



CITY OF NEW ORLEANS

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CITY CIVIL SERVICE COMMISSION
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Tuesday, May, 26, 2026

Mr. Samuel Fischman
1340 Poydras St, Ste 720
New Orleans, LA 70112

Re: **Oscar Young Jr. VS.
Sewerage & Water Board
Docket Number: 9805**

Dear Mr. Fischman:

Attached is the decision of the City Civil Service Commission in the above-referenced 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 – 5/26/2026 - 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 "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Randy Hayman
Tiffany Green
Jay Ginsberg
Oscar Young

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

OSCAR YOUNG, JR.
Appellant

Docket No. 9805

v.

SEWERAGE & WATER BOARD,
Appointing Authority

DECISION

Oscar Young, Jr. 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 termination of his employment on November 19, 2025, and the preceding emergency suspension on October 29, 2025. (Ex. HE-1). At all relevant times, Appellant had permanent status at the Sewerage & Water Board as a Meter Reader Trainee I. (Tr. at 9-10). A Hearing Examiner presided over the hearing of this matter on January 29, 2026. 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 post-hearing briefs submitted by the parties, the Hearing Examiner's report dated March 12, 2026, and controlling Louisiana law.

For the reasons set forth below, Mr. Young's appeal is GRANTED.

I. FACTUAL BACKGROUND

At the time of his termination, Mr. Young had worked for the Sewerage & Water Board for 18 months as a Meter Reader Trainee. (Tr. at 9-10). Mr. Young was required to operate a Sewerage & Water Board vehicle to read meters between two and five days per week. (Tr. at 10,

22). Mr. Young applied for the position of Networks Maintenance Tech I, and he underwent a drug test on October 10, 2025, in connection with the promotion procedure. (Tr. at 11; Ex. SWB-1). Mr. Young tested positive for a marijuana metabolite. (Tr. at 11; Ex. SWB-1). Mr. Young has a prescription for marijuana, and he renewed the prescription in October of 2025. (Tr. at 15-16; Ex. App-1). The Sewerage & Water Board has not alleged that Mr. Young was impaired at work. (Tr. at 28, 52-53).

Ms. Monique Chatters, the Utility Meter Services Manager, testified that the Sewerage & Water Board does not accept marijuana prescriptions. (Tr. at 21, 29). Sharita Curtis, the interim Human Relations Manager, testified that Sewerage & Water Board policy does not specifically address medical marijuana prescriptions. (Tr. at 37). Ms. Curtis also testified that the position of Water Meter Reader Trainee is not a safety-sensitive position. (Tr. at 44).

Mr. Young testified that he uses marijuana after 5:00 P.M., and he does not feel the effect in the morning. (Tr. at 50). He uses marijuana two or three times per week. (Tr. at 18).

Ms. Chatters testified that Mr. Young's job performance has been good. (Tr. at 27).

The Sewerage & Water Board's Substance Abuse Policy states that the presence of an illegal drug in an employee's system while working is prohibited. (Tr. at 33; Ex. SWB-4 at 5). The Sewerage & Water Board Substance Abuse Policy excepts controlled substances used under the supervision of a licensed health care professional from the definition of illegal drugs. (Ex. SWB-4) (citing 21 C.F.R. Part 1308).

Mr. Young testified that the Sewerage & Water Board never informed him that it would reject a marijuana prescription or that termination could result from using marijuana as prescribed. (Tr. at 49-50). Mr. Young testified that if he had been aware of this policy, he would have sought an alternative treatment for his conditions. (Tr. at 54-55).

II. ANALYSIS

A. Legal Standard for Commission's Review of 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).

1. 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 disciplining 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”).

B. The Sewerage & Water Board has not Carried its Burden of Showing Cause

The Sewerage & Water Board Substance Abuse Policy defines “illegal drug” as “a substance whose use or possession is controlled by federal law but that is not being used or possessed under the supervision of a licensed health care professional.” (Ex. SWB-4 at 3). The policy notes in a parenthetical that “[c]ontrolled substances are listed in Schedules I-V of 21 C.F.R. Part 1308.” (Ex. SWB-4 at 3). “Marihuana” is listed as a controlled substance in this federal regulation. 21 C.F.R. 1308.11. Mr. Young has a prescription for marijuana under La. R.S. 40:1046. Therefore, Mr. Young was using a federally controlled substance under the supervision of licensed health care professional, so his use of marijuana does not meet the definition of an illegal drug in the Sewerage & Water Board policy.

Both parties rely on La. R.S. 49:1016 in their post-hearing briefs. This statute concerns employment discrimination based on physician recommended marijuana, but this statute applies


only to a “state employer.” As the hearing examiner noted in his report, the Sewerage & Water Board is a political subdivision of the state, not a state employer.

1. In the alternative, the discipline is not commensurate with the infraction

Just as in *Matusoff v. Department of Fire*, No. 2019-0932 (La. App. 4 Cir. 5/20/20), 364 So. 3d 240, 245, which concerned the use of CBD oil by a firefighter, the marijuana Mr. Young used was “purchased legally and was not on any list of prohibited substances that [Mr. Young] was aware of.” Just as in *Matusoff*, the marijuana was “also recommended by a physician.” *Id.* Further, Mr. Young has “no record of prior disciplinary action.” *Id.* In fact, the Sewerage & Water Board administered the drug test as part of a promotion procedure. Therefore, just as in *Matusoff*, the penalty of termination is not commensurate with the off-duty use of marijuana with a current prescription.

Mr. Young’s appeal is GRANTED. The Sewerage & Water Board shall reinstate Mr. Young and reimburse him for wages and emoluments of employment from October 29, 2025, to the date of his reinstatement.

WRITER:


Brittney Richardson (May 16, 2026 16:20:17 CDT)
BRITTNEY RICHARDSON, CHAIRPERSON

CONCUR:


J h Korn (May 25, 2026 07:12:59 GMT+2)
JOHN KORN, VICE-CHAIRPERSON


Ruth Davis (May 14, 2026 15:06:51 EDT)
RUTH DAVIS, COMMISSIONER