

DAMOND HARRIS

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7810

Damond Harris (“Appellant”) is employed by the Department of Police (“Appointing Authority”) as a Police Officer IV with permanent status. The Appellant received a four day suspension for violation of the Appointing Authority’s internal regulation concerning Professionalism. The factual basis for the violation is contained in the second paragraph of the December 29, 2010 disciplinary letter, which provides as follows:

The investigation determined that on Thursday, January 7, 2010, at about 5:02 p.m., you posted inappropriate and derogatory comments and words on NOPD Officer William Torres’ Facebook Web-Page, an open computer internet forum, about NOPD Officer Athena Monteleone. When you used Facebook website to communicate the insulting and degrading comments about Officer Monteleone, your actions were unprofessional and brought discredit to yourself and the New Orleans Police Department. The investigation determined that you violated Rule 3: Professional Conduct, paragraph 1, Professionalism and Rule 3: Professional Conduct, paragraph 14 – Social networking websites, Facebook, MySpace, print or transmitted media, etc.

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 July 7, 2011. The 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.

When called to testify, the Appellant acknowledged that he posted comments on Officer Torres’ Facebook page. The exchange between the Appellant and Officer Torres concerned Officer Torres’ ability to seduce lesbians. Both parties used colorful language

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and Officer Torres made reference to someone with the initials A.M. who he referred to as a douche. A.M. was fellow police officer, Athena Monteleone. The Appellant testified that he was unaware that Officer Torres' webpage was a forum open to the public. The Appellant defended his comments stating that he was under the impression that his conversation with Officer Torres was private. The Appellant also denied that he was aware at the time of the exchange that Officer Torres was referring to Officer Athena Monteleone when Officer Torres used the initials A.M. The Appellant did, however, state that he was aware of Officer Monteleone's sexual orientation, testifying that she was very open regarding her preference for women. Apparently, Officers Torres, Harris, and Monteleone worked together previously and had been friends. However, because of certain intimacies between Officer Torres and Officer Monteleone's girlfriend, the friendships had ended. The Appellant also testified that he never identified himself as a police officer on the webpage and was unaware that the conversation was about a police officer.

Sgt. Dan Anderson conducted the internal investigation and sustained the violations of the professionalism rules. Apparently, Officer Monteleone gained access to the Facebook conversation and was very unhappy. She made a complaint which led to the investigation and the resulting disciplinary action, which is the subject of this appeal. Sgt. Anderson testified that he sustained the violation because the Appellant's participation in the conversation with Officer Torres about Officer Monteleone was degrading and caused her and the department embarrassment.

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LEGAL PRECEPTS

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer 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 that the complained of activity occurred 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 not be established beyond a reasonable doubt. Id.

While it is conceivable that the Appellant was unaware that Officer Torres' Facebook page was open to the public and that Officer Torres was talking about a fellow police officer, he should have been more cautious when chatting on the internet with a

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fellow police officer. In the instant case, the Appellant used poor judgment and acted in an unprofessional manner. Whether intended or not, his words were particularly upsetting to a fellow police officer and reflected poorly on the department.

The Facebook/social networking phenomenon is still new, and assurances of actual privacy are not necessarily dependable, as we have seen in the instant matter. With this in mind, police officers should be very careful about the words they use on social network sites and other on-line forums considering the high standards they are required to uphold.

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

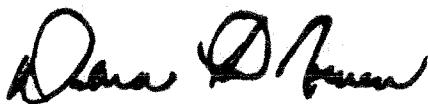
RENDERED AT NEW ORLEANS, LOUISIANA THIS 15TH DAY OF
MARCH, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



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

CONCUR:



DEBRA S. NEVEU, COMMISSIONER



AMY L. GLOVINSKY, COMMISSIONER