



MITCHELL J. LANDRIEU  
MAYOR

# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
SUITE 900 – 1340 POYDRAS ST.  
NEW ORLEANS LA 70112  
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CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON  
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LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Tuesday, May 24, 2016

Ms. Rowena Jones  
1010 Common, Suite 1400A  
New Orleans, LA 70112

Re: **Joan V. Davis VS.**  
**Department of Public Works**  
**Docket Number: 8134**

Dear Ms. Jones:

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 - 5/24/2016 - 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: Mark D. Jernigan, P.E.  
Elizabeth S. Robins  
Jim Mullaly  
Joan V. Davis

file



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Tuesday, May 24, 2016

Ms. Rowena Jones  
1010 Common, Suite 1400A  
New Orleans, LA 70112

Re: **Joan V. Davis VS.**  
**Department of Public Works**  
**Docket Number: 8122**

Dear Ms. Jones:

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 - 5/24/2016 - 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.

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A handwritten signature in blue ink that reads "Doddie K. Smith".

Doddie K. Smith  
Chief, Management Services Division

cc: Mark D. Jernigan, P.E.  
Elizabeth S. Robins  
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Joan V. Davis

file

**JOAN DAVIS**

**CIVIL SERVICE COMMISSION**

**VERSUS**

**CITY OF NEW ORLEANS**

**DEPARTMENT OF PUBLIC WORKS**

**DOCKET NO. 8122 c/w 8134**

The Appellant was a Senior Parking Control Officer for the Department of Public Works. This is the consolidated appeal of an emergency suspension and termination. The Appellant was terminated by letter dated February 19, 2013. As set forth in the disciplinary letter, the Appointing Authority charged that the Appellant violated Departmental policy relative to insubordination and injuring a public record when, on January 11, 2013, the Appellant left roll call and began citing a City vehicle assigned to her Supervisor for parking in a passenger zone. The Appointing Authority avers that the citation was falsely issued as no violation occurred or could have been observed by the Appellant. The Appellant was then approached by her supervisor, who asked the Appellant to print the citation. The Appellant refused to provide the ticket to any Supervisor.

The Appellant contends that she was terminated because of discrimination based upon her medical condition.

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 over the course of three days on October 2, 2014, February 26, 2015, and March 5, 2015. 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 and evidence was as follows:

Ms. Sherida Emory testified that on January 11, 2013, she was a Parking Supervisor I.

She is familiar with the January 11, 2013 incident at issue in this appeal.

Ms. Emory explained that roll call began on that day at 9:05 a.m. for the 9:00-5:00 shift. She explained the procedure that Parking Control Officers (PCOs) went through before leaving roll call. PCOs were required to log into their handheld device, sign on to it and printout a summary report to make sure that all of the tickets have downloaded from the previous night. When they do that summary report, it should read that the device has zero reports on it. If it doesn't, then the PCO logs back out and gives it back to the supervisor to download it again. The summary report is given to the supervisor, the PCO's supervisor or the supervisor that was conducting roll call.

Ms. Emory reviewed DPW Exhibit 1, which is the Appellant's summary report from the morning of January 11, 2013. It shows that the Appellant submitted her summary report prior to leaving roll call at 9:27 a.m.

Ms. Emory explained the procedure for issuing a citation for parking in a passenger zone. Foremost, Ms. Emory explained that the PCO has no control over entering the time that the citation was issued; rather, the computer enters that information. The PCO enters the vehicle information and the precise violation, such as "passenger zone." The device then keeps the time. The PCO then re-enters the information and the device lets the PCO know whether the time has run out; if, as in this case, the ten minutes has expired, the PCO issues the citation.

Ms. Emory testified that on January 11, 2013, at approximately 9:30 a.m. she was working on the 8<sup>th</sup> Floor of 1340 Poydras when she was asked by fellow supervisors to print out the citations that Ms. Davis had written that morning and, specifically, to determine if anything had been "timed" as explained above. Ms. Emory testified that the Appellant had in fact not "timed" anything.

Ms. Emory testified that the citation that the Appellant processed for Mr. Connor's City vehicle was not properly issued because it wasn't timed properly; first, because the vehicle was not in violation of the ten-minute zone in which Mr. Connor had parked, and second because if it was timed properly then the time of the initial observation would have been automatically stamped on the citation, which it was not.

In sum, Ms. Emory testified that the Appellant did not observe a violation of the ten-minute zone for Mr. Connor's City vehicle.

Ms. Emory testified that a Department of Public Works employee who is cited for a violation involving a City vehicle is responsible for payment of the citation.

Mr. Bridgewater was a Supervisor in the Parking Division of the Appointing Authority on January 11, 2013 at approximately 9:30 a.m. when Mr. Connor asked that he approach the Appellant and instruct her to print the citation for Mr. Connor's City vehicle. Mr. Bridgewater testified that he complied with Mr. Connor's instruction and asked the Appellant to print her citations. She refused. Mr. Bridgewater related that the Appellant "balled up" the citation that she had issued to Mr. Connor's City vehicle.

The Appellant admitted that on January 11, 2013, Mr. Bridgewater was her direct supervisor. The Appellant also admitted that, in order to cite Mr. Connor for a violation of parking in a passenger zone, she would have had to have observed Mr. Connor's vehicle in the passenger zone for ten minutes. The Appellant acknowledged that the citation she issued shows that it was issued at 9:33 a.m. and, thus, she would have had to observe Mr. Connor's vehicle no later than 9:23 a.m. However, according to the Appellant's own summary report, she was still in the roll call room on the 8<sup>th</sup> Floor of 1340 Poydras at 9:27 a.m. when she turned in her summary report prior to going to her beat. The Appellant offered no credible explanation as to

how it was that the citation she issued to Mr. Connor could have been properly issued in light of these facts. The Appellant also admits that she did not provide the citation to her supervisors as directed. The Commission makes the reasonable inference that the Appellant refused to provide the citation she issued related to Mr. Connor's vehicle because it would have established that the citation issued improperly.

Ms. Brandi Rome was called by the Appellant. She too described the process for citing a violation for parking in a passenger zone. She reaffirmed that the process requires that a Parking Control Officer first make an observation of the vehicle. The Officer then saves that information into the handheld device. Then, the Officer returns after ten minutes to determine whether the vehicle is in violation. If it is, the Officer calls up that license plate and the previously saved information in order to issue the citation. Ms. Rome confirmed that a Parking Control Officer is not permitted to cite a vehicle immediately upon first observing it in a passenger zone.

Referring to DPW Number 2, the Appellant's summary report, Ms. Rome confirmed that the Appellant submitted her summary report and exited roll call at 9:27 a.m. and that the citation for Mr. Connor's City vehicle was issued at 9:33 a.m. Ms. Rome agreed that if the citation was properly issued at 9:33 a.m., the Appellant would have to had to have observed the violation no later than 9:23 a.m.

Mr. Connor wrote in the January 11, 2013, Emergency Suspension letter to Ms. Davis that he knew he was not in violation of the ten-minute passenger zone because he had not been there for ten minutes.

Ms. Zepporah Edmonds was the Parking Administrator for the Appointing Authority. She was so employed at all relevant times. In this capacity, she supervised all personnel

assigned to the Parking Division.

Ms. Edmonds testified that the Appellant was a Senior Parking Control Officer in 2013. She also testified that the Appellant had been a supervisor prior to that but that her supervisory responsibilities were revoked; although the Appellant was able to maintain her supervisor pay.

Ms. Edmonds testified that Departmental rules, regulations, code of conduct and training require that employees follow the lawful orders of their supervisors and treat each other and the public with courtesy and respect. An employee is also prohibited from falsifying any public record. These rules provide for a disciplinary action to be taken against an employee that violates the rules.

Ms. Edmonds testified that as a result of her review, and because it appeared that the Appellant had violated Departmental policies and procedures and rules by failing to follow a directive of a superior officer and injuring a public record, the Appellant was sent home for the day, placed on emergency suspension and subsequently terminated. She further testified that the fact that the insubordinate behavior was observable to the public while the Appellant and her Supervisor were in uniform made it particularly egregious.

#### **LEGAL PRECEPTS**

Civil Service employees who have reached permanent status cannot be terminated without a lawful cause. *Barquet v. Department of Welfare*, 620 So. 2d 501, 504 (La. App. 4 Cir. 1993); Louisiana Constitution Article X, Sec. 8. The burden on appeal, as to the factual basis for the disciplinary action is on the appointing authority. *Walters v. Department of Police of New Orleans*, 454 So. 2d 106 (La. 1984).

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. *Id.* 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.*

All employees have a right not to be subject to discipline based on discrimination. *Goins v. Department of Police*, 570 So.2d 93, 94 (La. App. 4 Cir. 1990). Under Rule II, Section 4.5 of the Civil Service Rules the Appellant has the right to appeal a disciplinary action that she believes was discriminatory. Under Rule II, Sec. 4.8 of the Civil Service Rules, the Appellant has the burden of proof to establish that the Appointing Authority terminated her employment because of discrimination. If the Appellant can establish a prima facie case, the Appointing Authority is required to rebut the Appellant's prima facie case, and provide a non-discriminatory justification for the adverse employment action.

### ANALYSIS

The Appointing Authority proved that the Appellant was disciplined for cause. The evidence, including the Appellant's own admissions, showed that the Appellant exited roll call and began issuing a citation to Mr. Connor's City vehicle without first observing and properly timing a violation and where no violation had actually occurred. The citation, therefore, was manufactured and demonstrably false. Further, it is undisputed that the Appellant failed to



provide the citation to her supervisors despite their repeated demands.

The Appellant did not provide evidence sufficient to meet the burden of proving that the Appointing Authority's decision to terminate her employment was motivated by discrimination. The Appellant's complaints are, at best, subjective and speculative. Ultimately, there is insufficient evidence to establish a prima facie case of discrimination. Furthermore, even had the Appellant made a prima facie showing of discrimination, the Appointing Authority proved that the Appellant was disciplined for cause, which cause was not discriminatory.<sup>1</sup>

Therefore, after considering all of the evidence, the Appellant's appeal is DISMISSED.  
RENDERED AT NEW ORLEANS, LOUISIANA THIS 23<sup>rd</sup> DAY of May,  
2016.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

  
TANIA TETLOW, COMMISSIONER

CONCUR:

  
RONALD P. McCLAIN, VICE-CHAIRMAN

  
JOSEPH S. CLARK, COMMISSIONER

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<sup>1</sup> The Appointing Authority asserted procedural objections vis-à-vis whether the Appellant properly asserted a claim of discrimination. The parties briefed the issue. We do not decide this procedural issue here because, as discussed above, the Appellant failed to make any showing of discrimination on the merits and the Appointing Authority otherwise established by a preponderance of the evidence that the Appellant was disciplined for a legitimate, non-discriminatory, business-related reason.