

JOSEPH NARCISSE

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

DOCKET NO. 7784

The Department of Police (“Appointing Authority”) employed Joseph Narcisse (“Appellant”) as a Police Sergeant with permanent status. He was first hired by the Appointing Authority on October 28, 1990, promoted to Police Sergeant on March 15, 2002, and demoted to Police Officer IV effective October 6, 2010. The demotion resulted from the Appointing Authority’s determination that the Appellant violated internal rules regarding Instructions from an Authoritative Source. Specifically, the Appointing Authority determined that the Appellant failed to follow several verbal instructions from his supervisors on May 5, 2010. The Appointing Authority also suspended the Appellant for forty five days after determining that he made several untruthful statements regarding the May 5, 2010 events.

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 10, 2011. 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.

May 4, 2010 Meeting

At the time of the disciplinary action, the Appellant was a twenty year veteran of the department and had been serving in the rank of police sergeant for ten years. The Appellant had no prior disciplinary actions with the exception of a suspension for working one hour of unauthorized overtime. The Appellant had a known medical condition that had prevented him

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from working regularly. After an extended absence, the Appellant returned to work on May 4, 2010.

Upon the Appellant's return, Major John Bryson, the Commander of the Office of Compliance met with him to discuss his assignment. Capt. Brian Weiss and Lt. Angelo Smith, supervisors in the Office of Compliance, were also present. Although the Appellant was assigned to the Office of Compliance, Major Bryson detailed him to the Public Integrity Bureau ("PIB") where he had been previously assigned. Major Bryson directed the Appellant to complete the paperwork on a backlog of PIB investigations. The Appellant testified that during the meeting Major Bryson gave him his assignment, explained his expectations, and told him that he would try to accommodate him if he needed help acclimating. Although Major Bryson did not specifically discuss the Appellant's medical condition, everyone attending the meeting was aware of the Appellant's condition. Lt. Angelo Smith confirmed the Appellant's testimony.

Capt. Weiss testified that the Appellant had missed a significant amount of work while on sick leave and that his attendance was erratic. Capt. Weiss stated that Major Bryson informed the Appellant that his working hours were from 8:35 am until 5:00 pm. To supervise his attendance, the Appellant was instructed to report to the Office of Compliance located in Police Headquarters and sign the payroll timesheet on a daily basis before relocating to PIB's facility at another physical location.

Captain Weiss also testified that he conducted a staff meeting on the same day as the meeting with Capt. Bryson. All supervisors including the Appellant were instructed to turn in their departmental cell phones the following day because of budgetary constraints. Captain Weiss also instructed his subordinates to maintain radio contact on the compliance talk channel when outside the office because they were no longer equipped with departmental cell phones.

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May 5, 2010 Events

Lt. Angelo Smith spoke by telephone to the Appellant twice on May 5, 2010. He received the first call from the Appellant shortly before 9:00 am. The Appellant informed Lt. Smith that he was currently turning in his departmental radio at police headquarters. Lt. Smith testified that the Appellant also asked to change his working hours for that day. Lt. Smith declined the request informing the Appellant that he was working for PIB and that PIB was responsible for his hours. Lt. Smith received a second call from the Appellant at approximately 2:45 pm. The Appellant told Lt. Smith that he was at home and that he needed to take sick leave. Lt. Smith was aware that the Appellant suffered from migraine headaches and, therefore, approved his sick leave for the remainder of the day. However, after consulting with Capt. Weiss, Lt. Smith denied the Appellant's sick leave request from 8:25 am to 2:45 pm because the Appellant's PIB supervisor, Lt. Iris Carey, reported that the Appellant failed to report for duty. Lt. Smith also testified that he attempted to contact the Appellant earlier in the day by radio and that he never responded to the calls even though he was instructed to maintain radio contact.

Lt. Carey testified that she never saw the Appellant on May 5, 2010. She spoke to the Appellant around 9:00 am and learned that he was at police headquarters turning in his radio as instructed. According to Lt. Carey, the Appellant informed her that he was just talking to Capt. Weiss in the hallway. Around 11:00 a.m. Lt. Carey stated that she spoke to the Appellant again. He said he was not feeling well and needed to get medical attention – more specifically a shot for his migraine headache. Lt. Carey was familiar with the Appellant's medical condition and gave him permission to get medical attention. Lt. Carey also testified that the Appellant told her that Major Bryson had given him permission to modify his hours. She spoke to Lt. Smith and learned that Major Bryson had not given the Appellant permission to change his work hours.

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She also was informed that the Appellant could not have had a conversation with Capt. Weiss earlier that day because he was not at police headquarters at the time the Appellant was turning in his radio.

Internal Investigation

Truthfulness

Lt. Carl Perilloux conducted the internal investigation. He sustained a violation of the departmental rule regarding truthfulness finding that the Appellant falsely reporting to Lt. Carey that he was talking in the hallway with Capt. Weiss. Lt. Perilloux discounted the Appellant's statement that he merely told Lt. Carey that he saw Capt. Weiss in the hallway and that apparently he mistook someone else for the Captain.

Lt. Perilloux sustained a second violation of the truthfulness rule finding that the Appellant falsely informed Lt. Carey that Major Bryson gave him permission to change his work hours.

Lt. Perilloux sustained a third violation of the truthfulness rule finding that the Appellant falsely informed Lt. Carey that Lt. Smith had given him permission to change his work hours. However, Lt. Carey did not provide any testimony supporting that particular charge.

Lt. Perilloux also found that the Appellant was untruthful in his administrative statement on two occasions. Lt. Perilloux determined that the Appellant was untruthful when he stated that he reported for work at PIB on May 5, 2010. Lt. Perilloux determined that the Appellant was untruthful a second time when he stated that he logged onto a PIB computer to work on his files as proof that he was physically at work.

Instructions from an Authoritative Source

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Lt. Perilloux found that the Appellant failed to follow Major Bryson's instruction to report for work at PIB on May 5, 2010. He relied upon Lt. Carey's statement that she never saw the Appellant at the PIB office on May 5, 2010. Lt. Perilloux stated that he relied upon Lt. Carey's statement that no one saw the Appellant on May 5th. Lt. Perilloux also found that the Appellant failed to follow verbal instructions from Lt. Smith and Lt. Carey to report to PIB on May 5, 2010. Finally, Lt. Perilloux found that the Appellant failed to follow instructions from Capt. Weiss to carry and monitor the NOPD police radio on the compliance staff channel. Lt. Perilloux determined that Lt. Smith attempted to contact the Appellant but he never responded to the calls.

Appellant's Version of Events

The Appellant testified that he suffers from a chronic condition that hinders his ability to perform his job functions. At the time of the appeal hearing, the Appellant was assigned to the Administrative Duties Division because his condition prevented him from performing his duties as a police officer.

The Appellant confirmed that he met with Major Bryson on May 4, 2010 to discuss his return to work. Major Bryson was aware of his condition and let the Appellant know that the department would work with him regarding his return to work after an extended absence due to his medical condition. The Appellant testified that he was aware of his assigned working hours and understood his assignment, which was to first report to the Office of Compliance and sign the beat roll book. The Appellant was then to relocate to PIB which was several blocks away in another building.

On May 5, 2010, the Appellant testified that he followed instructions and started his day at police headquarter where he turned in his police radio and signed the beat roll book for the

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previous day. Shortly before 9:00 am, he spoke to Lt. Carey and informed her where he was and what he was doing – turning in his departmental cell phone at police headquarters. He also mentioned to her that he just saw Capt. Weiss in the hallway. The Appellant testified that he was not intending to mislead Lt. Carey. He mistook someone else for Capt. Weiss.

The Appellant testified that he arrived at PIB at approximately 9:30 am. He worked on his files until around 11:00 am and decided to take his lunch break. The Appellant testified that he did not have an assigned work area and that he found work space at any available computer. The Appellant stored his files on a thumb drive because he was not actually assigned to PIB. The Appellant acknowledged that he told Lt. Perilloux that the computer system would have shown that he logged in on the day in question. However, the Appellant testified that he was mistaken because, while he typically logs onto the computer, on that particular day, the computer he used was already on and did not require a log-in. He merely had to insert his thumb drive to start working. The Appellant also stated that other employees would have seen him, but he would not have had any particular conversations with anyone because his work did not require it. He worked on his files alone.

The Appellant stated that he went home for lunch early because he was not feeling well and hoped that getting something to eat would help his headache subside. He called Lt. Carey while at lunch because he was not feeling better. He asked for her permission to get medical treatment, which she gave. The Appellant denies telling Lt. Carey that Major Bryson said he could change his work hours. He said that Major Bryson would be willing to do whatever he needed. The Appellant further testified that he suggested changing his work hours to placate his supervisors who were pressuring him.

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The Appellant further testified that he had his radio on, but reception where he was located was spotty. All police officers called to testify confirmed that the police radio was not as reliable as cell phones and that service is not always consistent. This was the Appellant's first day without a departmental cell phone. He testified that he kept in contact with his supervisors and would have answered his radio had he heard it.

The Appellant received medical treatment but his headache did not subside. He called Lt. Smith and requested sick leave, which was approved for the remainder of the day. The following day the Appellant reported for work and received permission to change his work hours.

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

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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 that 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 established by a preponderance of evidence that it disciplined the Appellant for cause. The Appellant's credibility with regard to the events of May 5, 2010, are at best questionable. The Appointing Authority gave explicit instructions in an attempt to work with the Appellant following his return to work and those instructions were not followed.

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

RENDERED AT NEW ORLEANS, LOUISIANA THIS 1ST DAY OF JUNE, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION


DANA M. DOUGLAS, VICE CHAIRMAN

CONCUR:


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


DEBRA S. NEVEU, COMMISSIONER