

TRACY FULTON

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7816

Tracy Fulton (“Appellant”) is employed by the Department of Police (“Appointing Authority”) as a Police Officer IV with permanent status. The Appellant received a twenty day suspension for violation of the Appointing Authority’s internal rules concerning Instructions from an Authoritative Source. The penalty was enhanced because it was the Appellant’s third violation within a thirty-six month period. The factual basis for the violation is contained in the third paragraph of the December 29, 2010 disciplinary letter, which provides as follows:

This investigation determined that on Friday, March 12, 2010, at approximately 7:47 p.m., you failed to activate your assigned vehicle’s onboard mobile video camera while interacting with parties involved in an automobile accident. You also failed to provide the parties involved in the accident an “Auto Accident Driver Information Exchange” form to ensure the information was filled out completely. The investigation determined that you violated Rule 4: Performance of Duty, paragraph 2 – Instructions from an Authoritative Source to wit: Chapter 17.6 Mobile Video Cameras, paragraph 1 and Rule 4: Performance of Duty, paragraph 2 – Instructions from an Authoritative Source to wit: Chapter 61.7 Accident Investigations, paragraph 22.

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 11, 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.

Sgt. Kendrick Allen investigated the incident. He testified that the Appellant admitted that he failed to activate the vehicle’s onboard mobile video camera. According

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to Sgt. Allen, the Appellant informed him that the area was too dark for the camera to video the accident investigation. Sgt. Allen stated that, while it may have been too dark to video the investigation, the camera also has an audio component that may have served a useful purpose.

Regarding the Auto Accident Driver Information Exchange form, Sgt. Allen testified that the Appellant also admitted that he failed to provide the form to the parties that were involved in the accident. According to Sgt. Allen, the Appellant informed him that he ran out of forms and that he wrote the incident number on a piece of paper. Sgt. Allen stated that, while it is not unusual for police officers to run out of the forms, they are expected to gather and provide the information normally contained on the forms to the parties in some written form. The information expected includes the parties' names, telephone numbers, and insurance carriers.

The Appellant did not testify in support of his appeal.

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).

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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.*

The Appointing Authority has established by a preponderance of evidence that it suspended the Appellant for cause and that the penalty was commensurate with the violation. The Appellant violated two internal rules and failed to provide a satisfactory

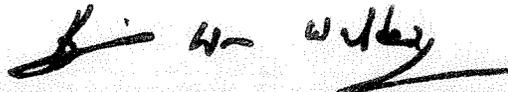
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explanation that would mitigate his omissions.

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

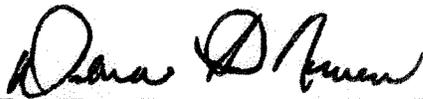
RENDERED AT NEW ORLEANS, LOUISIANA THIS 27TH DAY OF APRIL,
2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION

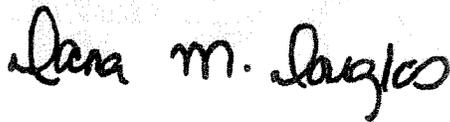


REV. KEVIN W. WILDES, S.J., CHAIRMAN

CONCUR:



DEBRA S. NEVEU, COMMISSIONER



DANA M. DOUGLAS, VICE-CHAIRMAN