



MITCHELL J. LANDRIEU
MAYOR

CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
ROOM 7W03 CITY HALL
NEW ORLEANS LA 70112
(504) 658-3500
FAX NO. (504) 658-3599

CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J., PHD,
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LISA M. HUDSON
DIRECTOR OF PERSONNEL

Friday, October 26, 2012

Mr. Brandon Beard

Re: **Brandon Beard VS.
Sewerage & Water Board
Docket Number: 7866**

Dear Mr. Beard:

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 - 10/26/2012 - 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, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Marcia St. Martin
Yolanda Grinstead
Jay Ginsberg
file

BRANDON BEARD

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

SEWERAGE & WATER BOARD

DOCKET NO. 7866

The Sewerage & Water Board ("Appointing Authority") employed Brandon Beard ("Appellant") as a Laborer with permanent status. The Appointing Authority terminated the Appellant for job abandonment by letter dated April 18, 2011.

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 January 18, 2012. 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 relevant facts are not in dispute. The Appellant left work on February 3, 2011 and did not return. During the period prior to his termination, the Appellant did not contact his supervisors to explain his absences. He had no accrued sick or annual leave. The Appellant had been suspended previously for attendance problems. He had also been counseled and reprimanded for his attendance problems. He failed to appear for his pre-termination hearing to explain why he stopped reporting for work.

The Appellant acknowledged that the Appointing Authority gave him numerous chances to improve his attendance. He testified that he had personal problems that prevented him from coming to work. He further testified that his personal problems are resolved and, on that basis, asks for his job back.

B. Beard
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LEGAL PRECEPTS

An employer cannot subject an employee who has gained permanent status in the classified city civil service to disciplinary action 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 make an independent judgment, 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 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 be established beyond a reasonable doubt. *Id.*

CONCLUSION

B. Beard
#7866

The Appointing Authority has established by a preponderance of evidence that it terminated the Appellant for cause. He violated internal rules regarding attendance and provided no acceptable excuse for his failure to report for work.

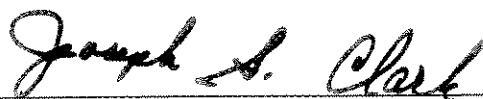
Considering the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 26th DAY OF
OCTOBER, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION


DEBRA S. NEVEU, COMMISSIONER

CONCUR:


JOSEPH S. CLARK, COMMISSIONER


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