



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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CLIFTON J. MOORE, VICE-CHAIRPERSON
JOHN KORN
MARK SURPRENANT
RUTH WHITE DAVIS

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Tuesday, March 23, 2021

Mr. Keith Parker

Re: **Keith Parker VS.
Department of Sanitation
Docket Number: 8864**

Dear Mr. Parker:

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 - 3/23/2021 - 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 "Stacie Joseph".

Stacie Joseph
Management Services Division

cc: Matt Torri
Renee E. Goudeau
Alexandra Mora
file

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

KEITH PARKER,
Appellant,

vs.

DOCKET No.: 8864

DEPARTMENT OF SANITATION,
Appointing Authority.

I. INTRODUCTION

Appellant, Keith Parker, (hereinafter “Appellant”) brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission's Rule II, §4.1, asking the Commission to find that the Department of Sanitation (hereinafter “Appointing Authority”) did not have sufficient cause to discipline him. At all times relevant to the instant appeal, Appellant served as an Environmental Enforcement Assistant and had permanent status as a classified employee.

By letter dated November 5, 2018, the Appointing Authority notified the Appellant of its decision to suspend the Appellant for three days and six hours for insubordinate behavior and the use of profanities during and immediately following a meeting that occurred on November 1, 2018. (H.E. Exh. 1).

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 DENY the appeal

and render the following judgment.

II. FACTUAL BACKGROUND

Matthew Torri, the Deputy Director of Sanitation and the Appellant's immediate supervisor, testified that the Appellant reported an hour late for work on November 1, 2018, and that he had a recurring attendance problem. Mr. Torri and Cynthia Sylvain-Lear, the Director of Sanitation, asked the Appellant to join them in Ms. Sylvain-Lear's office to explain why he was late for work that day, and informed him of their concern about what they deemed a recurring problem. (Tr. at 11 – 12).

Mr. Torri stated that the Appellant responded to their questions in an agitated and defensive manner. Because the meeting was proving unproductive, they ended the meeting to let things settle down. However, as the Appellant was exiting the office, they overheard the Appellant mutter, "this is bullshit." In response, they called the Appellant back into the office to inform him that he was suspended for the remaining six hours of the day for insubordination and use of profanity. (Tr. at 13 – 15).

The Appellant returned to his desk, which is located in an open area in close proximity to other employees. Mr. Torri stated that he observed the Appellant venting his anger by throwing his keys on his desk and uttering, "stupid motherfuckers." Mr. Torri observed other employees within hearing distance, including Jolene Gettridge. Mr. Torri testified that he reacted to the Appellant's behavior by saying, "thanks Keith," who replied, "thanks asshole." (Tr. at 16 – 17). He testified that he and Ms. Sylvain-Lear determined that an additional three-day suspension was justified for the Appellant's continuing acts of insubordination and use of profanities to express his anger. (Tr. at 17).

Jolene Gettridge is employed by the Appointing Authority as a Management Development Analyst I. Her work area is in close proximity to the Appellant's and she confirmed Mr. Torri's testimony that the Appellant used the word "motherfucker." She had no knowledge of the events that precipitated the Appellant's outbursts. (Tr. at 30 – 31).

The Appellant acknowledged that he said, "this is bullshit" as he left the meeting. He testified

that Mr. Sylvain-Lear would not listen to him and abruptly ended the meeting while he was trying to explain, which upset him, causing him to say what he said. However, he denies all other allegations. (Tr. at 36 – 37).

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

The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for cause. The Appellant expressed his anger on two separate occasions within a short time period in an insubordinate manner using profanity. Mr. Torri's version of events, which is corroborated by the testimony of Ms. Gettridge, is more credible and supports the Appointing Authority's

determination.

Further, the discipline is commensurate with the violation. In conducting its analysis, the Commission must determine if Appellant's discipline was "commensurate with the dereliction;" otherwise, the discipline would be "arbitrary and capricious." *Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d 976, 978 (citing *Staehele v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033). Although, the Appellant has no history of insubordinate conduct or the use of profanities, the Appellant's outbursts were extremely inappropriate and disrespectful.

CONCLUSION

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

This the 23 day of March, 2021.

CIVIL SERVICE COMMISSION

WRITER:

Mark C. Surprenant
Mark C. Surprenant (Mar 11, 2021 10:08 CST)

MARK SURPRENANT, COMMISSIONER

CONCUR:

CJ Moore
CJ Moore (Mar 15, 2021 13:48 CDT)

CLIFTON J. MOORE, JR., VICE-CHAIRPERSON

J. H. Korn
J. H. Korn (Mar 23, 2021 15:03 CDT)

JOHN KORN, COMMISSIONER