

JEFFERY TYLER

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

DOCKET NO. 7703

The Department of Police ("Appointing Authority") employs Jeffery Tyler ("Appellant") as a Police Officer IV with permanent status. The Appellant was first hired on June 12, 1988, and was promoted to his current class on March 1, 2004. The Appointing Authority suspended the Appellant for 10 days after its investigation determined that the Appellant violated internal rules regarding Adherence to Law. Specially, the Appointing Authority determined that the Appellant violated Municipal Criminal Code provision 17271 M.C.S. 54:526 relative to acts of domestic violence by engaging in a criminal trespass. The Appointing Authority also issued a letter of reprimand determining that the Appellant's conduct violated internal rules regarding Professionalism. The factual determination that resulted in the disciplinary letter is contained in paragraph two of the January 19, 2010 disciplinary letter which provides that:

This investigation has determined that on Monday, December 1, 2008, at or about 12:56 a.m., you were involved in a domestic violence incident, relative to trespassing at your estranged wife's (Latasha Harris-Tyler) residence, 325 South Pierce Street. You gained entry into Mrs. Tyler's residence without her permission and she awoke to find you standing on the floor near the foot of her bed. Upon gaining her composure Mrs. Tyler asked you to leave and you complied...In your administrative statement you acknowledged that your name was not on the lease agreement for 325 South Pierce Street and you were never provided a key to the residence...

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 July 15, 2010. Testimony presented at the hearing was transcribed

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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 undisputed material facts establish that the Appellant entered the residence of his wife with whom he was having marital problems at the time. If the Appellant ever had a key in the past, which is possible, he had returned it to his wife prior to the day in question. The Appellant entered the residence in the early morning hours by pushing open an unlocked window, reaching his arm into the residence and unlocking the door. The Appellant awoke his wife, they argued for a few minutes and he left. The Appellant's name was not on the lease, and at that moment and time he was not welcomed or invited into his wife's residence.

The Appellant contends that it was his residence also, and that he merely spent some nights with his uncle because he was working on the families' permanent residence on the West Bank. He further contended that he surrendered his key voluntarily to his wife after an argument and that he had merely forgotten to get it back.

Sgt. Omar Diaz conducted the internal investigation including the interview of Ms. Tyler. He testified that Ms. Tyler stated that she and her husband were separated and that he had not had a key for several months. According to Sgt. Diaz' investigation, the Appellant was only allowed in the residence when invited, and primarily to visit their children. Further, Sgt. Diaz testified that on the night of the incident the Appellant had been continually calling his wife who had chosen not to answer the telephone. Recordings of the telephone messages were reviewed and they confirmed that telephone communications were attempted prior to the Appellant entering the residence. Sgt. Diaz credited Ms. Tyler's version of events based upon the above described uncontested

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material facts, in conjunction with the Appellant's apparent flip flopping as to where he resided. According to Sgt. Diaz, the Appellant initially reported to him that he lived at the West Bank residence, but changed his story to say that he actually lived with his wife. He concluded that the Appellant made a physical appearance at the residence because his wife would not answer the telephone.

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 decide independently from 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

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efficient operation of the public service. Id. While these facts must be clearly established, they need not be established beyond a reasonable doubt. Id.

The uncontested material facts establish by a preponderance of evidence that the Appellant violated internal rules regarding Adherence to Law by entering a residence where he was not currently residing without the permission of the occupant of the residence. He engaged in a criminal trespass which was an act of domestic violence. Further, his actions were clearly unprofessional thus justifying the letter of reprimand.

Considering the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 27TH DAY OF
APRIL, 2012.

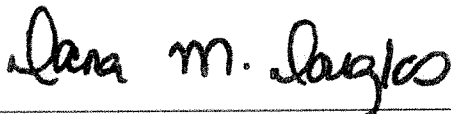
CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



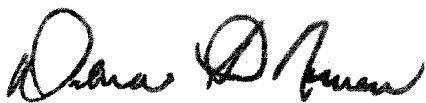
JOSEPH S. CLARK, COMMISSIONER

CONCUR:

I concur with the decision of the majority for separate reasons. It is arguable whether the actions of the Appellant would be interpreted as a "criminal trespass," under Louisiana law. The acts of the Appellant, however, clearly fall within the realm of those that can be disciplined for Adherence to Law as defined in the New Orleans Police Department Manual on Moral Conduct which specifically provides that the failure to be arrested or charged for an offense is not a valid defense to such a disciplinary action.



DANA M. DOUGLAS, VICE-CHAIRMAN



DEBRA S. NEVEU, COMMISSIONER