

JAMES ADAMS

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7666

The Department of Police ("Appointing Authority") employed James Adams ("Appellant") as a Police Officer III with permanent status. By letter dated August 18, 2009, the Appointing Authority terminated the Appellant's employment after determining that he was either unwilling or unable to return to work and perform the duties of a police officer.

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 18, 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.

The facts are not in dispute. The Appellant was absent from work for an extended period of time due to illness. On August 18, 2009, the Appointing Authority conducted a hearing to determine whether the Appellant could return to his position as a police officer and, if so, when. Asst. Supt. Bruce Adams conducted the Police Department hearing. Asst. Supt. Adams testified before the Hearing Examiner that he recommended termination after reviewing medical information presented by the Appellant indicating that the Appellant was unable to return to work in any capacity. Asst. Supt. Adams stated that he made the recommendation because the Appellant failed to provide any medical information as to when he would return to work and because of the extended period he had already been absent.

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The Appellant testified that at the time of the Police Department hearing he needed to see one more doctor before returning to work, but, because of financial difficulties he was unable to schedule the appointment. He contended that he was capable of returning to work after September, 2009. However, the Appellant failed to provide sufficient medical evidence to support his contention. The Appellant provided correspondence dated February 16, 2011 from a registered nurse with Baylor Endocrine Center stating that the Appellant's type 2 diabetes was under control and that "he is overall capable of carrying on normal physical activities of daily living." The Appellant was invited to supplement the record with medical records to support his contention. He failed to take advantage of this opportunity.

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 from the facts presented whether the appointing authority has good or lawful cause for taking

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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.

The Appointing Authority has established that it terminated the Appellant because he was unable to return to work and could provide no indication of a return date. The Appellant's contention that his doctor cleared him to return to work shortly after his

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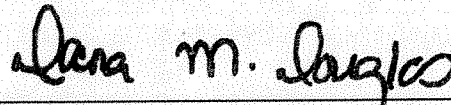
termination is not supported by the evidence.

Accordingly, the Appellant's appeal is DENIED.

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

2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION

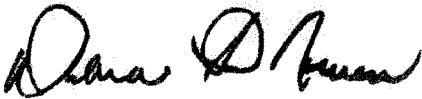


DANA M. DOUGLAS, VICE-CHAIRMAN

CONCUR:



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



DEBRA S. NEVEU, COMMISSIONER