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MAYOR

CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON
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JOSEPH S. CLARK
TANIA TETLOW
CORDELIA D. TULLOUS

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Friday, April 01, 2016

Mr. Jonathan Raymond

Re: **Jonathan Raymond VS.
Department of Human Services
Docket Number: 8146**

Dear Mr. Raymond:

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 - 4/1/2016 - 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 blue ink that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Ava Rogers
Elizabeth S. Robins
Jim Mullaly
file



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LISA M. HUDSON
DIRECTOR OF PERSONNEL

Mr. Jonathan Raymond

Re: **Jonathan Raymond VS.
Department of Human Services
Docket Number: 8221**

Dear Mr. Raymond:

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 - 4/1/2016 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Amoco Building, New Orleans, Louisiana.

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Chief, Management Services Division

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Jim Mullaly
file

JONATHAN RAYMOND

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF HUMAN SERVICES

NO. 8146 c/w 8221

Appellant was an Institutional Counselor II with permanent status assigned to the Youth Study Center (“YSC”), a pre-trial detention center. The Appellant received a Notice of Emergency Suspension (30 working days) by letter dated May 8, 2013, and was terminated from his employment by letter dated September 10, 2013. The discipline arises out of three separate incidents. The first incident occurred on April 30, 2013 when the Appellant allegedly violated safety protocols that resulted in a youth being assaulted and that jeopardized the safety of other youth and staff. The second and third incidents occurred on May 7 and August 27, 2013 when it is alleged that the Appellant was found asleep while on duty jeopardizing the safety of youth and staff.

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 8, 2014. 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 testimony was as follows:

MR. LEROY CRAWFORD

Mr. Crawford is the Assistant Superintendent at the Youth Study Center and the training coordinator. He is tasked with daily programming, staffing, and overall operations of the kids in school. Mr. Crawford is also tasked with ensuring that the YSC is a safe and secure facility and that staff are trained properly on how to deal with the youth at the YSC.

Mr. Crawford testified that in March, 2013 the Appellant was an Institutional Counselor. As such, Appellant's duties were to provide safety and security for those kids that are in his group. It was Mr. Raymond's responsibility to make sure those kids do the daily program and things they need, school, recreation, depending on the shift that he's working.

Mr. Crawford testified that the Appellant, as required of all Institutional Counselors, received the mandatory Safe Crisis Management ("S.C.M.") training. S.C.M. teaches that in a normal setting you should be an arm length away from the kids so you can kind of get an idea of what's going on and you can hear things. In the cafeteria setting, Counselors are trained that only two youths may stand up at a time. Appellant was also trained in the needs of youth with behavioral health disorders and intellectual disabilities and medication. Mr. Crawford explained that the Appellant was trained that his actions and emotions would play a role in the child's actions and reactions and that he had to take care not to escalate a situation by introducing his own emotions.

This S.C.M. training teaches about a behavior curve. It teaches that there's a period of escalation where some kids go from mumbling and grumbling to out of control. Then there's a de-escalation period. What the Counselors are taught is that if something is taking place and you're involved in it, then it's the responsibility of two coworkers to manage the situation and ensure that neither gets overinvolved in such a way that he or she is now "inside the curve" and escalating the situation. If one Counselor should find that he is "inside the curve," he must "tap out" or the other counselor must tap him out because at that point in time everybody is responsible for the welfare and safety of those kids and the staff member. This procedure is called a self-tap-out or a staff-tap-out.

Mr. Crawford testified that counselors and staff are trained to maintain proper boundaries to avoid escalating the situation.

Mr. Crawford testified that on the day in question, the Appellant violated all of these training procedures and escalated a situation that could have resulted in numerous injuries to the kids in his care as well as fellow staff. Mr. Crawford went scene by scene through the video of the incident, Exhibit C, and explained in detail how the Appellant's conduct was contrary to the training and procedures of the YSC.

It is clear from the video as well as Mr. Crawford's contemporaneous explanation that the Appellant allowed more than two youths to be standing in the cafeteria and that he took no action. It is likewise clear that the Appellant shows aggression toward a youth when he slams his hand on the table while getting up to instruct the youth. It is clear that the youth then responds in kind and moves toward the Appellant aggressively, which is precisely what the S.C.M. training seeks to prevent.

It is clear from the video that Ms. Roussell attempts a "staff-tap-out", tapping the Appellant's arm in an attempt to get him to disengage from the youth and deescalate the situation as per S.C.M. training. The video clearly depicts that the Appellant disregarded Ms. Roussell and instead "closes space" on the youth, in further violation of proper S.C.M. protocol and further exacerbating the situation.

The video clearly shows that another youth is emboldened by the aggression in the room and engages the youth with whom the Appellant was engaged, punching him numerous times. The video shows that the Appellant moved away from the attacking youth allowing him a clear path to perpetrate his assault of the other youth. Mr. Crawford testified that this action also

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violated proper protocol, which required the Appellant to step into the path of the attacker and protect the other youth.

Mr. Crawford testified, and it goes without saying, that as a result of the Appellant's failure to maintain control of himself and the situation, he, the youth, and other staff were placed in peril. This conduct impaired the efficient operation of the Appointing Authority and, in particular, the operations at the YSC.

Regarding the allegations that on May 7 and August 27, 2013, the Appellant fell asleep while he was assigned to provide watch over a classroom, Mr. Crawford testified that same violated policies governing devotion to and neglect of duty. Mr. Crawford likewise testified that the dangers created by the Appellant's conduct jeopardized the safety of youth and staff and impaired the efficient operation of the Appointing Authority and, in particular, the operations at the YSC. He testified, and the rules clearly state that a staff member found to be sleeping on duty faces termination.

MS. STEPHANIE MILLS

Ms. Mills is an Assistant Superintendent at the YSC. She is tasked with overall management of the facility. Like Mr. Crawford, Ms. Mills testified that the Appellant's conduct on April 30, 2013 in the cafeteria violated policy, training and protocol; specifically, these actions of the Appellant were allowing too many youth to stand, use of profanity and aggressive behavior toward a youth, and his failure to self-tap-out or to heed Ms. Rousell's staff-tap-out.

Ms. Mills testified that she personally observed the Appellant sleeping on duty on August 27, 2013. She testified that she observed that the teacher in the classroom had to physically nudge the Appellant awake.

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Ms. Mills testified similarly to Mr. Crawford regarding the impact of the Appellant's conduct on the efficient operation of the facility.

MR. GLENN HOLT

Mr. Holt is the Superintendent of the YSC. Regarding the April 30, 2013 incident, Mr. Holt testified that he reviewed the video and spoke with Mr. Crawford and Ms. Mills about the incident. Mr. Holt testified that he considered the following in determining that the Appellant's conduct violated YSC policy and procedure:

When you look at Mr. Raymond's actions from the time that the youth takes the food from another youth, there is a verbal exchange. What you can tell nonverbally is it escalates. You can see that by Mr. Raymond's kind of gestures with his arms and his hands. You can see the youth stand up; can see nonverbally that this youth is kind of agitated through his nonverbal action. You then see Mr. Raymond slam his hand down. Instead of trying to just place it and push it to stand up, he actually slams his hand down, which would indicate to me he's upset. His nonverbals indicate that he appears to be upset. So he kind of rises up, closes space on the youth. The youth is simply standing having this verbal confrontation. Mr. Raymond actually stands up, walks around the table that he's sitting, and closes space on the youth who appears to be, at least on the video by his nonverbal, highly agitated. That is counter to S.C.M. training. You never want to close space and get into a more intense situation with a youth that's already agitated, unless you absolutely have to for the safety of that youth or other youths in the facility or the location.

The video shows that the confrontation between the youth and Mr. Raymond is getting really, really intense. The youth actually closes more space; Mr. Raymond doesn't give space. At some point, you see Ms. Rousell move into the frame and see her reach out. That reach out is what we call a tap out. It's a way to try and tell Mr. Raymond, hey, I got this, you need to step back. What she indicated and what it appears is he's now lost what I would call professional perspective. He now has lost his professionalism in how he's dealing with the youth. It's a way to say, hey, step back, you're kind of losing that professional perspective, let me now take over. It does two things. One, it gives Mr. Raymond a chance to kind of cool down and maybe recollect himself. It allows Ms. Rousell to have a conversation with the kid, because that's not the target anymore. Sometimes that can actually de-escalate the kid because now I'm focused on Ms. Rousell, I don't have a problem with Ms. Rousell, and I may be able to also de-escalate. So the situation doesn't become more volatile, actually moving it down into a de-escalation situation where we can better handle that.

[W]hen Ms. Rousell reached out to touch him, he ignores that. He stays in this highly volatile situation with this youth. At one point, the youth that was sitting stands up, walks around the table. At that point, Mr. Raymond should have at least stuck his arm out to tell that youth who stood up to stay back. Instead, he steps completely back, opens space to give this youth a clear line of direction to the youth he's engaged in a confrontation. The tape clearly says that. At that point, that youth physically assaults the youth that he's having a confrontation with. At that point, Ms. Rousell goes around Mr. Raymond and applies proper S.C.M. in trying to at least restrain one of those youths and keep the assault from escalating.

Mr. Holt testified, and it goes without saying, that the Appellant's actions, which resulted in a youth being assaulted and which could have resulted in more youth as well as staff being assaulted, impaired the efficient operation of the YSC, the sole function of which is to provide a safe and secure facility for youth.

Similarly, regarding the May 7 and August 27, 2013 incidents in which the Appellant was found to be sleeping on the job, Mr. Holt testified that same creates a substantial security risk and impairs the efficient operation of the YSC.

Mr. Holt testified that he terminated Appellant because "the serious egregiousness of all these actions together represented... gross negligence on his part. And that in turn... put the facility, staff, and kids at ongoing risk of potential harm..."

MR. JONATHAN RAYMOND

The Appellant denied all of the allegations against him. Regarding the April 30, 2013 incident in the cafeteria, the Appellant denies that he slammed his hand on the table; he testifies, rather, that he placed it on the table to assist him in standing. The Appellant denies that Ms. Rousell ever attempted to tap him out. The Appellant testifies that he as in fact trying to deescalate the incident. He testifies that he maintained an arms-length of distance from the youth and that it looks otherwise on the video because of the angle from which the camera was recording the incident.

Regarding the May 7 and August 27, 2013 incidents in which the Appellant was found to have slept on duty; Appellant denies that he was sleeping. The Appellant also testified that if he was sleeping, management had a duty to relieve him immediately. The Appellant admits that sleeping on duty is not permitted, that sleeping on duty carries a serious security risk, and that the policy of the Appointing Authority calls for termination of an employee found to be sleeping on duty.

LEGAL PRECEPTS

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer except for cause expressed in writing. La. 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.

ANALYSIS

The Appointing Authority overwhelmingly proved that the Appellant was disciplined for cause and that the Appellant's conduct impaired the efficient operation of the YSC. With regard to the April 30, 2013 incident in the cafeteria, again the video speaks for itself and clearly supports the Appointing Authority's testimony that the Appellant's conduct depicted in the video violated safety protocols, jeopardized the safety of youth and staff, and impaired the efficient operation of the YSC. This incident alone would support termination.

Regarding the May 7 and August 27, 2013 sleeping incidents, again the Appointing Authority met its burden of proof. The Appointing Authority introduced a photograph of the Appellant that shows him sleeping on May 7, 2013 and Ms. Mills testified that she personally observed him sleeping on August 27, 2013, such that he had to be nudged awake by a teacher. There is no question, and it is undisputed that sleeping on duty creates a security risk and impairs the efficient operation of the YSC. It is policy and the Appellant admits that either one of these

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incidents, if proven as they were, would independently support his termination.

Considering the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 30th DAY OF March, 2016.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION


MICHELLE D. CRAIG, CHAIRMAN

CONCUR:


RONALD P. MCCLAIN, COMMISSIONER


CORDELIA D. TULLOUS, COMMISSIONER