



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  
RONALD P. McCLAIN, VICE-  
CHAIRPERSON

JOSEPH S. CLARK  
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CORDELIA D. TULLOUS

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Tuesday, January 12, 2016

Mr. Alex Smith

Re: **Alex Smith VS.  
Department of Parks & Parkways  
Docket Number: 8340**

Dear Mr. Smith:

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 - 1/12/2016 - 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 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: Ann McDonald  
Elizabeth S. Robins  
Victor Papai  
file

**ALEX SMITH**

**CIVIL SERVICE COMMISSION**

**VS.**

**CITY OF NEW ORLEANS**

**DEPARTMENT OF PARKS AND PARKWAYS**

**NO. 8340**

Alex Smith (“Appellant”) was employed by the Department of Parks and Parkways (“Appointing Authority”) as a lead laborer with permanent status. The Appellant was suspended for one day for making threats against a co-worker on August 1, 2014.

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 November 11, 2014. 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.

The appellant made physical threats to a co-worker and called him “an alcoholic bitch”. The co-worker stated that the appellant told him that if he opened his mouth one more time that he, the appellant, would slap the piss out of him. The co-worker took the threat seriously and reported the incident to his supervisors. Another worker stated that he overheard the appellant use profanity and called his colleague an alcoholic bitch. The incident was investigated and was deemed to have occurred.

A representative of the appointing authority explained that the department took such matters seriously, and imposed discipline based upon how serious the event was. Factors related to the disciplinary history of the offender, the nature and seriousness of the offense, as well as the impact on employee morale were used to determine the

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penalty. The department believed that a one day suspension was appropriate in this matter.

### 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 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.*

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**CONCLUSION**

The Appointing Authority has established that the Appellant made a physical threat against his co-worker. Legal cause is proved and the punishment is commensurate.

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

RENDERED AT NEW ORLEANS, LOUISIANA THIS 12<sup>th</sup> DAY OF January, 2016.

CITY OF NEW ORLEANS  
CIVIL SERVICE COMMISSION

  
MICHELLE D. CRAIG, CHAIRMAN

CONCUR:

  
RONALD P. MCCLAIN, COMMISSIONER

  
JOSEPH S. CLARK, COMMISSIONER