



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
SUITE 900 - 1340 POYDRAS ST.
NEW ORLEANS LA 70112
(504) 658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION

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MAYOR

Tuesday, May 24, 2016

Mr. Raymond C. Burkart, III
19407 Front Street
Covington, LA 70433

Re: **George Olivier VS.
Department of Police
Docket Number: 8303**

Dear Mr. Burkart, III:

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 - 5/24/2016 - 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 cursive script that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Michael S. Harrison
Elizabeth S. Robins
Victor Papai
George Olivier

file

GEORGE OLIVIER

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 8303

The Department of Police (“Appointing Authority”) employed George Olivier (“Appellant”) as a police officer with permanent status. The Appointing Authority suspended the Appellant for two days, for violating departmental rules regarding instructions from an authoritative source regarding care of equipment. Specifically, driving his police vehicle into a flooded intersection and damaging the vehicle’s engine.

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 August 19, 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 and his partner were responding to a suspicious person call on the evening of February 24, 2013 at about 11:00 p.m. It was raining and dark. The Appellant was driving the police car when he came to the intersection of MacArthur and Eton streets. The intersection had a stop sign requiring the Appellant to stop. Upon slowing to stop, the engine shut off. The officers found themselves in standing water approximately a foot and a half deep.

The Appellant had lived in the area and was very familiar with the intersection. He testified that he had never seen the intersection flood. The Appellant stated that there

had been no notification by the department of flooding in the area. The Appellant stated that he was not driving at an excessive speed for the conditions. This was corroborated by his partner.

The vehicle's engine had locked up because of water entering the air filter and then the cylinder head. The engine was inoperative and the vehicle was out of commission. The Appellant was initially charged with neglect of duty where damage resulted from carelessness or neglect. The matter was assigned to an investigating officer who found that there was insufficient evidence to sustain the Appellant for negligence or carelessness.

The investigator's findings were sent up through the chain of command. The District Commander approved the findings, but the next two levels did not. Deputy Superintendent Albert recommended that a different charge related to instructions from an authoritative source regarding care of equipment. Albert testified that the department expected officers to return equipment in the same shape in which it was issued. Albert did admit that at times equipment was damaged through no fault of the officer. However, in this situation, Albert stated the Appellant was at fault for the damage to the unit, but he could not specify an act of neglect or carelessness that resulted in the damage to the vehicle.

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).

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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 on the appointing authority. *Id.*; *see also 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

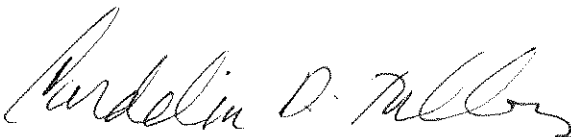
The Appointing Authority failed to establish by a preponderance of evidence that it disciplined the Appellant for cause. Nothing in the record suggests that Appellant operated his vehicle in a neglectful or careless manner. There was no notice transmitted by the department about street flooding. Finally, no order issued from an authoritative source to Appellant regarding the operation of his assigned vehicle in the area Appellant encountered unexpected flooding.

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This incident was unfortunate, but also unexpected. The Appellant was familiar with the area and had never seen the intersection flood. There is no showing in this case that the Appellant failed to properly care for his equipment. The City's own witness, an expert in accident reconstruction, found the Appellant was operating the vehicle in a reasonable manner.

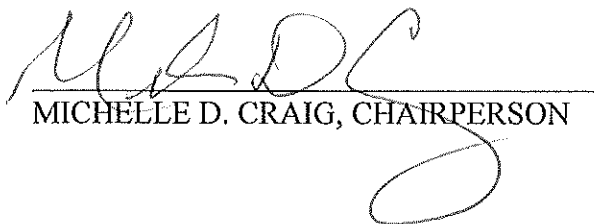
Based upon the foregoing, the Appellant's appeal is GRANTED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 23rd DAY OF
May, 2016.


CORDELIA D. TULLOUS, COMMISSIONER

CONCUR:


TANIA TETLOW, COMMISSIONER


MICHELLE D. CRAIG, CHAIRPERSON