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CITY CIVIL SERVICE COMMISSION

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DIRECTOR OF PERSONNEL

Monday, October 01, 2012

Ms. RoShawn Stokes

Re: **RoShawn Stokes VS.
Code Enforcement & Hearing Bureau
Docket Number: 7896**

Dear Ms. Stokes:

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 - 10/1/2012 - 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,

Germaine Bartholomew
Chief, Management Services Division

cc: Jeffrey P. Hebert
Victor Papai
Jay Ginsberg
file

ROSHAWN STOKES

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

**CODE ENFORCEMENT AND
HEARING BUREAU**

NO. 7896

The Appointing Authority employs the Appellant, Roshawn Stokes, as an Office Assistant II with permanent status. The Appointing Authority suspended the Appellant for ten (10) days by letter dated July 13, 2011 for repeated insubordination. The specific allegations resulting in the disciplinary action are found in the second and third paragraphs of the disciplinary letter, which provides as follows:

Since February of this year, you have exhibited insubordination to your supervisor repeatedly. You have not followed office protocol nor completed appropriate documentation to ask for permission for many of your absences from the office. During the performance of your regularly assigned duties you have not turned in call logs when asked by your supervisor, and have not completed assignments on deadline.

Most recently, you were dishonest to managers in the office and myself regarding an absence on June 16, 2011. When questioned about completing paperwork for the scheduled absence, you stated to me that you had filled paperwork out and sent to your supervisor for approval. You stated further that since she was on vacation you hadn't received a response and I had not been routed the document for signature. I therefore granted the last minute request on that condition. When your supervisor returned from vacation, there was no documentation or request on record from you.

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 October 20, 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.

Kristen Illarmo is the Appellant's immediate supervisor. During the relevant period, Ms. Illarmo was a Policy Assistant and Technology Specialist. She testified that the Appellant's primary responsibility was to create letters, send hearing notices for code violations, and maintain the case files. She testified that she gave the Appellant an assignment on April 20, 2011 to prepare hearing notices before 3:45 pm that day. She received no indication from the Appellant that there would be a problem. However, according to Ms. Illarmo, the Appellant completed the assignment two days late.

With regard to the allegation of dishonesty surrounding the Appellant's June 16, 2011 absence from work, Ms. Illarmo had no first hand knowledge of the facts surrounding this allegation, as she was on vacation at that time. Ms. Illarmo was only aware that the Appellant did not come to work on that particular day and that the Appellant did not provide any documentation approving her absence.

Lucille Johnson was the Appellant's immediate supervisor for two months beginning in March, 2011 and was employed as the Appointing Authority's lead intake clerk. Through her testimony, the Appointing Authority introduced a copy of a memorandum to Nadine Fletcher, a manager. The memorandum reported that the Appellant was not doing her share of the work, relating primarily to the opening of case files. Ms. Johnson also testified that on one occasion the Appellant failed to prepare call logs reporting unanswered voice mails. She reported as well that the Appellant was not answering citizen calls, which was placing an undue amount of the work load on her co-workers. In particular, on March 22, 2011 the Appellant failed to answer any calls. She testified that she spoke to the Appellant regarding this problem, yet the situation did not

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improve. Ms. Johnson considered the Appellant's behavior insubordinate because she was counseled regarding a problem and she made no apparent efforts to correct it.

Jeffrey Hebert was employed as the Interim Director of Code Enforcement and Hearing Bureau at the time of the disciplinary action. He testified that because of the shortage of employees it was important that employees obtain approval in advance before attending civil service classes. If there was a shortage of employees, the employees could reschedule the classes. He considered the Appellant insubordinate when she ignored the directive and attended a class without prior approval.

Mr. Hebert also testified regarding the incident of June 16, 2011, at which time the Appellant was absent without approval. Ms. Illarmo, the appellant's supervisor, was on vacation and there was no documentation that the Appellant received prior approval for her absence. He confronted the Appellant, who informed him that Ms. Illarmo was aware of her absence and that it was documented with Nadine Fletcher. When Ms. Illarmo returned from vacation, she informed Mr. Hebert that she had no documentation of an absence. It is unclear whether Ms. Illarmo was aware of the Appellant's intended absence prior to her vacation.

Ms. Stokes testified that she assists all eight of the case managers with setting their hearings and assuring that their case files are in order. She testified that she had no problem answering the telephone and did not realize there was a problem. She was unaware of the memorandum criticizing her performance. She testified that her civil service classes were approved prior to the merger of her department with Code Enforcement and that she was trying to complete the final classes to qualify for promotions. She informed Nadine Fletcher before attending a class. If she did not

complete the final classes she would have had to wait a year before being able to complete the course. She testified that she was never instructed not to attend the classes and that she completed her work on time including the assignment Ms. Illarmo testified was late.

Regarding the June 16, 2011 absence, the Appellant testified that her original appointment with her oncologist had been cancelled and was rescheduled for June 16, 2011. She stated that she informed her supervisor, Ms. Illarmo, before she went on vacation that her appointment had been rescheduled at the last minute. According to the Appellant, Ms. Illarmo never asked her to complete a form for sick leave. She stated that she informed Nadine Fletcher that she would not be in on Friday because of her doctor's appointment. Finally, she testified that she completed a form and gave it to Ms. Fletcher. When confronted by Mr. Hebert, she informed him of the steps she had taken.

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).

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

derelection. *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 failed to establish by a preponderance of the evidence that it disciplined the Appellant for cause. While it appears that the Appellant's performance may have warranted improvement, there is no clear evidence of insubordination or dishonesty. The Appellant credibly testified that she reported her attendance at civil service training to her supervisor, Nadine Fletcher, who did not testify. She also credibly testified that she had a last minute change in a doctor's appointment, which she reported to her supervisor and documented with Ms. Fletcher. We cannot rule out the possibility that the form was misplaced. In any event, it appears that the Appellant was absent for a legitimate medical reason and that she made reasonable efforts to make her supervisors aware of the reasons for her absence. We also find that the Appointing Authority's concerns regarding job performance were not sufficiently communicated to the Appellant such that any perceived deficiencies were the consequence of willful subordination.

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Accordingly, the Appellant's appeal is GRANTED and the Appointing Authority is directed to return to the Appellant ten days of back pay and emoluments of employment.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 1st DAY OF
OCTOBER, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION

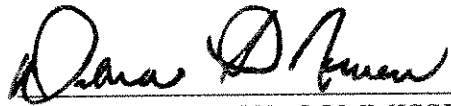


JOSEPH S. CLARK, COMMISSIONER

CONCUR:



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



DEBRA S. NEVEU, COMMISSIONER