



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

REV. KEVIN W. WILDES, S.J.,
CHAIRMAN
AMY L. GLOVINSKY
JOSEPH S. CLARK
COLEMAN D. RIDLEY, JR.

LISA M. HUDSON
DIRECTOR OF PERSONNEL

MITCHELL J. LANDRIEU
MAYOR

Friday, August 09, 2013

Mr. Anthony Pierce

Re: **Anthony Pierce VS.
Department of Human Services
Docket Number: 8102**

Dear Mr. Pierce:

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 - 8/9/2013 - 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 that reads "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Seung Hong
Shawn Lindsay
Jay Ginsberg
file

ANTHONY PIERCE

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF HUMAN RESOURCES

NO. 8102

Anthony Pierce (“Appellant”) was employed by the Department of Human Resources (“Appointing Authority”) as an Institutional Counselor II with permanent status. The Appointing Authority terminated the Appellant following a determination that he violated internal rules and engaged in insubordinate conduct towards his supervisor.

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 February 27, 2013. 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.

The November 15, 2012 termination letter sets forth several acts of alleged misconduct that resulted in the Appellant’s termination. Those primary causes will be considered separately. By way of background, the Appellant was responsible for the care and safety of juveniles in custody and housed at the Youth Study Center while awaiting trial .

(1) Leaving Assigned Post for Extensive Period of time

Glenn Holt, the Superintendent of the Youth Study Center, described the violation, contained on the first page, second paragraph of the disciplinary letter, as serious enough in and of itself to justify termination. It provides as follows:

On October 15, 2012, at 1:25.52 AM, you were observed on camera leaving your assigned post on unit 5 and walking toward the control room,

A. Pierce
#8102

you picked up a chair and took it with you into the control room. You do not appear back on unit 5 till 2:31.32. AM. You were off the unit for approximately 1 hour and 6 minutes leaving only one staff on the unit with the youth leaving the unit out of mandated 1:10 ratio (one (1) staff to ten (10) youth.

A review of the videotape relied upon by the Appointing Authority confirmed the factual allegations contained in the disciplinary letter. Both Mr. Holt and the Appellant's immediate supervisor Leroy Crawford testified that maintaining the requisite ratio was extremely important to assure the safety of the residents of the facility. In fact, the requirement was instituted in response to a Federal Consent Decree that the Appointing Authority was required to follow. Mr. Crawford also testified that the Appellant received training during which he was made fully aware of the requirement.

The Appellant acknowledged that he was outside the unit for an extended period. He stated that he was able to monitor the unit from a computer located in the control room. The Appellant also stated that the ratio requirement was not a written rule, implying that it was therefore not as important as the Appointing Authority contended.

(2) Unauthorized Use of Cell Phone

The allegation regarding cell phone usage found on the first page, fourth paragraph of the termination letter provides as follows:

You were observed on camera at 4:22.44 AM using your cell phone/Smartphone till 4:45.35 AM. This is in violation of employee work rules regarding use of cell phones/smartphones.

Mr. Holt testified that while reviewing the videotape he observed the Appellant talking on his cell phone for an extended period of time. He testified that it is a violation of departmental rules to engage in personal calls while on duty. Employees are expected to devote their entire time to duty.

A. Pierce
#8102

The Appellant acknowledged that he was prohibited from using his cell phone during working hours except for work-related activities. However, he contended that he was not talking on the phone but texting business information. He also contended that he was not on the cell phone for as long as is contended in the termination letter.

(3) Room Checks

The allegations regarding room checks are contained on the first page, fifth and sixth paragraphs of the termination letter. It provides as follows:

During the course of your shift there was a total of 5 times that room checks were not completed per policy every 15 minutes, the longest being approximately 1 hour and 6 minutes.

The times that the checks were completed were postdated showing all room check times for the entire shift had been completed though the last room check log showing an actual room check had been actually completed was for 4:00 AM there was no room check logbook entries after 4:00 AM showing the actual room checks occurred at the time entered in the logbook.

The Appointing Authority reviewed room check log entries that were incomplete. Mr. Crawford testified that the Appellant was the shift supervisor and responsible for assuring that the log entries were made extemporaneously with the room checks. He found it suspicious that the times were recorded in the log but that no entries were made.

The Appellant testified that a Mr. Ransaw, who was also assigned to the shift, had made the room checks but had not yet made the entries.

(4) Room Checks throughout the shift on October 16, 2012 were not performed every fifteen minutes and the unit was consistently out of the mandated 1:10 staff to youth ratio.

The Appointing Authority again relied upon videotape footage in determining that the Appellant engaged in misconduct during his shift on October 16, 2012. As reflected

A. Pierce
#8102

on the second page, first paragraph of the termination letter, the Appointing Authority determined as follows:

On October 16, 2012 at 2:01.05 AM you were observed on camera leaving unit 5 with an empty laundry basket going to the control room. You were observed on camera at 2:53.42 AM arriving back on unit without a laundry basket. You were off unit 5 for 52 minutes. You were observed leaving unit 5 at 2:55.35 AM going to the control room. You were observed on camera returning to unit 5 at 3:15.32 AM with a laundry basket with clothes. You were off the unit for 19 minutes. You were observed on camera moving out of camera view on unit 5 at 5:04.50 AM and you do not appear on camera till 5:29.14 AM. During this time no room checks were completed per policy of every 15 minutes.

A review of the videotape supports the allegations contained in the disciplinary letter. Both Mr. Holt and Mr. Crawford testified with regard to the importance of regular 15 minute room checks to assure that residents are secure and not engaged in unsafe activities.

The Appellant testified that he was again monitoring the unit from the control room and that Mr. Ransaw performed the room checks during the relevant period. He contends that the videotape contained gaps.

(5) Insubordination

According to the disciplinary letter, the Appellant repeatedly refused to answer questions posed to him by Mr. Holt concerning the above-described activities. More specifically, as contained on the second page, third paragraph of the termination letter, the Appointing Authority contends as follows:

On Thursday, October 18, 2012, I questioned you several times if you had postdated the logbook entries for October 15, 2012 during your shift and you repeatedly refused to answer my question. I gave you several opportunities to answer my question but you refused. I asked you this question in the presence of Assistant Superintendent Leroy Crawford and Ms. Brandi Clay. Your actions were a display of gross insubordination and in violation of cooperating during an investigation.

Both Mr. Holt and Mr. Crawford testified that the Appellant was argumentative and refused to respond to questions posed. Conversely, the Appellant contended that he did not respond because Mr. Holt spoke to him in an aggressive and disrespectful manner. He also testified that Mr. Holt abruptly ended the meeting and exited the room before he could respond.

(6) Prior Disciplinary Actions

The Appellant's prior disciplinary record indicates a three day suspension for failing to provide necessary safety procedures during the transport of a resident and a one day suspension for insubordination. He appealed both actions and his appeals were denied.

In his defense, the Appellant testified that the Appointing Authority was looking to "clean house". He provided the testimony of several former employees who stated basically that the Appellant was a dedicated employee and that the Appointing Authority's new leadership did not know what they were doing. None of the Appellant's witnesses had any knowledge of the events that lead to the Appellant's dismissal.

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).

A. Pierce
#8102

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 the occurrence of the complained of activity by a preponderance of the evidence 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.*

CONCLUSIONS

The Appointing Authority has established by a preponderance of evidence that it terminated the Appellant for good cause. The videotape evidence established the Appellant's failure to follow proper protocol and adhere to internal policy. Further, the Appellant was insubordinate towards his supervisors during their investigation. Finally, this is not the Appellant's first infraction. The Appointing Authority has suspended him on two previous occasions.

A. Pierce
#8102

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

RENDERED AT NEW ORLEANS, LOUISIANA THIS 9th DAY OF AUGUST,
2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION




JOSEPH S. CLARK, COMMISSIONER

CONCUR:



AMY L. GLOVINSKY, COMMISSIONER



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