



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

MICHELLE D. CRAIG, CHAIRPERSON
RONALD P. MCCLAIN, VICE-
CHAIRPERSON

JOSEPH S. CLARK
TANIA TETLOW
STEPHEN CAPUTO

MITCHELL J. LANDRIEU
MAYOR

Tuesday, June 27, 2017

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Mr. Charles Thomas

Re: **Charles Thomas VS.
CAO\Equipment Maintenance Divisio
Docket Number: 8599**

Dear Mr. Thomas:

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 - 6/27/2017 - 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 must conform to the deadlines established by the Commission's Rules and Article X, Sec.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: Barry Gangolf
Matthew D. Fraser
Jay Ginsberg
file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

<p>CHARLES THOMAS</p> <p>vs.</p> <p>OFFICE OF CHIEF ADMINISTRATOR, EQUIPMENT MAINTENANCE DIVISION</p>	<p>DOCKET No.: 8599</p>
---	-------------------------

I. INTRODUCTION

Appellant, Charles Thomas, 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 the City’s Chief Administrative Officer (Equipment Maintenance Division), (hereinafter “CAO” or “Appointing Authority”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the Appointing Authority disciplined Appellant for sufficient cause. At all times relevant to the instant appeal, Appellant served as an Automotive Mechanic III within the Appointing Authority and had permanent status as a classified employee.

On April 18, 2017, a hearing examiner appointed by the Commission presided over an appeal hearing. 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

A. Alleged Misconduct

The Appointing Authority issued Appellant a six-hour suspension after substantiating an allegation that Appellant had engaged in insubordinate conduct towards a supervisor on December 19, 2016. Specifically, the Appointing Authority alleged that Appellant refused to perform a task assigned to him by a direct supervisor. (H.E. Exh. 1).

B. December 19, 2016

During all times relevant to the instant appeal, Appellant served as an Automotive Mechanic III within the CAO's Equipment Maintenance Division. (H.E. Exh. 1). Joseph Jacobs was Appellant's direct supervisor and held the title of Supervisor Mechanic. (Tr. at 8:24-9:25). At approximately 9:00 a.m. on December 19, 2016, Mr. Jacobs directed Appellant to exchange an empty butane fuel canister on a forklift with full one. *Id.* at 10:16-19. Changing a fuel canister on a forklift was part of Appellant's duties as an Automotive Mechanic. *Id.* at 12:1-3. However, Appellant objected to the tone in which Mr. Jacobs made the request and refused to change the fuel canister. *Id.* at 31:3-12. In fact, Appellant told Mr. Jacobs where the keys to the forklift were and told Mr. Jacobs to change the canister himself. *Id.* at 10:19-21.

Due to Appellant's refusal to follow direction, Mr. Jacobs contacted his own direct supervisor, Barry Gangolf. *Id.* at 13:9-18. Mr. Gangolf then directed Appellant to change the fuel canister and Appellant eventually complied. *Id.* at 24:1-11.

Christopher Melton, Fleet Manager for the CAO, became aware of the conflict between Appellant and Mr. Jacobs and conducted a brief internal investigation. As part of his investigation, he interviewed Appellant who admitted that he did not comply with Mr. Jacobs's order regarding the fuel canister. *Id.* at 23:24-24:3. Appellant also acknowledged to Mr. Melton that his conduct

inappropriate but told Mr. Melton that the manner in which Mr. Jacobs made the underlying request was disrespectful. *Id.* at 24:5-11. Mr. Melton then sent Appellant home for the remainder of the day. *Id.* at 24:11-17.

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

The material facts of this case are not in dispute. There is no question that Mr. Jacobs was Appellant’s supervisor and thus authorized to assign Appellant specific tasks. Pursuant to his

authority as Appellant's supervisor, he directed Appellant to change a fuel canister and Appellant refused. It was not until higher ranking members of the CAO's management team intervened that Appellant complied with the instruction.

During the course of the initial investigation and the appeal hearing itself, Appellant acknowledged that his conduct was inappropriate and warranted discipline. However, Appellant filed his appeal in order to formally object to the manner in which Mr. Jacobs issued his directive.

The Commission finds that, whether or not Mr. Jacobs was rude or terse in his interactions with Appellant on December 19, 2016 has no bearing on Appellant's refusal of an appropriate and lawful directive. Thus, based on the foregoing, the Commission finds that the Appointing Authority has established that Appellant engaged in the alleged misconduct.

B. Impact on the Appointing Authority's Efficient Operations

Due to Appellant's refusal to perform a straight-forward task, members of the Equipment Division's senior management team had to intervene. While Appellant eventually performed the task, the delay and interruption had already occurred. Additionally, Appellant's refusal occurred in front of other employees, which in turn had an adverse impact on the general morale within the Equipment Division.

Based upon the record before us, the undersigned Commissioners find that Appellant's misconduct had an adverse impact on the efficient operations of the Appointing Authority.

C. Was the Discipline Commensurate with Appellant's Offense

The Commission must independently decide, based upon the facts presented in each appeal, whether the punishment imposed by an appointing authority was commensurate with the offense. *Cornelius v. Dep't of Police*, 2007-1257 (La.App. 4 Cir. 3/19/08, 6), 981 So.2d 720, 724. In the matter now before the Commission, the question is whether or not a "six-hour" suspension

C. Thomas
No. 8599

is “commensurate” with Appellant’s insubordinate conduct, otherwise, the discipline would be “arbitrary and capricious.” See *Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d 976, 978 (citing *Staehele v. Dept. of Police*, 98–0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

A six-hour suspension represents a very minor form of discipline and Appellant himself acknowledges that it was appropriate given the circumstances. Appellant only pursued an appeal to challenge the manner in which Mr. Jacobs issued the instruction regarding the fuel canister. The Commission observes that there are more effective and efficient ways in which to pursue a grievance such as the one voiced by Appellant during the appeal hearing.

An appeal hearing before the Commission seeks to determine if an appointing authority had sufficient cause to discipline an employee. If the employee does not challenge the sufficiency of the cause nor the level of discipline, his or her appeal has no merit. Given the Commission’s rules regarding frivolous appeals, Appellant should be more thoughtful in bringing any future appeals.

V. CONCLUSION

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

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.

SIGNATURES APPEAR ON THE FOLLOWING PAGE.

C. Thomas
No. 8599

Judgment rendered this 26th day of June, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

Ronald P. McClain
RONALD McCLAIN, VICE-CHAIRMAN

6/26/17
DATE

Joseph S. Clark
JOSEPH S. CLARK, COMMISSIONER

6-26-17
DATE

Michelle D. Craig
MICHELLE D. CRAIG, CHAIRPERSON

6-26-2017
DATE