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CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J.,
CHAIRMAN
AMY L. GLOVINSKY
JOSEPH S. CLARK
COLEMAN D. RIDLEY, JR.

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Friday, August 09, 2013

Mr. Alvin Porter

Re: **Alvin Porter VS.
Sewerage & Water Board
Docket Number: 8096**

Dear Mr. Porter:

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 - 8/9/2013 - 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 blue ink, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Marcia St. Martin
Yolanda Grinstead
Jay Ginsberg
file

ALVIN PORTER

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

SEWERAGE & WATER BOARD

DOCKET NO. 8096

The Sewerage & Water Board (“Appointing Authority”) employs Alvin Porter (“Appellant”) as a Management Development Specialist II with permanent status. The Appointing Authority suspended the Appellant for one day by letter dated October 11, 2012, after determining that he failed to complete a task before taking annual leave and that he failed to obtain approval before extending his unapproved days of leave. The factual basis for the disciplinary action is contained in the second and third paragraphs of the disciplinary letter which provided as follows:

On September 20 and 21, 2012, you verbally requested two days of annual leave for September 24, 2012-September 25, 2012. Natika Manego, your immediate supervisor informed you that she would approve your leave request upon completion of specific assignments. Specifically, Ms. Manego required that you complete your Third Quarter Compliance Letters and Final Acceptance Reports of three (3) construction contracts before your annual leave would be approved. However, by Friday September 21, 2012, you failed to complete the assignments as directed and your immediate supervisor was required to complete the Final Acceptance tasks on your behalf.

Additionally, on September 21, 2012, you emailed your immediate supervisor after she left for the day that you would use annual leave from September 24, 2012 through September 27, 2012. Thereafter, you called Ms. Manego on Wednesday September 26, 2012 and stated that you would be out of the office on Friday September 28, 2012. However, you failed to complete your assignments prior to unauthorized leave and took an additional three days off while on unauthorized leave. Additionally, you have been counseled previously regarding your failure to follow directives and unauthorized absenteeism.

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 February 28, 2013. 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 employs the Appellant in the monitoring unit of its Economically Disadvantaged Business Program. As reflected in the disciplinary letter, the Appellant is responsible for obtaining documentation from general contractors evidencing contractual compliance with the program. In the instant case, the Appointing Authority determined that the Appellant failed to complete certain job responsibilities, which were a precondition to his taking annual leave and, further, that he extended his leave without authorization.

The Appellant acknowledges that he did not complete his assigned tasks before taking annual leave. He testified that he would have completed the task within the time restraints placed upon him by his supervisor if the general contractors had provided the information required in a timely manner. Consequently, he could not have completed the task by Friday, September 21, 2012. The information arrived the following Tuesday (September 25, 2012), while the Appellant was on leave, and his supervisor performed the tasks in his absence.

The Appellant also acknowledges that he did not obtain approval for his leave and that he extended his leave for an additional three days. The Appellant testified that he agreed to accompany his elderly mother to a funeral for one of her friends. He originally intended to fly, but drove instead, which created the need for additional annual leave for travel time. He notified his supervisor of all leave usage by email communication.

Essentially, the Appellant admits what is contained in the disciplinary letter, but contends that the one day suspension is excessive. He testified that he had no previous problems with

attendance and that his absence was not planned, but the result an unanticipated obligation to his mother.

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 of New Orleans 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 make an independent judgment, based on 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 not be established beyond a reasonable doubt. *Id.*

CONCLUSION

The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for just cause. The Appellant acknowledged the violations contained in the disciplinary letter. Further, while the Appellant provided explanations for his actions, we cannot say that the Appointing Authority abused its discretion by suspending him for one day. While there is no evidence of past disciplinary actions, a one day suspension is not patently excessive.

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

RENDERED AT NEW ORLEANS, LOUISIANA THIS 9th DAY OF AUGUST, 2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



JOSEPH S. CLARK, COMMISSIONER

CONCUR:



AMY L. GLOVINSKY, COMMISSIONER



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