

SHAWN MADISON

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 8183

Appellant was a Police Officer II with permanent status. He was first hired by the Appointing Authority on October 14, 2001, and was promoted to his current class on November 4, 2012. The Appellant was suspended for four (4) days by letter dated August 5, 2013. As set forth in the disciplinary letter:

This investigation determined that you drove your assigned vehicle through standing water after being instructed not to drive through standing water. Additionally, an inspection of the vehicle revealed that water via the intake valves was found inside the engine causing the vehicle to be deleted from the fleet. As such, you violated Rule 4: Performance of Duty, paragraph 2: Instructions from an Authoritative Source to wit, Chapter 17.2 Departmental Property and Rule 4: Performance of Duty; paragraph 2: Instructions from an Authoritative Source to wit, Verbal Instructions.

The matter was assigned by the Civil Service Commission to a Hearing Examiner pursuant to Article X, Section 12 of the Constitution of the State of Louisiana, 1974. The hearing was held on March 31, 2015. The testimony presented at the hearing was transcribed by a court reporter. The three undersigned members of the Civil Service Commission have reviewed a copy of the transcript and all documentary evidence.

The testimony was as follows:

RICHARD CHAPMAN

Mr. Chapman is a supervisor in the City's Equipment Management Division ("EMD"). He has been with the EMD for forty-two years.

Mr. Chapman performed the inspection of the Appellant's police vehicle after it is alleged that he drove it through standing water. Mr. Chapman testified that upon opening the hood of the vehicle, the EMD staff noticed debris on top of the engine. He testified

that they inspected the air filter, and that the air filter was soaking wet. Mr. Chapman had a mechanic put a wrench on the crankshaft to turn it and the engine would not turn. Mr. Chapman testified that it was determined that the engine was locked up. Mr. Chapman also testified that they checked the oil and that the oil had water in it.

Mr. Chapman testified that the Appellant's vehicle was a total loss as a result of the damage, which damage was caused by water. He testified that if the Appellant was driving or proceeding at a speed of twenty, twenty-five miles an hour when he entered the water, it would create a wake effect pushing water through the grill into the air intake system. He testified that if the Appellant continued driving, it would push the water further into the engine and cause the catastrophic engine failure.

Mr. Chapman testified that based upon his experience, it is his opinion that the damage to the Appellant's vehicle was caused by or occurred during the tow of the vehicle to the EMD facility. He also testified that the damage was not, in his opinion, caused prior to the Appellant driving the vehicle on the evening in question.

Mr. Chapman testified that the replacement value of the vehicle was just over twenty-thousand dollars.

DEPUTY SUPERINTENDENT DARRYL ALBERT

Chief Albert testified that the Appellant acknowledged in his statement to investigators that he had received verbal instructions on the night of the incident not to drive through high water. He testified that the Appellant also acknowledged having overheard similar instructions over the radio during his tour of duty.

Regarding how Officer Madison's actions in this case of driving his police vehicle into standing waters, which rendered it a total loss required its deletion from the fleet,

impacted the efficient operation of the Department, Chief Albert testified that the Department needs equipment to be able to serve the public. It needs the equipment to be able to go on calls for service; to do the daily work of the Department. By losing equipment, Chief Albert testified that it impacts the Department's response times and ability to deploy units in certain areas. Chief Albert testified that having all available equipment at all times is paramount in performing the Department's mission.

Chief Albert testified that a four-day suspension was appropriate in this case for the violation because the members of the Department have been informed on numerous occasions, especially with the type of rain we get, that they should not drive through flooded streets unless they take precautions and execute due care when operating a vehicle. He testified that that information has been communicated over, and over, and over, and over again. Chief Albert testified that the penalty fits the violation because the Appellant did not follow the simple rule to not drive through flooded streets.

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The Appellant did not testify. However, it is uncontested that the Appellant admitted to investigators that he did drive into what he guessed was about six inches of standing water at between 10-15 miles per hour and that the vehicle stalled.

#### LEGAL PRECEPTS

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer except for cause expressed in writing. LSA Const. Art. X, sect. 8(A); Walters v. Department of Police of New Orleans, 454 So. 2d 106 (La. 1984). The employee may appeal from such a disciplinary action to the city civil service commission. The burden on appeal, as to the factual basis for the

disciplinary action is on the appointing authority. Id.; Goins v. Department of Police, 570 So 2d 93 (La. App. 4th Cir. 1990).

The civil service commission has a duty to decide independently from the facts presented whether the appointing authority has good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. Walters, v. Department of Police of New Orleans, supra. Legal cause exists whenever the employee's conduct impairs the efficiency of the public service in which the employee is engaged. Cittadino v. Department of Police, 558 So. 2d 1311 (La. App. 4th Cir. 1990). The appointing authority has the burden of proving by a preponderance of the evidence the occurrence of the complained of activity and that the conduct complained of impaired the efficiency of the public service. Id. The appointing authority must also prove the actions complained of bear a real and substantial relationship to the efficient operation of the public service. Id. While these facts must be clearly established, they need not be established beyond a reasonable doubt. Id.


#### ANALYSIS

The Appointing Authority met its burden of proof and established by a preponderance of the evidence that the Appellant was disciplined for cause. The Appellant does not dispute the material facts. He admits that he drove his police vehicle into standing water despite being instructed not to attempt to traverse flooded streets. He also admits that the vehicle stalled and needed to be towed to the EMD as a result. It is uncontested that water caused the catastrophic engine damage that resulted in the vehicle being a total loss and deleted from the fleet of vehicles at the Department's disposal.

The Appointing Authority likewise met its burden of showing that the violation in this case impaired the efficient operation of the Police Department by virtue of the Department losing an expensive piece of equipment that it needs to fulfill its mission of public service.

Considering the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 1st DAY OF December, 2015.

  
CORDELIA D. TULLOUS,  
COMMISSIONER

CONCUR:

  
TANIA TETLOW, COMMISSIONER

  
JOSEPH S. CLARK, COMMISSIONER