



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

CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J., PHD,
CHAIRMAN
DANA M. DOUGLAS, VICE
CHAIRMAN
DEBRA S. NEVEU
AMY L. GLOVINSKY
JOSEPH S. CLARK

MITCHELL J. LANDRIEU
MAYOR

Monday, October 01, 2012

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Ms. Rowena Jones
1010 Common, Suite 1400A
New Orleans, LA 70112

Re: **James Rowley VS.**
Department of Human Services
Docket Number: 7870

Dear Ms. Jones:

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 - 10/1/2012 - 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,

A handwritten signature in cursive script, appearing to read "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Seung Hong
Victor Papai
Jay Ginsberg

JAMES ROWLEY

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF HUMAN SERVICES DOCKET NO. 7870

The Department of Human Services (“Appointing Authority”) employs James Rowley (“Appellant”) at its Youth Study Center as an Institutional Counselor II with permanent status. The Appointing Authority has employed the Appellant since 1992. The Appointing Authority terminated the Appellant for violation of internal rules regarding Dereliction of Duty and Rules of Conduct. Specifically, the Appointing Authority terminated the Appellant after determining a) that the Appellant was asleep while assigned to supervise youth and b) for using profane and threatening language towards a youth under his supervision. The Appellant denies the allegations and alternatively contends that the punishment is not commensurate with the violation.

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 August 3, 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.

The Youth Study Center houses juveniles awaiting trial for criminal offenses before the Orleans Parish Juvenile Court. The Appellant’s job duties include the care and control of delinquent juveniles that reside at the Youth Study Center. As reflected in the job description contained in his resume, the Appellant is responsible for assuring the general security and safety of the facility and its occupants.

The May 20, 2011 disciplinary letter informed the Appellant that Chris Hynes, a maintenance employee, observed him sleeping on duty while youth were out of their rooms watching television. Mr. Hynes testified that he observed the Appellant sleeping. He stated that he walked past the Appellant several times over the span of fifteen or twenty minutes and photographed the Appellant while he was sleeping. Mr. Hynes provided the photographs to the Appellant's supervisors. The photographs reflected the Appellant reclined in his chair behind a desk. In the photographs, he appeared to be sleeping.

Glenn Holt, Superintendent of the Youth Study Center, testified that he reviewed the photographs and confronted the Appellant. In reaction to the photographs, Mr. Holt testified that the Appellant responded by stating, "Yeah, you got me; that's me." Mr. Holt along with Stephanie Mills, Assistant Superintendent; Seung Hong, Director of Human Services; and Laura Smith, Assistant to the Director; attended the Appellant's pre-termination hearing. They each testified consistently that when confronted the Appellant would neither confirm nor deny that he was asleep when the photographs were taken.

At the August 3, 2011 hearing, the Appellant denied that he was sleeping. He contends that the photographs reflect that he was resting his eyes for a few minutes. He stated that his eyes were bothering him and he closed them momentarily. He denies making any admissions to Mr. Holt. The Appellant also contends that his actions did not create a threat to safety and that the youths watching television were properly supervised.

With regard to the second violation, Mr. Holt testified that he overheard the Appellant state to a delinquent youth, "I will knock you the fuck out. I don't play that shit." Mr. Holt testified that when confronted the Appellant admitted making the statement to the youth. Mr. Holt testified that the Appellant is aware of rules forbidding the use of profanity and threatening

J. Rowley
#7870

language. Mr. Holt along with Ms. Mills, Mr. Hong, and Ms. Smith, testified consistently that during the pre-termination hearing the Appellant admitted making the statement to the youth. The Appointing Authority previously suspended the Appellant for three days for violation of the same rule forbidding the use of verbal abuse or threats towards any youth placed under his supervision.

The Appellant denies making abusive and threatening statements to the youth. He also denies that he admitted making those statements when questioned by his supervisors

Finally, the Appellant requested that the Commission look at his many years of service and treat the infractions for which he was terminated as isolated incidents not justifying termination. Many of the Appellant's co-workers testified to affirm the Appellant's value to the organization.

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 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.

The Appellant's version of events was not credible. Mr. Hynes testimony that the Appellant was asleep for an extended period was supported by photographs and was, therefore, more persuasive. Regarding the abusive language, Mr. Holt's testimony was also more persuasive, particularly with the corroboration of several other witnesses that the Appellant admitted making the statements during his pre-termination hearing. Consequently, the Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for cause.

Regarding the severity of the penalty, while the Appointing Authority may have considered a lesser punishment as an alternative to termination for a long term employee who otherwise adequately performed the duties of his job, we cannot say that the Appointing Authority abused its discretion. The Appellant's failure to remain alert was an act of gross negligence, regardless of whether any harm occurred as a consequence. Additionally, the

J. Rowley
#7870

Appellant was aware or should have been aware that for obvious reasons, treating troubled youth in a harsh and threatening manner is forbidden.

Considering the foregoing, the appeal is DENIED.

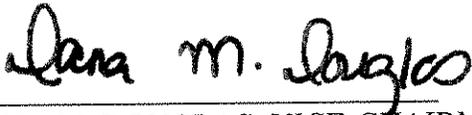
RENDERED AT NEW ORLEANS, LOUISIANA THIS 1st DAY OF OCTOBER, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



AMY L. GLOVINSKY, COMMISSIONER

CONCUR:



DANA M. DOUGLAS, VICE-CHAIRMAN



JOSEPH S. CLARK, COMMISSIONER