



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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CLIFTON J. MOORE JR., VICE-CHAIRPERSON
JOHN H. KORN
MARK SURPRENANT
RUTH WHITE DAVIS

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Monday, January 24, 2022

Mr. David T. Reed

Re: **David T. Reed VS.
Recreation Department
Docket Number: 9231**

Dear Mr. Reed:

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 - 1/24/2022 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Amoco Building, 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 purple ink that reads "Stacie Joseph".

Stacie Joseph
Management Services Division

cc: Larry Barabino
Darren Tyus
Jay Ginsberg
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**DAVID REED,
Appellant**

Docket No. 9231

v.

**RECREATION DEPARTMENT,
Appointing Authority**

DECISION

Appellant, David Reed, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his November 19, 2020, termination of employment. (Ex. HE-1). At all relevant times, Appellant had permanent status as an Aquatics Manager. (Tr. at 7). A Hearing Examiner, appointed by the Commission, presided over a hearing on January 27, 2021. At this hearing, both parties had an opportunity to call witnesses and present evidence.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the hearing, all exhibits submitted at the hearing, the Hearing Examiner's report dated August 11, 2021, and controlling Louisiana law.

For the reasons set forth below, Reed's appeal is DENIED.

I. FACTUAL BACKGROUND

The Department of Recreation hired David Reed as a lifeguard in 2013. (Tr. at 58). The Department of Recreation promoted Mr. Reed to full-time lifeguard in January of 2014 and to Aquatics Manager in October of 2016. (Tr. at 7, 58). At the time of his termination, he was working at the Joe Brown Park Pool. (Tr. at 7). Based on the testimony of two patrons, the users of the pool were pleased with the programming and management of the facility by Reed. (Tr. at

43, 48). Yolanda White testified that the facility became a “safe haven for seniors and families.” (Tr. at 50). Ms. White also testified about her significant weight loss from using the facility, attributing this weight loss to the welcoming environment created by Reed. (Tr. at 52).

Donated pool furniture was delivered to Joe Brown Park Pool on November 5, 2020. (Tr. at 21). Included in this delivery were 20 pool chairs, 19 lounges, and five tables. (Tr. at 20). Jellell Jones, another Aquatics Manager, discovered some of the furniture was missing on November 6, 2020. (Tr. at 21). Ms. Jones requested the video, and she discovered that Mr. Reed took four chairs and that his subordinates helped him load the furniture. (Tr. at 23, 37-38).

Reed admitted taking the chairs. (Tr. at 23). In his written statement, Reed said he believed the Department would discard the older pieces. (Ex. NORDC-1). During the hearing, Reed testified he intended to move the chairs to another facility, but Reed conceded that this explanation is absent from his written statement. (Tr. at 8-9).

II. ANALYSIS

It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, the 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). The Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance of evidence that it had good or lawful cause for disciplining the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App.

4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d 106 (La. 1984).

The Appointing Authority has carried its burden of proving that Reed committed theft of City property. (Tr. at 34). This theft impaired the efficient operation of the Department of Recreation. As the Director of the Department of Recreation testified, theft is not tolerated, and Reed's role as a manager makes this infraction more serious, indicating a lack of leadership. (Tr. at 34-37). The Director testified that Reed would not be able to return and manage other employees after his subordinates helped him take the furniture. (Tr. at 37-38). The Commission also finds that the penalty is commensurate with the violation. Although it appears that Reed was otherwise a high performing manager based on the testimony of the patrons, the Department must be able to rely on the trustworthiness of its managers. "Honesty is essential to the efficient operation of a public institution." *Sanders v. Dep't of Health & Hum. Res.*, 394 So. 2d 629, 632 (La. App. 1 Cir 1980), *writ denied*, 399 So. 2d 602 (La. 1981) (concerning theft of food by cook).

The appeal is DENIED.

This the 24th day of January, 2022

WRITER:

J. H. Korn
J. H. Korn (Jan 12, 2022 12:23 CST)

JOHN KORN, VICE-CHAIRPERSON

CONCUR:

C. J. Moore
CJ MOORE (Jan 24, 2022 06:07 CST)

CLIFTON J. MOORE, JR., COMMISSIONER

Ruth White Davis
Ruth Davis (Jan 12, 2022 20:27 CST)

RUTH DAVIS, COMMISSIONER