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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

Thursday, August 22, 2013

Mr. Anthony Kirkendall

Re: **Anthony Kirkendall VS.
Sewerage & Water Board
Docket Number: 8059**

Dear Mr. Kirkendall:

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 - 8/22/2013 - 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 blue ink, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Marcia St. Martin
Yolanda Grinstead
Jay Ginsberg
file

ANTHONY KIRKENDOLL

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

SEWERAGE & WATER BOARD

DOCKET NO. 8059

Consolidated with

ELDRIDGE GARNER

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

SEWERAGE & WATER BOARD

DOCKET NO. 8062

The Sewerage & Water Board (“Appointing Authority”) employs Anthony Kirkendoll and Eldridge Garner (“Appellants”) as Public Works Maintenance Worker I’s with permanent status. The Appointing Authority suspended the Appellants for five (5) days after its investigation determined that they abandoned their jobs cutting grass on the Morrison Canal in New Orleans East.

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 November 15, 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.

Myron Ester was the Appellants’ immediate supervisor on July 12, 2012. He testified that the Appellants were part of a three man crew assigned to cut the grass along the Morrison Canal using weed whackers. According to Mr. Ester, after working for approximately ten to fifteen minutes, the Appellants stopped working and returned to the department truck. They informed him that the work was too hard. In response, Mr. Ester notified his supervisor Herman Martin. Mr. Martin instructed him to drive the Appellants to the nearest bus stop if they refused

to work. Mr. Ester did as he was instructed. Mr. Ester stated that neither of the Appellant's informed him that they were unable to work because of illness or injury. Mr. Martin confirmed the conversation that he had with Mr. Ester.

The Appellant's deny that they informed Mr. Ester that they were not going to cut the grass because it was too hard. Mr. Kirkendoll testified that he left the job because his stomach was bothering him. Mr. Garner testified that his knee caps were hurting him.

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

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 suspended the Appellants for just cause. Mr. Ester credibly testified that the Appellants stopped working and offered no justification other than the work was too hard. The Appellants' claims of simultaneous stomach and knee problems were not credible.

Considering the foregoing, the Appellants' appeals are DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 22nd DAY OF AUGUST, 2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION


AMY L. GLOVINSKY, COMMISSIONER

CONCUR:


JOSEPH S. CLARK, COMMISSIONER


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