

VALERIE BANKSTON

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF HUMAN SERVICES

DOCKET NOS. 7824 & 7858

The Department of Human Services ("Appointing Authority") employed Valerie Bankston ("Appellant") at its Youth Study Center as a Senior Food Service Worker with permanent status. The Appointing Authority initially terminated the Appellant. However, after a brief period of time the Appointing Authority modified the disciplinary action by demoting the Appellant to a Food Service Worker and suspending her for fifteen days.¹ The Appointing Authority disciplined the Appellant as a result of a retail food inspection report by the Louisiana Department of Health, where health code violations were found. In particular, the Appointing Authority assessed responsibility to the Appellant for the presence of rodent droppings on cans and boxes of stored food.

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 April 13, 2011 and May 19, 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 Appointing Authority has employed Glen Holt as the Superintendent of the Youth Study Center since October 15, 2010. He is responsible for the overall operation of the facility, including the kitchen. The Youth Study Center ("Center") is a juvenile detention facility that houses juveniles while they are awaiting trial for various criminal offenses. Since Hurricane Katrina, the Center's kitchen has operated out of a trailer. Mr.

¹ The demotion came with no reduction in pay and the Appellant is not appealing her demotion.

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Holt testified that the Appellant was responsible for the kitchen operations, including the preparation of daily meals along with the maintenance of a clean and sanitary kitchen and storage area. Mr. Holt found Ms. Bankston responsible for the rodent droppings, and recommended her termination. Ultimately, the termination was modified to a demotion and suspension. Mr. Holt concluded that the Appellant failed to report the rodents and clean up the droppings, which resulted in the health code violations.

The Appellant testified that she could not control the rodent infestation. She stated that she reported rodents to maintenance when she saw them and cleaned any rodent droppings that appeared around or near the food. She further testified that during her twenty years of employment the Appointing Authority had never disciplined or counseled her regarding the cleanliness of the kitchen or storage area. She stated that she was unaware of any deficiency until she received notice of her pre-termination letter.

Emory McKenzie was the chief engineer of the Youth Study Center for thirty five years.² He testified that rodents were a constant problem for the facility because of its location and the condition of the buildings. He stated that the Appellant always notified him regarding the rodent problem and that rodent control was called three or four times a year to address the problem.

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

² Mr. McKenzie retired less than two months prior to the disciplinary action.

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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.

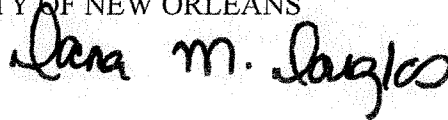
The record reflects that the Appointing Authority wants higher standards for its kitchen facility. To this end, it demoted the Appellant to a non-supervisory position, which the Appellant chose not to appeal. We agree that a demotion was the appropriate disciplinary action to remedy the problem. However, we do not agree that the Appellant engaged in any misconduct that warranted a suspension. Apparently, the Appellant had performed her duties in the same manner for twenty years without any notification that a rodent infestation was her responsibility or that she was expected to do anything more than what she testified she was doing.

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Accordingly, the appeal is DENIED in part, and GRANTED in part. The uncontested demotion remains. However, the Appointing Authority is directed to pay the Appellant fifteen days of back pay and emoluments of employment.

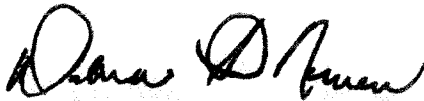
RENDERED AT NEW ORLEANS, LOUISIANA THIS 27TH DAY OF APRIL,
2012.

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS



DANA M. DOUGLAS, VICE-CHAIRMAN

CONCUR:



DEBRA S. NEVEU, COMMISSIONER



JOSEPH S. CLARK, COMMISSIONER