CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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MITCHELL J. LANDRIEU
MAYOR

Friday, October 26, 2012

Ms. Rowena Jones
1010 Common, Suite 1400A
New Orleans, LA 70112

Re: **Miochi Sumling VS.**
Department of Health
Docket Number: 7968

Dear Ms. Jones:

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,

Germaine Bartholomew

Germaine Bartholomew
Chief, Management Services Division

cc: Dr. Karen B. DeSalvo
Victor Papai
Jay Ginsberg
Miochi Sumling

MIOCHI SUMLING **CIVIL SERVICE COMMISSION**

VS. **CITY OF NEW ORLEANS**

DEPARTMENT OF HEATH **NO. 7968**

The Department of Health ("Appointing Authority") employed Miochi Sumling ("Appellant") as a Medical Assistant with permanent status. The Appointing Authority terminated the Appellant by letter dated January 23, 2012 for deficiencies in her job performance.

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 April 18, 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.

The Appellant worked at the City of New Orleans' Health Care Clinic for the Homeless. Jennie Robinson was also employed by the City of New Orleans' Health Care Clinic as a Nurse Practitioner. Ms. Robinson treated patients and relied upon the Appellant to assist her. On or about January 19, 2012, Ms. Robinson prepared a written memorandum to Patrice Williams, Executive Director of Health Care for the Homeless, outlining the Appellant's poor work performance, unprofessional behavior in front of patients, and disrespectful and rude behavior towards herself. Based upon her complaints, Ms. Robinson informed Ms. Williams that she no longer wanted to work with the Appellant. Ms. Robinson testified regarding the observations and complaints

contained in the memorandum.[1] In general, Ms. Robinson described a lack of attention and responsiveness on the Appellant's part in the performance of her job responsibilities.

Ms. Williams incorporated Ms. Robinson's observations into an internal document, called a "Corrective Actions Form" that she used to document her reasons for recommending the Appellant's termination.[2] Ms. Williams testified that she was charged with improving the overall performance of the clinic and, with that in mind, there had been previous discussions with the Appellant regarding the same performance issues raised by Ms. Robinson in her memorandum. Ms. Williams stated that the effective provision of medical services to the homeless is challenging and that the Appellant's failure to keep up with the pace at a high volume clinic and adequately provide support to the clinical staff made her expendable.

The Appellant testified that Ms. Robinson never communicated her complaints to her and that she never saw the Corrective Action Plan prior to the date of her appeal. She contends that she never received a verbal warning and that the June meeting described in the Corrective Action Plan as a verbal warning was actually a conference she requested. The Appellant stated that she had always worked well with her co-workers and provided the testimony of her previous supervisor who stated that she had been competent at her job.

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).

[1] The January 19, 2012 memorandum was identified and made part of the record as Appointing Authority Exhibit 1.
[2] The Corrective Action Plan was identified and made part of the record as Appointing Authority Exhibit 2.

The employee may appeal from such a disciplinary action to the city Civil Service Commission. The burden of proof, 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 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.*

CONCLUSION

The Appointing Authority has established by a preponderance of evidence that it

terminated the Appellant for cause. Documented concerns regarding the Appellant's performance justify making a change to improve the efficient operation of the clinic.

Accordingly, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 26th 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