



MITCHELL J. LANDRIEU
MAYOR

CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
SUITE 900 - 1340 POYDRAS ST.
NEW ORLEANS LA 70112
(504) 658-3500 FAX NO. (504) 658-3598

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, September 06, 2013

Mr. Raymond C. Burkart, III
19407 Front Street
Covington, LA 70433

Re: **James Young VS.
Department of Police
Docket Number: 8140**

Dear Mr. Burkart, III:

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 - 9/6/2013 - 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: Ronal Serpas
Elizabeth S. Robins
Jay Ginsberg
James Young

JAMES YOUNG

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 8140

James Young (“Appellant”) is employed by the Department of Police (“Appointing Authority”) as a Police Sergeant with permanent status. The Appellant received a one (1) day suspension for violation of the Appointing Authority’s internal rules concerning Instructions from an Authoritative Source. The factual basis for the violation is contained in the second paragraph of the February 25, 2013 disciplinary letter, which provides as follows:

This investigation determined that on November 25, 2011, you were assigned to the Bayou Classic special coverage. During your assignment, Assistant Superintendent Albert observed one of your subordinates, Officer Tracie Medus, not dressed according to departmental uniform policy. Assistant Superintendent Albert summoned you, Sergeants Michelle Woodfork and Bradley Rhoads. Assistant Superintendent Albert instructed you to initiate and issue a DI-2 to Officer Medus for not wearing her NOPD garrison hat while on duty. Additionally you were instructed to forward a completed copy of the DI-2 to Assistant Superintendent Albert’s office no later than 12:00 pm, Monday, November 28, 2011. The DI-2 was completed but you failed to follow the verbal instructions of Assistant Superintendent Albert and forward a copy to his office, which is a violation of Rule 4: Performance of Duty, paragraph 2 – Instructions from an Authoritative Source, to wit: verbal instructions issued by Assistant Superintendent Albert.

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 June 20, 2013. 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 Appellant acknowledged that he received a verbal instruction to initiate a DI-2 from Assistant Superintendent Albert. However, the Appellant testified that he does not recall receiving an instruction from Assistant Superintendent Albert to have the form on his desk by the

following Monday by 12:00 pm. The Appellant testified that he took all steps to comply with the order that he thought he received. He prepared the DI-2 and met with Officer Medus early Monday afternoon when both of them were on duty.¹ Once he obtained Officer Medus' signature, he followed normal procedure by forwarding the document to Captain Rose Duryea, the Eighth Police District's Integrity Control Officer, who obtained a Public Integrity Bureau Control Number. The Appellant stated that he did not know whether Assistant Superintendent Albert received a copy through the chain of command.

Assistant Superintendent Albert testified that he gave the order and expected the Appellant to comply. Because he only wanted a copy, he was not concerned as to whether the document had a PIB control number.

LEGAL PRECEPTS

An employer cannot discipline an employee who has gained permanent status in the classified city civil service 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, 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

¹ Officer Medus and the Appellant worked over-lapping shifts.

engaged. *Cittadino v. Department of Police*, 558 So. 2d 1311 (La. App. 4th Cir. 1990). The appointing authority has the burden of proving the occurrence of the complained of activity by a preponderance of the evidence 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 good cause. The Appellant's explanation that he did not recall Assistant Superintendent Albert's instruction to provide a copy of the document by Monday at 12:00 pm does not mitigate the Appellant's failure to comply with the instruction.

Considering the foregoing, we cannot say that the Appointing Authority abused its

J. Young
#8140

discretion by taking disciplinary action, and the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 6th DAY OF SEPTEMBER,
2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



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

CONCUR:



JOSEPH S. CLARK, COMMISSIONER



AMY L. GLOVINSKY, COMMISSIONER