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CITY CIVIL SERVICE COMMISSION

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DIRECTOR OF PERSONNEL

Friday, October 26, 2012

Mr. C. Theodore Alpaugh, III
639 Loyola Avenue, Suite 2500
New Orleans, LA 70113

Re: **Nikia Adams VS.**
Department of Police
Docket Number: 7796

Dear Mr. Alpaugh:

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 - 10/26/2012 - 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, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Ronal Serpas
Eraka Williams
Jay Ginsberg
Nikia Adams

NIKIA ADAMS

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7796

The Department of Police ("Appointing Authority") employed Nikia Adams ("Appellant") as a Police Officer IV with permanent status. The Appointing Authority terminated the Appellant for violation of internal regulations regarding Adherence to Law after she entered a *nolo contendere* plea to a misdemeanor charge of cruelty to animals on September 16, 2010. The Appellant contends that she committed no crimes and that her agreement to plead *nolo contendere* to a crime does not justify her termination.

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 July 6, 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.

The Appointing Authority relied solely on the Appellant's *nolo contendere* plea. Sgt. Jenerio Sanders was assigned to investigate the criminal charges. He testified that he sustained the violation of adherence to law for cruelty to an animal based solely on the Appellant's *nolo contendere* plea for which she received a suspended sentence and paid a nominal fine plus court costs.

Sgt. Sanders testified that he interviewed the Appellant as part of his administrative investigation of the incident and that she maintained her innocence, stating that she was arrested for allegedly starving the two dogs left in her care when in fact they were suffering from heart worms, which was the cause of death of one of the dogs.

N. Adams
#7796

The decision to terminate the Appellant was made by Supt. Ronal Serpas. The dismissal was based solely on the Appellant's *nolo contendere* plea to a misdemeanor. According to Supt. Serpas, when asked whether termination was automatic where an employee pleads guilty to a crime, he responded that all disciplinary actions are reviewed on a case-by-case basis.

The Appellant testified that she was not the dogs' owner and that she was caring for the two animals for their owner who previously resided at her residence in LaPlace, LA. According to the Appellant, she only observed that the dogs were losing weight. She contacted their owner, who recommended that she increase their food portions. He told her that he would take them to the veterinarian if they did not gain weight in a couple of weeks. One of the two dogs died before any further action was taken. The Appellant was arrested after she tried to enlist the assistance of animal control to remove the dead dog.

The Appellant testified that she assumed her job would be safe since the *nolo contendere* plea was to a minor crime unrelated to her job as a police officer. The Appellant explained that she did not have the financial resources to continue employing a lawyer to defend her at trial, even though it was clear to all involved that she had not starved the dogs as proven by the necropsy report. She stated that it was less expensive to enter the plea and pay a few hundred dollars than to bear the cost of a trial.

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).

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, 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 has established by a preponderance of evidence that it disciplined the Appellant for cause. The Appellant pleaded *nolo contendere* to an offense of cruelty to animals that resulted in a fine and a suspended sentence, and is part of her criminal record. Regarding the penalty, we cannot say that the Appointing Authority abused its discretion by terminating an employee for admitting to a minor criminal violation even though the violation was unrelated to her job.

N. Adams
#7796

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

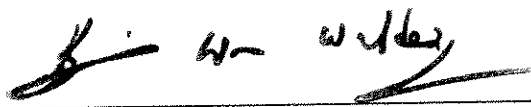
RENDERED AT NEW ORLEANS, LOUISIANA THIS 26th DAY OF
OCTOBER, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



DANA M. DOUGLAS, VICE-CHAIRMAN

CONCUR:



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



AMY L. GLOVINSKY, COMMISSIONER