



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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DIRECTOR OF PERSONNEL

Monday, April 29, 2024

Ms. Corinne Geekie
1340 Poydras, Suite 720
New Orleans, LA 70112

Re: **Kevin Gibson VS.
Recreation Department
Docket Number: 9511**

Dear Ms. Geekie:

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 - 4/29/2024 - 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: Larry Barabino
Max V. Camp
Jay Ginsberg
Kevin Gibson

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**KEVIN GIBSON,
Appellant**

Docket No. 9511

v.

**RECREATION DEPARTMENT,
Appointing Authority**

DECISION

Appellant Kevin Gibson brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from the Recreation Department's September 1, 2023, termination of his employment. (Ex. HE-1). At all relevant times, Mr. Gibson had permanent status as a Recreation Lifeguard II at the Recreation Department. (Tr. at 20). A Hearing Examiner, appointed by the Commission, presided over a hearing on December 12, 2023. 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 March 1, 2024, and controlling Louisiana law.

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

I. FACTUAL BACKGROUND

CAO Policy Memorandum 83(R) prohibits employees from carrying firearms on City property: "An employee shall not bring or carry dangerous weapons while on duty or while on City property. Prohibited weapons include: . . . firearms . . ." (Ex. NORD-2 at 4; Ex. HE-1). Mr. Gibson admittedly possessed a firearm on City property, the Sanchez Multi-Service Center and pool, in violation of City policy, undermining the efficient operation of the Recreation Department.

(Tr. at 5). Mr. Gibson brought a firearm in the saddle bag to his scooter inside the Sanchez Multi-Service Center and pool. (Tr. at 21). Children were present at this recreational facility. (Ex. NORD-1). According to the body worn camera footage from the responding police officer, the complainant alleged Mr. Gibson was holding the firearm while it was in a bag on his body during a disagreement with her. (Ex. NORD-1). The complainant stated to the responding officer that she felt her life was in danger. (Ex. NOPD-1; Tr. at 14).

The sole issue for the Commission is whether the penalty is commensurate with the violation.

Officer Rukeene Jones testified that he responded to Sanchez Multi-Service Center and pool on the afternoon of July 29, 2023, after the police department received a call from a woman reporting someone had threatened her with a firearm. (Tr. at 8). After Officer Jones arrived at the recreational facility, he talked to the complainant and then he asked Mr. Gibson to show him the firearm in the saddle bag. (Ex. NORD-1). Mr. Gibson led Officer Jones to the break room. (Ex. NORD-1). Mr. Gibson identified his unattended saddle bag on a bench, and Officer Jones took the firearm from Mr. Gibson's saddle bag. (Ex. NORD-1). Mr. Gibson admitted the handgun belonged to him. (Tr. at 13).

Officer Jones then arrested Mr. Gibson for possessing a firearm in a firearm-free zone. (Tr. at 18). In addition to possessing the firearm on City property, Mr. Gibson also possessed the firearm within 1000 feet of a school. (Tr. at 13). Mr. Gibson was charged with simple assault. (Tr. at 50).

I. ANALYSIS

A. Legal Standard for Commission's Review of Discipline

1. The Appointing Authority must show cause for discipline

“Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A).” *Whitaker v. New Orleans Police Dep’t*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep’t of Police*, 2000-1682 (La. App. 4 Cir. 5/9/01)). “Legal cause exists whenever an employee’s conduct impairs the efficiency of the public service in which the employee is engaged.” *Id.* “The Appointing Authority has the burden of proving the impairment.” *Id.* (citing La. Const., art. X, § 8(A)). “The appointing authority must prove its case by a preponderance of the evidence.” *Id.* “Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the “efficient operation” of the public service.” *Id.* “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).

2. The Appointing Authority must show the discipline was commensurate with the infraction

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 the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Durning v. New Orleans Police Dep't*, 2019-0987 (La. App. 4 Cir. 3/25/20), 294 So. 3d 536, 538, *writ denied*, 2020-00697 (La. 9/29/20), 301 So. 3d 1195; *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 the burden of showing that the discipline was reasonable and not arbitrary or capricious. *Neely v. Dep't of Fire*, 2021-0454 (La. App. 4 Cir. 12/1/21), 332 So. 3d 194, 207 (“[NOFD] did not demonstrate . . . that termination was reasonable discipline”); *Durning*, 294 So. 3d at 540 (“the termination . . . deemed to be arbitrary and capricious”).

a. Factors considered by Commission

“In determining whether discipline is commensurate with the infraction, the Civil Service Commission considers the nature of the offense as well as the employee’s work record and previous disciplinary record.” *Matusoff v. Dep't of Fire*, 2019-0932 (La. App. 4 Cir. 5/20/20), 2020 Westlaw 2562940, *writ denied*, 2020-00955 (La. 10/20/20), 303 So. 3d 313. The Commission considers the nature of the offense, the employee’s work ethic, prior disciplinary records, job evaluations, and any grievances filed by the employee.” *Honore v. Dep't of Pub. Works*, 14-0986,

pp. 8-9 (La. App. 4 Cir. 10/29/15), 178 So. 3d 1120, 1131, *writ denied*, 2015-2161 (La. 1/25/16), 185 So. 3d 749.

B. The Recreation Department has shown cause for the termination of Mr. Gibson.

Mr. Gibson has stipulated that he brought a firearm into a City-owned building in violation of City policy. Mr. Gibson also stipulated that this conduct impaired the efficient operation of the Recreation Department. Therefore, Mr. Gibson has stipulated that the Recreation Department had cause to terminate his employment.

C. The penalty is commensurate with the violation.

The penalty of termination is commensurate with the violation because of the nature of the offense, showing a lack of concern for the safety of his co-workers and the public. Mr. Gibson, whose job duties included supervising other lifeguards, placed an unsecured handgun in an unlocked room at a recreational facility with children present. Mr. Gibson supervised six other employees, and he brought a firearm into the building during a disagreement with one of his subordinates. (Tr. at 51, 55).

The Director of the Recreation Department, Larry Barabino, testified that the presence of a firearm at a NORD facility is dangerous for the employees and the patrons, including children:

it also gives the opportunity for a bigger threat, a bigger problem to occur on a job if, by any chance, there's any tension or disagreements or anything that takes place, or if it gets into the wrong hands of a kid, a minor, or someone that's around, that can cause another issue as relates to safety or can cause bodily harm to someone at the facility.

(Tr. at 28-29). Mr. Barabino also testified that when the police officers arrived, the gun was stored in an unlocked room accessible by anyone. (Tr. at 28-29).

Mr. Gibson's appeal is DENIED.

WRITER:



J H Korn (Apr 26, 2024 21:18 CDT)

JOHN KORN, VICE-CHAIRPERSON

CONCUR:



Ruth Davis (Apr 23, 2024 12:38 CDT)

RUTH DAVIS, COMMISSIONER



Andrew Monteverde (Apr 23, 2024 11:12 CDT)

ANDREW MONTEVERDE, COMMISSIONER