

FREDERICK STEMLEY

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

SEWERAGE & WATER BOARD

DOCKET NO. 7780

The Sewerage & Water Board (“Appointing Authority”) employs Frederick Stemley (“Appellant”) as a Senior Maintenance Technician II with permanent status. He was first hired on August 11, 2003, and was promoted to his current class on December 9, 2009. The Appointing Authority suspended the Appellant for one hundred and twenty days for engaging in workplace violence. Specifically, as reflected in the November 16, 2010 disciplinary letter, the Appointing Authority determined that “..., you [Appellant] approached Calvin Parker, your immediate supervisor, in a heated temper by going around his desk towards him, at which time you pushed him in the chest.”

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 December 9, 2010. 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 appeal raises issues of credibility. The Appellant acknowledges that he and Mr. Parker engaged in a heated verbal exchange regarding his alleged tardiness for work. However, their versions of events diverge regarding the events that resulted in a third employee separating them before a serious physical altercation ensued.

Johnny Jones, Zone Manager I who oversees Zone II where both Mr. Parker and the Appellant work, observed the incident. He testified that the Appellant was upset because he was questioned about his tardiness for work and took issue. He turned to Mr.

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Parker for support, and became angry when he did not get it. Mr. Jones heard shouting and when he looked up he observed the Appellant walking around Mr. Parker's desk. In reaction, Mr. Parker stood up, and the Appellant pushed him "forcefully" back into the wall. Mr. Jones reported the incident to his supervisors, and the Appellant was placed on emergency suspension while the matter was investigated. Mr. Jones' version of events is consistent with the testimony of Mr. Parker. Daniel Eglin, the Zone Manager of Zone I also corroborated Mr. Parker's version of events as well as Frank Cooper, a security guard employed by Gallagher Security.

The Appellant testified that Mr. Parker was the aggressor who came around his desk towards him. He testified that Mr. Parker came into his personal space and he pushed him away. The Appellant characterized the push as inconsequential. The Appellant's co-workers, Glen Wilson and Kenneth Webster supported the Appellant's version of events.

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 decide independently from the facts presented whether the appointing authority has good or lawful cause for taking

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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 be established beyond a reasonable doubt. *Id.*

The Appointing Authority has established by a preponderance of evidence that it

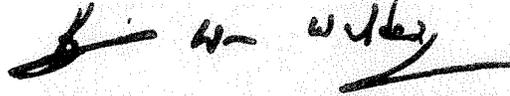
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disciplined the Appellant for cause. Those witnesses supporting the Appointing Authority's factual determination were more credible.

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

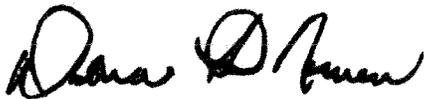
RENDERED AT NEW ORLEANS, LOUISIANA THIS 15TH DAY OF
MARCH, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



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

CONCUR:



DEBRA S. NEVEU, COMMISSIONER



JOSEPH S. CLARK, COMMISSIONER