

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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Monday, August 17, 2015

Mr. Eric Hessler
PANO 2802 Tulane Avenue #101
New Orleans, LA 70119

Re: **John Hunter VS.
Department of Police
Docket Number: 8190**

Dear Mr. Hessler:

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 - 8/17/2015 - 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;



Doddie K. Smith
Chief, Management Services Division

cc: Michael S. Harrison
Elizabeth S. Robins
Jim Mullaly
John Hunter

file

JOHNATHAN HUNTER
VERSUS
DEPARTMENT OF POLICE

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS
NO. 8190

Appellant was a Police Sergeant with permanent status. The Appellant was terminated by letter dated June 26, 2013. As set forth in the disciplinary letter, the discipline arises out of allegations that for an extended period of time the Appellant failed to report to duty, failed to devote his entire time to duty, failed to perform his duties in a satisfactory manner, and may have committed what amounted to alleged payroll fraud. The disciplinary action came after an investigation by the NOPD that included surveillance of the Appellant's activities relative to the performance of his job duties over an extended period.

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 May 29 and June 5, 2014. 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 testimony was as follows:

SERGEANT DANIEL WHARTON:

Sergeant Daniel Wharton (Sgt. Wharton") was a Sergeant assigned to the Public Integrity Bureau ("PIB"). Sgt. Wharton testified that he received information from Lt. Errol Foy that Sgt. Hunter was working paid details when he had previously been prohibited from working paid details.

On April 19, 2011, Sgt. Wharton checked the payroll records and determined that

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Sgt. Hunter was supposed to work his regular shift from 10:00 p.m. to 6:35 am. On that night, Sgt. Wharton initiated surveillance of Sgt. Hunter and observed him leave his residence at 10:12 pm. Sgt. Hunter arrived at 5632 Peoples Street at 10:34 pm. Sgt. Hunter remained at the Peoples Street address until 4:14. At 4:14 Sgt. Hunter left Peoples and was observed traveling in the direction of his residence. Sgt. Hunter arrived at his residence at 4:31 am and remained there until the end of his tour of duty, 6:35 am.

On April 20, 2011, Sgt. Wharton again checked payroll and determined that Sgt. Hunter was assigned to Rape Squad, Rape Cold 1 from 4:00 pm to 12:00 am. Sgt. Wharton initiated surveillance and observed Sgt. Hunter arrive at Xavier University at 4:00 pm and remain there until 4:45 pm. Sgt. Hunter then traveled in the direction of his residence and arrived there at 5:41. Sgt. Hunter remained at his residence until 10:19 pm. At 10:19 pm Sgt. Hunter departed his residence and drove to 1529 Basin Street, arriving at 10:34. Sgt. Hunter remained at the Basin street address until 12:36 pm. 1529 Basin Street is the address of a bar and Sgt. Wharton did not believe that location had sent a call for service.

On April 21, 2011, Sgt. Wharton determined Sgt. Hunter was assigned to regular duty from 10:00 pm until 6:35 am. Sgt. Wharton and the surveillance team observed Sgt. Hunter at his residence at 4:00 pm. Sgt. Hunter left his residence and traveled to Walmart. Sgt. Hunter left Walmart and returned to his residence at 10:57 pm. Sgt. Hunter departed his residence at 11:00 pm and arrived at 325 Dorgenois Street at 11:15 and remained at that address until 11:55. Sgt. Wharton temporarily lost track of Sgt. Hunter's whereabouts until 1:32 a.m. when he determined that Sgt. Hunter had been handling a call for service on Homer Street in Algiers.

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Sgt. Wharton testified that at the end of the investigation he believed that this was a neglect of duty case. Sgt. Hunter testified that he wrote a memo to Sgt. Zschiedrich explaining his findings and that Sgt. Zschiedrich wrote the final Investigative Report with findings to proceed up the chain of command.

DET. CARL THIBODEAUX:

Detective Carl Thibodeaux (Det. Thibodeaux”) was assigned to the PIB. He testified that he received information that Sgt. Hunter was accused of violating Departmental rules regarding performance of duty; devoting entire time to duty, moral conduct; adherence to law, public payroll fraud, official information; and making false and inaccurate reports, to wit, two trip sheets.

Det. Thibodeaux conducted surveillance with other members of PIB, including Sgt. Wharton. He testified that he and others began surveillance on 105 Fairfax Drive in Algiers when they learned Sgt. Hunter resided there. Det. Thibodeaux testified that to his knowledge Sgt. Hunter was not responding to any complaints or calls for service at 105 Fairfax. Det. Thibodeaux testified that to his knowledge Sgt. Hunter was not responding to any complaints or calls for service at 5632 Peoples Avenue, Xavier University, or 1535 Basin Street (Jazzy Belle's Cafe), the other locations that Sgt. Hunter traveled to during the surveillance period.

SERGEANT KENNETH QUETANT:

Sergeant Kenneth Quetant (“Sgt. Quetant”) was during relevant times assigned to the Sex Crimes Unit. He testified that Sgt. Hunter was assigned to the Child Abuse Unit, and worked under the CODIS Federal Overtime Project. The project was funded by a federal grant and its purpose was to clear up old, unsolved cases. Sgt. Quetant testified

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that Officers reported their hours on an overtime CODIS sheet and did reports. The officers' hours would get documented in payroll under the payroll grant code. The federal grant funded this project by paying officers overtime to determine if old cases could be reopened.

Sgt. Quetant testified that he was in charge of the CODIS project. Sgt. Quetant testified that Officers did not typically work from home and that he did not give Sgt. Hunter authority to work from home in April, 2011.

Sgt. Quetant testified he was in charge of assigning cases to others, including Sgt. Hunter. He testified that all the cases that he gave Sgt. Hunter had been worked. However, Sgt. Quetant testified that the April, 2011, cases assigned to Sgt. Hunter were given to him on the 27th day of May, 2011, meaning that if cases needed to be reinvestigated/reworked, the investigation would be late by a month.

DETECTIVE WAYNE JACQUE

Detective Wayne Jacque (“Det. Jacque”) was assigned to the PIB. He testified that when Sgt. Zschiedrick completed the DI-1 form and initiated the investigation into the Appellant’s activities that the Appellant was under investigation for possible criminal activity in violation of Departmental Rules and state statutes, namely: Rule 2, Moral Conduct, paragraph 1, Adherence to Law, relative to public payroll fraud, to wit La. R.S.14:138.

Det. Jacque testified that pursuant to the alleged violation, he and other members of his team, including Det. Thibodeaux and Sgt. Wharton, were instructed to conduct a mobile surveillance on Sgt. Hunter. That mobile surveillance consisted of surveillance of

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him while at his residence, from his residence to whatever location he may have went and back to his residence at the end of the night.

Det. Jacque testified that in 2011, during the time period of the surveillance of Appellant, the Sex Crimes Unit was located at 715 South Broad, NOPD Police Headquarters. He testified that from April 19, 2011 through April 28, 2011, during the times that he observed Sgt. Hunter at his residence at 1005 Fairfax Drive in Jefferson Parish, there was no indication that Sgt. Hunter was responding to a call. There was nothing that existed that showed the surveillance team that he was responding to a call.

Det. Jacque testified that during the time period of surveillance from April 19, 2011, through April 28, 2011, when he observed Sergeant Hunter at the house at 5632 Peoples Avenue in New Orleans, there was no indication that Sgt. Hunter was responding to a police call for service at that location. There was nothing that indicated that he was responding to a call or was assisting in a call at that location.

Det. Jacque testified that during the time period of surveillance from April 19 through April 28, 2011, when he observed Sgt. Hunter at Xavier University in New Orleans, there were no indications that Sgt. Hunter was responding to a police complaint for service at that location.

DEPUTY SUPERINTENDENT KIRK BOUYELAS

Chief Bouyelas testified that NOPD policy prohibits officers from going home before the end of a tour of duty or leaving the City without permission. He testified that it is against policy for an officer to work from home and that Sgt. Hunter would have been expected to report to duty at Police Headquarters for his assigned shift.

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Chief Bouyelas testified that based upon the investigation and the admissions of Sgt. Hunter in his statement to most of the facts, Sgt. Hunter was not performing his duties for the Department, for the City or the citizens of the City while pursuing private interests when he should have been working, handling investigations, supervising his personnel, and doing the things that are required of him as a police Sergeant and expected as a police Sergeant. Sgt. Hunter was not performing those duties, which affects the efficient and effective service that the NOPD renders to the citizens of the City. Chief Bouyelas testified that as a result, the NOPD loses public confidence and that he and the command staff lose confidence in Sgt. Hunter as a supervisor and a member of the NOPD able to perform the duties that are expected of him.

Chief Bouyelas testified that when members of the NOPD are not focused on their jobs and those duties that they are paid to do, and they are doing other things that are not related to work or the job, it affects the service that the NOPD renders to the city and to the citizens of the city.

SGT. JOHN HUNTER

Appellant does not dispute most if not all of the factual allegations contained in the disciplinary letter or the trial testimony from the other witnesses.

Appellant admits that he was supposed to have worked regular hours on April 19 and 20, 10:00 p.m. until 6:35 a.m. but that he was at home and then studying with friends at 5632 Peoples Avenue on both days during his working hours.

Appellant admits that on April 20, 2011, there was an entry on his payroll record showing he worked from 4 p.m. to 12 a.m. on CODIS overtime. Sgt. Hunter admits however that he went to Xavier and remained there until 4:45 p.m. at which time he left

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and went home. At 10:17 p.m. he left his residence, in Jefferson Parish, and went to Jazzy Belle's Cafe on Basin where he ate until 12:20.

On April 21, 2011, there are two entries on his payroll record. One showing he worked CODIS Overtime Grant from 4:00 p.m. until 10:00 p.m. and another entry that shows he was working his regular shift from 10:00 p.m. until 6:35 a.m. Sgt. Hunter testified, however, that he was at his residence from 4 p.m. until 10:30 p.m. at which time he drove to Walmart and then returned to his residence at 11:00 p.m. At 11:00 p.m. he went to a location a block away from his office and remained there for an hour.

On April 26 payroll records show that he worked from 10:00 p.m. until 6:35 a.m. On that date Sgt. Hunter admits that he was at home until 10:40 p.m. and that at 12:00 a.m. until 1:45 a.m. he was visiting a friend at the 8th District Station.

LEGAL PRECEPTS

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer 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 efficient operation of the public service. Id. While these facts must be clearly established, they need not be established beyond a reasonable doubt. Id.

ANALYSIS

The Appointing Authority met its burden of proof and established by a preponderance of the evidence both the occurrence of the complained of activity and that the conduct complained of impaired the efficiency of the public service. The Appellant does not dispute the facts, which were proven by the Appointing Authority. Appellant also does not dispute, and the Appointing Authority established, that the facts as demonstrated violate Departmental policy. Further, as Deputy Superintendent Bouyelas testified, the Appellant's conduct impaired the efficient and effective operation of the Department, and eroded public confidence in its police service.

Finally, Appellant's assertion that the investigation went beyond the statutory sixty-day limitation on administrative disciplinary investigations as set forth in La. R.S. 40:2531, referred to as The Police Officer's Bill of Rights, is unavailing. The Appointing Authority established that the investigation into the Appellant was criminal in nature. The sixty-day limitation "does not apply" when the investigation is one of alleged criminal activity. McMasters v. Department of Police, 13-2634, p. 2 (La. 2/28/14), 134

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So. 3d 1163, 1164; La. R.S. 40:2531 B(7) ("Further, nothing in this Paragraph shall limit any investigation of alleged criminal activity.").

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

RENDERED AT NEW ORLEANS, LOUISIANA THIS 17th DAY OF
August, 2015.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



JOSEPH S. CLARK, COMMISSIONER

CONCUR:



MICHELLE D. CRAIG, CHAIRMAN



RONALD P. MCCLAIN, COMMISSIONER