

IRMA REGIS

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7648

The Department of Police ("Appointing Authority") employs the Irma Regis ("Appellant") as a police sergeant with permanent status. The Appointing Authority first hired the Appellant on March 17, 1991, and appointed her to this class on February 3, 2006. The Appellant received a letter of reprimand after the Traffic Accident Review Board determined that she caused an avoidable accident by failing to maintain reasonable vigilance while operating her departmental vehicle. The factual basis for the determination is provided in the second paragraph of the Appellant's May 26, 2009 disciplinary letter.

The inquiry determined that on December 10, 2008 at approximately 5:00 p.m., while on duty and driving New Orleans Police Department vehicle APOL #06001, you were involved in a traffic accident at the intersection of Carondelet Street and Gravier Street, which was reported under N.O.P.D., Item number L-11073-08. You were operator of the vehicle number one responding to an accident with injury in the 300 block of St. Charles Avenue. You were traveling east on Carondelet Street with the emergency vehicle's light's activated. As you approached the intersection of Carondelet and Gravier, while in the right lane you noticed the traffic light facing you indicated green and you slowed down before making a turn. You observed a pedestrian crossing the street from your left side and applied brakes to stop. The pedestrian observed vehicle one and raised his right arm up, before impact, which struck the front hood of vehicle one. The pedestrian, Mr. Steven Rapier refused medical treatment, did not want to report the incident and left the location. Prior to Mr. Rapier leaving the location he provided Sergeant Patrick Baxter with an account of the incident. Mr. Rapier stated that he did not see vehicle one until the last minute and raised his arm up before impact. Mr. Rapier stated he would have kept walking away if Sergeant Regis would not have called him back to the scene. After reviewing the facts and circumstances of the accident, the Board concluded that this accident was avoidable in that you were in violation of 17271 MCS Chapter 154, Section 400 relative to Reasonable Vigilance.

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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 August 30, 2010. 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 do not support any disciplinary action. The disciplinary letter accurately describes an unavoidable incident that perhaps technically is an accident. The Appointing Authority provided no documentary evidence or testimony supporting a conclusion that the incident was avoidable. The Appellant made a right turn with a green light at an appropriate speed, and a pedestrian stepped out in front of her without looking. She applied her brakes, and the vehicle stopped short of the pedestrian. The pedestrian flung out his arm and struck the vehicle. He was not injured.

#### 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 disciplinary action and, if so, whether the punishment imposed is commensurate with the

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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.

Accordingly, the Appellant's appeal is GRANTED. The Appointing Authority is directed to remove the letter of reprimand from the Appellant's disciplinary record.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 13th DAY OF APRIL, 2012.

CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS



JOSEPH S. CLARK, COMMISSIONER

CONCUR:

  
AMY L. GLOVINSKY, COMMISSIONER  
REV. KEVIN W. WILDES, S.J., CHAIRMAN