



CITY OF NEW ORLEANS

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CITY CIVIL SERVICE COMMISSION

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MAYOR

Wednesday, February 28, 2018

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Mr. Eric Hessler
PANO 2802 Tulane Avenue #101
New Orleans, LA 70119

Re: **Peggy Poche VS.
Office of Police Secondary Employ
Docket Number: 8596**

Dear Mr. Hessler:

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 - 2/28/2018 - 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, 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: John L. Salomone, Jr
Elizabeth S. Robins
Brendan M. Greene
Peggy Poche

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

PEGGY POCHE vs. OFFICE OF POLICE SECONDARY EMPLOYMENT	 DOCKET No.: 8596
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I. INTRODUCTION

Appellant, Peggy Poche, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Office of Police Secondary Employment for City of New Orleans, (hereinafter “OPSE” or “Appointing Authority”) terminated Appellant for violating a City of New Orleans ordinance mandating that City employees maintain a residence in Orleans Parish. The Commission’s analysis will address whether or not OPSE had sufficient cause to terminate Appellant’s employment. At all times relevant to the instant appeal, Appellant served as an Analyst for OPSE and had permanent status as a classified employee.

On August 15, 2017, a referee appointed by the Commission presided over hearing during which both Parties had an opportunity to call witnesses and introduce evidence. The referee prepared a report regarding factual findings and recommended a final disposition. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the hearing examiner’s report. Based upon our review, we render the following judgment.

II. FACTUAL BACKGROUND

OPSE is an entity within the City of New Orleans responsible for coordinating and tracking when and where New Orleans Police Officers work “paid details.” (Tr. at 60:8-12). Companies, private individuals, schools and a variety of other entities contact OPSE in order to secure the presence of an off-duty Police Officer at a specific location and time. OPSE was created through the Federal Consent Decree between the City of New Orleans and the U.S. Department of Justice.

A. Applicable City Ordinance

OPSE terminated Ms. Poche’s employment in connection with an allegation that she had willfully violated the City’s Residency Ordinance (hereinafter the “Ordinance”). (H.E. Exh. 1).

The applicable portion of the ordinance reads as follows:

Except as otherwise provided in this article, it shall be the policy of the city to provide employment, promotions, reemployment or reinstatement, and retention of employment opportunities with the city to persons who do or will have an actual domicile in Orleans Parish within 180 days of their employment commencing and who thereafter maintain their actual domicile in Orleans Parish.

City of New Orleans Code of Ordinances, Art. X, § 2-973.

In adopting this Ordinance, the New Orleans City Council deemed that any willful violation of the Ordinance would serve as sufficient cause for “termination or other disciplinary action.” *Id.* at at § 2-977.

To establish a domicile in Orleans Parish, an employee’s Orleans Parish residence must meet the following criteria:

- He or she usually sleeps there;
- He or she keeps most clothing, toiletries, household appliances, and similar personal property of daily utility there;
- He or she is registered to vote there;¹

¹ For the purposes of the Ordinance, voters registered in another parish or county are presumed not to have their actual domicile in Orleans Parish.

- He or she or a spouse with whom he or she lives has a telephone there in his or her name which is not usually on call forward to another residence;
- He or she directly receives and opens most non-city mail addressed to him or her there;
- He or she is free to enter the premises without notice to or permission from others.

Id. at § 2-972.

B. OPSE's Investigation

This case began with a returned letter. In late-September 2016, OPSE sent a letter to Appellant notifying her of a five-day suspension issued in connection with unrelated allegations of misconduct. (H.E. Exh. 1). The address on the letter was ***** Burgundy Street, New Orleans, Louisiana 70116. The U.S. Postal Service returned the letter to OPSE as undeliverable with a note “no one by that name at this address.” *Id.* Upon receiving the returned disciplinary notice, Appellant’s supervisor, Eric Duchesneau, reviewed Appellant’s personnel file to verify her address.

Within Appellant’s personnel file was an acknowledgment that Appellant was aware of the Ordinance requiring that she maintain an Orleans Parish residence within 180 days of her hire date. *Id.* At the time she was hired in October 2013, Appellant did not reside in Orleans Parish but at *****, Drive, Metairie, LA 70005. On or about April 2014, Appellant entered into a lease for the Burgundy Street address. The lease expired on its own terms on April 30, 2016. *Id.*

Concerned about the expired lease, Mr. Duchesneau notified Appellant that the Postal Service was unable to deliver the disciplinary notice and asked that Appellant provide him with updated documentation that established her residence in Orleans Parish. *Id.* Appellant failed to provide Mr. Duchesneau with any documents or other information that showed that she resided within Orleans Parish and Mr. Duchesneau referred the matter to his supervisor, John Salomone, Director of OPSE.

When Mr. Duchesneau approached him with a concern that Appellant no longer resided at the address listed in her residency document, Mr. Salomone initiated his own investigation. Soon thereafter, Mr. Salomone discovered that Appellant had submitted a hardship waiver request with the City's Chief Administrator's Office ("CAO") in an attempt to secure an exemption from the Ordinance. (Tr. at 65:3-15; OPSE Exh. 6). Appellant had not approached Mr. Salomone or anyone else at OPSE prior to submitting the request. (Tr. at 65:24-66:7). Based upon the evidence before him, Mr. Salomone believed that Appellant was in violation of the Ordinance and scheduled a pre-termination hearing.

At the pre-termination hearing, Appellant did not produce any evidence that she resided in Orleans Parish. During the instant appeal hearing, however, Appellant elaborated on her living situation.

According to Appellant, she had complied with the Ordinance and moved to the Burgundy Street address within 180 days of her hire. When the Burgundy Street lease expired in April 2016 Appellant continued to lease the property for \$500.00 per month. *Id.* at 119:14-16. Appellant testified that she always paid her rent in cash, but would also frequently provide the landlord with "in kind" services related to various housekeeping and public relations matters. *Id.* at 119:17-24. Right around the time OPSE began investigating her residency, Appellant claimed that she made the decision to move out of the Burgundy Street location. Her decision was allegedly prompted by her son's health conditions and vague concerns regarding her landlord and a kitchen fire. *Id.* at 125:7-12.

In her waiver request, Appellant acknowledged that she had violated the Ordinance on prior occasions. (OPSE Exh. 1). During her testimony Appellant elaborated that she had stayed at her Metairie property in the past in order to be closer to her ailing father and son. *Id.* at 125:12-13.

Appellant acknowledged that she never sold her Metairie property and allowed her adult sons to reside there during the period of time in question. She also admitted to applying for and receiving a homestead exemption from the Jefferson Parish Assessor's Office for the Metairie property. *Id.* at 140:8-14. In her hardship waiver application, Appellant cited her son's chronic medical conditions as justification for her waiver. (H.E. Exh. 1).

III. LEGAL STANDARD

An appointing authority may discipline an employee with permanent status in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that an appointing authority issued discipline without sufficient cause, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, an 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 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094 (La. Ct. App. 2007)). If the Commission finds that an appointing authority has met its initial burden and had sufficient cause to issue discipline, it must then determine if that discipline "was commensurate with the infraction." *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). Thus, the analysis has three distinct steps with the appointing authority bearing the burden of proof at each step.

IV. ANALYSIS

A. Occurrence of the Complained of Activities

Appellant acknowledged that she violated the Ordinance on occasion, but attempted to claim that such violations were sporadic and related to the care of ailing family members. OPSE alleges that Appellant knowingly violated the Ordinance sometime after her lease for the Burgundy Street property expired in April 2016. Given Appellant's acknowledgment of the Ordinance, Appellant's decision to reside at her Metairie property during her employment with OPSE constitutes a knowing violation of the Ordinance.

As soon as it became apparent to Appellant that the medical needs of her father and son required her to leave the Burgundy Street property, she could have and should have notified the CAO's office and OPSE and requested a waiver from the Ordinance. Instead, Appellant waited until OPSE was already investigating her violation of the Ordinance before requesting a waiver from the CAO. Another detail that casts doubt upon Appellant's claims is the manner in which she described her son's ailments. In her waiver request, Appellant described her son's medical issues as "chronic" and notes that her son has had numerous surgeries. Presumably, these serious medical complications are not new, but Appellant was only moved to request a waiver related to these issues on the very day her supervisor confronted her about the residency requirement. The timing of the waiver request does not help Appellant's case and tends to suggest that she had left the Burgundy Street address well before October 2016.

The Commission is also troubled by Appellant's homestead exemption for her Metairie property. Under Louisiana Law:

The bona fide homestead consists of a residence **occupied by the owner** and the land on which the residence is located, including any building and appurtenances located thereon, and any contiguous tracts up to a total of five acres if the residence

is within a municipality, or up to a total of two hundred acres of land if the residence is not located in a municipality.

La. Rev. Stat. Ann. § 20:1 (emphasis added).

Ms. Poche denied understanding what a homestead exemption meant during her testimony, but that does not serve her cause well. Ignorance of the law is no excuse or defense for a violation of the law. We find that Appellant either misled the Jefferson Parish Assessor's Office or is purposefully misleading the Commission.

Based upon the record before us, the undersigned Commissioners find that OPSE has established that Appellant knowingly violated the City's Residency Ordinance.

B. Impact on OPSE's Efficient Operations

OPSE is essentially a watchdog entity responsible for overseeing the paid detail work by New Orleans Police Officers. This was an area of serious concern for Department of Justice Monitors who recognized the potential for undue influence in the area of police compensation. Mr. Salomone argued Appellant's actions carried with them an element of deception that compromises the core oversight mission of OPSE.

The Commission recognizes that one of the core purposes of OPSE is to create a transparent, equitable and ethical system through which New Orleans Police Officers may work detail assignments. This is a benefit to both the Officers and the residents of New Orleans. When an OPSE employee knowingly violates a City Ordinance it undercuts the general mission of OPSE.

Presumably, the City Council did not adopt the Ordinance lightly and viewed the requirement as an important aspect of City employment. It is not for employees to determine which Ordinances they will follow and which they will disregard. OPSE was established in response to a crisis of confidence in the ability of NOPD to police itself when it came to the

assignment of details. While NOPD has come a long way since the imposition of the consent decree, it is still reasonable to hold NOPD employees and those who monitor such employees to a high standard of conduct as a model to other departments.

We find that Appellant's willful violation of the City's Residency Ordinance had an adverse impact on OPSE's operations.

C. Was the Discipline Commensurate with Appellant's Offense

In conducting its analysis, the Commission must determine if Appellant's termination was "commensurate with the dereliction;" otherwise, the discipline would be "arbitrary and capricious." *Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d 976, 978 (citing *Staeble v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

The Ordinance itself indicates that a knowing violation constitutes sufficient ground for termination; "knowing failure to comply with any provision [of the Ordinance] by officers and employees of the city shall be cause for dismissal or other disciplinary actions." While the Commission must conduct an independent review of the facts to determine the appropriate level of discipline, the legislative body of the City of New Orleans had deemed violation of the Residency Ordinance as sufficient ground for dismissal. In order to second guess such a legislative action, the Commission must find that termination is so out of touch with the offense as to offend the basic tenants of just cause.

The Ordinance itself explicitly puts an employee on notice that he or she could face serious discipline – including termination – for a knowing violation. Appellant herself acknowledges that she was "generally" aware of the residency requirements. Yet, when it became necessary for her to move back to her Metairie property, she made no apparent effort to further educate herself on a

subject that had direct bearing on her continued employment. Whether or not Appellant read through her hiring materials carefully is immaterial. The record supports OPSE's suggestion that Appellant knew or should have known that she was out of compliance with the Ordinance and only sought a waiver once she was caught.

For the above-stated reasons, we find that termination, while not OPSE's only option, was not so severe as to be arbitrary or capricious.

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby DENIES Appellant's appeal.

Judgment rendered this 28th day of February, 2018.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER



STEPHEN CAPUTO, COMMISSIONER

2-19-18

DATE

CONCUR



CLIFTON MOORE, JR., COMMISSIONER

2-19-18

DATE



MICHELLE D. CRAIG, CHAIRPERSON

2-27-2018

DATE