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DIRECTOR OF PERSONNEL

Tuesday, November 22, 2016

Ms. Joan V. Davis

Re: **Joan V. Davis VS.
Department of Public Works
Docket Number: 8099**

Dear Ms. Davis:

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 - 11/22/2016 - 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 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: Mark D. Jernigan, P.E.
Elizabeth S. Robins
Jim Mullaly
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

JOAN DAVIS vs. DEPARTMENT OF PUBLIC WORKS	DOCKET NOs.: 8099
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I. INTRODUCTION

Appellant, Joan Davis, filed three appeals in response to three distinct disciplinary actions by the Appointing Authority, the Department of Public Works for the City of New Orleans (hereinafter “DPW”). The Civil Service Department assigned each of these appeals a separate case number. Civil Service case number 8099 represents Appellant’s challenge to a five-day suspension issued on or about October 31, 2012. Case numbers 8122 and 8134 are related appeals arising out of an emergency suspension and subsequent termination. On October 2, 2014, the Parties appeared before a hearing examiner appointed by the Commission. At that time, the hearing officer separated case 8099 (appeal of five-day suspension) from the other matters. Thus, the instant decision relates only to Appellant’s appeal of her five-day suspension.

The undersigned commissioners have reviewed the transcript, evidence and submissions of both parties. We have also considered the hearing examiner’s report. After taking the matter under consideration, we render the following findings of fact and judgment.

II. FACTUAL BACKGROUND

Via letter dated October 31, 2012, the DPW notified Appellant that she would be suspended for five days. The reason identified in the letter for the suspension was Appellant's alleged violation of the DPW's "Parking Division Code of Conduct." (H.E. Exh. 1). Specifically, the DPW alleged that Appellant failed to issue a parking citation to a vehicle because she had a "personal connection" with the vehicle.

The vehicle in question was a green Cadillac with the license plate TGL394. According to the DPW, the vehicle was illegally parked in a "freight zone" on August 3, 2012 at approximately 9:20 a.m. (H.E. Exh. 1; Tr. v. 2 at 13:16-14:4). When a DPW parking supervisor reported to the scene, she noted that no citation could issue to the green Cadillac because there was signage indicating a freight zone missing. (Tr. v. 2 at 20:2-10).

Then, on August 8, 2012, another DPW employee observed that the green Cadillac was still parked in the freight zone. During the course of that day, DPW employees observed the green Cadillac had left and then returned to the freight zone on LaSalle Street.

The parking supervisor recognized the vehicle as one occasionally operated by Appellant and conducted an investigation. (Tr. v. 2 at 14:15-21). This investigation resulted in the discovery that Appellant had submitted a "damage claim form" related to the above vehicle alleging that it was damaged after she had parked the vehicle in the City's auto pound parking lot. (DPW Exh. 4). Furthermore, a supervisor and then-parking administrator Zapporiah Edmonds witnessed Appellant receive a citation for parking too close to a bicycle ramp.

DPW policy prohibits employees from using their knowledge of parking ordinances and regulations to prevent or inhibit the enforcement of those ordinances and regulations. *Id.* The policy specifically notes as an example missing signage. *Id.* All parking employees receive

training regarding DPW Parking Division policies through a combination of classroom and field settings. (Tr. v. 2 at 8:25-9:10).

PCOs, like Appellant, are not permitted to park their personal vehicles on their “beat” during their shift. (Tr. v. 2 at 13:10-15). However, while parking employees noted that the car had moved, no one saw Appellant actually operate the vehicle on August 3rd. (Tr. v. 2 at 24:16-19). Appellant testified that she suffered from stage IV cancer and that, due to her illness, a family member dropped her off at work. (Tr. v. 3 at 27:4-23).

III. POSITION OF PARTIES

A. Appointing Authority

The DPW asserts that Appellant purposefully took advantage of missing signage and parked her personal vehicle in an area that was specifically reserved for freight. The DPW also alleges that Appellant parked her personal vehicle within her “beat” and operated a personal vehicle during her shift.

B. Appellant

Appellant alleges that she did not park the vehicle on her beat and insisted that a family member, who had dropped her off at work, was responsible for parking the car on both August 8th, and September 5th.

III. LEGAL STANDARD

Employees in the classified service may only be disciplined for sufficient cause. If an employee believes that his/her discipline was issued without sufficient cause, he/she may bring an appeal before this Commission. 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

A. Occurrence of the Complained of Activities

The DPW’s allegations against Appellant with respect to August 3 and 8, 2012 are circumstantial. However, circumstantial evidence may be sufficient enough to sustain discipline. While no witness personally witnessed Appellant park her car on her beat and in a freight zone, Appellant admits that the green Cadillac in question was hers and did not challenge DPW’s assertion that the car was parked on her beat. Therefore, the Commission finds that it is more likely than not that Appellant parked her car in the freight zone on August 3 and 8, 2012.

The Commission also finds that it is more likely than not that Appellant knew that her vehicle would not be ticketed or towed because there was missing signage with respect to the freight zone.

Appellant did not challenge the DPW’s assertion that Appellant’s vehicle was parked on Appellant’s beat on August 3, 8, and September 5, 2012. Nor did she contest DPW’s assertion

that employees were prohibited from parking personal vehicles on that employee's beat. The reason for such a policy is clear. DPW employees responsible for enforcing parking restrictions, ordinances, or regulations should not be in a position where they would have to determine whether or not their own conduct was in compliance with such restrictions, ordinances or regulations. And, while Appellant may have successfully challenged the issuance of the September 5, 2012, that success does not change the fact that Appellant's personal vehicle was again parked on her beat. Based upon the above analysis, the Commission finds that the DPW has met its burden in establishing that Appellant engaged in the misconduct alleged in the disciplinary letter in evidence as Hearing Examiner Exhibit 1.

B. Impairment of Efficient Operation of Appointing Authority

The DPW introduced testimony through Ms. Edmonds and Ms. Emery that Appellant's actions impaired the efficient operation of the DPW by giving citizens the impression that, while City employees are responsible for enforcing parking regulations, they are not bound by them. The Commission finds this argument persuasive. If PCOs violate the very regulations they enforce, then it compromises the ability of the Appointing Authority to effectively deliver services and it calls into question the credibility of the Parking Division.

C. Discipline Commensurate with Offense

In conducting its analysis, the Commission must determine if the Appellant's five-day suspension 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 *Staehle v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033). DPW's policy prohibiting the parking of an employee's personal vehicle within that same area that employee patrols as part of his or her enforcement duties is well-

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founded and necessary. Violations of this policy should be strongly deterred and the Commission finds that a three-day suspension is an appropriately strong deterrent.

V. CONCLUSION

Based upon the foregoing, the Commission DENIES the appeal and sustains the five-day suspension issued by the DPW to Appellant.

Judgment rendered this 15th day of November, 2016.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION



MICHELLE D. CRAIG, CHAIRPERSON

11/15/2016

DATE



RONALD P. McCLAIN, VICE-CHAIRMAN

11/15/16

DATE



TANIA TETLOW, COMMISSIONER

11/16/16

DATE