



MITCHELL J. LANDRIEU  
MAYOR

# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
SUITE 900 – 1340 POYDRAS ST.  
NEW ORLEANS LA 70112  
(504) 658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON  
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DIRECTOR OF PERSONNEL

Tuesday, April 19, 2016

Ms. Renata Lawrence

Re: **Renata Lawrence VS.  
Information Technology and Innovati  
Docket Number: 8330**

Dear Ms. Lawrence:

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 - 4/19/2016 - 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 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 that reads "Doddie K. Smith".

Doddie K. Smith  
Chief, Management Services Division

cc: Lamar Gardere  
Elizabeth S. Robins  
Victor Papai  
file

CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS

RENATA LAWRENCE

vs.

DEPT OF INFORMATION TECH.  
AND INNOVATION

DOCKET NO.: 8330

## I. INTRODUCTION

Appellant, Renata Lawrence, 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 Information Technology and Innovation for the City of New Orleans, (hereinafter the “ITI”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the Appellant was disciplined for sufficient cause.

According to a letter issued to Appellant by ITI, Appellant’s termination resulted from her “failure to improve [her performance] during the ninety (90) day review period following [her] unsatisfactory evaluation.” (H.E. Exh. 1).

## II. FACTUAL BACKGROUND

### *A. Performance Evaluation Rules*<sup>1</sup>

The Commission’s Rules govern the evaluation of employees in the City’s classified service. Rule XI *en globo*. Pursuant to Rule XI, each organizational unit – such as ITI – must

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<sup>1</sup> The Commission’s Rules with respect to performance evaluations/service ratings underwent extensive revisions in August 2014, after Appellant’s termination. All references and citations in this subsection refer to the pre-August 2014 Rules.

adhere to a uniform service rating system that provides for periodic rating of employees based on performance. Rule XI, § 1.1. The lowest rating an employee may receive on an evaluation is “Unsatisfactory.” *Id.* at § 1.4. For an employee who receives such a rating, the supervisor responsible for issuing the rating **shall** review the performance of the employee for a period of ninety days. *Id.* at § 1.7. If an employee does not improve his or her performance by the end of the ninety-day period, the Rules mandate that the appointing authority take disciplinary action against the employee pursuant to Rule IX. *Id.* at § 1.7. And, Rule IX provides for discipline up to and including termination for employees who are “unable or unwilling to perform the duties of his/her position in a satisfactory manner. Rule IX, § 1.1.

***B. Appellant’s Performance***

Appellant began working for the City in 2010 in the Office of Code Enforcement; she then worked for the department of public works and the ITI help desk. (Tr. at 72:24-73:5). In 2012, she transitioned to the 311 Call Center at the request of the Director of ITI operations. *Id.* at 73:5-17.

The instant appeal pertains to an overall evaluation issued to Appellant on February 27, 2014. ITI Exhs. 1, 2. The period of time covered by this evaluation was January 1, 2013 through December 31, 2013. ITI Exh. 2. According to the February evaluation, Appellant’s performance fell below acceptable standards and she was rated as Unsatisfactory. ITT Exh. 1. Pursuant to the Rules in effect at the time, ITI notified Appellant that she had failed to improve her performance during the course of the ninety-day review period and would be terminated as a result. ITI Exh. 3. A pre-termination meeting occurred on April 16, 2014 during which Appellant had the opportunity to present ITI with mitigating factors or to challenge the basis of ITI’s assertion that her performance did not improve. See H.E. Exh. 1. Following the meeting, Appellant received

notification that ITI had not changed its position with respect to her termination and that she would in fact be terminated due to her failure to meet performance standards. *Id.* ITI listed the following specific deficiencies as the reasons for Appellant's termination:

- [Could not] be counted on to show up to work on time in a consistent [manner].
- Oftentimes was unreliable and took excessive breaks during peak times.
- Attitude [was] often demeaning towards the department/management which [brought] down employee morale.
- Missed calls that were presented in queue which allud[ed] to not being dependable.

H.E. Ex. 1.

By way of brief background, the 311 Call Center is staffed by City employees and provides information services to the citizens of New Orleans. *Id.* at 10:9-18. If a citizen has a question about health services, records, ordinances, pest control, public utility maintenance, or any other City-related matter, he or she can call 311 and the operators will either address the issue or put the citizen in contact with the appropriate department. *Id.* at 10:9-18.

Kenneth Davis, the 311 Operations Manager at ITI who performed Appellant's evaluation, testified as part of ITI's case-in-chief. Mr. Davis testified that he directly supervised all 311 call center operators, including Appellant, at the time he evaluated Appellant's performance. Tr. at 8:12-21. ITI provided training to all 311 operators, but also conducted regular training sessions with Appellant during the course of her evaluation. *Id.* at 11:6-12:11. Although training was available to Appellant, her performance did not meet standards and Mr. Davis testified extensively as to specific aspects of Appellant's performance that were deficient. *Id.* at 15:6-17:18.

Mr. Davis issued an evaluation to Appellant during the course of a thirty minute meeting held on or about February 24, 2014. *Id.* at 25:3-24. Following the issuance of the February 24th evaluation, Mr. Davis continued to observe Appellant's performance. *Id.* at 26:23-27:20. Based upon his observations, Mr. Davis felt that Appellant's performance remained unsatisfactory in the

areas of “dependability, cooperation, and volume of work.” *Id.* at 27:17-20; *see also*, 69:5-12. As a result of his observations, Mr. Davis recommended that ITI pursue discipline against Appellant in the form of termination. Lamar Gardere, ITI’s director of operations at the time in question, agreed with Mr. Davis’s recommendation and Appellant was terminated. H.E. Exh. 1.

### **III. POSITION OF PARTIES**

#### ***A. Appointing Authority***

ITI asserts that it had sufficient cause to discipline Appellant due to her failure to meet performance expectations. During the presentation of its case, ITI presented testimony from Appellant’s supervisor and the director of operations that established that the assessment of Appellant’s performance was based upon fair and uniform measures applied to all operators at the 311 Call Center. And, although she was given an opportunity to improve her performance, Appellant failed to do so.

#### ***B. Appellant***

Appellant alleges that her performance did improve over the course of her evaluation period and during her ninety-day post-evaluation observation period. Appellant further alleges that she was not originally assigned to the 311 Call Center and may have been better suited in another position.

### **IV. STANDARD**

It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A), 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. *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 this initial burden, 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 Commission’s analysis is a three-pronged one with the appointing authority bearing the burden of proof for each prong.

## V. ANALYSIS

### A. The Complained of Activity

The complained of activity at issue in the instant appeal is Appellant’s failure to satisfactorily perform her duties as a 311 Call Center Operator. ITI presented Appellant’s evaluation as well as testimony from her direct supervisor who completed the evaluation. Appellant did not allege that the evaluation process was procedurally deficient or that Mr. Davis was somehow prejudiced against her. Additionally, the Commission notes that Appellant did not appeal the unsatisfactory performance rating when ITI issued same to Appellant in February 2014. Given the state of the record and Appellant’s failure to mount any serious challenge to ITI’s contention that she was an unsatisfactory performer, the Commission finds that ITI has met its burden in establishing Appellant failed to meet performance standards.

### B. Did Appellant’s Misconduct Impair the Efficiency of the ITI?

At the time of his testimony, Mr. Gardere was the chief information officer for the City, but in 2013, he was the director of operations for ITI. (Tr. at 54:17-55:3). As ITI’s director of operations, Mr. Gardere oversaw all of the department’s operations including the data center, help desk and 311 Call Center. *Id.* at 55:6-9. According to Mr. Gardere, Appellant’s poor performance resulted in either missed citizen calls or co-workers necessarily taking on additional tasks and

responsibilities. *Id.* at 60:17-61:6. This testimony is consistent with that provided by ITI's primary witness, Mr. Davis, who stated that Appellant's performance deficiencies had a negative impact on the 311 Call Center. *Id.* at 24:9-20. Appellant did not challenge either witness in connection with this line of testimony. Therefore, the Commission finds that ITI has met its burden in establishing that Appellant's poor performance impaired ITI's ability to provide a public service to the citizens of New Orleans.

**C. Appellant's Discipline was Commensurate with her Offense**

Since the facts presented establish that Appellant was an unsatisfactory performer and that her poor performance compromised the efficient operation of the Department, the Commission now addresses whether or not termination reflects an appropriate level of discipline for such misconduct. In conducting its analysis, the Commission must determine if the Appellant's termination 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).

As noted above, ITI satisfied the first two prongs of the three-prong test for discipline. Due to the nature of the services provided by the 311 Call Center, supervisors appropriately expect employees to use the highest degree of respect and civility when interacting with the public and with co-workers. The Commission finds that Appellant failed to meet reasonable performance expectations, even though she had ample notice of her deficiencies and plenty of time to address such deficiencies. Given the above considerations, the undersigned Commissioners hold that termination is commensurate with Appellant's failure to bring her performance to satisfactory levels.

**V. CONCLUSION**

Upon considering the testimony and evidence presented in connection with the instant appeal, the Commission finds that the Appointing Authority had sufficient cause to discipline Appellant. Therefore, the appeal is DENIED.

Judgment rendered this 18<sup>th</sup> day of April, 2016

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

Tania Tetlow  
TANIA TETLOW, COMMISSIONER

4/18/16  
DATE

CONCUR

Ronald P. McClain  
RONALD P. McCLAIN, VICE-CHAIRPERSON

4/18/16  
DATE

Joseph S. Clark  
JOSEPH S. CLARK, COMMISSIONER

April 18, 2016  
DATE