



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

REV. KEVIN W. WILDES, S.J.,  
CHAIRMAN  
AMY L. GLOVINSKY  
JOSEPH S. CLARK  
COLEMAN D. RIDLEY, JR.

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Friday, November 01, 2013

Ms. Cleaster Baham

Re: **Cleaster Baham VS.  
Sewerage & Water Board  
Docket Number: 8138**

Dear Ms. Baham:

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 - 11/1/2013 - 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, reading "Germaine Bartholomew".

Germaine Bartholomew  
Chief, Management Services Division

cc: Marcia St. Martin  
Yolanda Grinstead  
Jay Ginsberg  
file

**CLEASTER BAHAM**

**CIVIL SERVICE COMMISSION**

**VERSUS**

**CITY OF NEW ORLEANS**

**SEWERAGE & WATER BOARD**

**DOCKET NO. 8138**

The Sewerage & Water Board ("Appointing Authority") employed Cleaster Baham ("Appellant") as an Office Assistant 4 with permanent status. The Appointing Authority terminated the Appellant by letter dated February 8, 2013, after determining she was unable or unwilling to perform the duties of the position. The termination letter reflects as follows:

You have been absent from work since July 22, 2012. You presented doctor's certificates indicating that you were able to return to work on 10/22/2012, after 12/21/2012, and on 12/28/2012. However, you failed to report to work on three separate occasions as directed by your doctor's certificates.

On January 9, 2013, a Pre-Termination hearing was held wherein you failed to attend and or call. Your failure to continually report to work due to being unable or unwilling was deemed as the reason your supervisor recommended you for termination.

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 June 6, 2013. 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.

As an Office Assistant 4, the Appellant worked for the Networks Department. Her duties were to provide clerical and administrative services as needed. The Appellant was not eligible for Family Medical Leave because she had not worked the requisite days during the twelve months prior to her absence. The Appellant was absent for legitimate medical reasons, but because of the extended period of her absence, she exhausted all of her leave and received her

last pay check in November of 2012. Consequently, the Appellant was carried leave without pay until her termination several months later.

The Appellant testified that she missed her pre-termination hearing because she never received the certified letter that the Appointing Authority attempted to deliver. She also testified that she would have been unable to attend the pre-termination hearing because of a second surgery. She also provided a doctor's note post-dating her termination releasing her to return to work in March.

#### LEGAL PRECEPTS

An employer cannot subject an employee who has gained permanent status in the classified city civil service to disciplinary action 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 make an independent judgment, 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

C. Baham  
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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 has established by a preponderance of evidence that it terminated the Appellant for just cause. The Appointing Authority has no duty to retain an employee who has exhausted all leave options and is unable to return to work. Positions cannot remain vacant indefinitely, and the Appointing Authority acted within its authority by terminating the Appellant when she was unable to return to work within a reasonable period of time. Considering the foregoing, the Appellant's appeal is DENIED.

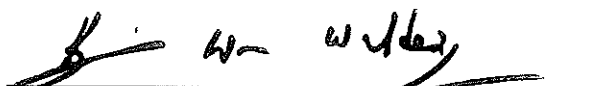
RENDERED AT NEW ORLEANS, LOUISIANA THIS 1st DAY OF NOVEMBER,  
2013.

CITY OF NEW ORLEANS  
CIVIL SERVICE COMMISSION



JOSEPH S. CLARK, COMMISSIONER

CONCUR:

  
AMY L. GLOVINSKY, COMMISSIONER  
REV. KEVIN W. WILDES, S.J., CHAIRMAN