



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

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MITCHELL J. LANDRIEU
MAYOR

Monday, November 13, 2017

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Mr. Lee Everidge Sr.

Re: **Lee Everidge Sr. VS.
Department of Sanitation
Docket Number: 8678**

Dear Mr. Everidge:

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 - 11/13/2017 - 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: Cynthia Sylvain-Lear
Elizabeth S. Robins
Brendan M. Greene
file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

LEE EVERIDGE, SR., vs. DEPARTMENT OF SANITATION	DOCKET No.: 8678
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I. INTRODUCTION

Appellant, Lee Everidge, Sr., brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission's Rule II, §4.1. The Appointing Authority, the Department of Sanitation for City of New Orleans, (hereinafter "Appointing Authority") does not allege that the instant appeal is procedurally deficient. And, Appellant did not challenge the process through which the Appointing Authority disciplined him. Therefore, the Commission's analysis will be limited to whether or not the Appointing Authority disciplined Appellant for sufficient cause. At all times relevant to the instant appeal, Appellant served as a Laborer and had permanent status as a classified employee.

On Tuesday, June 27, 2017, a hearing examiner appointed by the Commission presided over an appeal hearing. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the hearing examiner's report. Based upon our review, we render the following judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

The Appointing Authority issued Appellant a one-day suspension for failing to attend a March 23, 2017 mandatory staff meeting. (H.E. Exh. 1).

B. March 23, 2017

Ms. Cynthia Sylvain-Lear has been the Appointing Authority's Director since 2010. (Tr. at 10:7-10). As Director, Ms. Sylvain-Lear is ultimately responsible for the conduct and performance of all employees within the Appointing Authority. On March 23, 2017, Ms. Sylvain-Lear participated in a department-wide meeting. The purpose of the meeting was to address a wide range of issues including training on employee safety, public service and customer service. *Id.* at 22:7-14. After the meeting, Appellant's supervisors notified Ms. Sylvain-Lear that Appellant had failed to attend the mandatory meeting. *Id.* at 12:9-13:4.

Appellant had reported to work as scheduled on March 23, 2017 and was in the process of painting trash receptacles as the staff meeting started. When his supervisors confronted him about his failure to attend the meeting, Appellant claimed that he had been so wrapped up in his work that he lost track of time. *Id.* at 14:13-15:6. During his testimony, Appellant candidly acknowledged that his supervisors had given him advance notice of the mandatory meeting. *Id.* at 27:7-10. He went on to attribute his absence from the meeting to his focus on his painting assignment.

Appellant further acknowledged that the staff meeting on March 23rd was not the first such meeting he had missed. In July 2016, Appellant missed a mandatory training meeting because he had a headache related to a dental issue. *Id.* at 30:1-15. He had not notified his supervisors of his dental issue prior to the meeting.

III. LEGAL STANDARD

An appointing authority may only discipline an employee with permanent status in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that an appointing authority issued discipline without sufficient cause, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article 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

There is no dispute that Appellant missed the March 23, 2017 meeting. Appellant acknowledged that he failed to attend the meeting and admitted that he had advance knowledge that his attendance at the meeting was mandatory. Appellant’s excuse for missing the meeting – that he was engaged in another duty – may be a mitigating factor, but does not change the fact that the Appointing Authority has established that the underlying misconduct occurred.

B. Impact on the Appointing Authority's Efficient Operations

Ms. Sylvain-Lear testified that, because Appellant missed the mandatory training, his supervisors had to find time to repeat the essential elements of the training specifically to Appellant. This is not a productive use of either Appellant's time or his supervisors'. Furthermore, the Commission credits Ms. Sylvain-Lear's testimony that staff meetings provide personnel the opportunity to interact with each other and promote a collegial work environment. We find that Appellant's failure to attend the March 23rd meeting did adversely impact the efficient operations of the appointing authority.

C. Was the Discipline Commensurate with Appellant's Offense

In conducting its analysis, 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 *Staehele v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

The Commission finds that Appellant's failure to attend a mandatory staff meeting constitutes a minor infraction. And a one-day suspension constitutes a minor level of discipline. The fact that Appellant was attending to a bona fide work assignment rather than attending to personal or non-work-related matters serves as a mitigating circumstance. However, the Commission finds that there were also several aggravating factors that offset Appellant's excuse. First, Appellant's supervisors specifically reminded Appellant about the mandatory meeting. Second, Appellant had missed a mandatory meeting on an earlier occasion and was warned that any subsequent failure to attend a meeting could result in discipline. Therefore, we find that a one-day suspension is commensurate with Appellant's offense.

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby DENIES Appellant's appeal.

Judgment rendered this 13th day of November, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER



CLIFTON MORRE, JR., COMMISSIONER

11/13/17

DATE

CONCUR



RONALD P. McCLAIN, VICE-CHAIRMAN

11-6-17

DATE



STEPHEN CAPUTO, COMMISSIONER

11-6-2017

DATE