to ask your whereabouts, you stated that you were "down the street". You returned to the station at 10:15 pm at which time you were relieved from your duties and instructed to report to the Carrollton Water Plant at 7:00 am the next day.

As also reflected in the disciplinary letter, the Appellant was previously disciplined for the same offense in 2007.

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 December 16, 2011. 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.

The Appointing Authority presented the testimony of several witnesses involved in the incident. Todd Hathaway the pumping plant maintenance supervisor testified that

he received an anonymous telephone call on August 5, 2010 at approximately 9:10 pm reporting that the pumping plant operator had abandoned the Old River Station pumping plant. In response, Mr. Hathaway contacted Damon Adams who manages the pumping operations and instructed him to go to the plant and see what was going on. Mr. Hathaway testified that he was very concerned because of the importance of the role of the pumping plant. The Old River Plant draws water from the Mississippi River that is supplied to the Carrollton Water Plant for use as potable drinking water for the City of New Orleans. The Pumping Plant Operator is responsible for remaining on the plant premises and assuring that the operations continue without interruption.

Damon Adams testified that he received the call from Mr. Hathaway and immediately called Jerry Peterson, Steam Plant Operator II. Mr. Adams instructed Mr. Peterson to go to the plant immediately, and he would meet him there. Mr. Adams arrived a few minutes after Mr. Peterson. They found the building dark and empty with the telephone off the hook. He and Mr. Peterson observed the backdoor open, which is contrary to Board policy. According to Mr. Adams, all doors are required to remain locked for security purposes. Mr. Adams testified that they searched the entire facility, including the basement where the Appellant later claimed he was located, shouting out the Appellant's name. They also used the intercom system to determine if the Appellant was somewhere in the plant possibly injured.

Once satisfied that the Appellant was not on the premises, Mr. Adams instructed Mr. Peterson to lock the back door and they would wait for the Appellant to return. Sometime after 10:00 pm the Appellant reappeared. They concluded that the Appellant slipped back into the plant through an open window with a milk crate for elevating and

climbing. Mr. Adams climbed through the window himself to confirm that it was a reliable means of reentering the building. Mr. Peterson's testimony was consistent with Mr. Adams confirming that a complete and thorough search of the facility was conducted, and that the Appellant was not present.

Finally, the Appointing Authority called Cesar Elloie, the person from the Hi-Lift office referenced in the disciplinary letter. Mr. Elloie was the watch commander on duty. He testified that he called the Appellant's cell phone and when the Appellant answered asked him where he was. Mr. Elloie testified that the Appellant responded that he was "down the street". Mr. Elloie's cell phone records reflect that the call was made at 9:55 pm.

The Appellant denies that he ever left the station. He testified that while washing his hands his ring slipped off of his finger and fell down in the basement. The Appellant maintains that he was crawling around on the basement floor looking for his ring while Mr. Adams and Mr. Peterson were looking for him. He also maintains that he did not hear anyone shouting his name. Further, the Appellant contends that he could not have used the window to reenter the building because it was too small. Finally, the Appellant denies telling Mr. Elloie that he was down the street. He contends that he informed Mr. Elloie that he was down in the basement.

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 decide independently from 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 by established beyond a reasonable doubt. *Id.*

The Appointing Authority has established that it terminated the Appellant for cause. Mr. Adams, Peterson and Elloie were all credible witnesses who provided logical coherent testimony supporting the Appointing Authority's conclusion that the Appellant abandoned his job. Further, this is the Appellant's second violation of the same rule. Conversely, the Appellant was not credible. His claim that he was searching for a ring in the basement where no one could see him and where he could not see or hear them was far fetched and contrived, as was his testimony that he told Mr. Elloie that he was down in the basement and not down the street. Although, no one actually observed the

Appellant climb through the window, the totality of the circumstances supports the Appointing Authority's conclusion that it is more likely than not that the Appellant reentered the building through the window in an effort to avoid detection.

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

RENDERED AT NEW ORLEANS, LOUISIANA THIS 3rd DAY OF OCTOBER, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION

AMY L. GLOVINSKY, COMMISSIONER

CONCUR:

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

DANA M. DOUGLAS, VICE-CHAIRMAN