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

Tuesday, November 17, 2020

Ms. Van Vu

Re: **Van Vu VS.**
Sewerage & Water Board
Docket Number: 9144

Dear Ms. Vu:

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 - 11/17/2020 - 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,

Doddie K. Smith

Doddie K. Smith
Chief, Management Services Division

cc: Ghassan Korban
Joseph Zanetti
Christina Carroll
file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

VAN VU
Appellant

vs. **DOCKET NO. 9144**

SEWERAGE & WATER BOARD
Appointing Authority

DECISION

Appellant, Van Vu (hereinafter "Appellant"), brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission's Rule II, §4.1, asking this Commission to find that the Sewerage & Water Board (hereinafter "Appointing Authority") did not have sufficient cause to issue a written reprimand to her on February 6, 2020. At all times relevant to the instant appeal, Appellant was employed as a water chemist at the Carrollton Water Plant and had permanent status as a classified employee.

The below Commissioners have reviewed the transcript from the June 17, 2020, hearing, all exhibits introduced into the record, and the October 6, 2020 attached report from the Hearing Examiner, which is advisory in nature. After reviewing this record, we GRANT Appellant's appeal for the reasons set forth by the Hearing Examiner.

The February 6, 2020, letter of reprimand shall be removed from Ms. Vu's personnel file.

Judgment rendered this 17th day of November, 2020.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER:
Mark C. Surprenant
Mark C. Surprenant (Nov 16, 2020 20:05 CST)
MARK SURPRENANT, COMMISSIONER

CONCUR:
Brittney Richardson (Nov 16, 2020 19:53 CST)
BRITTNEY RICHARDSON, COMMISSIONER
CJ Moore
CJ Moore (Nov 17, 2020 14:39 CST)
CLIFTON J. MOORE, JR., VICE-CHAIRMAN

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

VAN VU

Appellant

v. **DOCKET NO. 9144**

SEWERAGE & WATER BOARD

Appointing Authority

HEARING OFFICER'S REPORT

The undersigned conducted a hearing on June 17, 2020, of a February 6, 2020, letter of reprimand issued to Van Vu, who is a water chemist at the Sewerage & Water Board. Witnesses included Chad Lavoie, Water Purification Superintendent, Alton Delarge, III, Assistant Water Purification Superintendent, Byron Iverson, Disciplinary Specialist, and Van Vu, Appellant

At issue is a photograph of Appellant covered by a lab coat and apparently sleeping on a desk in an office at the Carrollton Water Plant. (Tr. at 1; Exhibit Board-2). At the time of the hearing, the photograph was approximately two years old. (Tr. at 10). The Appointing Authority became aware of the photograph in or about January 2, 2020 from an anonymous complainant (Tr. at 17; Exhibit Board-1) and disciplined Ms. Vu under the provision of Civil Service Rule IX authorizing discipline for committing an act to the prejudice of the service. (Tr. at 26; Exhibit Board-1). The Sewerage & Water Board currently has a policy against sleeping on the job, carrying more severe discipline, but this policy did not go into effect until 2019. (Tr. at 26-27). Ms. Vu's supervisor, Chad Lavoie, testified that he gave Ms. Vu a warning over two years prior to the written reprimand. (Tr. at 16). Mr. Lavoie testified as follows: "This lighthouse complaint came more than two years after this picture was taken and after I had already given her a warning." (Tr. at 18). During Mr. Lavoie's counseling of Ms. Vu, she informed him the photograph was taken as a joke. (Tr. at 37). Alton DeLarge, III, and Ms. Vu corroborated Mr. Lavoie's testimony that Lavoie gave Ms. Vu a warning two years before the written reprimand. (Tr. at 21-22, 37).

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 (quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094). 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); 165 So.3d

191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). The Appointing Authority has met its burden of proof as to the occurrence of the complained of activity and as to the impairment to the efficiency of the public service. Because Ms. Vu received a verbal counseling from her supervisor in approximately 2018 for this incident and because Alton Delarge, III, the Water Purification Superintendent, was aware of the level of discipline issued to Ms. Vu, Ms. Vu's supervisory chain viewed a verbal counseling as sufficient discipline. Therefore, a written reprimand is not commensurate with the infraction and should be removed form Ms. Vu's personnel file.

DATED: October 6, 2020

Christina Carroll Digitally signed by Christina Carroll
Date: 2020.10.06 11:49:51 -05'00'

Christina Carroll
Hearing Officer