



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

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CLIFTON J. MOORE, JR.

MITCHELL J. LANDRIEU
MAYOR

Monday, May 14, 2018

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Mr. Wesley Pardew

Re: **Wesley Pardew VS.
Department of Emergency Medical Se
Docket Number: 8681**

Dear Mr. Pardew:

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 - 5/14/2018 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal must conform to the deadlines established by the Commission's Rules and Article X, Sec.12(B) of the Louisiana Constitution. Further, any 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 "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Jeffrey M. Elder
Elizabeth S. Robins
Jay Ginsberg
file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

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| <p>WESLEY PARDEW</p> <p>vs.</p> <p>DEPARTMENT OF EMERGENCY MEDICAL SERVICES</p> | <p>DOCKET No.: 8681</p> |
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I. INTRODUCTION

Appellant, Wesley Pardew, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Department of Emergency Medical Services for the City of New Orleans, (hereinafter the “EMS”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not EMS disciplined Appellant for sufficient cause. At all times relevant to the instant appeal, Appellant served as a Field Captain for EMS and had permanent status as a classified employee.

On Tuesday, July 11, 2017, a referee appointed by the Commission presided over an appeal hearing during which both Parties had an opportunity to call witnesses and present evidence. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing, as well as the referee’s report. Based upon our review, we render the following judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

EMS issued Appellant a letter of reprimand after substantiating allegations that Appellant had failed to keep current his Pre-hospital Trauma Life Support (PHTLS) certification. (H.E. Exh. 1). In the disciplinary notice, EMS Medical Director Jeffrey Elder observed that Appellant declined an opportunity to renew his certification. *Id.* EMS gave Appellant sixty days to produce evidence that he had renewed his certification or face discipline up to and including termination. The policy manual adopted by EMS on January 1, 2014 establishes the certifications each employee must maintain as a condition of continued employment. (EMS Exh. 1). One of those certifications is PHTLS. The policy clearly states that failure to maintain up-to-date certifications will result in discipline up to and including termination. *Id.* EMS provides its policies to all employees upon hire. (Tr. at 14:12-18).

B. PHTLS Certification

EMS tracks the certifications of all of its employees using an electronic database referred to in the record as “Crew Scheduler.” (Tr. at 11:19-12:10). Both supervisors and field personnel have access to this database and can track each certification as well as the expiration date of such certifications. *Id.* The PHTLS certification encompasses a range of techniques and skill to care for patients during the transportation to a hospital facility. *Id.* at 12:11-18. All EMS employees occupying the classification of EMT-Intermediate or higher (position “1.2”) are required to maintain PHTLS certification and EMS views the skills/techniques covered by the certification as a vital piece of the work employees perform.

While it is an employee’s responsibility to maintain up-to-date certifications, EMS does regularly offer classes to aid in certification renewal. *Id.* at 12:25-13:9. EMS distributes the

schedule of these classes to all employees via email and posts the schedule at EMS headquarters. There is minimal cost to the employees when they take certification courses offered through EMS. *Id.* at 27:18-22. There are training and certification options offered by other entities, but the cost for participating in these options varies. *Id.* at 27:23-28:3. In 2015 and 2016, Appellant had the option of taking an in-house certification class for PHTLS at an out-of-pocket cost of approximately \$15. *Id.* at 27:18-22, 28:23-25

At all times relevant to this appeal, Appellant occupied the working title of EMS Captain/Field Supervisor and his civil service classification was “EMS Coordinator Assistant (EMS Captain).” *Id.* at 17:12-16. Among the minimum qualifications for employees in this classification are all those required of an EMT-Paramedic including, “PHTLS or BTLIS or ITLS Provider certification.” (EMS Exhs. 2, 3).

On or about March 2, 2017, EMS Deputy Chief Lynn Ramagos learned that Appellant’s PHTLS certification had lapsed in January 2017. (Tr. at 23:22-24:15). Deputy Chief Ramagos notified Appellant of this lapse and provided him with a training option that would allow Appellant to renew the lapsed certification. *Id.* at 24:21-25:8. The training options were offered by an outside entity located in Gulfport, Mississippi. Later, Deputy Chief Ramagos learned that Appellant had not taken advantage of the training option. *Id.* at 25:15-18. Due to Appellant’s continued failure to maintain a current PHTLS certification, Deputy Chief Ramagos recommended that the appointing authority issue Appellant discipline. *Id.* at 26:19-21. As discussed above, EMS did issue a letter of reprimand due to Appellant’s lapsed certification. Eventually, Appellant did take advantage of a PHTLS certification course offered by EMS. *Id.* at 29:7-15.

III. LEGAL STANDARD

An appointing authority may discipline an employee with permanent status in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that an appointing authority issued discipline without sufficient cause, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, an Appointing Authority has the burden of proving, by a preponderance of the evidence; 1) the occurrence of the complained of activity, and 2) that the conduct complained of impaired the efficiency of the public service in which the appointing authority is engaged. *Gast v. Dep't of Police*, 2013-0781 (La. App. 4 Cir. 3/13/14), 137 So. 3d 731, 733 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094 (La. Ct. App. 2007)). If the Commission finds that an appointing authority has met its initial burden and had sufficient cause to issue discipline, it must then determine if that discipline “was commensurate with the infraction.” *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). Thus, the analysis has three distinct steps with the appointing authority bearing the burden of proof at each step.

IV. ANALYSIS

A. Occurrence of the Complained of Activities

There is no dispute that EMS policy requires all employees in Appellant’s classification to maintain current PHTLS certification. Deputy Chief Ramagos’s unrebutted testimony was that employees were responsible for maintaining up-to-date certifications. And there is no dispute that Appellant failed to renew his PHTLS certification and it lapsed while he was an active member of

EMS. Therefore, EMS has established that Appellant engaged in the misconduct alleged in the disciplinary notice in evidence as “Hearing Examiner Exhibit 1.”

During his testimony, Appellant indicated that it was a financial hardship to attend the out-of-state PHTLS certification. While the Commission does not doubt Appellant’s representation on this front, it is not relevant to our analysis. EMS policy requires employees in Appellant’s rank to maintain PHTLS certification. There is no hardship waiver available. Additionally, the Commission notes that Appellant had the opportunity to take the PHTLS certification locally in 2016 for \$15. Appellant also believed that his certification was current because he had sat in on some PHTLS classes in 2013 and 2014. He never received a renewal card after the classes but assumed his certification was current. The Commission compares this assumption to a driver’s license. A driver who is pulled over by a police officer and presents an expired license faces fines, arrest and/or vehicle impoundment unless he or she produces evidence of renewal. This is true even if an individual filled out forms on-line and assumed that the license is current.

B. Impact on the Appointing Authority’s Efficient Operations

One of the minimum qualifications for employees in Appellant’s classification is the maintenance of a PHTLS certification. While paramedics obtain and hone their skills over a period of time, regular training and certification courses help to keep all employees abreast of recent developments and innovations. It also is an opportunity to refresh a skill or knowledge base that may have become stale. The Commission defers to EMS for a determination of what skills, licenses and certifications are necessary for employees, like Appellant, who serve in leadership roles. By failing to maintain a required certification, Appellant impaired EMS’s ability to make sure that all of its employees have up-to-date training.

Based upon the foregoing, the Commission finds that EMS has established that Appellant's misconduct impaired the EMS's efficient operations.

C. Was the Discipline Commensurate with Appellant's Offense

In conducting its analysis, the Commission must determine if Appellant's discipline was "commensurate with the dereliction;" otherwise, the discipline would be "arbitrary and capricious." *Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d 976, 978 (citing *Staehle v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

Appellant presented as a dedicated employee who was understandably upset about having a reprimand in his personnel file. The Commission has no doubt that Appellant plays an important role as a first responder in the City of New Orleans and we thank him for his service. The Commission also must recognize, however, that EMS has adopted clear policies with respect to the various types of certifications employees must maintain. These are common sense requirements that pertain to job-related skills and training employees use every day. EMS has a responsibility to ensure that all of its employees are prepared for what they may encounter in the field and the maintenance of current certifications is one way to accomplish that.

Based upon the above findings, we hold that a letter of reprimand was an appropriate level of discipline for Appellant's misconduct.

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby DENIES the Appellant's appeal.

W. Pardew
No. 8681

Judgment rendered this 14th day of May, 2018.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER



TANIA TETLOW, COMMISSIONER

5/14/18

DATE

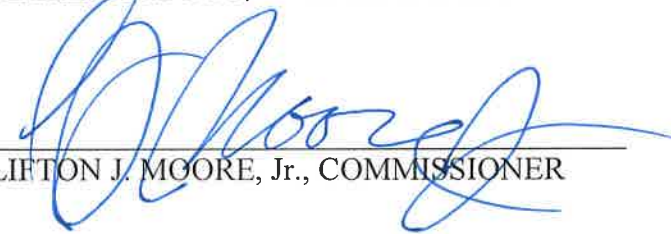
CONCUR



STEPHEN CAPUTO, COMMISSIONER

5/11/18

DATE



CLIFTON J. MOORE, Jr., COMMISSIONER

5/2/2018

DATE