



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
RONALD P. McCLAIN, VICE-
CHAIRPERSON
JOSEPH S. CLARK
TANIA TETLOW
CORDELIA D. TULLOUS

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Tuesday, May 24, 2016

Mr. Joshua West

Re: **Joshua West VS.
Department of Parks & Parkways
Docket Number: 8285**

Dear Mr. West:

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 - 5/24/2016 - 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 blue ink that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Ann McDonald
Elizabeth S. Robins
Victor Papai
file

JOSHUA WEST

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF PARKS AND PARKWAYS

NO. 8285

The Department of Parks and Parkways (“Appointing Authority”) employed Joshua West (“Appellant”) as a lead laborer with permanent status. The Appointing Authority terminated the Appellant for being in possession of a firearm on City property which he used to threaten and intimidate a coworker.

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 August 13, 2014. 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.

FACTS

On March 17, 2014, at the end of the duty day, the Appellant was in his private vehicle in the city parking lot when a coworker came up to his own vehicle parked next to Appellant. Words were exchanged between the employees, and the Appellant brandished a revolver at his side intimidating the coworker. Each employee then left the lot and the Appellant followed the coworker for several miles. The coworker informed his supervisor of the incident the following morning. The matter was investigated, and statements were taken. Several days later a gun pouch was observed in the Appellant’s vehicle. When called to his vehicle regarding the pouch, the Appellant was asked for a description of his gun. That description matched the description of the weapon used to

J. West
#8285

intimidate given by the coworker. The Appellant was subsequently terminated for threats against the coworker.

DISCUSSION

The Appointing Authority had a policy prohibiting the possession of weapons of any kind on the job. If a person was found with a gun or harmful object they could be dismissed immediately. The rule did not apply to weapons stored in a vehicle on the city lot. Although no firearm was ever found in the Appellant's vehicle or on his person, there was sufficient testimony and evidence to show that the Appellant had had a gun and used it to intimidate his coworker. There were no witnesses, besides the coworker and the Appellant to the incident, but the matching description of the firearm, along with the firearm pouch, are sufficient factual elements to conclude that the Appellant did in fact have the weapon on the day in question. The Commission also makes the reasonable factual finding that the Appellant used the firearm in the threatening manner described by Appellant's co-worker.

An employer must provide a safe working place for his employees and members of the public. Any allegation regarding a weapon being used at the workplace to threaten another coworker must be taken seriously by the employer. We find that the coworker was indeed threatened by the Appellant, and that there was little or no basis for a fabrication by the coworker regarding the incident. The Appellant's explanation for what occurred was not logical, and thus the Commission affords little weight to Appellant's version of the events.

LEGAL PRECEPTS

An employer cannot discipline an employee who has gained permanent status in the classified city civil service 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.*; see also *Goins v. Department of Police*, 570 So. 2d 93 (La. App. 4th Cir. 1990).

The Civil Service Commission has a duty to decide independently, based on 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.*

J. West
#8285

CONCLUSION

The Appointing Authority established by a preponderance of evidence that it disciplined the Appellant for cause. The efficiency of the service is promoted by having a safe place to work. The Appellant's action impaired that efficiency when he threatened his coworker with a firearm on City-owned property.

Based upon the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 24th DAY OF

May, 2016.


RONALD P. Mc CLAIN, VICE-CHAIRMAN

CONCUR:


MICHELLE D. CRAIG, CHAIRMAN


JOSEPH S. CLARK, COMMISSIONER