



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J.,
CHAIRMAN
JOSEPH S. CLARK
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MITCHELL J. LANDRIEU
MAYOR

Tuesday, June 03, 2014

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Ms. Keishon Robinson

Re: **Keishon Robinson VS.
Sewerage & Water Board
Docket Number: 8103**

Dear Ms. Robinson:

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 - 6/3/2014 - 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 blue ink that reads "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Robert K. Miller
Yolanda Grinstead
Jay Ginsberg
file

KEISHON ROBINSON

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

SEWERAGE & WATER BOARD

DOCKET NO. 8103

The Sewerage & Water Board (“Appointing Authority”) employed Keishon Robinson (“Appellant”) as an Office Assistant Trainee with permanent status. The Appointing Authority terminated the Appellant by letter dated November 13, 2012, after determining she was unable or unwilling to perform the duties of the position.

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 April 4, 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 Trainee, the Appellant worked for the Equipment Maintenance Information Systems. Her duties included making sure that vendor invoices were processed and paid, along with various other clerical duties. On Monday, August 20, 2012, the Appellant left work and was absent for an extended period, exhausting her remaining sick leave. At the Appointing Authority’s direction, the Appellant applied for Family Medical Leave. However, because the Appellant had been absent for approximately five months during the prior twelve month period, she did not qualify and was carried leave without pay until her termination.

On October 22, 2012, the Appointing Authority scheduled and the Appellant attended a pre-termination hearing. According to John Wilson, Director of Support Services, the Appellant when questioned gave no indication whether she was ready to return to work or when she would be ready to return to work. He denies that he received any medical authorizations for the

K. Robinson
#8103

Appellant's return to work. Mr. Wilson testified further that if the Appellant had stated that she was able to return to work, he would not have recommended her termination. He explained that the Appellant's extended absence caused a staff shortage and that, even with other employees performing the Appellant's tasks, the department was still behind paying their vendors as a consequence of the Appellant's absence. Mr. Wilson testified that the Appellant had no accrued leave and the Appointing Authority could not continue to carry the Appellant leave without pay indefinitely.

Also present at the pre-termination hearing were Laberta Jones, Warehouse and Supplies Manager, Terrance Wills, Management Development Specialist I, and Janell Jones, Environmental Enforcement Technician I. They confirmed Mr. Wilson's testimony that the Appellant gave no indication that she was ready to return to work or when she would be able to return to work.

The Appellant testified that she informed Mr. Wilson that she was prepared to return to work during the pre-termination hearing and that she provided a doctor's release. She acknowledged that the Appointing Authority gave her the opportunity to prepare a written response to the termination recommendation. She testified that she chose not to put her position in writing because she thought that the doctor's release was sufficient.

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

K. Robinson
#8103

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 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. The Appellant's testimony that she informed Mr. Wilson during the pre-termination hearing she was prepared to return to work on October 22, 2012 is not credible. Three other attendees at the pre-termination hearing corroborated Mr. Wilson's testimony that the Appellant was not able to return to work and gave no indication as to when she would be able. Further, the Appellant was allowed the opportunity during the pre-termination hearing to

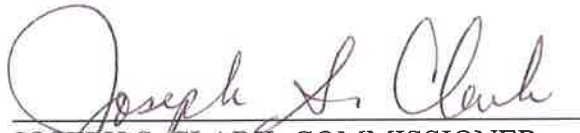
K. Robinson
#8103

prepare a written statement challenging Mr. Wilson's recommendation of termination. If the Appellant was prepared to return to work, she could have confirmed her position in writing, but she declined to do so.

Considering the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 3rd DAY OF
June, 2014.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



JOSEPH S. CLARK, COMMISSIONER

CONCUR:



REV. KEVIN W. WILDES, S.J., CHAIRMAN



MICHELLE D. CRAIG, COMMISSIONER