



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

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Friday, September 07, 2012

Mr. C. Theodore Alpaugh, III
639 Loyola Avenue, Suite 2500
New Orleans, LA 70113

Re: **Irma Regis VS.
Department of Police
Docket Number: 7727**

Dear Mr. Alpaugh:

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 - 9/7/2012 - filed in the Office of the Civil Service Commission in Room 7W03, City Hall, 1300 Perdido Street, 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, appearing to read "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Ronal Serpas
Victor Papai
Jay Ginsberg

IRMA REGIS

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7727

The Appellant is a Police Sergeant with permanent status. The Appellant received a letter of reprimand based upon the Appointing Authority's determination that the Appellant violated internal rules regarding Adherence to Law. The facts upon which the Appointing Authority based its determination are found in the second paragraph of the February 25, 2010 disciplinary letter which provides as follows:

This investigation determined that on Sunday, May 24, 2009, at approximately 9:30 p.m., you were stopped for a traffic violation by NOPD Officers and revealed that the window tint on your personal vehicle were illegal. You did not obtain exemptions from the State of Louisiana to operate your personal vehicle with tinted material affixed to your windshield. As such you violated Rule 2: Moral Conduct, paragraph 1 – Adherence to Law to wit: Revised Statute 32:361.1(B) View outward or inward through windshield or windows; obscuring prohibited.

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 September 30, 2010. 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 Appellant acknowledged that the window tint was in violation of the statute, and that she did not receive an exemption sticker from the Louisiana State Police. In her defense, the Appellant explained that she made an application for an exemption, and assumed the State Police granted it. She stated that she was unaware that she was required to wait for confirmation and the receipt of an exemption sticker for her vehicle prior to tinting her windows.

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 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 that the complained of activity occurred 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.

The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for cause. The Appellant violated state statute by tinting her windows as dark as she did. The Appellant's assumption that her application was

I. Regis
#7727

received by the State Police and an exemption granted was not reasonable. She should have taken steps to confirm that an exemption was granted prior to tinting her windows. Accordingly, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 7TH DAY OF SEPTEMBER, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



DEBRA S. NEVEU, COMMISSIONER

CONCUR:



JOSEPH S. CLARK, COMMISSIONER



DANA M. DOUGLAS, VICE-CHAIRMAN