



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
SUITE 900 - 1340 POYDRAS ST.
NEW ORLEANS, LA 70112
(504)658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION
BRITTNEY RICHARDSON, CHAIRPERSON
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MARK SURPRENANT
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AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Friday, June 21, 2024

Mr. Robert Pearson
4480 Gen DeGaulle, Ste 115
New Orleans, LA 70131

Re: **Ronique Frazier VS.
Recreation Department
Docket Number: 9510**

Dear Mr. Pearson:

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 - 6/21/2024 - 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 purple ink that reads "Stacie Joseph".

Stacie Joseph
Management Services Division

cc: Larry Barabino
William R. H. Goforth
Christina Carroll
Ronique Frazier

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**RONIQUE FRAZIER,
Appellant**

Docket No. 9510

v.

**RECREATION DEPARTMENT,
Appointing Authority**

DECISION

Appellant Ronique Frazier brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from the Recreation Department's September 18, 2023, decision to demote her from Recreation Lifeguard II to Recreation Lifeguard I. (Ex. HE-1). At all relevant times, Mr. Gibson had permanent status as a Recreation Lifeguard II at the Recreation Department. (Tr. at 5-6). A Hearing Examiner, appointed by the Commission, presided over a hearing on February 23, 2024. At this hearing, both parties had an opportunity to call witnesses and present evidence.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the hearing, all exhibits submitted at the hearing, the Hearing Examiner's report dated May 13, 2024, the Appellant's post-hearing brief, and controlling Louisiana law.

For the reasons set forth below, Ms. Frazier's appeal is DENIED.

I. FACTUAL BACKGROUND

The Commission adopts the statement of facts from the attached hearing officer's report. Most importantly, when Ms. Frazier's supervisor arrived at the Lyons pool, children were

swimming in the pool with no lifeguard on the pool deck. (Tr. at 31-32). Ms. Frazier was responsible for supervising the other lifeguards. (Tr. at 5-6).

I. ANALYSIS

A. Legal Standard for Commission's Review of Discipline

1. The Appointing Authority must show cause for discipline

“Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A).” *Whitaker v. New Orleans Police Dep’t*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep’t of Police*, 2000-1682 (La. App. 4 Cir. 5/9/01)). “Legal cause exists whenever an employee’s conduct impairs the efficiency of the public service in which the employee is engaged.” *Id.* “The Appointing Authority has the burden of proving the impairment.” *Id.* (citing La. Const., art. X, § 8(A)). “The appointing authority must prove its case by a preponderance of the evidence.” *Id.* “Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the “efficient operation” of the public service.” *Id.* “It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, the appointing authority has the burden of proving by a preponderance of the evidence: 1) the occurrence of the complained of activity, and 2) that the conduct complained of impaired the efficiency of the public service in which the appointing authority is engaged. *Gast v. Dep’t of Police*, 2013-0781 (La. App. 4 Cir. 3/13/14), 137 So. 3d 731, 733 (quoting *Cure v. Dep’t of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094).

2. The Appointing Authority must show the discipline was commensurate with the infraction

The Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance of evidence that it had good or lawful cause for suspending the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Durning v. New Orleans Police Dep't*, 2019-0987 (La. App. 4 Cir. 3/25/20), 294 So. 3d 536, 538, *writ denied*, 2020-00697 (La. 9/29/20), 301 So. 3d 1195; *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d 106 (La. 1984). The Appointing Authority has the burden of showing that the discipline was reasonable and not arbitrary or capricious. *Neely v. Dep't of Fire*, 2021-0454 (La. App. 4 Cir. 12/1/21), 332 So. 3d 194, 207 (“[NOFD] did not demonstrate . . . that termination was reasonable discipline”); *Durning*, 294 So. 3d at 540 (“the termination . . . deemed to be arbitrary and capricious”).

a. Factors considered by Commission

“In determining whether discipline is commensurate with the infraction, the Civil Service Commission considers the nature of the offense as well as the employee’s work record and previous disciplinary record.” *Matusoff v. Dep't of Fire*, 2019-0932 (La. App. 4 Cir. 5/20/20), 2020 Westlaw 2562940, *writ denied*, 2020-00955 (La. 10/20/20), 303 So. 3d 313. The Commission considers the nature of the offense, the employee’s work ethic, prior disciplinary records, job evaluations, and any grievances filed by the employee.” *Honore v. Dep't of Pub. Works*, 14-0986, pp. 8-9 (La. App. 4 Cir. 10/29/15), 178 So. 3d 1120, 1131, *writ denied*, 2015-2161 (La. 1/25/16), 185 So. 3d 749.

B. The Recreation Department has shown cause for the demotion of Ms. Frazier

The Commission credits the testimony of Ms. Frazier's supervisor, Warren Matthews, that when he arrived at the Lyons pool on July 6, 2023, Ms. Frazier was absent and there were children swimming in the pool with no lifeguard on the pool deck. The Appointing Authority has shown the occurrence of the complained-of conduct. Failing to have a lifeguard present at a public swimming pool when children are in the water impaired the efficiency of the Appointing Authority, as it threatened the safety of the children it serves.

C. The penalty is commensurate with the violation.

The demotion of Ms. Frazier is commensurate with the violation of failing to ensure a lifeguard was on the pool deck while children were swimming. Because of the severe nature of this offense, which could have resulted in death or injury to a child, the penalty of demotion is commensurate with the violation.

D. Legal arguments in post-hearing brief

The Commission rejects the arguments of Appellant in her post-hearing brief that she failed to receive due process and that the demotion she suffered constituted double jeopardy for the reasons set forth in the attached hearing examiner's report.

Ms. Frazier's appeal is DENIED.


WRITER:



[J H Korn \(Jun 14, 2024 14:34 CDT\)](#)

JOHN KORN, VICE-CHAIRPERSON

CONCUR:



[Brittney Richardson \(Jun 21, 2024 04:07 CDT\)](#)

BRITTNEY RICHARDSON, CHAIRPERSON



Andrew Monteverde (Jun 15, 2024 06:09 CDT)

ANDREW MONTEVERDE, COMMISSIONER

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**RONIQUE FRAZIER,
Appellant**

Docket No. 9510

v.

**DEPARTMENT OF RECREATION,
Appointing Authority**

HEARING EXAMINER'S REPORT

The undersigned served as the hearing officer of the February 23, 2024, hearing of Ms. Frazier's disciplinary appeal of a September 18, 2023, demotion. (Ex. HE-1). Ms. Frazier appeared *pro se*, and the Department of Safety and Permits was represented by William Goforth. The Department of Recreation entered Ms. Frazier's statement (Ex. NORDC-1) and the job description for a Senior Lifeguard (Ex. NORDC-2). Ms. Frazier offered an August 28, 2023, letter of discipline (Ex. EE-1) and a July 21, 2023, letter of discipline (Ex. EE-2). Witnesses were Ms. Frazier, Warren Matthews, and Larry Barabino.

FACTUAL BACKGROUND

The Department of Recreation demoted Ms. Frazier because she left the pool unattended when children were swimming on July 6, 2023. (Ex. HE-1). As a Lifeguard II, Ms. Frazier was responsible for supervising other lifeguards at the Lyons pool. (Tr. at 5-6). On July 6, 2023, Ms. Frazier had a verbal disagreement with a subordinate and his sister inside the building that opens to the outdoor pool. (Tr. at 11). Ms. Frazier testified that she notified her supervisor and the director by phone that she was leaving the pool area. (Tr. at 13-14; Ex. NORDC-1). Ms. Frazier testified that when she left the pool, lifeguards were on deck and she was able to watch the deck from the monitors in the front office. (Tr. at 100). Ms. Frazier also testified that when she returned to the

back of the building, her supervisor was conducting a staff meeting. (Tr. at 17). Ms. Frazier wrote a statement and informed her supervisor she was leaving for the day. (Tr. at 17).

Warren Matthews, Ms. Frazier's supervisor, testified that Ms. Frazier had to be present at the pool on July 6 in order to have a complete rotation of lifeguards. (Tr. at 25). Another lifeguard called him between 11:00 and 1:00 on July 6 asking about Ms. Frazier's whereabouts. (Tr. at 27). When Mr. Matthews arrived at the facility, he saw five or six lifeguards in the building. (Tr. at 35). While he was standing in the front of the building, he called Ms. Frazier. (Tr. at 31). She told him she was in the front of the building, but she was not present. (Tr. at 31). Mr. Matthews saw Ms. Frazier getting out of a car about 10 minutes after he had arrived. (Tr. at 31). When Mr. Matthews entered the pool area, children were swimming in the pool with no lifeguard on the pool deck. (Tr. at 31-32). Ms. Frazier had the responsibility as a Senior Lifeguard to ensure that lifeguards were on deck when children were in the pool. (Tr. at 34).

Larry Barabino, the Director of the Department of Recreation, testified he made the decision to demote Ms. Frazier because she failed to ensure a lifeguard was on the pool deck when children were swimming. (Tr. at 59-60). In addition, a Senior Guard was required to be on duty on the pool deck at all times. (Tr. at 60).

Ms. Frazier also testified that she had already served a five-day suspension based on the same conduct. (Tr. at 89-90).

LEGAL ANALYSIS

“Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A).” *Whitaker v. New Orleans Police Dep’t*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep’t of Police*, 2000-1682 (La. App. 4 Cir. 5/9/01)). “Legal cause exists whenever an employee’s conduct

impairs the efficiency of the public service in which the employee is engaged.” *Id.* “The Appointing Authority has the burden of proving the impairment.” *Id.* (citing La. Const., art. X, § 8(A)). “The appointing authority must prove its case by a preponderance of the evidence.” *Id.* “Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the “efficient operation” of the public service.” *Id.* “It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, the appointing authority has the burden of proving by a preponderance of the evidence: 1) the occurrence of the complained of activity, and 2) that the conduct complained of impaired the efficiency of the public service in which the appointing authority is engaged. *Gast v. Dep’t of Police*, 2013-0781 (La. App. 4 Cir. 3/13/14), 137 So. 3d 731, 733 (quoting *Cure v. Dep’t of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094).

The Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance of evidence that it had good or lawful cause for terminating the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Durning v. New Orleans Police Dep’t*, 2019-0987 (La. App. 4 Cir. 3/25/20), 294 So. 3d 536, 538, *writ denied*, 2020-00697 (La. 9/29/20), 301 So. 3d 1195; *Abbott v. New Orleans Police Dep’t*, 2014-0993 (La. App. 4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d 106 (La. 1984). The appointing authority has the burden of showing that the discipline was reasonable and not arbitrary or capricious. *Neely v. Dep’t of Fire*, 2021-0454 (La. App. 4 Cir. 12/1/21), 332 So. 3d 194, 207 (“[NOFD] did not demonstrate . . . that termination was reasonable

discipline”); *Durning*, 294 So. 3d at 540 (“the termination . . . deemed to be arbitrary and capricious”).

Ms. Frazier admittedly left the pool deck without closing the pool. Further, no lifeguards were on the pool deck while children were swimming, posing a safety risk to the children. (Tr. at 66). The demotion of Ms. Frazier, the only disciplinary action appealed by Ms. Frazier, is commensurate with the violation.0909

Ms. Frazier argued in her post-hearing brief that she failed to receive due process and that her demotion constitutes double jeopardy. The Recreation Department’s suspension of Ms. Frazier while it conducts an investigation does not preclude it from also demoting her based on the same conduct. Although Ms. Frazier argues that she was entitled to notice and an opportunity to be heard, these *Loudermill* protections only apply when the Appointing Authority terminates the employment of a classified employee. Civil Service Rule IX, section 1.2. Otherwise, an employee must receive written notice of the disciplinary action within five working days of the effective dates of the action. Civil Service Rule IX, section 1.3.

I recommend that the Commission deny the appeal.



CHRISTINA L. CARROLL