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CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON
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LISA M. HUDSON
DIRECTOR OF PERSONNEL

Friday, February 24, 2017

Mr. Reynaldo Martinez

Re: **Reynaldo Martinez VS.
New Orleans Aviation Board
Docket Number: 8464**

Dear Mr. Martinez:

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 - 2/24/2017 - 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 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: Mark Reis, Interim
Elizabeth S. Robins
Victor Papai
file

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

REYNALDO MARTINEZ vs. NEW ORLEANS AVIATION BOARD	DOCKET No.: 8464
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I. INTRODUCTION

Appellant, Reynaldo Martinez, brings the instant appeal challenging a five-day suspension issued by the New Orleans Aviation Board (hereinafter “Appointing Authority”). At all times relevant to the matter now before the Commission, Appellant was a classified employee with permanent status and worked as a Principal Services Agent for the Appointing Authority. The Appointing Authority suspended Appellant for five days for allegedly submitting two fraudulent letters intended to support Appellant’s use of sick leave. (H.E. Exh. 1). Such action, argued the Appointing Authority, violated this Commission’s Rule II, § 2.4 regarding sick leave and warranted discipline under Rule IX, § 1.1. *Id.*

A hearing examiner appointed by the Commission conducted a hearing in response to the instant appeal on January 12, 2016. Upon reviewing the report submitted by the hearing examiner, the transcript from the hearing, and the exhibits submitted by the Parties, the undersigned Commissioners render the following judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

On or about September 22, 2015, Appellant submitted a letter to his supervisor, Douglas McCrary. (A.A. Exh. 2). The letter purported to be from a physician who saw Appellant in her offices on September 18, 2015 and asked that the Appointing Authority excuse Appellant from work from September 17, 2015 through September 21, 2015. *Id.* Mr. McCrary called the doctor's office to investigate the authenticity of the letter and learned that, 1) the doctor who purportedly signed the letter no longer worked at the offices, and 2) there was no record of Appellant seeing any physician at the office on the 18th. *Id.* Upon discovering this apparent attempt to falsify records, Mr. McCrary contacted Renee Brunt, the Appointing Authority's Human Resource Manager. Ms. Brunt conducted a further review of Appellant's earlier doctors' notes and determined that an additional letter, one submitted on July 1, 2015, was forged/fraudulent. (A.A. Exhs. 7, 8).

Later, Ms. Brunt and Mr. McCrary directed Appellant to attend a meeting and provide an explanation as to why he had submitted an apparently fraudulent documents. (Tr. at 15:8-14). At this meeting, Appellant admitted that he had submitted two letters with fraudulent information and forged signatures. *Id.* at 15:15-19, 43:6-11. Appellant repeated this admission during his testimony. (72:5-11).

III. LEGAL STANDARD

Appointing Authorities may only discipline permanent employees in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that an appointing authority did not have sufficient cause to issue discipline, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article

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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

The Parties do not dispute the material facts of this case. Namely, that Appellant submitted two fraudulent and forged documents in an attempt to justify his sick leave. Appellant’s defense appears to be based upon the enormous pressure he felt as the sole care-giver to his father, who suffered from cancer, and his daughter, who suffered from an unspecified illness. While these facts establish Appellant as an individual who warrants sympathy, they do not excuse his misconduct.

The Commission’s Rules explicitly state that paid sick leave is a benefit available to employees for their own illnesses or injuries, not those of family members. Rule 1, ¶ 70. By submitting forged letters, Appellant was willfully violating the Rules and attempting to gain a benefit not available to any other classified employee. Based upon the above facts, the undersigned

Commissioners find that the Appointing Authority has established that Appellant engaged in the misconduct alleged in the notice of discipline.

B. Impairment of Efficient Operation of Appointing Authority

The Commission has adopted rules and policies that govern the use of sick leave. While such leave is a valuable and common benefit, it is vulnerable to abuse. By submitting fraudulent documents regarding his sick leave use, Appellant added to the burden of other employees and compromised the ability of the Appointing Authority to effectively and efficiently accomplish tasks related to terminal maintenance. There is no evidence that Mr. Martinez attempted to engage his supervisors in a discussion about a flexible work schedule that would enable him to provide necessary care to his family. Nor did he explore the possibility of leave without pay. Essentially, Mr. Martinez stole sick leave time from the Appointing Authority forcing the Appointing Authority to take action. The Commission finds that the Appointing Authority met its burden in establishing that Appellant's misconduct had an adverse impact on the efficiency of its operations.

C. Discipline Commensurate with Offense

In conducting its analysis at this stage, the Commission must determine if Appellant's suspension 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).

All City departments have a keen interest in deterring abuse of sick leave. There is no question that Appellant's actions represent a dramatic violation of both trust and policy. The Commission finds that a five-day suspension is an appropriate, even lenient level of discipline.

V. CONCLUSION

Based upon the foregoing, the Commission DENIES the appeal.

Judgment rendered this 24th day of February, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION



MICHELLE D. CRAIG, CHAIRPERSON

2/21/2017

DATE



RONALD McCLAIN, VICE-CHAIRPERSON

2/21/17

DATE



JOSEPH S. CLARK, COMMISSIONER

2/24/17

DATE