



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

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MAYOR

Wednesday, April 23, 2014

Brady Skinner, III
P.O. Box 58571
New Orleans, La 70158

Re: **Aaron White VS.
Sewerage & Water Board
Docket Number: 8168**

Dear Mr. Skinner:

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 - 4/23/2014 - 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: Robert K. Miller
Yolanda Grinstead
Jay Ginsberg

AARON WHITE

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

SEWERAGE & WATER BOARD

DOCKET NO. 8168

The Sewerage & Water Board (“Appointing Authority”) employed Aaron White (“Appellant”) as a Laborer with permanent status. The Appointing Authority terminated the Appellant by letter dated May 13, 2013. The Appointing Authority determined that the Appellant failed to transfer water service to a property he purchased and that, after the water was disconnected for failure to pay the bill, he installed an illegal underground water connection. The specific allegations are found in the second, third and fourth paragraphs of the disciplinary letter which provides as follows:

On April 1, 2013, the Sewerage and Water Board Customer Service Call Center received a call from a customer in reference to an outstanding water bill at 8018 Ebbtide Drive. The customer informed the Call Center that the property was sold to you on October 24, 2012, and the water was supposed to be opened in your name after the sale of the property to you. However, you did not open the service in your name until April 4, 2013 and the service had remained in the name of the previous owner.

An investigation was conducted and it was determined that an illegal underground connection had been made at that address and had been used to effect an illegal connection. The illegal connection was disconnected and property connected to the inlet/outlet and a locking device was installed in the meter box.

The illegal connection resulted in the tampering and theft of water from the Sewerage and Water Board.

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 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 Appellant admitted that he received water at the residence he had purchased without transferring the service to his name. He also admitted that he informed the seller he was a Sewerage and Water Board employee and that he would transfer the account into his name. The Appellant offered no explanation for his failure to transfer the account.

Eventually, water service was disconnected for failure to pay the bill. However, an inspection of the site in April 2013 established that an illegal line hookup was installed to enable the residence to continue receiving water. The connection was made with brass fittings that were easily accessible to Sewerage and Water Board employees. Further, the Appellant previously worked as a meter reader and according to the testimony of the Appointing Authority's witnesses he would have known how to install such a connection.

During his April 29, 2013 pre-termination hearing, the Appellant denied creating the illegal line hookup. He stated that a contractor working on the property did it without his knowledge. To support his contention, he offered a signed affidavit from Robert Matthews who stated that he was working on the site and needed water. In the affidavit, Mr. Matthews stated that he made the illegal connection without the Appellant's knowledge. The pre-termination hearing concluded with the Appointing Authority placing the Appellant on leave without pay status pending a final determination by the Appointing Authority.

Mr. Matthews did not testify. However, Craig Jennings, Security Manager testified that he investigated the allegations against the Appellant as well as the evidence the Appellant presented. Mr. Jennings stated that after the pre-termination hearing he attempted to obtain a statement from Mr. Matthews. During the second brief telephone conversation, Mr. Matthews informed Mr. Jennings that he did not want to get involved. He further stated to Mr. Jennings

that he did not make the connection and that he was just trying to help a friend. According to Mr. Jennings, Mr. Matthews told him that he did not realize that there would be hearing.

The Appellant only testified on cross-examination by the Appointing Authority in its case in chief. He failed to return as a witness on his own behalf to provide any details explaining his behavior or challenging the Appointing Authority's conclusions.

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 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

A. White
#8168

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 terminated the Appellant for just cause. The Appellant falsely represented to the seller that he would transfer water service to his name and only did so after the seller complained. Further, the Appellant's denial of creating the illegal connection is not credible. He had the knowledge and wherewithal to surreptitiously install an underground connection. Further, his representation that someone working on his residence installed the connection is not supported by reliable evidence.

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

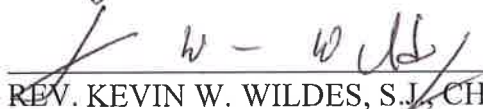
RENDERED AT NEW ORLEANS, LOUISIANA THIS 23rd DAY OF April, 2014.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION


EDWARD P. COHN, COMMISSIONER

CONCUR:


JOSEPH S. CLARK, COMMISSIONER


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