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Monday, July 3, 2017

Brett J. Prendergast
4603 S. Carrollton Avenue
New Orleans, La. 70119

Re: **Joyce Atkins VS.
Facilities, Infrastructure & Communit
Docket Number: 8576**

Dear Mr. Prendergast:

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 - 7/3/2017 - 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 must conform to the deadlines established by the Commission's Rules and Article X, 12(B) of the Louisiana Constitution. Further, any 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: Ellen M. Lee
Corwin St. Raymond
Brendan M. Greene
Joyce Atkins

file

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

JOYCE ATKINS vs. DEPARTMENT OF FACILITIES, INFRASTRUCTURE, & COMMUNITY DEVELOPMENT	DOCKET No.: 8576
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I. INTRODUCTION

Appellant, Joyce Atkins, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Department of Facilities, Infrastructure, & Community Development for City of New Orleans, (hereinafter “OCD” or “Appointing Authority”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the Appointing Authority disciplined Appellant for sufficient cause. At all times relevant to the instant appeal, Appellant served as a Fiscal Manager within the Appointing Authority and had permanent status as a classified employee.

On February 7, 2017, a hearing examiner appointed by the Commission presided over an appeal hearing. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the hearing examiner’s report. Based upon our review, we render the following judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

The OCD issued Appellant a one-day suspension after substantiating an allegation that Appellant had engaged in insubordinate conduct towards a supervisor on August 31, 2016. Specifically, the OCD alleged that Appellant sent emails to her supervisor that were inappropriate and insubordinate.

B. August 31, 2016 Emails

During all times relevant to the instant appeal, Appellant served as a Fiscal Manager within the Appointing Authority. (Tr. at 10:25-2). Ms. Zivah Bauman, the Deputy Director of Transactions for the OCD, served as Appellant's direct supervisor and would occasionally assign Appellant specific tasks. *Id.* at 11:3-4. Part of Appellant's responsibilities as a Fiscal Manager was to monitor and process payments due to vendors working for the Appointing Authority. *Id.* at 11:13-23. One of those vendors working for the Appointing Authority during the 2016 calendar year was the St. Bernard Project (hereinafter "SBP").

On May 20, 2016, Appellant sent an email to Ellen Robinson and Barbara Herdon – both of whom worked in the City's Finance Department – regarding a claim by SBP that it had not received payment in the form of three checks. (App. Exh. 3). In her email, Appellant referenced each of the three checks by number and amount. One of those checks was #1721904 in the amount of \$7,671.24. *Id.* Ms. Robinson responded that SBP had received two of the checks and that the Treasury Bureau had sent SBP a letter regarding the outstanding check along with a form necessary for the reissuance of the check. *Id.*

On May 23, 2016, Appellant sent an email to Lichelle Adams and Pamela Davis – employees within the Appointing Authority – with a copy to Ms. Bauman. (App. Exh. 4).

Attached to the May 23rd email was the Treasury Bureau form required for the re-issuance of the missing check. *Id.* Appellant instructed Ms. Adams to send the form to SBP and instruct SBP to return the form to the Treasury Department. *Id.* Finally, Appellant noted that, once SBP returned the form to the Treasury Bureau, Ms. Adams did not need to “follow up.” *Id.*

On or about August 31, 2016, Ms. Bauman met with Ms. Adams regarding the reconciliation of payments made and due to SBP. *Id.* at 11:13-25. After meeting with Ms. Adams, Ms. Bauman sent an email to Ms. Adams with a copy to Appellant and Pamela Davis, Ms. Adams’s supervisor. (OCD Exh. 1). In her email, Ms. Bauman identified a payment of \$7,671.24 due to SBP that City’s Treasury Bureau is researching. *Id.* Ms. Bauman indicated that Appellant would contact Treasury to get a status update on the payment. *Id.*

At 11:24 a.m. on August 31st, Ms. Bauman sent a follow-up email to Appellant asking Appellant to “get with Treasury to find out the status of the affidavit filed for St. Bernard Project in the amount of \$7,671.24 (check #1721904).” (OCD Exh. 2). This was the same amount and check number that was the subject of Appellant’s emails in May 2016. (App. Exhs. 3, 4). Via email at 11:30 a.m., Appellant asked Ms. Bauman when the affidavit went over to the Treasury Bureau to which Ms. Bauman replied, “I don’t know” at 11:32 a.m. (OCD Exh. 2).

At 11:37 Appellant wrote back to Ms. Bauman and stated that she needed more information to process Ms. Bauman’s request. She then asked whether there was a “stop payment” and “who sent it to [SBP].” *Id.* To which Ms. Bauman responded, “You need to find out this information. Speak with Lichelle or Pam. If I recall correctly, you gave [Ms. Adams] the initial instructions of what to do.” *Id.*¹

¹ Ms. Bauman referred to “HOME” in her email to Appellant. Appellant confirmed that “HOME” was part of the Home Investments Partnership Program that was part of the Appointing Authority at all relevant times. (Tr. at 87:14-88:6). Appellant understood that Ms. Bauman was referring to Ms. Adams when she mentioned “HOME.” (88:7-15).

J. Atkins
No. 8576

Upon receiving Ms. Bauman's 11:43 a.m. email, Appellant wrote back to Ms. Bauman and claimed that:

Okay, then my job is done. We do not follow-up on stop payment. The form are (sic) sent to the vendor to be brought back by the vendor to Treasury. Again, what are you looking for?

Id. Ms. Bauman responded at 11:54 a.m. and wrote:

Just what I asked for you to do. Find out the status from Treasury. It's not about what you don't do, it's all about what I have asked for you to do. It's all about providing good customer service to our sub-recipients.

Id.

Ms. Bauman testified that, through her emails to Appellant, she was attempting to determine if SBP had submitted the proper paperwork in connection with the missing payment. As of 11:47, Appellant had not contacted the Treasury Bureau about the check in question. (Tr. at 18:22-19:7). However, Appellant did respond to Ms. Bauman at 11:59 a.m. Her response is reproduced below verbatim:

Zivah

It not about do what you say. I am asking What is the problem, What status are you talking about.

Id.

Eventually, Appellant was able to determine that the Treasury Bureau cancelled the original check (#1721904) and reissued another check (#1730379) in the amount of \$7,671.24. (App. Exh. 1). At 4:00 p.m. Appellant sent an email to Ms. Davis and Ms. Adams, with a copy to Ms. Bauman and Lindsay Raspinio, with information related to the reissued check and committed to contacting the Treasury Bureau to determine if SBP had cashed the new check. *Id.* The following day, September 1, 2016, Appellant emailed Ms. Adams, Ms. Davis and Ms. Bauman to confirm that SBP had cashed the reissued check and attached a copy of the cashed check. *Id.* She

also asked Ms. Adams to send a copy of the cashed check to SBP in order to prove that the payment had been processed and made. *Id.* Ms. Adams complied with Appellant's request and SBP later confirmed that it was in receipt of the payment in question. *Id.*

C. Allegation of Insubordination

Ms. Bauman believed that the emails Appellant sent to her on August 31, 2016 were inappropriate and reported them to her supervisor, Natasha Muse. (OCD Exh. 3). Ms. Muse served as the Director of Administrative Support for the Appointing Authority during the relevant period of time. (Tr. at 44:16-22). Upon reviewing the emails, Ms. Muse requested that Ms. Bauman prepare a memorandum containing a summary of the incident and a recommendation regarding discipline. Two emails struck Ms. Muse as inappropriate. The first was the one Appellant sent Ms. Bauman at 11:43 a.m. which began with Appellant's claim that "Okay, then my job is done." According to Ms. Muse, it was not for Appellant to determine when a task assigned by a supervisor was complete and to suggest otherwise was inappropriate. *Id.* at 56:4-11. Ms. Muse also viewed Appellant's 11:59 a.m. email as inappropriate and an indication that Appellant did not intend to comply with Ms. Bauman's instruction. *Id.* at 56:17-23, 57:24-58:5.

However, on cross-examination Ms. Muse acknowledged that Ms. Bauman did not produce subsequent emails that established that Appellant had in fact eventually complied with Ms. Bauman's request. *Id.* at 52:11-53:12.

Ms. Muse testified that she had addressed an earlier incident between Appellant and Ms. Bauman that involved unprofessional and disrespectful communications. *Id.* at 50:18-51:5. As a result of the earlier incident, Ms. Muse issued Appellant a document entitled "written reprimand."

(ODC Exh. 4).² In this document, Ms. Muse directed Appellant to respect the chain of command and address differences or concerns in a calm and professional manner. *Id.* Ms. Muse specifically recognized that there may be personal differences between Ms. Bauman and Appellant, but that Appellant was to conduct herself in a “professional, respectful manner.” *Id.*

Appellant claimed that she was confused about Ms. Bauman’s request because she believed that the confusion around the missing payment to SBP had been resolved in May 2016. (Tr. at 82:14-20). In order to address her confusion, she posed a series of questions to Ms. Bauman in order to focus the inquiry and clarify possible questions to the Treasury Bureau. (*See tr.* at 85:16-21). Based upon Appellant’s understanding, once SBP submitted the form required for the reissuance of the missing check, the Treasury Bureau was responsible for all subsequent steps. (Tr. 86:14-20). Therefore, Appellant sought to obtain as much information regarding the submission of the form as she could prior to contacting the Treasury Department.

Yet, on cross-examination, Appellant admitted that she understood that Ms. Bauman was attempting to determine the status of SBP’s request for the reissuance of the missing payment/check. *Id.* at 104:21-105:2. Nevertheless, Appellant claimed that she was initially concerned that Ms. Bauman’s question was related to a more recent payment and/or problem. *Id.* at 105:16-25. However, Appellant ultimately acknowledged that Ms. Bauman’s 11:24 a.m. email contained all of the information she needed to verify the payment’s status with the Treasury Bureau. *Id.* at 106:9-12.

² The Commission agrees with the hearing examiner that the document in evidence as “OCD Exhibit 4” does not conform with the procedural due process requirements established by the Commission’s Rules for discipline. There is no indication in the “reprimand” that Appellant has the right to appeal its issuance to the Commission and it does not appear to be copied to the Civil Service Department. The document is more aptly described as a written counseling session and does not constitute discipline in the context of a progressive discipline scheme.

III. LEGAL STANDARD

An appointing authority may discipline an employee with permanent status in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that an appointing authority issued discipline without sufficient cause, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, an 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 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094 (La. Ct. App. 2007)). If the Commission finds that an appointing authority has met its initial burden and had sufficient cause to issue discipline, it must then determine if that discipline “was commensurate with the infraction.” *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). Thus, the analysis has three distinct steps with the appointing authority bearing the burden of proof at each step.

IV. ANALYSIS

A. Occurrence of the Complained of Activities

The underlying issue that preceded the email confrontation between Ms. Bauman and Appellant was SBP’s attempt to reconcile its account regarding an alleged missing payment. Ms. Bauman had originally scheduled a meeting between herself, Ms. Adams and Appellant for 10:00 a.m. on August 31, 2016 to discuss the SBP payment, but abruptly canceled the meeting. *Id.* at 83:17-24. Appellant learned that Ms. Adams and Ms. Bauman subsequently met without

Appellant. *Id.* at 84:4-11. Thus the questions Appellant first posed to Ms. Bauman via email on August 31, 2016 were the product of a reasonable belief that Ms. Bauman and Ms. Adams had already discussed some of the details regarding the missing payment.

However, once Ms. Bauman made it clear to Appellant that she did not have the answers to Appellant's questions, Appellant should have proceeded to contact the Treasury Bureau as directed by Ms. Bauman. Instead, she continued to pursue her original line of questioning and included her own strong opinions as to what tasks were her responsibility and which ones were not.

The underlying request was a simple one that should have taken Appellant very little time to research. Appellant admitted that she had all of the information necessary to determine the status of the alleged missing payment and could have followed up with the Treasury Bureau. Her attempt to gather more information was an attempt to avoid wasting the Treasury Bureau's time. While admirable, this reasoning does not change the fact that Ms. Bauman had issued Appellant a straight-forward instruction to "get with Treasury" and Appellant failed to promptly comply with this instruction. Instead, Appellant sought to get in the last word and prove her point. The tone of Appellant's emails grew progressively more confrontational until the grammar, structure and content degraded into unprofessional communications. Given the earlier warning Appellant received regarding her interactions with Ms. Bauman, she should have been particularly aware of the content and tone of her emails. Appellant also likely would have benefited from a longer period of reflection prior to responding to Ms. Bauman.

Based upon the foregoing, the Commission finds that the OCD has established that Appellant engaged in the alleged misconduct.

B. Impact on OCD's Efficient Operations

Ellen Lee, Director of Housing Policy and Community Development, reviewed Appellant's emails and claimed that Appellant's actions unnecessarily complicated a straightforward request from Ms. Bauman. (Tr. 61:1-6). From Ms. Lee's perspective, Appellant's task, to "find out the status of the affidavit filed by the St. Bernard Project in the amount of \$7,671.24," was simple. (61:24-62:9). Appellant's confrontational emails impaired the OCD's ability to quickly respond to SBP's inquiry regarding the payment. However, the Commission observes that Appellant did eventually contact the appropriate individuals and determined the status of the affidavit. Thus, Appellant's actions had little practical impact on the staff's ability to respond to SBP's questions.

Another impact upon OCD's efficient operations was the disruption caused by Appellant's confrontational approach to Ms. Bauman's request. While it is appropriate for an employee to ask a supervisor clarifying questions regarding a particular task, once such an employee has all of the information necessary to complete the task, he or she should endeavor to complete the task to the best of his or her abilities. Appellant acknowledged that she had all of the information necessary to complete the task assigned by Ms. Bauman, but insisted on pursuing a line of questioning in an increasingly confrontational manner. Such conduct necessarily disrupts the efficient operations of an appointing authority.

Based upon the record before us, the undersigned Commissioners find that Appellant's misconduct had a minor impact on the efficient operations of the Appointing Authority.

C. Was the Discipline Commensurate with Appellant's Offense

The Commission must independently decide, based upon the facts presented in each appeal, whether the punishment imposed by an appointing authority was commensurate with the

offense. *Cornelius v. Dep't of Police*, 2007-1257 (La.App. 4 Cir. 3/19/08, 6), 981 So.2d 720, 724. In the matter now before the Commission, the question is whether or not a one-day suspension is “commensurate” with Appellant’s insubordinate conduct, otherwise, the discipline would be “arbitrary and capricious.” *See Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d 976, 978 (citing *Staehle v. Dept. of Police*, 98–0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

Both Ms. Lee and Ms. Muse testified that part of OCD’s basis for issuing a one-day suspension was Appellant’s failure to complete a task assigned by a supervisor. Yet, it is clear from the correspondence that followed Appellant’s 11:59 a.m. email that she did eventually determine the status of the missing SBP payment.

The remaining justification for the one-day suspension was that Appellant’s emails constituted unprofessional and disrespectful communications. The Commission has already determined that Appellant’s emails sent at 11:47 a.m. and 11:59 a.m. on August 31, 2016 were unprofessional. Furthermore, Appellant had already received a directive from Ms. Muse to communicate with Ms. Bauman in a professional and respectful manner. In her warning to Appellant, Ms. Muse went so far as to invite Appellant to reach out to her if there is an instruction or task assigned by Ms. Bauman that causes Appellant concern.

Because Appellant’s email violated Ms. Muse’s explicit directive regarding professional and respectful communications, the Commission finds that the one-day suspension was appropriate.

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby DENIES the appeal.

Judgment rendered this 3rd day of July, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

Ronald P McClain
RONALD McCLAIN, VICE-CHAIRMAN

6/26/17
DATE

Joseph S. Clark
JOSEPH S. CLARK, COMMISSIONER

6-26-17
DATE

Tania Tetlow
TANIA TETLOW, COMMISSIONER

6-28-17
DATE