



# 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

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MAYOR

Thursday, August 24, 2017

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Mr. Jerome Campbell

Re: **Jerome Campbell VS.  
Sewerage & Water Board  
Docket Number: 8659**

Dear Mr. Campbell:

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 - 8/24/2017 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal must conform to the deadlines established by the Commission's Rules and Article X, Sec.12(B) of the Louisiana Constitution. Further, any 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: Cedric S. Grant  
James E. Thompson, III  
Jay Ginsberg  
file

**CIVIL SERVICE COMMISSION**

**CITY OF NEW ORLEANS**

JEROME CAMPBELL  vs.  SEWERAGE & WATER BOARD	DOCKET No.: 8659
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**I. INTRODUCTION**

Appellant, Jerome Campbell, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Sewerage and Water Board for the City of New Orleans, (hereinafter the “S&WB”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the S&WB disciplined Appellant for sufficient cause. At all times relevant to the instant appeal, Appellant served as a Networks Maintenance Technician I for the S&WB and had permanent status as a classified employee.

On Tuesday, April 25, 2017 a hearing examiner appointed by the Commission convened an appeal hearing related to the above-captioned matter. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the hearing examiner’s report. Based upon our review, we render the following judgment.

## II. FACTUAL BACKGROUND

### A. Alleged Misconduct

The S&WB terminated Appellant's employment effective Wednesday, February 22, 2017. (H.E. Exh. 1). The reason for Appellant's termination was his alleged violation of S&WB Policy #49 – Surplus Property, and Policy #74 – Inventory Control. *Id.* Appellant allegedly violated Policies #49 and #74 when he sold “lead, brass and other material belonging to the S&WB” and kept the proceeds of that sale. *Id.*

Policy 49 establishes the process through which the S&WB disposes of surplus property. (S&WB Exh. 3). Under Policy 49, each department within the S&WB reports the “amount, description, model number, serial number and condition” of the surplus property so that such property may be catalogued and included in a sealed bidding process or public auction. *Id.* The S&WB keeps the proceeds of the sale of surplus property and dedicates it to other operating expenses. Policy 49 also contains specific steps related to record-keeping in order for the S&WB to maintain an accurate accounting of what surplus property is sold.

### B. Sale of S&WB Property

Most of facts related to the underlying appeal are largely undisputed. At all times relevant to the instant appeal, Appellant worked as a Maintenance Technician I in the S&WB's Networks Department. (Tr. at 9:18-10:4). Appellant's responsibilities included the operation of excavating equipment in and around underground utilities maintained by the S&WB. *Id.* at 10:8-23.

On or about December 2, 2016 investigators with the Office of the Inspector General (“OIG”) conducted an interview with Appellant in connection with an investigation into the unauthorized sale of S&WB property by S&WB employees. *Id.* at 12:5-10. The property in

question was lead, brass and other materials used in the installation, repair and maintenance of underground utilities.

Appellant was candid during his interview with OIG investigators and admitted to selling approximately two hundred and seven pounds (207 lbs.) of brass to Uptown Recycling on Claiborne Avenue. (S&WB Exh. 5). According to the OIG's summary of the interview with Appellant, Appellant claimed to be unaware of any S&WB policy that prohibited S&WB employees from selling scrap metal or old fittings excavated from work sites. *Id.*

During the course of his testimony, Appellant stated that, when he first began working for the S&WB as a laborer in 2014, it was common practice for employees to keep scrap metal recovered from work sites and sell that scrap metal to salvage companies in the City. (Tr. at 19:23-21:20). According to Appellant, S&WB employees, including supervisors and foremen, regularly collected scrap metal from worksites, sold the scrap metal, and split the proceeds among themselves. *Id.* From Appellant's perspective, he did not perceive what he was doing as theft because it was his appreciation that if one performed work on a particular project and completed the project, he could keep any scrap metal recovered during the course of work. *Id.* at 23:24-24:4. Appellant was not aware that the S&WB regularly held auctions to sell scrap metal recovered from various work sites across the City. *Id.* at 27:23-28:23. However, Appellant did acknowledge that the scrap metal recovered from S&WB work sites had value.

Appellant claims that he was also unaware of any S&WB policy that prohibited employees from selling scrap metal excavated from S&WB work sites for personal profit. Cedric Grant, Executive Director of the S&WB, testified that the surplus property policy had been in place for more than twenty years, but was not aware of any training provided to employees regarding the policy prior to the OIG's investigation. *Id.* at 77:18-21. However, Mr. Grant did note that he did

not think that the S&WB needed to put in writing that S&WB employees should not sell S&WB property for personal profit. *Id.* at 78:6-15. Nevertheless, following the OIG's investigation, the S&WB instituted revised policies and training regarding the proper procedure for recovering, storing and selling material from S&WB work sites. *Id.* at 78:3-15. Finally, Mr. Grant noted that the S&WB would periodically sell scrap material in accordance with Policy 49. This suggests that many S&WB employees were aware of the policy and followed it.

### III. LEGAL STANDARD

An appointing authority may discipline an employee with permanent status in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that an appointing authority issued discipline without sufficient cause, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, an 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 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094 (La. Ct. App. 2007)). If the Commission finds that an appointing authority has met its initial burden and had sufficient cause to issue discipline, it must then determine if that discipline "was commensurate with the infraction." *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). Thus, the analysis has three distinct steps with the appointing authority bearing the burden of proof at each step.

#### IV. ANALYSIS

##### **A. Occurrence of the Complained of Activities**

There is no dispute that Appellant sold approximately 207 lbs. of scrap metal to a recycling business for \$243.00. According to Appellant he saved up the scrap metal until he had enough to sell and used the money to pay bills. The Commission finds that Appellant was well aware that the materials he was recovering and collecting from S&WB construction sites had value. And, while S&WB employees may not have received regular training regarding the proper recovery, storage, reporting, disposal and accounting of surplus material, there should be no need for a policy that prohibits S&WB employees from personally profiting from the sale of S&WB property.

Based upon the foregoing, the Commission finds that the S&WB has established that Appellant violated Policy 49.

##### **B. Impact on the S&WB's Efficient Operations**

At a minimum, Appellant's actions deprived the S&WB of proceeds from the sale of 207 lbs. of brass. However, as Mr. Grant pointed out during his testimony, the scrap metal in question belonged to the residents of New Orleans who expect the S&WB to maximize its limited resources, this includes recovering any potentially valuable scrap metal and selling it to defray costs. When S&WB employees personally profit from the sale of scrap metal pulled from public infrastructure projects, it erodes the confidence of the general public in the S&WB's ability to manage its limited resources.

Based upon the foregoing, the Commission finds that the S&WB has established that Appellant's misconduct impaired its efficient operations.

**C. Was the Discipline Commensurate with Appellant's Offense**

The Commission must independently decide, based upon the facts presented in each appeal, whether the punishment imposed by an appointing authority was commensurate with the offense. *Cornelius v. Dep't of Police*, 2007-1257 (La.App. 4 Cir. 3/19/08, 6), 981 So.2d 720, 724. In the matter now before the Commission, the question is whether or not Appellant's misconduct warranted termination otherwise, the discipline would be "arbitrary and capricious." *See Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d 976, 978 (citing *Staeble v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

The Commission is not persuaded by Appellant's claim that the widely-accepted practice of S&WB employees selling scrap metal and pocketing the profits militates against termination. We find that Appellant's primary motivation was personal gain. Every appointing authority, including the S&WB, has a responsibility to strongly deter the type of misconduct perpetrated by Appellant. City employees are often entrusted with expensive equipment, vehicles and materials paid for directly by City residents. In the vast majority of cases, City employees conduct themselves in an exemplary manner, but when they do not, appointing authorities must take appropriate disciplinary action.

Based upon the above findings, we hold that termination was an appropriate level of discipline for Appellant's misconduct.

**V. CONCLUSION**

As a result of the above findings of fact and law, the Commission hereby DENIES Appellant's appeal.

J. Campbell  
No. 8659

Judgment rendered this 23<sup>rd</sup> day of August, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

  
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MICHELLE D. CRAIG, CHAIRPERSON

8-21-17  
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DATE

  
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STEPHEN CAPUTO, COMMISSIONER

8-21-17  
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DATE

  
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RONALD McCLAIN, COMMISSIONER

8/18/17  
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