

THOMAS CLARK

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7890

The Department of Police (“Appointing Authority”) employed Thomas Clark (“Appellant”) as a Police Officer with permanent status. The Appointing Authority terminated the Appellant for violation of internal regulations regarding Instructions from an Authoritative Source. Specifically, the Appointing Authority determined that the Appellant failed to follow Chapter 71.1 Prisoner Transportation, paragraphs 18 and 19 of the Appointing Authority’s internal rules. Paragraph 18 requires that the Arresting/transporting officers request their supervisor’s permission prior to transporting any arrested subject to a district station. Paragraph 19 requires the officers to inform the dispatcher of the beginning mileage and the intended destination of the transport. The Appointing Authority also suspended the Appellant for ten (10) days for violation of internal rules regarding Professionalism, and twenty (20) days for the violation of the internal rule entitled Ceasing to Perform Before End of Period of Duty.<sup>1</sup>

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 January 11, 2012. 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.

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<sup>1</sup> The Appellant ended his shift thirty minutes early without obtaining the permission of his supervisor. He admits that he violated this rule and does not contest the twenty day suspension.

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#### UNDISPUTED FACTS

The material facts are not in dispute. On June 30, 2009, the Appellant was employed by the Sixth Police District Task Force. Police Officers assigned to the task force are employed to proactively patrol their assigned area to find and respond to criminal activity generally in areas where criminal activity is known to occur. The Appellant was working in a two man police unit with his partner Police Officer Henry Hollins. The Appellant testified that while patrolling their assigned area, they observed a female subject standing outside of the door of a van with the door open. When the female subject saw their police unit approaching, she slammed the door of the van and walked away. Because the area was known for narcotics activity they elected to conduct a suspicious person stop. Because the stop was two blocks from the Sixth District Station, they elected to transport the subject to the station for further questioning. After reaching the station Officer Hollins informed the Appellant that he was not going to process the female subject, and instead was going to return her to where they detained her. Officer Hollins stated he was going to end his shift and go home after dropping her off.

Unbeknownst to the Appellant, Officer Hollins did not return the female subject to the location where they detained her. Instead, Officer Hollins drove the female subject to another location and attempted to rape her. The female subject reported the incident and Officer Hollins and the Appellant were arrested.

A criminal investigation resulted in the State prosecuting Officer Hollins and attaining a conviction for Attempted Aggravated Rape and Second Degree Kidnapping.

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Charges against the Appellant were dismissed, and the Appointing Authority investigated Appellant administratively.

#### TESTIMONY

Sgt. Kevin Stamp investigated the incident and testified that internal rules require police officers to contact their supervisor and obtain permission before transporting an arrested subject to a police station. He testified that the Appellant and his partner failed to contact a supervisor.

Sgt. Stamp also found that the Appellant and his partner failed to contact the dispatcher and report their mileage before transport. Sgt. Stamp testified that the requirement allows the Appointing Authority to monitor a police officer's efficient use of time when transporting a detained subject. The Appellant testified that because of the close proximity of the arrest to the station, he and his partner chose not to seek permission from a supervisor to transport the female subject or to notify the dispatcher of their mileage before driving two blocks to the district station. Sgt. Stamp's supervisor Lt. Errol Foy testified that he reviewed and agreed with Sgt. Stamp's investigative report.

#### 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, based on 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.*

#### CONCLUSION

The Appointing Authority has established that the Appellant failed to provide the dispatcher with the police unit's mileage before transporting a detained subject. The Appointing Authority also established that the Appellant failed to contact a supervisor and obtain permission before transporting the detained subject two blocks to the district station. The Appointing Authority also established that the Appellant left work early

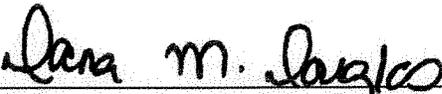
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without permission of a supervisor. The Appellant admitted the violation.

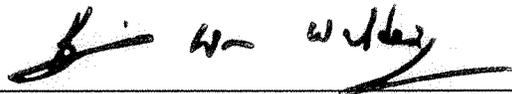
Based upon the foregoing, the Appellant's appeal is DENIED.

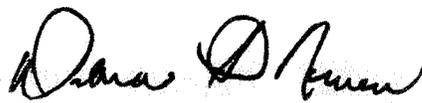
RENDERED AT NEW ORLEANS, LOUISIANA THIS 1ST DAY OF JUNE,  
2012.

CITY OF NEW ORLEANS  
CIVIL SERVICE COMMISSION

  
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DANA M. DOUGLAS, VICE-CHAIRMAN

CONCUR:

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

  
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DEBRA S. NEVEU, COMMISSIONER