



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
BRITTNEY RICHARDSON, CHAIRPERSON
JOHN KORN, VICE-CHAIRPERSON
CLIFTON J. MOORE
MARK SURPRENANT
RUTH WHITE DAVIS

Friday, February 4, 2022

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Mr. Houston Bates

Re: **Houston Bates VS.
Mosquito Control Board
Docket Number: 9277**

Dear Mr. Bates:

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 - 2/4/2022 - 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: Claudia Riegel
Eraka Williams Delarge
Alexandra Mora
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**HOUSTON BATES,
Appellant**

Docket No. 9277

v.

**MOSQUITO AND TERMITE
CONTROL BOARD,
Appointing Authority**

DECISION

Appellant, Houston Bates, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his May 19, 2021, letter of reprimand. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a Pest Control Specialist 3. (Tr. at 6; HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on July 29, 2021. At this hearing, both parties had an opportunity to call witnesses and present evidence.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the hearing, all exhibits submitted at the hearing, the Hearing Examiner's report dated November 1, 2021, and controlling Louisiana law.

For the reasons set forth below, Houston Bates' appeal is DENIED.

I. FACTUAL BACKGROUND

The Mosquito and Termite Control Board hired Houston Bates on February 11, 2019. (Tr. at 74). "Adulticiding," or fogging for adult mosquitoes by truck, is part of Bates' job duties. (Tr. at 51, 85). Erin Cloherty, Bates' direct supervisor, asked Bates to fog for mosquitoes on the evenings of April 27 and April 28. (Tr. at 9-10). Bates asked for 15 hours of overtime to fog on these two evenings. (Tr. at 10). Cloherty did not approve the overtime, instead requesting that

Bates adjust his work schedule, so that he would not exceed 35 hours for the work period. (Ex. MTCB-2). Bates informed Cloherty he would not fog for mosquitoes unless he received overtime. (Tr. at 10). Cloherty reported this issue to Dr. Claudia Riegel, the Director, who emailed Bates and asked Bates to adjust his schedule to fog on the evenings of April 27 and 28. (Tr. at 10; MTCB-5). Bates refused to fog on April 27 and 28 in the absence of overtime compensation. (Tr. at 16; Ex. MTCB-5). Bates did not adjust his work schedule or fog on the evenings of April 27 or 28. (Ex. MTCB-1; Tr. at 56, 85-86).

The Mosquito and Termite Control Board Policy defines insubordination as a refusal to carry out a supervisor's reasonable instruction. (MTCB-4 (Rule 9(A)(1))). The penalty for the first offense of insubordination is a written reprimand. (Tr. at 27; MTCB-4).

II. ANALYSIS

It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, the 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 (quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094). The Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance of evidence that it had good or lawful cause for suspending and terminating the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d 106 (La. 1984).

The Mosquito and Termite Control Board has carried its burden of showing that the complained-of conduct occurred. Bates failed to adjust his schedule or to fog on the evenings of April 27 and 28, even after the Director emailed Bates and made this request directly. This refusal to carry out his supervisor's reasonable instruction constituted insubordination under MTCB Policy. (MTCB-4). Bates' insubordination impaired the efficient operation of the MTCB, as the Director was required to "bring in another person to come and do the work." (Tr. at 60). The undersigned Commissioners find that the penalty is commensurate with Bates' infraction.

Bates' appeal is DENIED.


This the 4th day of February, 2022

WRITER:


CJ MOORE (Feb 4, 2022 09:16 CST)

CLIFTON J. MOORE, JR., COMMISSIONER

CONCUR:


Brittney Richardson (Feb 3, 2022 17:33 CST)

BRITTNEY RICHARDSON, CHAIRPERSON


Ruth Davis (Feb 1, 2022 18:28 CST)

RUTH DAVIS, COMMISSIONER