



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

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MAYOR

Tuesday, May 19, 2015

Christina Carroll
2540 Severn Ave. Suite 400
Metairie, LA 70002

Re: **Larry Chan VS.**
Department of Safety & Permits
Docket Number: 8293

Dear Ms. Carroll:

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 - 5/19/2015 - 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: Jared Munster
Elizabeth S. Robins
Victor Papai
Larry Chan

file

LARRY CHAN

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF SAFETY AND PERMITS NO. 8293

The Department of Safety and Permits (“Appointing Authority”) employed Larry Chan (“Appellant”) as a building official with permanent status. The Appointing Authority suspended the Appellant for five days, for violating the departmental employee Code of Conduct related to conduct with other employees. Specifically, making discriminatory and inappropriate remarks to a female co-worker.

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 October 7, 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.

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 of proof 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, 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.*

CONCLUSION

The Appointing Authority failed to establish by a preponderance of evidence that it disciplined the Appellant for cause. The alleged aggrieved employee denied any inappropriate action by the Appellant. Independent witnesses did not corroborate any

L. Chan
#8293

inappropriate action taken or stated by the Appellant.

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

RENDERED AT NEW ORLEANS, LOUISIANA THIS 18th DAY OF
May, 2015.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



TANIA TETLOW, COMMISSIONER

CONCUR:



JOSEPH S. CLARK, COMMISSIONER



RONALD P. MCCLAIN, COMMISSIONER