



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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RUTH WHITE DAVIS

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Thursday, June 17, 2021

Mr. Richard P. Bullock
619 Barracks St.
New Orleans, LA 70116

Re: **Duaine Daniels VS.
Department of Fire
Docket Number: 8786**

Dear Mr. Bullock:

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 - 6/17/2021 - 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, 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,


Doddie K. Smith
Chief, Management Services Division

cc: Roman Nelson
Daniel T. Smith
Jay Ginsberg
Duaine Daniels

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

DUAINE DANIELS
Appellant

v.

Docket No. 8786

NEW ORLEANS FIRE DEPARTMENT
Appointing Authority

DECISION

Appellant, Duaine Daniels, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his termination imposed by the New Orleans Fire Department on April 23, 2018. (See Exhibit HE-1). At the time he was terminated, Appellant was employed as a Fire Captain and had permanent status as a classified employee. A Hearing Examiner, appointed by the Commission, presided over a hearing held on November 7, 2018. At this hearing, both parties had an opportunity to call witnesses and present evidence. The Hearing Examiner provided the Commission with her advisory report dated March 5, 2019.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the November 7, 2018, hearing, all exhibits submitted at the hearing, the Hearing Examiner's March 5, 2019, report, and controlling Louisiana law. For the reasons set forth below, we DENY the appeal.

I. ANALYSIS

It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, the 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 (quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094). The Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance of evidence that it had good or lawful cause for terminating the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d 106 (La. 1984).

Rule IX, § 1.1 of the Commission's rules provides that "[w]hen an employee in the classified service is unable . . . to perform the duties of his/her position in a satisfactory manner . . . the appointing authority shall take action warranted by the circumstances to maintain the standards of effective service." The action may include demotion to a lower classification. Rule IX, § 1.1(d).

When reviewing termination decisions under Rule IX based on physical inability to return to work, the Louisiana Court of Appeal for the Fourth Circuit has held in more than one decision that the Appointing Authority failed to meet its burden of proving that an employee was permanently unable to return to work. *See, e.g., Laviolette*, 200 So. 3d at 966 ("Captain Laviolette never stated or otherwise indicated that he was unwilling to return to work . . . Most importantly, there was never any medical determination that Captain Laviolette's injuries would prevent him from returning to work in the future); *Wilson v. Dep't of Prop. Mgmt.*, 2016-1124 (La. App. 4 Cir. 5/10/17), 220 So. 3d 144, 148 ("[n]either Ms. Wilson nor her physician suggests that she is unable to return to work"). In an earlier decision concerning the termination of a police officer under Rule

IX for medical reasons, the Fourth Circuit concluded that “in the case *sub judice* the Commission heard all of the testimony, including the appellant's testimony in which he admitted that he was not able to return to his duties as a police officer.” *Muhammad v. New Orleans Police Dep't*, 2000-1034 (La. App. 4 Cir. 7/11/01), 791 So. 2d 788, 792. Likewise, a police officer's failure to provide information to the New Orleans Police Department about when he could return to work was fatal to his appeal of his Rule IX termination: “Officer Adams was told he could supplement the Rule IX hearing record with medical evidence that he could return to work in September 2009, as he claimed. He did not do so.” *Adams v. Dep't of Police*, 2012-1268 (La. App. 4 Cir. 2/20/13), 109 So. 3d 1003, 1006.

As indicated in the November 7, 2018 hearing exhibit HE-1 dated April 23, 2018, Superintendent of Fire, Timothy McConnell, terminated the Appellant effective May 5, 2018, because he was unable to perform his regular duties given his ongoing medical condition.

At the November 7, 2018 hearing, evidence was presented by both the Appellant and the Appointing Authority. Subsequent thereto, the Hearing Examiner drafted his attached advisory report dated March 5, 2019. Based upon the undersigned Commissioners' review of the entire record in this matter, it is clear that the Appointing Authority has carried its burden of proving that Appellant was terminated for cause.

More specifically, as Chief McConnell testified at the November 7, 2018 hearing, the Appellant had been unable to perform his regular duties since September 22, 2016, and would be unable for at least the next six months to return to his regular duties as indicated by the applicable medical information. See pages 26-27, 49-50, and 64-65 from the November 7, 2018 hearing transcript.

The Appellant's termination was justified based on the clear provisions of our applicable Rule IX. The Appellant's appeal is DENIED.

This the 17th day of June, 2021.

WRITER:

Mark C. Surprenant
Mark C. Surprenant (May 25, 2021 13:36 EDT)

MARK SURPRENANT, COMMISSIONER

CONCUR:

B. Richardson
Brittney Richardson (Jun 2, 2021 12:27 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON

J H Korn
J H Korn (Jun 17, 2021 09:57 CDT)

JOHN KORN, COMMISSIONER