



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
ROOM 7W03 CITY HALL
NEW ORLEANS LA 70112
(504) 658-3500
FAX NO. (504) 658-3599

CITY CIVIL SERVICE COMMISSION

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MAYOR

Monday, October 01, 2012

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Ms. Miochi Sumling

Re: **Miochi Sumling VS.
Department of Health
Docket Number: 7900**

Dear Ms. Sumling:

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 - 10/1/2012 - filed in the Office of the Civil Service Commission in Room 7W03, City Hall, 1300 Perdido Street, 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 cursive script, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Dr. Karen B. DeSalvo
Victor Papai
Jay Ginsberg
file

MIOCHI SUMLING

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF HEALTH C/W

NO. 7900

LATOYA JEFFERSON

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF HEALTH

NO. 7901

The Department of Health ("Appointing Authority") employs Miochi Sumling and Latoya Jefferson ("Appellants") as Medical Assistants with permanent status. The Appointing Authority gave both Appellants a two (2) day suspension by letters dated July 29, 2011 for an incident occurring on July 14, 2011. Because both Appellants were disciplined for the same alleged act of misconduct, the appeals were consolidated.

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 November 10, 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 factual basis for the disciplinary actions is contained in the first and second paragraphs of the Appellants' disciplinary letters. The letters provide as follows:

...Dr. Berrien became quite concerned about the patient, and asked the Medical Assistants (MA) to offer her some glucose paste but the patient declined. The patient remained alert. Dr. Berrien then attempted to see if the clinic had any crackers or snacks to give her; one staff member offered a mint which the patient accepted but clearly that was not going to be sufficient.

Dr. Berrien than asked the medical assistants who were sitting together in the MA room (one was working on scheduling a specialty appointment with podiatry) whether one of them could run next door to get a cracker or snack for the patient (and she would provide money) while she continued to carefully observe the patient. Both MAs declined, [Latoya Jefferson] by not looking up from her work on the referral, the other, Miochi Sumling by asking Dr. Berrien whether she had an umbrella (it was not raining during the interval) and starting to explain that she would get sick if she went out in the rain and didn't want to do that without an umbrella. Dr. Berrien said clearly that she was concerned about leaving a patient with a falling blood sugar alone without a nurse or physician but this seemed to make no difference to the MA's. As a result, Dr. Berrien ran to get her purse, checked to see if there might be a nurse available in the Pilsbury clinic (there was not) and ran over to the store herself (it was not raining as suggested by Miochi Sumling), purchased a snack and came back to the patient who ate it immediately. Soon thereafter the sugar had returned to 50 and a little later to 100.

Rebecca Berrien, M.D was employed as the Medical Director for the Appointing Authority's health clinic for the homeless located at 222 Simon Bolivar Blvd. Both Appellants worked under her direct supervision as medical assistants. Dr. Berrien testified that the Appellant's primary duties and responsibilities were to assist with the patients, prepare the patients for examination, make telephone calls for the patients, and follow up with consultant referrals. Dr. Berrien's testimony was consistent with the disciplinary letters. However, she did not recall Ms. Sumling asking her for an umbrella. Regarding Ms. Jefferson, Dr. Berrien did not recall that Ms. Jefferson was on the telephone arranging a consultation with a patient when Dr. Berrien came into the MA room.

Ms. Sumling acknowledged that Dr. Berrien asked her to walk across the street to the Chicken Mart to buy peanut butter crackers for a diabetic patient. Ms. Sumling testified that she asked Dr. Berrien whether she had an umbrella because she had a sinus infection. However, according to Ms. Sumling, Dr. Berrien responded by saying she

M. Sumling c/w L. Jefferson
#7900 / 7901

would do it herself and left before she could react. Ms. Sumling stated that she did not refuse Dr. Berrien's directive, but merely asked a question. She stated that she was fully prepared to do as Dr. Berrien requested, but was not given the opportunity.

Ms. Jefferson testified that she was on the telephone arranging a podiatric consult for the same patient when Dr. Berrien entered the MA room. She also testified that she saw Dr. Berrien enter the room, but did not hear what she was asking. Ms. Jefferson learned from Ms. Sumling what Dr. Berrien wanted. She testified that she immediately went to Dr. Berrien's office, but observed that Dr. Berrien was already walking towards the Chicken Mart.

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 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, 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

It is understandable that Dr. Berrien was moving quickly and was impatient with her subordinates given her concern for her patient's condition. However, it does not appear that Ms. Sumling's hesitation to respond to Dr. Berrien was a refusal to act as requested. Also, Ms. Jefferson's testimony that she did not hear Dr. Berrien's request is credible. Consequently, the Appointing Authority has failed to establish by a preponderance of the evidence that it disciplined the Appellants for cause.

M. Sumling c/w L. Jefferson
#7900 / 7901

Accordingly, the Appellants' appeals are GRANTED and the Appointing Authority is directed to return to both Appellant two days of back pay and emoluments of employment.

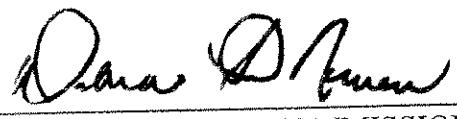
RENDERED AT NEW ORLEANS, LOUISIANA THIS 1st DAY OF
OCTOBER, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION


JOSEPH S. CLARK, COMMISSIONER

CONCUR:


AMY L. GLOVINSKY, COMMISSIONER


DEBRA S. NEVEU, COMMISSIONER