

LEONARD PARKER

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF PARKS AND
PARKWAYS

NO. 7798

The Appointing Authority employs the Appellant as a Groundskeeper II with permanent status. He was first hired by the Appointing Authority on December 17, 2007, and appointed to this class on April 16, 2009. The Appointing Authority suspended the Appellant for six hours by letter dated October 14, 2010, following a determination that he was insubordinate towards his foremen. Specifically, the Appellant was sent home for the remainder of the day after refusing to pick up some paper on the neutral ground.

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 February 3, 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.

Curtis Ruffin testified that he was the Appellant's foreman on October 7, 2010. He and the Appellant were mowing grass on the neutral ground on Behrman Highway. Mr. Ruffin was on a riding lawnmower and the Appellant was using a push lawnmower. Mr. Ruffin testified that he instructed the Appellant to pick up some paper that was in the path of the riding lawnmower, and the Appellant refused stating that he should pick it up himself. After consulting with his supervisor Michael D'Anastasio, Mr. Ruffin sent the Appellant home for the rest of the day.

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The Appellant testified that Mr. Ruffin was closer to the paper. In so, the Appellant stated that he was intending to comply with Mr. Ruffin's directive, but was sent home before he could comply.

LEGAL PRECEPTS

An employer cannot subject an employee who has gained permanent status in the classified city civil service to disciplinary action 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 from 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.

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The Appointing Authority has established by a preponderance of evidence that the Appellant refused a directive from his supervisor. It appears that the Appellant thought that Mr. Ruffin should do it himself because Mr. Ruffin was closer.

Accordingly, the Appointing Authority has met its burden of proof, and the appeal is DENIED.

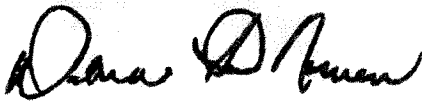
RENDERED AT NEW ORLEANS, LOUISIANA THIS 13th DAY OF APRIL,
2012.

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

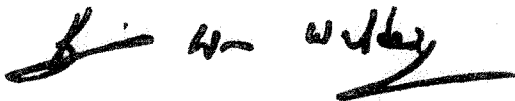


JOSEPH S. CLARK, COMMISSIONER

CONCUR:



DEBRA S. NEVEU, COMMISSIONER



REV. KEVIN W. WILDES, S.J., CHAIRMAN