



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WII DFS, S. J.,
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MAYOR

Tuesday, June 03, 2014

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Mr. Kenneth M. Plaisance
5626 Elysian Fields Avenue
New Orleans, LA 70122

Re: **Rudolph Thomas VS.
Department of Police
Docket Number: 8063**

Dear Mr. Plaisance:

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 - 6/3/2014 - 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 that reads "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Ronal Serpas
Gregory Brumfield
Jay Ginsberg
Rudolph Thomas

RUDOLPH THOMAS

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 8063

Rudolph Thomas (“Appellant”) is employed by the Department of Police (“Appointing Authority”) as a Police Sergeant with permanent status. The Appellant received an Eight (8) day suspension for violation of the Appointing Authority’s internal rules concerning Neglect of Duty (2 counts four days each). The factual basis for the violations is contained in the second and third paragraphs of the February 26, 2012 disciplinary letter, which provides as follows:

This investigation determined that on October 22, 2011, approximately 8:10 p.m., while on duty as a supervisor in the Second District the Channel 2 Dispatcher had to place your status as “Unavailable For Duty Reason Unknown), after several attempts were made to contact you over the police radio. You did not answer your police radio when you were called by the Dispatcher. You admitted that you did not answer your police radio when you were called by the Dispatcher. You admitted that you did not answer the radio in your administrative statement. Captain Michael Pfeiffer was working Mission One as a Field Supervisor and witnessed and heard you not respond to the Dispatcher when called. As such, you neglected your duties and responsibilities which is a violation of Rule 4: Performance of Duty, paragraph 4 – Neglect of Duty, subparagraphs 4a and 4b – Failing to answer your police radio when called on by dispatcher and Devoting entire time to Duty. .

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 21, 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 admits the factual allegations contained in the disciplinary letter but contends that the penalty is not commensurate with the violation. He contends that the Appointing Authority failed to take into consideration mitigating circumstances; specifically his medical condition. The Appellant testified that he is a heart patient and that he went to his home for a lunch break because of his restricted diet. While watching television he fell asleep and did not hear his radio. The Appellant speculated that his inability to remain awake was somehow related to his heart condition.¹

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 engaged. *Cittadino v. Department of Police*, 558 So. 2d 1311 (La. App.

¹ The Appellant requested and was granted the opportunity to supplement the record with medical information, but did not do so.

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.*

CONCLUSIONS

The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for good cause and that the penalty was commensurate with the violation. The Appellant was the only supervisor on duty. Whether his neglect was intentional or unintentional is not germane. The Appellant went home during his shift and fell asleep while watching television. If he was unfit for duty because of a medical condition, he should not have reported for duty. If he did not feel well, he should have taken the appropriate steps to report his condition to his supervisor to assure that his

R. Thomas
#8063

responsibilities were covered by someone else.

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

RENDERED AT NEW ORLEANS, LOUISIANA THIS 3rd DAY OF

June, 2014.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



JOSEPH S. CLARK, COMMISSIONER

CONCUR:



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



MICHELLE D. CRAIG, COMMISSIONER