



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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JOHN KORN, VICE-CHAIRPERSON
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RUTH WHITE DAVIS
ANDREW MONTEVERDE

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Wednesday, February 26, 2025

Ms. Nerkeda Butler

Re: **Nerkeda Butler VS.
Sewerage & Water Board
Docket Number: 9285**

Dear Ms. Butler:

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 - 2/26/2025 - 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, 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: Ghassan Korban
Ashley Ian Smith
Imtiaz A. Siddiqui
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**NERKEDA BUTLER,
Appellant**

Docket No. 9285

v.

**SEWERAGE & WATER BOARD,
Appointing Authority**

DECISION

Appellant, Nerkeda Butler, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from the Sewerage & Water Board's termination of her employment, effective June 18, 2021. (Ex. HE-1). Ms. Butler appealed this decision on July 7, 2021, and the matter was set for hearing on August 24, 2021. At Appellant's request, with no objection from the Sewerage & Water Board, the Hearing Officer considered pre-hearing motions on August 24, 2021, and rescheduled the hearing for September 8, 2021. The hearing of this matter was delayed for a number of reasons, including Hurricane Ida, the unavailability of Sewerage & Water Board witnesses, the parties' desire to pursue settlement negotiations, Ms. Butler's medical procedures, and the withdrawal of Ms. Butler's counsel. The February 1, 2024, hearing went forward after the Hearing Officer denied a motion for a continuance from Ms. Butler. During the pendency of this appeal, Ms. Butler also had a pending workers' compensation claim against the Sewerage & Water Board.

At all relevant times, Appellant had permanent status as a Principal Office Support Specialist in the Sewerage & Water Board's Safety Department. (Ex. HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on February 1, 2024, and March 6, 2024. At this hearing, both parties had an opportunity to call witnesses and present evidence.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the hearing, all exhibits submitted at the hearing, the Hearing Examiner's report dated November 11, 2024, and controlling Louisiana law.

For the reasons set forth below, Ms. Butler's appeal is GRANTED.

I. FACTUAL BACKGROUND

Ms. Butler obtained permanent status at the Sewerage & Water Board in 2002. (Tr., Vol. I, at 8). When the Sewerage & Water Board terminated her employment in 2021, she was working as a Principal Office Support Specialist, but she had 13 or 14 years of experience in the workers' compensation department. (Tr., Vol. I, at 9). Ms. Butler holds a certification as a workers' compensation professional. (Tr., Vol. I, at 10).

In 2019, Ms. Butler started a clothing business, Koutour Fashions LLC. (Tr., Vol. I, at 24). Ms. Butler testified the business began online, although "it just never really worked." (Tr., Vol. I, at 25). Ms. Butler initially intended to establish a storefront, but "that never happened as well." (Tr., Vol. I, at 25). Ms. Butler testified that her daughter and her son help operate the business. (Tr., Vol. I, at 25). Ms. Butler's daughter runs the online and social media portion, and her son performs the packaging and inventory. (Tr., Vol. I, at 26). Koutour Fashions' Facebook page is linked to Ms. Butler's daughter's Facebook account. (Tr., Vol. I, at 25-26).

On September 28, 2020, Ms. Butler fell down the stairs at the offices of the Sewerage & Water Board. (Tr., Vol. I, at 15). Ms. Butler testified that she injured "my toe, my knee, my hand - well, the whole right side to be exact, from my shoulder down." (Tr., Vol. I, at 15). At the hearing of this matter, the Sewerage & Water Board's worker's compensation adjuster testified that the injury suffered by Ms. Butler was not in dispute. (Tr., Vol. II, at 83). Initially, the treating physician diagnosed Ms. Butler with a sprain. (Tr., Vol. I, at 17). After reviewing the imaging, on the second

day after her injury, her physician directed her not to return to work. (Tr., Vol. I, at 19). Ms. Butler received temporary total disability indemnity benefits while she was unable to work. (Tr., Vol. I, at 19).

Ms. Butler submitted Form 1020's, as required by Louisiana workers' compensation law, disclosing that she owned Koutour Fashions but informing the Sewerage & Water Board that she was not earning any income from this business. (Tr., Vol. I, at 39; Ex. S&WB-2). Ms. Butler testified that she had ordered merchandise before September 28, 2020, but she ordered no merchandise after her injury. (Tr., Vol. I, at 25). Ms. Butler testified that she "didn't sell anything" while she was receiving workers' compensation benefits. (Tr., Vol. I, at 26).

During the period of time she was receiving temporary total disability payments, Koutour Fashions advertised on Facebook and posted photos of Ms. Butler in the clothes available for sale. (Tr., Vol. I, at 27; Ex. S&WB-1). Koutour Fashions advertised a pop-up on December 19, 2020, which Ms. Butler testified she attended. (Tr. Vol. I, at 32-33). Ms. Butler's 2020 tax return reflected \$19,125 in gross sales for Koutour Fashions and a net operating loss. (E.x S&WB-6). Ms. Butler testified that the sales reflected in the 2020 tax return occurred prior to her injury in September of 2020. (Tr., Vol. II, at 176).

Ms. Butler returned to work in March of 2021. (Tr., Vol. I, at 19).

Following the termination of her employment, Ms. Butler obtained employment as a minute clerk at Civil District Court for the Parish of Orleans. (Tr., Vol. I, at 7-8). Ms. Butler has waived any entitlement to back pay. (Tr., Vol. II, at 157).

II. ANALYSIS

A. The Sewerage & Water Board Failed to Show Cause for Termination

“Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A).” *Whitaker v. New Orleans Police Dep’t*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep’t of Police*, 2000-1682 (La. App. 4 Cir. 5/9/01)). “Legal cause exists whenever an employee’s conduct impairs the efficiency of the public service in which the employee is engaged.” *Id.* “The Appointing Authority has the burden of proving the impairment.” *Id.* (citing La. Const., art. X, § 8(A)). “The appointing authority must prove its case by a preponderance of the evidence.” *Id.* “Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the “efficient operation” of the public service.” *Id.* “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 Sewerage & Water Board has failed to show cause for the termination of Ms. Butler’s employment because the Sewerage & Water Board has not shown the occurrence of the complained-of activity. In the termination letter, the Sewerage & Water Board stated that “you likely falsified official documentation to avoid a reduction of the TTDWC benefits you were receiving, when you reported receiving no income from your self-employment with Koutour


Fashions, LLC.” (Ex. HE-1). The Sewerage & Water Board further stated that Ms. Butler violated La. R.S. 23:1221 (prohibiting employment or self-employment while receiving TTD benefits) and La. R.S. 23:1208 (concerning fraudulent statements in worker’s compensation proceedings). (Ex. HE-1). The Sewerage & Water Board has failed to show that Ms. Butler made fraudulent statements about her income in violation of La. R.S. 23:1208. *Morris v. Louisiana Mach. Co., LLC*, 12-222 (La. App. 5 Cir. 12/18/12), 106 So. 3d 1173, 1178 (holding that claimant did not commit fraud when son earned income from lawn mowing business and fruit stand owned by claimant, even though checks were payable to claimant). The Sewerage & Water Board has also failed to show that Ms. Butler engaged in employment or self-employment as proscribed by La. R.S. 23:1221. Ms. Butler explained that her daughter posted the advertisements on social media, and although she attended the pop-up on December 19, 2020, she performed no actual work.


Ms. Butler’s appeal is GRANTED. Ms. Butler is reinstated to the position of Principal Office Support Specialist, effective the date the Department of Civil Service issues this decision under Civil Service Rule II, § 4.18. The Commission awards no back pay or emoluments of employment, as Ms. Butler has waived this relief.

WRITER:


Andrew Monteverde (Feb 20, 2025 17:02 CST)
ANDREW MONTEVERDE, COMMISSIONER

CONCUR:


Brittney Richardson (Feb 25, 2025 22:44 CST)
BRITTNEY RICHARDSON, CHAIRPERSON


Ruth Davis (Feb 25, 2025 15:43 CST)
RUTH DAVIS, COMMISSIONER