



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

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MAYOR

Tuesday, June 27, 2017

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Ms. Janeka Booker

Re: **Janeka Booker VS.  
Department of Public Works  
Docket Number: 8592**

Dear Ms. Booker:

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 - 6/27/2017 - 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  
Jay Ginsberg  
file

**CIVIL SERVICE COMMISSION**

**CITY OF NEW ORLEANS**

JANEKA BOOKER vs. DEPARTMENT OF PUBLIC WORKS	DOCKET No.: 8592
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**I. INTRODUCTION**

Appellant, Janeka Booker, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Department of Public Works for City of New Orleans, (hereinafter “DPW” or “Appointing Authority”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the DPW disciplined Appellant for sufficient cause. At all times relevant to the instant appeal, Appellant served as a Parking Control Officer and had permanent status as a classified employee.

On Thursday, February 16, 2017, a hearing examiner appointed by the Commission presided over an appeal hearing. 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 render the following judgment.

## II. FACTUAL BACKGROUND

### A. Alleged Misconduct

The DPW issued Appellant a five-day suspension after substantiating an allegation that Appellant had violated standards of conduct established by Chief Administrative Officer Policy Memorandum 83(R) and the DPW Staff Handbook. (H.E. Exh. 1). Specifically, the DPW alleged that, on October 20, 2016, Appellant engaged a co-worker in a heated and unprofessional verbal altercation. During this altercation, the DPW alleged that Appellant committed the following misconduct prohibited by the above-mentioned policy documents:

- Displayed disrespectful and/or inappropriate behavior towards a fellow employee.
- Perpetrated an intentional act of intimidation, threat of violence, or act of violence against another person while on City premises.
- Perpetrated an intentional act towards another person that caused the other person to reasonably fear of his/her safety.
- Perpetrated unwelcomed name-calling, used obscene language and engaged in other abusive behavior.

*Id.*

The disciplinary notice that purports to inform Appellant of her suspension is dated November 4, 2016. However, Appellant did not sign an acknowledgement of receipt until November 21, 2016. The effective dates of her suspension were November 6-7, 9-10 and 13, 2016.

### B. October 20, 2016

During all times relevant to the instant appeal, Appellant served as a Parking Control Officer within the DPW. (Tr. at 38:10-15). On October 20, 2016, Appellant was in New Orleans City Hall with some co-workers. As Appellant was preparing to ride an elevator down to the first floor of City Hall, she observed a co-worker, Daraneike Williams, approaching. According to Appellant, she attempted to press the “open” button on the elevator once she saw Ms. Williams.

*Id.* at 39:5-6. Ms. Williams believed that Appellant had been pressing the “close” button and once on the elevator said “I hate this childish stuff.” (DPW Exh. 1). Upon hearing Ms. Williams’s statement, Appellant became irate and asked Ms. Williams who she was addressing. (Tr. at 39:6-9). Ms. Williams stated that she was addressing Appellant. Ms. Williams’s response served to escalate the confrontation and the two women began yelling at each other.

Both Ms. Williams and Appellant continued to address each other in a loud and disruptive manner when the elevator reached the first floor of City Hall. Several City of New Orleans employees overheard the exchange and voiced a concern to supervisors within the DPW’s parking enforcement division. (DPW Exh. 2). Based upon these concerns, the DPW asked both Ms. Williams and Appellant to submit statements summarizing the incident.

Ms. Williams alleged that Appellant used threatening language and referred to her as a “hoe” and “bitch.” (DPW Exh. 1) For her part, Appellant acknowledged that the verbal altercation was loud and that it continued into the first floor lobby of City Hall. (Tr. at 39:11-18). Furthermore, Appellant admitted that she was “wrong” and that her emotions got “carried away.” (DPW Exh. 4).

Appellant’s reason for appealing the five-day suspension was the manner in which the DPW issued it. According to Appellant, she first received notice of the suspension via phone and it was not until several weeks after receiving the phone call that her supervisor presented her with written reasons for her suspension. (Tr. at 39:25-40:18).

### **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

##### A. Appellant’s Procedural Challenge

The basis of Appellant’s challenge to the five-day suspension issued by DPW is procedural rather than substantive in nature. Appellant alleged that she received notice of her suspension via phone but did not receive actual written notice until after she had served her suspension. The DPW did not dispute Appellant’s claim nor could it have given that the disciplinary notice in evidence as “Hearing Examiner Exhibit 1” established that Appellant received written notice of her suspension on November 21, 2016.

The Louisiana State Constitution provides that no classified employee shall be subject to discipline “except for cause expressed in writing.” La. Con. art. X, § 8(A). Civil Service Rule IX,

§ 1.3 governs when a classified employee must receive written notice of the reasons for a disciplinary action taken by an appointing authority:

In every case of termination, suspension, reduction in pay, letter of reprimand, or fine of any employee in the classified service or of involuntary retirement or demotion of the employee, within five (5) working days of the effective date of the action, the appointing authority shall furnish the employee and the Personnel Director a statement in writing of the reasons therefore. The notification also must advise the employee of the possible right of appeal, which must be exercised within thirty (30) calendar days of the date of the disciplinary letter.

In the matter now before the Commission, there is no question that the Appointing Authority failed to comply with Rule IX, § 1.3. Appellant's five-day suspension was effective on November 6, 2016. She did not receive written reasons for her five-day suspension until November 21, 2016, more than two weeks after the suspension began. (H.E. Exh. 1). The question now before the Commission is whether or not the Appointing Authority's violation of Rule IX constitutes a fatal procedural defect.

The Fourth Circuit has held that the notice requirement contained within Article X, § 8(A) of the Louisiana State Constitution requires that classified employees receive sufficient notice of alleged misconduct in order to prepare and present a defense regarding such allegations. *Regis v. Dep't of Police*, 2016-0821 (La.App. 4 Cir. 5/24/17, 18)(citing *Williams v. Dept. of Property Mgmt.*, 02-1407, pp. 2-3 (La.App. 4 Cir. 4/16/03), 846 So.2d 102, 104). In *Regis*, the Fourth Circuit found that the New Orleans Police Department failed to provide an officer with sufficient notice of an additional charge of misconduct. *Id.* Specifically, the Fourth Circuit found that NOPD added a charge of "untruthfulness" following a disciplinary hearing during which "untruthfulness" was not among the allegations of misconduct. As a result of this failure, the Fourth Circuit held that the officer did not have an opportunity to present an adequate defense to the additional charge of untruthfulness and vacated any discipline related to the additional charge. *Id.*

In the matter now before the Commission, the allegations of misconduct against Appellant stemmed from an interaction between Appellant and Ms. Williams on October 20, 2016. There was never any ambiguity as to the nature of the allegations against Appellant, and Appellant herself acknowledged in her statement that she “got carried away” during her interaction with Ms. Williams. (DPW Exh. 4). Therefore, the Commission finds that the delay in the Appointing Authority’s issuance of its written reasons for suspending Appellant did not deprive Appellant of an opportunity to prepare an adequate defense. In so finding the Commission cautions the Appointing Authority to faithfully adhere to the Civil Service Rules as procedural defects like the one present in this case frequently result in the reversal of discipline and back pay awards.

**B. Occurrence of the Complained of Activities**

Appellant acknowledged that she engaged in a loud, verbal altercation with Ms. Williams that continued in full view and earshot of employees and patrons of City Hall. There is no dispute that such conduct constitutes unprofessional conduct and violates the DPW’s established standards for employee behavior. Based upon the foregoing, the Commission finds that the DPW has established that Appellant engaged in the misconduct described in the disciplinary hearing notice.

**C. Impact on DPW’s Efficient Operations**

Every appointing authority has an obligation to provide employees with a safe, respectful and supportive work environment. To achieve this end, it is appropriate and often necessary for an appointing authority to adopt written behavior standards and expectations. When an employee fails to adhere to such standards and expectations, he or she disrupts the work environment.

The DPW has established clear policies that require employees to refrain from engaging in disrespectful, threatening or unprofessional behavior. (H.E. Exh. 1). Appellant admits to engaging in conduct that violated DPW’s polices. We find that Appellant’s misconduct compromised the

DPW's ability to ensure its employees had a safe and respectful work environment. This necessarily interferes with the DPW's efficient operations and delivery of service to the residence of New Orleans.

Furthermore, Appellant and Ms. Williams's verbal altercation took place in a very public setting, namely the first floor lobby of City Hall. This is a location where residents and employees frequently congregate. When two City employees engage in a heated and unprofessional argument in the presence of residents and fellow employees, it reflects poorly on DPW and upon City employees as a whole.

As a result of the above findings, the undersigned Commissioners find that the DPW has established that Appellant's misconduct had an adverse impact on the DPW's efficient operations.

#### **D. Was the Discipline Commensurate with Appellant's Offense**

In conducting its analysis, the Commission must determine if Appellant's 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).

Enrico Sterling, the Parking Administrator for the City of New Orleans testified that he recommended a five-day suspension given the severity of Appellant's misconduct and the public setting in which the misconduct occurred. (23:8-24:9). Mr. Sterling also testified that the DPW had contemplated termination for both Appellant and Ms. Williams but decided upon a five-day suspension because it was not clear who served as the primary instigator.

The Commission finds that the DPW has an interest in deterring all manner of threatening and/or unprofessional conduct in the work place. A five-day suspension serves as an appropriate



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deterrent and represents a substantial level of discipline. Given the facts before us, we find that a five-day suspension was commensurate with Appellant's misconduct.

Finally, the Commission appreciates Appellant's candor during the course of the appeal hearing, but such candor does not serve to diminish the severity of Appellant's underlying misconduct.

#### **V. CONCLUSION**

As a result of the above findings of fact and law, the Commission hereby DENIES the appeal. However, the Commission reiterates that Appellant was due the courtesy and procedural due process of a written explanation of her suspension. It is likely that the DPW could have avoided the underlying appeal had it complied with the Commission's rules.

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**SIGNATURES APPEAR ON THE FOLLOWING PAGE.**

Judgment rendered this 16<sup>th</sup> day of June, 2017.


J. Booker  
No. 8592

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION


  
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RONALD McCLAIN, VICE-CHAIRMAN

  
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MICHELLE D. CRAIG, CHAIRPERSON

  
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JOSEPH S. CLARK, COMMISSIONER

  
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