



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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MITCHELL J. LANDRIEU
MAYOR

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Monday, March 27, 2017

J. Courtney Wilson
1510 Veterans Memorial Blvd.
Metairie, LA 70005

Re: **Valencia Lewis VS.**
Department of Human Services
Docket Number: 8454

Dear Mr. Wilson:

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 - 3/27/2017 - 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, 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: Ava Rogers
Elizabeth S. Robins
Jim Mullaly
Valencia Lewis

file



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CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

VALENCIA LEWIS vs. DEPARTMENT OF HUMAN SERVICES	DOCKET Nos.: 8454 & 8455
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I. INTRODUCTION

Appellant, Valencia Lewis, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. At all times relevant to the instant appeal, Appellant served as an Office Assistant I for the Department of Human Services for the City of New Orleans (hereinafter “DHS” or “Appointing Authority”) and had permeant status as a classified employee. The undersigned Commissioners have reviewed the testimony and evidence from the appeal hearings held on February 11, 2016¹ and March 17, 2016. We have also taken into consideration the hearing examiner’s report. Based upon our review of these materials, we render the following judgment.

II. FACTUAL BACKGROUND

DHS placed Appellant on an emergency suspension without pay effective September 2, 2015 based upon an allegation that Appellant had expressed a desire to “physically assault another employee.” (H.E. Exh. 2). Specifically, DHS alleged that Appellant told a supervisor that she wanted to hit another employee in the face. *Id.* Such a statement, according to DHS, violated

¹ The hearing on February 11, 2016 dealt only with a Motion to Quash a Subpoena Duces Tecum filed by DHS. The hearing examiner was able to dispose of the Motion to the satisfaction of both parties.

workplace rules governing employee conduct. DHS cited the following rules in its disciplinary letter to Appellant:

- Principles of Conduct: Treat coworkers professionally and with respect.
- Employees Rules of Conduct:
 - No employee shall act or behave privately or officially in a manner that undermines the efficiency of YSC,² causes the public to lose confidence in [YSC], or brings discredit upon them or the City of New Orleans.
 - No employee shall undermine the Superintendent's or an Assistant Superintendent's ability to conduct a safe and secure facility or disrupt the general good order of [YSC] whether by verbal comments or physical acts whether on or off duty, on City property or off City property.
 - Employees shall comply with all YSC and the City of New Orleans work place rules, memorandums, and written directives or verbal directives.
 - Employees will not use threats or intimidation toward youth or any other person on YSC property or off grounds whether on or off duty.
 - Employees shall not engage in any improper actions which violate department policies and procedures or that endanger other employees.
 - Staff shall maintain a work environment that is free from discrimination and harassment.
 - Staff shall never be engaged in a violent act, fighting, horseplay, nor threaten or interfere with other employees at any time on YSC premises or at any other place while on duty. **An Employee who engage[s] in a violent act, fighting, horseplay, or threaten[s] a staff member shall be terminated.**

(H.E. Exh. 1)(emphasis in original).

Following an investigation into Appellant's alleged misconduct, DHS substantiated the allegations against Appellant and terminated her employment. (H.E. Exh. 1). Appellant timely appealed both the emergency suspension and termination. Because both the suspension and

² Youth Study Center

termination arose out of the same allegations, the Civil Service Department consolidated the appeals.

At all times relevant to the underlying appeal, Appellant served as an Office Assistant I at the New Orleans Youth Study Center. The Youth Study Center (hereinafter “YSC”) is a secure, pre-trial detention facility for youths accused of delinquent offenses in Orleans Parish.

On the morning of September 1, 2015, Appellant met with Leroy Crawford, the Assistant Superintendent of the YSC. Appellant began telling Mr. Crawford that she did not feel well and sought permission to leave work. Tr. at 9:5-7. Mr. Crawford testified that, during the course of this conversation, he asked Appellant how she was doing. In response, Appellant said “I get so upset with her. I mean I feel like I want to hit her in the face.” *Id.* at 9:8-13. Mr. Crawford understood that Appellant was referring to Stephanie Mills, another Assistant Superintendent at DHS. *Id.* at 9:14:18. On cross-examination, Mr. Crawford acknowledged that Appellant had approached him on previous occasions and expressed frustration with Ms. Mills. *Id.* at 16:16-20. These frustrations stemmed from Appellant’s belief that Ms. Mills did not provide clear guidance for certain assignments and was frequently disrespectful towards Appellant. *Id.* at 17:1-8.

After Appellant expressed a desire to strike Ms. Mills, Mr. Crawford brought her to the office of Glen Holt, Superintendent of the YSC. *Id.* at 11:3-11. Mr. Holt recalled Mr. Crawford and Appellant visiting his office on or about September 1, 2015 and confirmed that the reason for the visit was Mr. Crawford’s concern that Appellant had expressed a desire to strike a coworker in the face. *Id.* at 34:19-24. Mr. Holt stated that he confronted Appellant about the statement and told her it was unacceptable. *Id.* at 34:25-35:1. In response, Appellant stated that she was “really frustrated” and that she believed her blood pressure to be very high and needed to go home. *Id.* at

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35:3-5. She then repeated her earlier statement regarding her desire to strike Ms. Mills. *Id.* at 35:11-17, 42:11-19.

While out on emergency suspension, Appellant spoke with Mr. Holt via phone and attempted to clarify to him that she did not “want to hit Ms. Mills in the face” but rather she “felt like she needed to hit” Ms. Mills. *Id.* at 37:19-38:12. For Mr. Holt, this was not a meaningful distinction, and proceeded to schedule a pre-termination meeting in order to give Appellant an opportunity to formally respond to the allegations.

At the pre-termination meeting, Appellant talked about her on-going frustrations with Ms. Mills and reiterated that her frustrations lead to a desire to strike Ms. Mills. *Id.* at 39:6-13. When Mr. Holt stated that expressing such a desire was unacceptable, Appellant again repeated her desire to strike Ms. Mills.

On cross-examination, Mr. Holt acknowledged that he did not believe that Appellant presented an imminent threat to Ms. Mills, but was concerned that Appellant’s desires could “at some point result in an assault.” *Id.* at 47:8-20. He also denied being aware of any criticisms Appellant had levied against him or DHS. *Id.* at 47:21-48:4. He also claimed to be unaware that Appellant had requested a transfer out of DHS at the time of the pre-termination meeting. *Id.* at 48:5-12.

During her case-in-chief, Appellant testified that, when she applied to the position of Office Assistant I at the YSC, she understood it to be a standard administrative support position. *Id.* at 66:1-6. However, when she began her orientation, she received “Safety Crisis Management” training. *Id.* at 67:13-18. When she asked Mr. Holt why she needed such training as a member of the administrative staff, he replied that all staff at the YSC must receive the training. Shortly after

she began working at the YSC, Appellant had frequent contact with youths committed to the YSC and occasionally had to escort them to various locations within the YSC.

Ms. Mills served as Appellant's direct supervisor at all times relevant to the instant appeal. And, Appellant testified that there were several interactions she had with Ms. Mills during which Ms. Mills was very confrontational and demeaning. *Id.* at 74:9-75:20. One such interaction on August 17, 2015 involved Ms. Mills waving her finger in Appellant's face and criticizing Appellant's work. *Id.* at 75:15-20. Appellant testified that Ms. Mill's actions, "made me feel like I wanted to hit her because... it made me feel like I was violated." *Id.* at 75:21-25. Appellant also confirmed that she told Mr. Crawford that Ms. Mills's actions on August 17th made Appellant want to strike Ms. Mills. *Id.* at 84:9-20. Appellant strenuously denied saying that she "was going to hit Ms. Mills in the face," and insisted that she had actually said she "felt like [she] wanted to hit [Ms. Mills]." *Id.* at 90:14-23, 92:17-23.

III. LEGAL STANDARD³

An appointing authority must have sufficient cause in order discipline an employee with permanent status in the classified service. 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

³ During the course of her testimony, Appellant alleged that she had raised several concerns regarding the operation of the YSC with her supervisors. (Tr. at 94:3-25, 95:1-96:2). However, in appealing the emergency suspension and termination rendered by DHS, Appellant did not allege she was the victim of retaliation in violation of Rule II, § 10.1. Therefore, the Commission's analysis of the underlying appeal shall be limited to whether or not DHS had sufficient cause to terminate Appellant.

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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

DHS based its decision to terminate Appellant’s employment on an allegation that, on several occasions, Appellant expressed a desire to harm a fellow employee. According to DHS, Appellant’s actions violated a variety of work rules including one that prohibits employees from “undermin[ing] the Superintendent’s ... ability to conduct a safe and secure facility or disrupt[ing] the general good order of the [YSC] whether by verbal comments or physical acts....” (H.E. Exh. 1). Appellant’s defense relies almost entirely upon the distinction between the statement, “I am going to hit Ms. Mills,” and “I felt like I wanted to hit Ms. Mills.” For the undersigned Commissioners, this distinction is irrelevant as both comments constitute extremely inappropriate and unprofessional conduct.

Yet, the most disturbing aspect of this case was Appellant’s insistence on repeating her desire to strike Ms. Mills. On at least five separate occasions, Appellant said, “I felt like I wanted to hit Ms. Mills,” or words to that effect. She made these statements despite Mr. Holt and Mr. Crawford informing her that such statements were unacceptable. Appellant’s cavalier attitude

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towards her expressions of violence, rightfully contributed to DHS personnel believing that returning Appellant to work would create an unsafe environment for Ms. Mills, other staff, and the youths served by the YSC.

Based on the foregoing, the undersigned Commissioners find that the Appointing Authority has established that Appellant engaged in the alleged misconduct cited in the disciplinary letter.

B. Impact on Appointing Authorities Efficient Operations

Mr. Holt testified that:

[A]ny time any employee makes a threat of violence against another employee, it raises serious concerns regarding the general overall safety and functioning of the facility or any place of business.

(Tr. at 36:4-22). He went on to observe that neither he nor Mr. Crawford were in a position to ascertain Appellant's ability or willingness to follow through on her violent desires. *Id.* at 36:13-16. This is especially true after Appellant expressed her desire to strike Ms. Mills on several occasions. Mr. Holt also recognized the precarious legal position Appellant's comments placed DHS. He observed that, had DHS failed to take action and Appellant followed through on her desire to commit an act of violence against Ms. Mills, DHS could be exposed to liability for any injuries sustained by Ms. Mills.⁴ While this may seem like a cold calculation, it is nevertheless a prudent and necessary one to make.

Finally, the Commission views Appellant's actions in the context of the YSC, which serves as a pre-trial detention center for troubled youths accused of serious offenses. The population

⁴ The Commission notes that, under Louisiana Law, employers may have vicarious tort liability for intentional acts of employees. *E.g.*, *Jones v. Thomas*, 426 So.2d 609 (La.1983); *Loya v. Lucas*, 2016-0321 (La.App. 4 Cir. 9/21/16, 8), 201 So.3d 928, 933. And, the City of New Orleans is not immune to suit or liability in actions regarding injury to a person. La. Con. Art. 12, § 10.

served by YSC is extremely sensitive and the Superintendent must have complete confidence in his staff's ability to perform professionally and behave appropriately at all times. Appellant's expressions of violence compromised his ability to efficiently manage YSC staff. Therefore, the undersigned Commissioners find that Appellant's misconduct had an adverse impact on the Appointing Authority's efficient operations.

C. Discipline Commensurate with Offense

In conducting its analysis, the Commission must determine if the 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 *Staehele v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

Appellant was undaunted by admonitions from both Mr. Crawford and Mr. Holt and continued to express the desire to harm Ms. Mills. In fact, Appellant readily acknowledged, on the record and under oath, that Ms. Mill's actions, "made [Appellant] feel like [she] wanted to hit [Ms. Mills]." *Id.* at 75:21-25. It is clear that Appellant still does not appreciate how inappropriate and disruptive her conduct was.

The Commission recognizes that the YSC is a challenging work environment and Appellant encountered a variety of difficulties in transitioning from the Department of Code Enforcement. However, no amount of stress gives an employee leave to disrupt the workplace with expressions of violence.

The DHS has an obligation to its employees to foster a safe and professional work environment. It must deter any misconduct that compromises its ability to meet this obligation. The degree of Appellant's misconduct warranted substantial discipline because it adversely

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impacted the Superintendent's ability to provide a safe and professional workplace. Bearing the above in mind, the undersigned Commissioners find that an emergency suspension and termination represent an appropriate level of discipline given Appellant's misconduct.

V. CONCLUSION

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

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Judgment rendered this 27th day of March, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION



TANIA TETLOW, COMMISSIONER

3/24/17

DATE



RONALD P. McCLAIN, VICE-CHAIRMAN

3-27-17

DATE



STEPHEN CAPUTO, COMMISSIONER

3-24-17

DATE