



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
SUITE 900 – 1340 POYDRAS ST.
NEW ORLEANS LA 70112
(504) 658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON
CLIFTON J. MOORE, JR. VICE-
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LATOYA CANTRELL
MAYOR

Thursday, July 2, 2020

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Ms. Zuri McCormick

Re: **Zuri McCormick VS.
New Orleans Public Library
Docket Number: 8821**

Dear Ms. McCormick:

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 - 7/2/2020 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, 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, Sec.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: Gabriel Morley
Michael J. Laughlin
Jay Ginsberg
file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

ZURI McCORMICK,
Appellant,

vs.

DOCKET No. 8821

NEW ORLEANS PUBLIC LIBRARY,
Appointing Authority

I. INTRODUCTION

Appellant, Zuri McCormick (hereinafter “Appellant”), brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission's Rule II, §4.1 and asks the Commission to find that the New Orleans Public Library (hereinafter “Appointing Authority”) did not have sufficient cause to discipline her. At all times relevant to the instant appeal, Appellant served as a Library Associate for the Appointing Authority and had permanent status as a classified employee.

A Hearing Examiner, appointed by the Commission, presided over a hearing during which both Parties had an opportunity to call witnesses and present evidence. The Hearing Examiner prepared a report and recommendation based upon the testimony and evidence in the record. 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 GRANT the appeal and render the following judgment.

II. PRELIMINARY LEGAL ISSUES

Whether the Written Warning Received by Appellant is an Appealable Disciplinary Action?

On August 1, 2018, the Appointing Authority gave the Appellant a written warning authored by her immediate supervisor, Branch Manager Mary Ablar. The written warning stated that:

On July 31, 2018, I was contacted by Sandra Davis, Assistant Secretary for Dr. King Charter School. She told me that Dr. Hicks, CEO of Dr. King Charter School, had been told that Zuri McCormick had pulled up a recent article about an ethics investigation involving Dr. Hicks from The Lens to show to a parent while working at the MLK Library circulation desk.

(Exhibit HE-1). In the section of the letter titled Expected Improvements, Ms. Ablar warned the Appellant that:

Any additional violations of the employee conduct expectations outlined on pages 15-17 of the Staff Handbook (see attached) will be cause for immediate further disciplinary action.

(Exhibit HE-1).

Ms. Ablar testified that she did not have the authority to take disciplinary action against her subordinate and that she authored the written warning as non-disciplinary counseling. (Tr. at 5, 10-11). She also stated that the written warning is not part of the Appellant's personnel file and that only the Appointing Authority can take disciplinary action against an employee. (Tr. at 6, 11) The Appointing Authority was not consulted. (Tr. at 9, 15).

However, regardless whether the document is part of the Appellant's personnel file or not, it remains part of the Appellant's disciplinary record, as evidenced by the language contained in the warning, which explicitly states that the document "will be cause for immediate future disciplinary action." (Exhibit HE-1).

The action taken against the Appellant was clearly disciplinary in nature. See *Burkart v New Orleans Police Department*, 811 So.2d 42 (La. App., 2002). The Appointing Authority's argument that the document is not part of the Appellant's personnel file ignores the essential question, which is whether the Appointing Authority can use the document for purposes of future disciplinary action. The disciplinary letter is evidence that it can.

For the above-stated reasons, the Commission finds that the written warning was an appealable disciplinary action.

III. ALLEGED MISCONDUCT

The Notification of Written Warning reflects that Ms. Ablar acted based upon a complaint that she received from the Dr. King Charter School secretary. (Exhibit HE-1). An unidentified person allegedly told Dr. Hicks that he or she observed the Appellant provide another unidentified person with an article about an ethics investigation involving Dr. Hicks. (Tr. at 8). Ms. Ablar testified that she asked the Appellant about the incident and the Appellant admitted assisting the library patron with the article described by Dr. Hicks. (Tr. at 8). Although somewhat cautious when questioned, Ms. Ablar seemed to believe that the Appellant did not deny pulling up the article without the library patron requesting it. (Tr. at 13, 16). It should be noted that the warning does not accuse the Appellant of offering the article without the patron requesting it, but merely assisting the patron by providing the article. (Exhibit HE-1). Ms. Ablar stated that if the patron requested the article, it would be the Appellant's responsibility to assist the patron with his or her request. (Tr. at 20).

The Appellant testified the patron requested the article, and she told the patron how to research the matter using a computer google search. (Tr. at 36-37). The Appellant was able to find the article for the patron and give her access. (Tr. at 37).

The Appellant also confirmed that she discussed the incident with Ms. Ablar. According to the Appellant's testimony found on page 40 of the transcript:

I said they asked for it, and I was told that it would be best practice if we do not involve ourselves with anything concerning Dr. Hicks or the school as it relates to any news articles on them. And I told her that I will - I said okay, I understand. I will not let their names cross my mouth again.

IV. 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.

V. ANALYSIS

The Appointing Authority has failed to establish by a preponderance of evidence that it

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disciplined the Appellant for cause. No reliable evidence was presented that supports the claim that the Appellant volunteered the article regarding Ms. Hicks without any specific request from the patron. In fact, the written warning does not accuse the Appellant of volunteering information that was not first requested. It merely states that the Appellant provided an article to a patron. Ms. Ablar relied upon an unverified complaint regarding alleged activities that she could not confirm. Finally, the Appellant's testimony that she did not volunteer the information nor give her supervisor the impression that she had volunteered the information is more credible than her supervisor who seemed uncertain of her own testimony.

VI. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby GRANTS the appeal. The Appointing Authority is ordered to remove the Notification of Written Warning from the Appellant's personnel file and all other records maintained by the New Orleans Public Library.

Judgment rendered this 2nd day of July, 2020.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER:

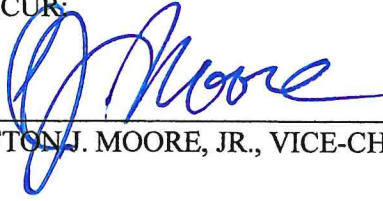


MARK SURPRENANT, COMMISSIONER

6/30/2020
DATE

Z. McCormick
8821

CONCUR:



CLIFTON J. MOORE, JR., VICE-CHAIRPERSON

6/2/2020
DATE



JOHN H. KORN, COMMISSIONER

6/2/2020
DATE