

CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

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Friday, September 21, 2012

Mr. Donovan A. Livaccari
101 W. Robert E. Lee, Suite 402
New Orleans, LA 70124

Re: **Ernest Crayton VS.**
Department of Police
Docket Number: 7834

Dear Mr Livaccari:

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 - 9/21/2012 - filed in the Office of the Civil Service Commission in Room 7W03, City Hall, 1300 Perdido Street, 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 cursive script, appearing to read "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Ronal Serpas
Isaka Williams
Jay Ginsberg

ERNEST CRAYTON

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7834

Ernest Crayton (“Appellant”) is employed by the Department of Police (“Appointing Authority”) as a Police Sergeant with permanent status. The Appellant received a two day suspension for violation of the Appointing Authority’s internal rules concerning Instructions from an Authoritative Source. The factual basis for the violation is contained in the third paragraph of the March 16, 2011 disciplinary letter, which provides as follows:

The investigation determined that on November, 24, 2009, you were assigned to the NOPD police Expedition unit (#420, BPOL#6007), which you failed to properly inspect and maintain as required. You were the last officer to use the vehicle on November 25, 2009, the night you shopped the vehicle at Equipment Maintenance Division for an acceleration and transmission problem. The mechanic repair order dated December 15, 2009, stated the check engine light was on and engine had no power. The mechanic at Lamarque Ford indicated that there was no oil on the dipstick, and the engine was knocking. The vehicle sustained over four thousand dollars (\$4000.00) in damages.

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 February 2, 2012. 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.

Asst. Supt. Kirk Bouyelas testified that he reviewed the investigative report prepared by Lt. John Deshotel and disagreed with Lt. Deshotel’s recommendation that the complaint be non-sustained. Asst. Supt. Bouyelas stated that the Appellant was responsible for checking the oil before every shift and that he was responsible for the

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damage to the vehicle because the vehicle had no oil on the dipstick when checked by the automobile mechanic.

Lt. Deshotel testified that he non-sustained the complaint primarily because the Appellant was only one of several police sergeants that drove the vehicle on a regular basis. He concluded that the Appellant could not be held responsible for the inspection of a vehicle for which he was only partially responsible.

The Appellant testified that he always inspected his vehicle before beginning a shift, and that he followed the same protocol on November 24, 2009. He testified that there was oil on the dipstick when he began his shift. According to the Appellant, the vehicle initially operated fine, but within three hours he heard an unusual noise and immediately returned the vehicle to the station and prepared the paperwork for the vehicle to be checked out by the station mechanic.

The Appellant could not explain why the vehicle had little or no oil when inspected later that same day. He did introduce numerous repair orders for the same vehicle as evidence that the vehicle had ongoing mechanical problems, which he regularly reported.

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

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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 decide independently, 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 the occurrence of the complained of activity by a preponderance of the evidence 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.*

CONCLUSIONS

The Appointing Authority has failed to establish by a preponderance of evidence that it disciplined the Appellant for good cause. The Appellant operated a vehicle with a history of mechanical problems that was regularly operated by other police personnel. The Appellant provided evidence that he regularly reported mechanical issues, having done so as recently as June of the same year. These uncontested facts support the Appellant's credible testimony that he checked the oil on November 25, 2009 and reported problems with the vehicle when those problems became apparent. The evidence suggests that the Appellant did not cause the damage to the vehicle and that the absence

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of a sufficient amount of oil was the result of a mechanical problem, not the Appellant's failure to inspect.

Considering the foregoing, the Appellant's appeal is GRANTED, and the Appointing Authority is ordered to return to the Appellant two days of back pay and emoluments of employment.

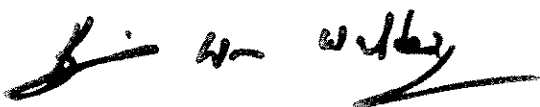
RENDERED AT NEW ORLEANS, LOUISIANA THIS 21st DAY OF
SEPTEMBER, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



JOSEPH S. CLARK, COMMISSIONER

CONCUR:



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



AMY L. GLOVINSKY, COMMISSIONER