



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

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MAYOR

Thursday, December 20, 2012

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Ms. Sheena Clements

Re: **Sheena Clements VS.
Department of Police
Docket Number: 7970**

Dear Ms. Clements:

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 - 12/20/2012 - 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,

A handwritten signature in cursive script, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Ronal Serpas
Victor Papai
Jay Ginsberg
file

SHEENA CLEMENTS

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7970

Sheena Clements ("Appellant") is employed by the Department of Police ("Appointing Authority") as a Police Technician with permanent status. The Appellant received a two (2) day suspension for violation of the Appointing Authority's internal rules concerning Instructions from an Authoritative Source (one day), and Neglect of Duty (one day). The basis for the disciplinary action is contained in the second paragraph of the December 11, 2011 disciplinary letter, which provides as follows:

This investigation determined that on March 9, 2009, at about 11:00 p.m., you were given verbal instructions by your supervisor to submit an Interoffice Correspondence concerning your leave usage. After submitting the correspondence, you were given additional instructions to return to your normal duties. Your supervisor, on more than one occasion, had to instruct you to do your work assignment. One order was a Direct Order for you to do your work. You admitted that you did not follow your supervisor's instructions. You also admitted that you were writing down information about your supervisor when you were instructed to do your work. Also you admitted that you left the office and went to a smoking break without your supervisor's permission. Your correspondence documented that your supervisor approached you six (6) times within thirty (30) minutes concerning your disobeying his orders...

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 19, 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.

Sgt. Michael Marziale was Appellant's supervisor while she was assigned to the record room. The Appellant was temporarily assigned to index police reports while

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under investigation for an unrelated matter. Sgt. Marziale testified that the Appellant failed to report for work on March 6, 2009 and that, on March 9, 2009, he gave the Appellant a verbal instruction to prepare an interoffice correspondence (105) explaining her absence. Sgt. Marziale stated that the Appellant was hesitant to prepare the report and that it took a certain amount of prodding to get her to comply. He also testified that he instructed the Appellant to return to her indexing duties. Instead of complying with his instruction, the Appellant began writing information concerning their exchange. He testified that he had to repeat his instruction at least six times before the Appellant resumed her duties. Additionally, when he returned to observe the Appellant's progress, she was not at her job assignment. He found her outside the building taking a cigarette break. As a consequence, he notified the Public Integrity Bureau and filed a formal complaint.

Sgt. Joe Sylve investigated the complaint. He determined that the Appellant failed to comply immediately with her supervisor's instruction to prepare a written explanation for her absence. He stated that the Appellant admitted that she failed to return to her duties after her supervisor instructed her to do so several times. She also admitted to Sgt. Sylve that she left her assignment for a smoking break.

The Appellant testified that she was assigned to the record room to index boxes of reports while she was under investigation. Sgt. Marziale was her immediate supervisor. She acknowledged that she was absent on March 6, 2009, and did not contact her supervisor. The Appellant admits that she did not immediately comply with Sgt. Marziale's instruction to prepare a written explanation for her absence and was making notes about him instead of working. However, she contends that she eventually complied

with his order within a reasonable period of time. The Appellant also stated that she was upset and left the building to calm down. She did not request permission because she did not think she was required to do so. She contends that her supervisor was singling her out and picking on her.

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 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.*

CONCLUSION

The Appointing Authority has established by a preponderance of evidence that the Appellant was insubordinate towards her supervisor by disregarding his instructions. Her actions were also neglectful because her failure to comply with her instructions also resulted in her failure to perform her assigned duties in an efficient effective manner.

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

RENDERED AT NEW ORLEANS, LOUISIANA THIS 20th DAY OF
DECEMBER, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION


AMY L. GLOVINSKY, COMMISSIONER

CONCUR:


DEBRA S. NEVEU, COMMISSIONER


DANA M. DOUGLAS, VICE-CHAIRMAN