



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

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DIRECTOR OF PERSONNEL

MITCHELL J. LANDRIEU
MAYOR

Tuesday, January 12, 2016

Ms. Kelly Smith

Re: **Kelly Smith VS.**
Department of Public Works
Docket Number: 8229

Dear Ms. Smith:

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 - 1/12/2016 - 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 "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Mark D. Jernigan, P.E.
Elizabeth S. Robins
Victor Papai
file

KELLY SMITH

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF PUBLIC WORKS

NO. 8229

The Department of Public Works (“Appointing Authority”) employed Kelly Smith (“Appellant”) as a Parking Control Officer (Meter Maid). Smith had permanent status. The Appointing Authority suspended the Appellant for three days, for violating departmental rules for failing to devote her entire time on duty to the enforcement of parking regulations.

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 June 10, 2014. 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.

FACTS

The Appellant was working a designated patrol area around the Rouses Grocery store in downtown New Orleans on June 24, 2013. During her tour of duty, from 9 a.m. to 5 p.m., the Appellant had several time gaps where she did not issue any traffic citations. These times were 9:36 a.m. to 10:44 a.m., 11:22 a.m. to 12:23 p.m., and 12:23 p.m. to 1:20 p.m. During her whole tour of duty, the Appellant wrote a total of seven violations. Times on the citations were 9:30 a.m., 9:31 a.m., 9:33 a.m., 10:44 a.m., 11:22a.m., 12:23 p.m., and 1:20 p.m. Testimony was had that the Appellant was entitled to a fifteen minute morning break, a thirty minute lunch break, and a fifteen minute break

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in the afternoon. The breaks and lunch could not be combined without permission from a supervisor. No such permission had been granted to the Appellant on the day involved.

On June 24th the Appointing Authority received a complaint from a member of the public that there were four parking control officers sitting in the Rouses being loud and using profanity. A supervisor went to the store about 1 p.m. and found the Appellant and three other officers getting ready to depart. The supervisor did not hear the officers being loud or using profanity. The supervisor instructed each officer to write a statement and to return to patrol. The officers denied that they had used profanity or had been loud. The officers stated that they were eating lunch and other customers had used profanity.

The testimony at the hearing did not address the time gap between 1:20 p.m. and 5 p.m., nor was there any evidence or testimony concerning the amount of citations expected or averaged in the particular patrol area the Appellant was assigned. The Appellant testified that she had had equipment problems and that the patrol area had very few violators. The Appointing Authority acknowledged that there had been equipment problems in May, but there were none known of on June 24.

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 on appeal, as to the factual basis for the disciplinary action, is

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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. 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.*

CONCLUSION

The Appointing Authority failed to establish by a preponderance of evidence that it disciplined the Appellant for cause. There was no evidence or testimony concerning the number of citations that the area averaged, or a showing that the Appellant was not patrolling her assigned area. Noted time lapses could have included a morning break as well as a later lunch break. The Appellant's explanation that she was patrolling in an area of little violation activity was not rebutted by any contrary evidence or explanation that the area was active and productive on other days.

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Based upon the foregoing, the Appellant's appeal is GRANTED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 12th DAY OF

January, 201⁶5.

Ronald P. McClain
RONALD P. McCLAIN, VICE-CHAIRMAN

CONCUR:

Joseph S. Clark
JOSEPH S. CLARK, COMMISSIONER

Tania Tetlow
TANIA TETLOW, COMMISSIONER