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CITY CIVIL SERVICE COMMISSION

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CHAIRMAN
AMY L. GLOVINSKY
JOSEPH S. CLARK
COLEMAN D. RIDLEY, JR.

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Tuesday, July 02, 2013

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

Re: **Lionel Hebert VS.
Sewerage & Water Board
Docket Number: 8046**

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 - 7/2/2013 - 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 blue ink, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Marcia St. Martin
Yolanda Grinstead
Jay Ginsberg

LIONEL HEBERT

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

SEWERAGE & WATER BOARD

DOCKET NO. 8046

The Sewerage & Water Board (“Appointing Authority”) employs Lionel Hebert (“Appellant”) as a Networks Maintenance Technician I with permanent status. The Appointing Authority terminated the Appellant by letter dated July 27, 2013. The justification for the disciplinary action is contained in the second paragraph of the termination letter that provided as follows:

On May 25, 2012, you discharged a firearm in the employee parking lot located at Central Yard. You claimed that the gun accidentally discharged when you attempted to pick it up after it slid from beneath the seat of your car when you put on brakes while leaving the parking lot. Your gross negligence resulted in a gunshot wound to your foot. Additionally, your actions endangered the lives of your co-workers and the general public and such behavior will not be tolerated.

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 November 28, 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 Appellant testified that he was unaware his fiancé, with whom he shares a residence, had left the weapon underneath the seat of the vehicle. He stated that, as he was driving out of the parking lot at the end of the work day, the weapon slid from underneath the seat as he applied the brakes. He reached to secure the weapon and it discharged striking him in the side of his foot. Another employee drove him to the hospital for treatment.

Craig Jennings, the Appointing Authority's security manager conducted the internal investigation. Mr. Jennings is a retired New Orleans Police Officer with thirty-eight years of service. He interviewed the Appellant and determined that his version of events was consistent with the physical evidence and credible based upon the injury suffered by the Appellant. Mr. Jennings testified that the injury suffered by the Appellant was consistent with his statement that the weapon slid from underneath the car seat and discharged when he reached to retrieve and secure it.

The Appellant's fiancé also testified stating that she left the weapon underneath the seat after using the Appellant's truck to drive to work. She testified that she carried the gun in her purse for protection when leaving her residence and placed it underneath the seat before entering her work place. When she returned home the next morning, she failed to take it out before the Appellant drove the vehicle to work.

Marcia St. Martin, Executive Director of the Sewerage and Water Board, terminated the Appellant. She testified that the termination was not based upon the presence of the weapon on Board property, but because of the discharge of the weapon. Ms. St. Martin stated that she also took into consideration a previous disciplinary action for which the Appellant received a five day suspension. Ms. St. Martin explained that she was concerned because the previous disciplinary action, which occurred a few months prior, involved what she characterized as another act of violence in the form of a physical altercation with another employee.

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 not be established beyond a reasonable doubt. *Id.*

CONCLUSION

The Appointing Authority has failed to establish by a preponderance of evidence that it terminated the Appellant for just cause. The discharge of the weapon was clearly accidental and, while we agree that guns are by their nature dangerous and instruments of violence, the facts do not reflect that the Appellant acted violently. Thus, the previous disciplinary action which

L. Hebert
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involved aggression by the Appellant towards another employee is not relevant. Even though the Appellant brought the gun onto Board property, there is no evidence that it was for the purpose of engaging in violent activity. The gun never left the floor of the vehicle and the only violence suffered was that which the Appellant committed accidentally against his own person.

Considering the foregoing, the Appellant's appeal is GRANTED, and the Appointing Authority is ordered to reinstate the Appellant with all back pay and emoluments of employment.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 2nd DAY OF JULY, 2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



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

CONCUR:



JOSEPH S. CLARK, COMMISSIONER



COLEMAN D. RIDLEY, JR., COMMISSIONER