

CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

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DIRECTOR OF PERSONNEL

Friday, September 07, 2012

Mr. Leotis Johnson

Re: **Leotis Johnson VS.
Sewerage & Water Board
Docket Number: 7806**

Dear Mr. Johnson:

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 - 9/7/2012 - 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, appearing to read "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Marcia St. Martin
Yolanda Grinstead
Jay Ginsberg
file

LEOTIS JOHNSON

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

SEWERAGE & WATER BOARD

DOCKET NO. 7806

The Sewerage & Water Board ("Appointing Authority") employs Leotis Johnson ("Appellant") as a Water Service Inspector II with permanent status. The Appointing Authority suspended the Appellant for three days by letter dated December 22, 2010 for (1) violating the Appointing Authority's Meter Reading Department's Missing or Broken Meter Box Covers policy and (2) for violating the Appointing Authority's Company Vehicle Policy, which forbids an employee from using a company vehicle for a purpose other than the performance of his or her job duties. The specific factual allegations that form the basis for the disciplinary action are contained in the third and fourth paragraphs of the December 22nd disciplinary letter, which provides as follows:

On Monday October 4, 2010, you were assigned to read Route-03. You reported to your Field Service Supervisor that you completed your assigned route and there were two (2) meter covers left that you were unable to read. However, the Field Service Supervisor found several missing meter box covers and four filler pieces. Your failure to report the aforementioned meter boxes and filler pieces violated the Meter Reading Department's Missing or Broken Meter Box Covers policy.

On October 5, 2010, you along with Mr. James Bates were assigned to read Route 12-14. Upon completing your route and returning to Central Yard with Mr. Bates, you utilized a Board vehicle without authorization to conduct a personal errand. Your action constituted an unauthorized use of a Board vehicle and violated the Board's Company Vehicle Policy No. 94.

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 May 5, 2011 and June 30, 2011. 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.

1. Violation of Missing or Broken Meter Box Covers Policy.

The Appointing Authority called Gary Manchester, Field Service Supervisor, who testified that on October 4, 2010, while training new employees using the Appellant's route, he discovered that the Appellant had failed to report twelve missing meter box covers to his immediate supervisor. The Appellant also failed to discover and remove four filler pieces.¹ He learned that the Appellant had reported only two missing covers to his immediate supervisor. Mr. Manchester referenced a March 31, 2009 inter-office memorandum issued to all meter reading employees that provided specific instructions regarding how an employee is expected to report missing or broken meter box covers. According to the memorandum, an employee is required to either notify a field service supervisor or call the Meter Reading Office ASAP. According to Mr. Manchester, open meter boxes pose a danger to the public and employees are required to follow internal policy to assure that hazards are reported immediately.

The Appellant acknowledged that he did not report the missing meter box covers to a field service supervisor or call the Meter Reading Office. Instead, he testified that he made an entry in the Appointing Authority's computer system. The Appellant contended that it was the Meter Reading Office's responsibility to use the information he entered into the computer system to replace missing or broken covers. The Appellant testified that he did not observe any filler pieces while working on his route.

Regarding the violation of the internal rule regarding missing or broken meter box covers, the Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for good cause. The internal policy unequivocally instructs the Appellant how potential hazards are to be reported. The Appellant's failure to follow proper

¹ A filler piece is a piece of plastic pipe that individuals use to take water illegally.

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procedure clearly impaired the efficient operation of the department. Making a computer entry does not provide the Appointing Authority sufficient notice of a potential hazard and is not a substitute for following the Appointing Authority's rules that were created for this specific purpose.

2. Violation of Vehicle Policy

The Appointing Authority called Keron Myles, Field Service Supervisor, who testified that she was the Appellant's immediate supervisor on October 5, 2010. Ms. Myles testified that the Appellant's working hours were from 7:00 am to 3:30 pm. She received a call from the Appellant at 3:58 pm informing her that he was on the compound clearing up the truck assigned to him. According to Ms. Myles, the Appellant did not mention that he was taking the department vehicle to a fast food restaurant to retrieve his personal cell phone nor did he ask for her permission. She did not become aware of the Appellant's actions until he returned to her office at 4:07 pm. At that time, the Appellant informed her that he had left his cell phone at a Burger King Restaurant and had driven his assigned vehicle there to retrieve it from the store manager. Ms. Myles testified that departmental policy forbids the use of departmental vehicles for personal business. She also testified that the Appellant's truck was equipped with a radio for business communications.

The Appellant admitted that he used his departmental vehicle to retrieve his personal cell phone without informing his supervisor or seeking her authorization. The Appellant testified that because he used his cell phone for departmental business, he considered his trip to the Burger King to retrieve his cell phone departmental business.

Regarding the violation of the internal rule regarding the use of departmental vehicles, the Appointing Authority has established by a preponderance of evidence that it disciplined the

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Appellant for good cause. The Appellant used the Appointing Authority's vehicle after working hours for a personal mission. He had the opportunity to explain his situation to his supervisor and obtain her authorization. The disciplinary action was justified by his failure to do so.

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 make an independent judgment, 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

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service. *Id.* While these facts must be clearly established, they need by established beyond a reasonable doubt. *Id.*

Considering all of the evidence provided, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 7TH DAY OF
SEPTEMBER, 2012.

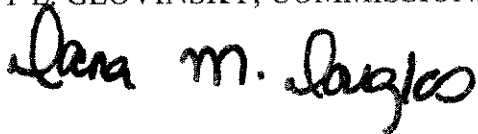
CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



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

CONCUR:



AMY L. GLOVINSKY, COMMISSIONER

DANA M. DOUGLAS, VICE-CHAIRMAN