



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Thursday, March 13, 2025

Mr. Joshua Payne

Re: **Joshua Payne VS.
Sewerage & Water Board
Docket Number: 9623**

Dear Mr. Payne:

Attached is the decision of the City Civil Service Commission in the above-referenced 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 - 3/13/2025 - 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 purple ink that reads "Stacie Joseph".

Stacie Joseph
Management Services Division

cc: Ghassan Korban
Harrece Gassery
Jay Ginsberg
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**JOSHUA PAYNE,
Appellant**

Docket No. 9623

v.

**SEWERAGE & WATER BOARD,
Appointing Authority**

DECISION

Appellant, Joshua Payne, 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 Sewerage & Water Board's termination of his employment, effective May 24, 2024. (Ex. HE-1). At all relevant times, Appellant had permanent status as a Networks Maintenance Tech I. (Ex. HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on September 4, 2024. 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 4, 2024, and controlling Louisiana law.

For the reasons set forth below, Mr. Payne's appeal is DENIED.

I. FACTUAL BACKGROUND

The Sewerage & Water Board hired Mr. Payne on March 5, 2018, as a Networks Maintenance Tech I. (Tr. at 8). Mr. Payne testified he worked as an Operator of a bobcat, a type of heavy machinery. (Tr. at 8). Following an accident on December 18, 2023, Mr. Payne tested positive for a marijuana metabolite. (Tr. at 12). Mr. Payne entered into a Substance Abuse Program Agreement on January 19, 2024, acknowledging he was returning to work on a last-chance basis.

(Ex. SWB-1). Mr. Payne agreed to complete a rehabilitation program and consented to random follow-up testing for 12 months. (Ex. SWB-1). Mr. Payne completed a rehabilitation program on March 4, 2024. (Ex. SWB-2). The rehabilitation provider tested Mr. Payne for drugs on March 4, 2024, and this test was negative. (Ex. SWB-3). The Sewerage & Water Board tested Mr. Payne for drugs on March 12, 2024, and this test was positive for marijuana metabolite. (Ex. SWB-6).

At the hearing of this matter, the Sewerage & Water Board offered the testimony of the collector, Tremekia Jones, and the forensic toxicologist at Alere, David Golz, establishing the chain of custody and the integrity of the testing process.

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 Sewerage & Water Board has shown cause for the termination of Mr. Payne’s employment

The Sewerage & Water Board has shown the occurrence of the complained-of conduct, namely, a failure to remain drug-free following rehabilitation. The Sewerage & Water Board had allowed Mr. Payne to remain employed after he tested positive for a marijuana metabolite on December 18, 2023, conditioned on completion of a rehabilitation program, as authorized by Civil Service Rule V, section 9.16. Mr. Payne then failed a follow-up drug test administered on March

12, 2024. (Ex. SWB-6). Substance abuse by employees impairs the efficient operation of the Sewerage & Water Board, especially when these employees are operating heavy machinery.

1. The penalty of termination is commensurate with the violation

Following a positive drug test, under Civil Service Rule V, section 9.15, the Sewerage & Water Board may “take such action as in its discretion is deemed appropriate,” considering a number of factors including “[t]he existence of previous attempts at rehabilitation and their results.” In addition, Civil Service Rule V, section 9.16(d) requires an employee who completes a rehabilitation program following a positive drug test to agree remain alcohol and drug free in order to continue their employment. Mr. Payne executed an agreement to this effect on January 19, 2024. (Ex. SWB-1). Rule V, section 9.16 also provides that “[f]ailure of the employee to agree to and/or comply with these conditions shall constitute adequate grounds for the appointing authority to invoke the provisions of Rule IX, Section 1, Maintaining Standards of Service.” Rule IX, section 1 includes termination of employment as a penalty.

Based on Mr. Payne’s failure to remain drug-free following rehabilitation, the penalty of termination is commensurate with the violation.

Mr. Payne’s appeal is DENIED.

WRITER:



JOHN KORN, VICE-CHAIRPERSON

CONCUR:



[Andrew Monteverde \(Mar 12, 2025 10:49 CDT\)](#)

ANDREW MONTEVERDE, COMMISSIONER

Ruth White Davis

Ruth Davis (Mar 12, 2025 11:55 CDT)

RUTH DAVIS, COMMISSIONER