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CITY CIVIL SERVICE COMMISSION

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LISA M. HUDSON
DIRECTOR OF PERSONNEL

Friday, September 21, 2012

Ms. Rosanna Burks

Re: **Rosanna Burks VS.**
Department of Property Management
Docket Number: 7948

Dear Ms. Burks:

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 - 9/21/2012 - filed in the Office of the Civil Service Commission in Room 7W03, City Hall, 1300 Perdido Street, 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 cursive script, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: George Patterson
Victor Papai
Jay Ginsberg
file

ROSANNA BURKS

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF PROPERTY
MANAGEMENT

NO. 7984

The Department of Property Management ("Appointing Authority") employs Rosanna Burks ("Appellant") as a Senior Support Specialist with permanent status. The Appointing Authority suspended the Appellant by letter dated December 5, 2011 for one day plus three hours, following a determination that she was insubordinate on December 1, 2011 towards George Patterson, the Director of the Department of Property Management.

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 March 8, 2012. 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.

Mr. Patterson testified that he suspended the Appellant after she failed to follow his directive to complete necessary paperwork for the collection of revenues owed to the City of New Orleans (hereinafter referred to as "warrants"). He testified that he confronted the Appellant in the Department's real estate office to find out when she intended to complete the warrants. He testified that the Appellant was argumentative and placed conditions on completing her job assignment. Specifically, Mr. Patterson testified that she told him that he needed to first "check or handle Deline Williams". Mr. Williams is assigned to the Department's Fiscal Office and the Appellant has to interact

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with Mr. Williams to process the warrants. After the Appellant gave him the same response to his directive a second time, he sent her home for the remaining three hours of the day and suspended her for one additional day.

The Appellant confirmed that her primary responsibility is the collection and processing of payments received by the Real Estate Office. She testified that she was preparing the warrants as requested by Mr. Patterson when he confronted her. She stated that Mr. Patterson was upset and she was taken off guard by his forceful manner when speaking to her. She insisted that it was not her intent to behave in an insubordinate or disrespectful fashion and that she was just seeking clarification. She stated that she was trying to tell Mr. Patterson that Deline Williams told her that the Chief Administrative Officer wanted the warrants immediately while Mr. Patterson gave her to the end of the day. While she was trying to ask her question, Mr. Patterson became angry and sent her home.

LEGAL PRECEPTS

An employer cannot discipline an employee who has gained permanent status in the classified city civil service except for cause expressed in writing. LSA 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, based on 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.*

CONCLUSIONS

The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for cause. Mr. Patterson perceived the Appellant's response as uncooperative and insubordinate. He is the Appointing Authority and responsible for the department. The Appellant, knowing that her boss was already upset, should have taken

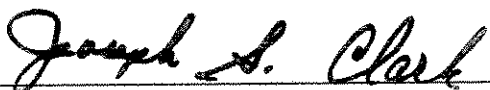
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his directive without comment and completed the task.

Accordingly, the Appointing Authority has met its burden of proof and the appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 21st DAY OF
SEPTEMBER, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION

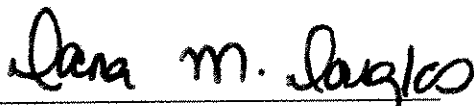


JOSEPH S. CLARK, COMMISSIONER

CONCUR:



AMY L. GLOVINSKY, COMMISSIONER



DANA M. DOUGLAS, VICE-CHAIRMAN