



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

BRITTNEY RICHARDSON,
CHAIRPERSON
CLIFTON J. MOORE, JR, VICE-
CHAIRPERSON
JOHN KORN
MARK SURPRENANT
RUTH WHITE DAVIS

Monday, September 13, 2021

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Mr. Ernest L. Jones
2317 Canal Street
New Orleans, LA 70119

Re: **Gary Hardy VS.**
Juvenile Justice Intervention Center
Docket Number: 9162

Dear Mr. Jones:

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 - 9/13/2021 - 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: Kyshun Webster
Megan A. Haynes
Jay Ginsberg
Gary Hardy
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**GARY HARDY,
Appellant**

Docket No. 9162

v.

**JUVENILE JUSTICE INTERVENTION
CENTER,
Appointing Authority**

DECISION

Appellant, Gary Hardy, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his seven-day suspension beginning April 21, 2020. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a Maintenance Engineer Second Class. (Tr. at 7; HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on August 17, 2020. 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 January 9, 2021, and controlling Louisiana law.

For the reasons set forth below, Hardy's appeal is DENIED.

I. FACTUAL BACKGROUND

At all relevant times, Gary Hardy served as a Maintenance Engineer Second Class at the Juvenile Justice Intervention Center (JJIC). (Tr. at 7). Hardy supervises two laborers and three plant attendants who are responsible for cleaning. (Tr. at 16). On March 18, 2020, Dr. Kyshun Webster, the Director of the JJIC, had a meeting about cleaning protocols implemented because of the coronavirus pandemic. (Tr. at 8). These protocols included the following: "Dining hall will be

sanitized immediately after every unit meal distribution. Before the next group of youth are allowed to enter the dining hall Maintenance will be on hand to hard surface disinfect the dining tables before meal consumption.” (Tr. at 102; Ex. JJIC-7 at 2). Mr. Hardy attended this meeting (Tr. at 8). Mr. Hardy testified that he was aware the dining hall needed to be cleaned daily, but that it was not his job to clean the dining hall. (Tr. at 11).

Karen Davis, a Senior Food Service Worker, communicated by radio to Mr. Hardy on Saturday, April 18, 2020, before 11:00 AM that the dining hall needed to be cleaned. (Tr. at 57, 68). Mr. Hardy was the only member of Maintenance present on this Saturday morning. (Tr. at 14). Mr. Hardy responded that the dining hall would be cleaned before the next meal. (Tr. at 60). Later, before noon, Ms. Davis asked Mr. Hardy again about cleaning the dining room. (Tr. at 137). Mr. Hardy told Ms. Davis that Willie Miles, Jr., a Plant Attendant Assistant, would report at noon and clean the dining hall. (Tr. at 134).

When Mr. Miles reported at noon, Mr. Hardy asked Mr. Miles to clean the dining hall. (Tr. at 126). However, Mr. Miles only had time to clean the seats and tables because the residents were reporting to the dining hall. (Tr. at 129-131). Although, according to Ms. Davis and Mr. Miles, a member of the maintenance staff usually spends 30-40 minutes cleaning the dining hall, including mopping the floor, disinfecting doorknobs and windowsill, etc., Mr. Miles was only able to spend 10-15 minutes cleaning on this occasion. (Tr. at 63, 131).

Shaun Lewis, the Superintendent of Building and Maintenance and Mr. Hardy’s supervisor, and Dichelle Williams, the Superintendent of Resident Life, testified that if an employee had been able to conduct a thorough cleaning before lunch was served on April 18, 2020, then there would have been no problem. (Tr. at 40-41, 99).

Mr. Hardy testified that he is responsible for being sure the directive to clean the dining hall after every meal is followed, but that no one ever told him he was personally responsible for the cleaning. (Tr. at 20-21).

Mr. Lewis testified that the cleaning requirements required “all hands on deck,” and that he expected everyone to participate in cleaning. (Tr. at 29). “Everyone has to chip in to do the cleaning of the building.” (Tr. at 45).

II. ANALYSIS

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 Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance of evidence that it had good or lawful cause for suspending and terminating the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d 106 (La. 1984).

The Appointing Authority has carried its burden of proving that the dining hall was not cleaned in accordance with the protocols implemented on March 18, 2020, and that Mr. Hardy was ultimately responsible for ensuring this cleaning was accomplished. The Appointing Authority has also carried its burden of showing that failure to comply with the cleaning protocols impaired the

efficient operation of the JJIC. The protocols were adopted for the safety of the residents of the JJIC, and a failure to comply with the protocols created a risk of exposure for the residents. (Tr. at 112). Because the undersigned Commissioners have found the Appointing Authority had cause for the disciplinary action, no legal basis exists to reduce the discipline: "Further, a legal basis for any change in a disciplinary action can only be that sufficient cause for the action was not shown by the appointing authority." *McGaw v. New Orleans Police Dep't*, 2020-0564 (La. App. 4 Cir. 6/9/21).

Hardy's appeal is DENIED.

This the 13th day of September, 2021

WRITER:

Ruth White Davis
Ruth Davis (Aug 9, 2021 17:35 CDT)

RUTH WHITE DAVIS, COMMISSIONER

CONCUR:

CJ Moore
CJ MOORE (Sep 13, 2021 12:26 CDT)

CLIFTON J. MOORE, JR., VICE-CHAIRPERSON

Mark C. Surprenant
Mark C. Surprenant (Aug 9, 2021 17:44 CDT)

MARK SURPRENANT, COMMISSIONER