

WILLIAM TORRES

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7819

William Torres ("Appellant") is employed by the Department of Police ("Appointing Authority") as a Police Officer with permanent status. The Appellant received a four day suspension for violation of the Appointing Authority's internal regulation concerning Professionalism. The factual basis for the violation is contained in the second paragraph of the December 29, 2010 disciplinary letter, which provides as follows:

The investigation determined that on Thursday, January 7, 2010, at about 5:02 p.m., you posted inappropriate and derogatory comments and words on your Facebook Web-Page, an open computer internet forum, about NOPD Officer Athena Monteleone. You utilized facebook website to communicate the insulting and degrading comments about Officer Monteleone as a "douchbag". In addition you listed the New Orleans Police Department as your employer. Your actions were unprofessional and brought discredit to yourself and the New Orleans Police Department. The investigation determined that you violated Rule 3: Professional Conduct, paragraph 1, Professionalism and Rule 3: Professional Conduct, paragraph 14 – Social networking websites, Facebook, MySpace, print or transmitted media, etc.

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 September 8, 2011. The 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.

When called to testify, the Appellant acknowledged that he posted comments on his Facebook page. The exchange between the Appellant and Officer Damond Harris concerned the Appellant's ability to seduce lesbians. Both parties used colorful language

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and Officer Torres made reference to someone with the initials A.M. who he referred to as a douche. A.M. was fellow police officer, Athena Monteleone. The Appellant acknowledged that his Facebook page was open to the public, and that he identified himself as a New Orleans police officer in his Facebook profile. The Appellant defended his comments stating that his comments were meant as a joke that he thought Officer Monteleone would find funny. He admitted contacting Officer Monteleone by text to make sure she read what he posted.

Sgt. Dan Anderson conducted the internal investigation and sustained the violations of the professionalism rules. Apparently, Officer Monteleone accessed the Facebook conversation and was very unhappy. She made a complaint which lead to the investigation and the resulting disciplinary action, which is the subject of this appeal. Sgt. Anderson testified that he sustained the violation because the Appellant's participation in the conversation with Officer Harris about Officer Monteleone was degrading and caused her and the department embarrassment.

LEGAL PRECEPTS

An employer cannot discipline an employee who has gained permanent status in the classified city civil service 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).

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The Civil Service Commission has a duty to decide independently from 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.*

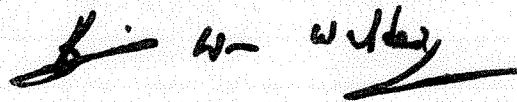
In the instant case, the Appellant used poor judgment and acted in an unprofessional manner. Whether intended or not, his words were particularly upsetting to

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a fellow police officer and reflected poorly on the department.

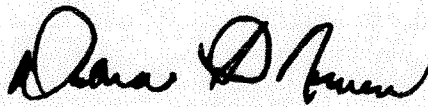
Considering the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 15TH DAY OF
MARCH, 2012.

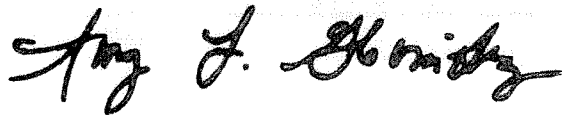


REV. KEVIN W. WILDES, S.J., CHAIRMAN

CONCUR:



DEBRA S. NEVEU, COMMISSIONER



AMY L. GLOVINSKY, COMMISSIONER