



MITCHELL J. LANDRIEU  
MAYOR

# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON  
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JOSEPH S. CLARK  
TANIA TETLOW  
CORDELIA D. TULLOUS

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Thursday, September 01, 2016

Ms. I'sha Kelly

Re: **I'sha Kelly VS.  
Recreation Department  
Docket Number: 8325**

Dear Ms. Kelly:

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 - 9/1/2016 - 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, 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: Victor N. Richard, III  
Elizabeth S. Robins  
Jim Mullaly  
file



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**CIVIL SERVICE COMMISSION**

**CITY OF NEW ORLEANS**

I'SHA KELLY vs. DEPARTMENT OF RECREATION	DOCKET NOs.: 8325 & 8338
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**I. INTRODUCTION**

Appellant, I'sha Kelly, brings the instant appeal challenging a suspension and subsequent termination effectuated by the New Orleans Department of Recreation (hereinafter "NORDC" or "Appointing Authority"). At all times relevant to the matter now before the Commission, Appellant was a classified employee with permanent status and worked as an office assistant for the Appointing Authority.

**II. FACTUAL BACKGROUND**

***A. Appellant's Initial Service Rating***

Appellant worked within NORDC's rental department. (Tr. at 14:13-18). As part of her responsibilities, Appellant interacted with the public and facilitated the rental of one hundred and twenty-seven NORDC facilities across New Orleans. *Id.* at 19-25. Given the volume of work facing NORDC's rental department, it was important for Appellant to display excellent customer service; NORDC also relied upon Appellant to accurately and timely complete necessary paperwork regarding facility rentals. *Id.* at 14:24-15:6.

Via letter dated August 1, 2014, the Appointing Authority notified Appellant that it was placing Appellant on a twenty-day suspension. The notice also informed Appellant that a pre-

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termination hearing would occur on August 14, 2014. (H.E. Exh. 1). The reason identified for both the suspension and the pre-termination hearing was Appellant's alleged failure to improve her performance following a ninety-day review period mandated by Appellant's "Needs Improvement" evaluation rating. *Id.*

Appellant attended the August 14th pre-termination hearing to address allegations that she failed to improve her performance following a ninety-day review period. (H.E. Exh. 2). Among the areas of her performance the Appointing Authority found to be in need of improvement were: quality of work, quantity of work, cooperation, and decision making. *Id.* Unpersuaded by Appellant's presentation during the course of the pre-termination hearing, the Appointing Authority proceeded with termination.

As its first witness, NORDC called Mary Jo Webster, the Chief Operating Officer of NORDC during all relevant time periods. (Tr. at 8:12-15). Ms. Webster was responsible for overseeing the day-to-day functions of the Appointing Authority. As part of those responsibilities, Ms. Webster directly supervised Appellant for a brief period of time. *Id.* at 9:14-18. Appellant then transferred to a different facility where Mr. Shawn Wyatt became her direct supervisor. *Id.* at 12:3-5. Mr. Wyatt issued Appellant an evaluation pursuant to Civil Service Rule XI on March 24, 2014. (NORDC Exh. 2).

As a result of perceived deficiencies in Appellant's performance, Mr. Wyatt issued Appellant an overall service rating of "Needs Improvement." *Id.* Appellant did not appeal her service rating and it became final per operation of Rule XI. (Tr. at 162:9-13).<sup>1</sup> Civil Service Rules

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<sup>1</sup> The Commission takes judicial notice of the fact that  $23 \div 9 = 2.555555555$ (repeating). Appellant takes the position that her rating should have been rounded up to 2.6 and her service rating changed to "competent." There was no testimony or evidence regarding the practice of rounding in terms of service ratings. Further, Appellant did not appeal her service rating with the 2.5 score and it became final. Therefore, all testimony regarding the authenticity of Appellant Exh. 6 is irrelevant to the Commission's decision.

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required that, upon rating Appellant as “Needs Improvement,” NORDC place Appellant on a ninety-day review period.<sup>2</sup> At the end of this review period, if Appellant failed to sufficiently improve her performance, the Rules allowed the Appointing Authority to discipline Appellant.<sup>3</sup>

***B. Appellant’s Performance During 90-day Review Period***

In an effort to provide Appellant with regular feedback, Mr. Wyatt instituted weekly meetings with Appellant and reviewed rental data. (Tr. at 86:24-87:8). And, immediately following issuance of Appellant’s service rating, Mr. Wyatt sent Appellant an email on March 27, 2014 reminding Appellant that she needed to be an active participant in rental meetings and contribute to the discussion and address questions posed by other participants. (NORDC Exh. 11). Later that same day, Mr. Wyatt sent Appellant another email regarding Appellant’s failure to include the required degree of specificity in her rental reports to Recreation Center Managers. *Id.* Prior to these emails, Mr. Wyatt had repeatedly reminded Appellant what his expectations were regarding rental reports. (NORDC Exh. 6).

According to Mr. Wyatt, Appellant initially made an effort to improve her performance and address the areas of deficiency identified in her evaluation. But, after this initial burst of effort, Appellant soon reverted to her past poor work habits. (Tr. at 85:12-16). Mr. Wyatt had to

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<sup>2</sup> According to NORDC, one of the events that led to Appellant’s “Needs Improvement” rating involved the theft of approximately \$2,200 in rental revenue. This event came to the attention of NORDC on or about June 7, 2013. Given that this event contributed to Appellant’s evaluation, and Appellant did not appeal her evaluation, it has very little probative value as far as sufficient cause for the twenty-day suspension and termination now at issue.

<sup>3</sup> Even though Ms. Webster was not Appellant’s direct supervisor, she did issue feedback regarding Appellant’s performance during the review period. Specifically, Ms. Webster recounted an instance where Appellant failed to accurately maintain a Department-wide calendar that contained information regarding facility rental. Tr. at 35:14-36:3. Appellant’s earlier failures to accurately record information in NORDC’s calendar contributed to her earlier “Needs Improvement” rating and represented a failure to improve her performance. *Id.* at 36:4-8. NORDC introduced a series of emails documenting Appellant’s alleged failure to timely complete required reports pertaining to the rental of NORDC facilities. (NORDC Exh. 6). The Commission notes that every email within NORDC Exh. 6 pre-dates Appellant’s “needs improvement” service rating and cannot serve as a foundation for Appellant’s termination or suspension.

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repeatedly engage Appellant in discussions and send emails regarding her poor customer service and lack of completeness and accuracy regarding rental reports. (NORDC Exh. 11; Tr. at 94:6-95:2).

All of NORDC's witnesses testified that they received complaints from the general public regarding Appellant's unprofessional approach to customer service. The Commission notes that, with the exception of an email string regarding a request from Councilmember Cantrell's office, none of Appellant's customer service failures are from the individual making the complaint. And, even the complaints found in most of NORDC's exhibits are hearsay. Similarly, the letters of support introduced by Appellant constitute hearsay. Furthermore, the context in which the letters of support were collected is not in the record. The Commission posits that, if one were to receive a phone call from a City Employee asking for a letter of recommendation because his or her job depends on it, chances are that a citizen or local organization would prepare such a letter. Therefore, the Commission gives little weight to either the Appointing Authority's hearsay evidence regarding Appellant's rude behavior or Appellant's letters of support. However, the Commission does note that Mr. Wyatt had to repeatedly counsel Appellant on the need to promptly respond to customers and Appellant never responded to Mr. Wyatt's emails denying the claims he made within those emails.

### **III. LEGAL STANDARD**

Employees in the classified service may only be disciplined for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that his/her discipline was issued 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

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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 Appointing Authority alleged that Appellant’s performance did not adequately improve during the course of her 90-day review period. (H.E. Exh. 2). In support of this contention, the Appointing Authority introduced testimony and emails from Mr. Wyatt. Mr. Wyatt testified that he provided Appellant with regular feedback as to whether or not she was meeting the Appointing Authority’s expected level of performance. Unfortunately for Appellant, NORDC and the citizens attempting to take advantage of NORDC facilities, Appellant failed to respond to the repeated counseling she received. The instances of poor performance documented by Mr. Wyatt during the 90-day review period followed closely the pattern displayed by Appellant leading up to her “Needs Improvement” service rating. Appellant was either unwilling or unable to produce accurate, timely rental reports, did not contribute to weekly status meetings regarding NORDC rentals, and failed to implement specific performance changes mandated by Mr. Wyatt.



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Based on these facts, the undersigned Commissioners find that the Appointing Authority has satisfied its burden and has established that Appellant failed to improve her performance during the 90-day review period.

***B. Impairment of Efficient Operation of Appointing Authority***

The rental reports generated by employees within NORDC's rental office include information about the individuals renting the facility, the number of citizens authorized to be at the facility, and information regarding the facility itself. These are distributed to other City departments, including the Police Department, so that if there is an issue at an event, a host of public service entities would have essential information. (Tr. at 16:12-18; 93:22-94:1). The Commission agrees with NORDC's witnesses that the accuracy of this information is important in the event that there is an emergency at the facility. NOFD, NOPD and/or EMS need to know how many people are authorized to be in the facility to best coordinate a response and allocate sufficient resources. The Commission finds that Appellant's frequent errors in preparing reports adversely impacted both NORDC and the other Departments charged with ensuring the safety of those who rented NORDC facilities.

Additionally, the Commission accepts that Appellant's failure to improve her performance, even after regular and consistent feedback, adversely impacted the morale of fellow staff members and hampered the staff's ability to respond to the needs of the citizens.

Therefore, the Commission finds that Appellant's failure to improve her performance adversely impacted the Appointing Authority's ability to deliver services to the citizens of New Orleans.



### **C. Discipline Commensurate with Offense**

In conducting its analysis at this stage, the Commission must determine if Appellant's suspension and subsequent termination were "commensurate with the dereliction;" otherwise, the discipline would be "arbitrary and capricious." *Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d 976, 978 (citing *Staehle v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

The Civil Service Rules provide the Appointing Authority with substantial discretion in determining the appropriate response to employees who fail to improve following a 90-day review period. Based upon the Rules in effect at the relevant period of time, the Appointing Authority had to take some manner of disciplinary action. However, that discipline could have been a reprimand, demotion, or suspension. Instead, NORDC terminated Appellant's employment. NORDC's decision to terminate Appellant was based upon Mr. Wyatt and Ms. Robert's observations that Appellant was either unwilling or unable to bring her performance up to an acceptable level, and NORDC's ability to serve the public was substantially impaired by Appellant's poor performance. The Commissioners find that, while harsh, the record supports the Appointing Authority's decision and we will not disturb the termination as it is commensurate with Appellant's offense.

### **V. CONCLUSION**

Based upon the foregoing, the Commission hereby DENIES Appellant's appeal.

Judgment rendered this 19 th day of August, 2016.

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CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

  
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MICHELLE D. CRAIG, CHAIRPERSON

8/2/2016  
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DATE

  
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RONALD P. McCLAIN, VICE-CHAIRMAN

8/2/16  
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DATE

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TANIA TETLOW, COMMISSIONER

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CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

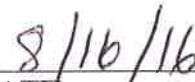
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