

ALBERT QUEST

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

SEWERAGE & WATER BOARD

DOCKET NO. 7799

The Sewerage & Water Board ("Appointing Authority") employs Albert Quest ("Appellant") as a Public Works Maintenance Worker I with permanent status. The Appointing Authority suspended the Appellant for twenty days by letter dated August 27, 2010 as the consequence of three incidents. The factual basis for the suspension as summarized in the disciplinary letter provides as follows:

On August 24, 2010, you were seen outside the administration building at the Central Yard sitting on the bench while you were supposed to be at the Fuel Island, your job site, performing your duties as the central yard fuel attendant. You stated that you were at lunch. Your immediate supervisor, Diane Jones, reminded you of your correct lunch hour and your designated work area. This is considered a negligence of duty by leaving your designated work area and abandoning your post and work duties.

On August 26, 2010, you were seen by Ms. Jones sitting on the outside of the warehouse in Central Yard. You stated that you were on the phone and you were on lunch. Again, you were reminded that you were not at the Fuel Island and you were not on your correct lunch hour. This is the second incident of negligence of duty of the same nature.

On Saturday, October 9, 2010, Ms. Jones smelled gasoline in the Fuel House, which is under your auspices. Ms. Jones searched the Fuel House and discovered a five (5) gallon fuel container full of unleaded fuel. Additionally, the fuel container was located near electrical wiring within an enclosed air-conditioned building.

Your reckless handling of a flammable substance in an enclosed air-conditioned facility near electrical wiring violated the petrol-chemical fuel handling regulations promulgated by the State of Louisiana. Additionally, your negligent acts endangered your safety and the safety of the entire Central Yard and its employees.

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

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hearing was held on February 3, 2011. 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 material facts as contained in the disciplinary letter are not in dispute. The Appellant was not at his assigned work location on the dates in question. He also admitted that he stored the gasoline in a concealed location in the Fuel House.

Regarding the Appellant leaving his assigned work location, the Appointing Authority provided a copy of a document entitled Fuel Attendant's Duties ("Appointing Authority's Exhibit B"). All of the responsibilities listed in this document require the Appellant's physical presence at his assigned work location. Of particular importance is the seventh listed duty which instructs the fuel attendant to notify his supervisor if any alarms are activated. The alarm system is located in the fuel house. The system alerts the Appointing Authority if there are any leaks or other problems in this area. The Appellant was found in an area where he could not hear the alarms if they activated. According to the Appellant's supervisor, Diana Jones, the Appellant was required to notify her before he left his work area. The Appellant failed to notify anyone of his intention to leave his work area. Consequently, if the system had activated, no one would have heard the alarm.

Regarding the gasoline container, the Appellant disagreed that it was dangerous to leave gasoline in the fuel house. He testified that he found the container on the fuel isle, and hid it in the fuel house. The Appellant stated that he intended to leave the container concealed in the fuel house until someone claimed it.

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Keith Pete is the Appointing Authority's Utilities Safety Manager. He testified that it is not safe to store gasoline in the fuel house because the fumes are combustible and could cause a fire. John Wilson is the Director of Support Services and manages the Central Yard. He confirmed that the Appellant attended a training session given by the State of Louisiana Department of Environmental Quality concerning the safe operation of a gasoline station. Part of the training included the safe storage of gasoline. Mr. Wilson concluded that the Appellant received adequate training to know that he should not have stored gasoline in the fuel house.

#### **LEGAL PRECEPTS**

An employer cannot subject an employee who has gained permanent status in the classified city civil service to disciplinary action 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

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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 by established beyond a reasonable doubt. *Id.*

The Appointing Authority has established that it suspended the Appellant for cause. Based on the evidence in the record, the Authority has established beyond a reasonable doubt that the Appellant failed to follow mandatory procedures regarding the monitoring and handling of gasoline and that this neglect of duty bears a real and substantial relationship to the efficient operation of the public service. Further, we find that the penalty is commensurate with the violation.

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

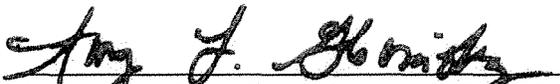
RENDERED AT NEW ORLEANS, LOUISIANA THIS 23rd DAY OF MARCH,  
2012.

CITY OF NEW ORLEANS  
CIVIL SERVICE COMMISSION



DEBRA S. NEVEU, COMMISSIONER

CONCUR:



AMY J. GLOVINSKY, COMMISSIONER



JOSEPH S. CLARK, COMMISSIONER