

# 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

MICHELLE D. CRAIG, CHAIRMAN  
JOSEPH S. CLARK  
RONALD P. MCCLAIN  
TANIA TETLOW  
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LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Monday, August 17, 2015

Ms. Shenetta Maye

Re: **Shenetta Maye VS.**  
**Department of Parks & Parkways**  
**Docket Number: 8156**

Dear Ms. Maye:

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 - 8/17/2015 - 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,



Doddie K. Smith  
Chief, Management Services Division

cc: Ann McDonald  
Elizabeth S. Robins  
Victor Papai  
file

**SHENETTA MAYE**

**CIVIL SERVICE COMMISSION**

**VS.**

**CITY OF NEW ORLEANS**

**DEPARTMENT OF PARKS AND PARKWAYS**

**NO. 8156**

The Department of Parks and Parkways (“Appointing Authority”) employed Shenetta Maye (“Appellant”) as a Lead Laborer with permanent status. The Appointing Authority terminated the Appellant for being absent from her job from October 1, 2012 up to her termination on March 28, 2013. The Appellant contends that she was under medical care and was not able to return to work.

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 May 7, 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.

Mr. Erdwin Fuentes, the Personnel Division Chief for the department stated that on September 27, 2012, the appellant left work two and one half hours into her eight hour shift. The appellant reported that she felt light headed and did not feel well. An Employer Report of Injury or Illness was made and the matter was referred to the City’s Workers’ Compensation carrier. The appellant did not have any sick or annual leave time and made no request to be on leave during her absence. The appellant did not return to work after September 27.

The Department requested documentation of any medical treatment being undergone by the appellant during the fall of 2012. The appellant provided one note, dated December 12, from a clinic that stated she could return to work after being cleared

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by Occupational and Physical therapy and a physician. No other medical information was supplied.

The Department scheduled a Pre-Disciplinary Hearing on February 22, 2013. In the hearing notification letter, the appellant was requested to bring any notes, records, or other materials which could assist in explaining her absence from work. The hearing was held and the appellant appeared. The appellant was instructed to provide medical documentation relative to her continued absence and given some time to produce them. A letter confirming the needed medical documentation was sent to the appellant on March 4, 2013. The appellant was given ten days to provide the documentation. The Pre-Disciplinary hearing was reset for March 25, 2013. On the reset hearing date, the appellant did not personally appear or provide any records or other documents that explained the appellant's absence. The department determined that the appellant was absent without authorization and terminated her employment effective March 28, 2013.

Kevin Pierre, a representative from the Worker's Compensation program, stated that the appellant was given the regular packet of forms related to receiving medical care. The appellant completed the forms on October 5, 2012, and requested travel reimbursements related to medical visits during October to Touro Hospital. Included in the forms were a medical records release. Mr. Pierre stated that a request for medical records was sent in November to Dr. Lowentritt, appellant's treating physician, but none were ever received. The only record that was received was the note, dated December 12, from the Culicchia Clinic. Based on the lack of medical documentation, the Workers' Compensation claim was denied. Mr. Pierre also stated that the appellant told her claims

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adjuster that her medical condition was a personal illness and that she did not want to pursue a claim.

Mr. Timothy Lavelle, the Chief of Operations for the Department stated that the department had a limited number of authorized employee positions to maintain the city property. The appellant occupied a position and no replacement for her could be hired until her position was open. Any employee's absence affected the department's ability to cut the grass and maintain the City's property.

The Appellant testified that she kept in periodic contact with her immediate supervisor while she was out. The appellant also testified that she was in treatment at Touro medical center, but that treatment stopped at the end of February because of insurance reasons. The appellant stated that she was released to return to work by her primary physician in July, after her termination date.

### **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

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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 disciplined the Appellant for cause. The Appellant did not provide requested documentation of a medical condition or medical treatment that prevented her from being able to work. Even when given the opportunity at her Pre-Disciplinary hearings, the documentation was not supplied. Regarding the termination, we cannot say that the Appointing Authority abused its discretion by terminating an employee for failing to

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come to work for five months, or providing documentation substantiating a medical basis for her absence.

Based upon the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 1<sup>st</sup> DAY OF August, 2015.

CITY OF NEW ORLEANS  
CIVIL SERVICE COMMISSION

  
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JOSEPH S. CLARK, COMMISSIONER

CONCUR:

  
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MICHELLE D. CRAIG, CHAIRMAN

  
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RONALD P. MCCLAIN, COMMISSIONER