

JAMES TERRELL

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7835

James Terrell (“Appellant”) is employed by the Department of Police (“Appointing Authority”) as a Police Officer with permanent status. The Appellant received a three day suspension for violation of the Appointing Authority’s internal regulation concerning Professionalism.¹ The factual basis for the violation is contained in the second paragraph of the March 16, 2011 disciplinary letter, which provides as follows:

The investigation determined that on Thursday, August 12, 2010, at about 5:02 p.m., Captain Edwin Hosli Jr., Commander of the Eighth District, received an email from Mr. Peter Jungena regarding New Orleans Police Department marked police unit #823. The vehicle was occupied by you and you were observed sleeping behind the steering wheel of the vehicle at the location of Saint Charles Avenue and Julia Streets. Several photographs were snapped of you sleeping while you worked a paid detail. The photographs revealed that you failed to be alert on a detail and during the time the photographs were taken. The photographs also proved that your eyes were closed while sitting in a police vehicle...

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 July 21, 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 Appointing Authority called the investigating officer, Sgt. Ernest Luster, as a witness during the July 21 hearing. Sgt. Luster testified that he relied exclusively on his

¹ The Appellant received an enhanced penalty because the Appointing Authority previously reprimanded the Appellant for violation of the same internal rule. However, in *Terrell v. Department of Police*, Case No. 7804, the Commission granted the Appellant’s appeal. Thus, for purposes of the Appeal currently before the Commission, the alleged violation of internal rules is a first violation.

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review of the photographs, which showed the Appellant with his eyes closed. The complainant failed to cooperate in the investigation and Sgt. Luster was unable to obtain a statement from him supporting the complaint. The Appointing Authority did not provide the complainant or anyone else present when the photographs were taken as a witness during the hearing. Sgt. Luster acknowledged that the photographs merely showed the Appellant for a moment in time with his eyes closed. He did not know whether the Appellant was sleeping or that his eyes were closed for any period of time beyond the moments in time that the photographs captured. Sgt. Luster interviewed the Appellant who admitted that he was the officer shown in the photographs and that his eyes were closed when the photographs were taken, but denied he was sleeping. Sgt. Luster testified that he made no credibility determinations regarding whether the Appellant was sleeping or regarding the length of time the Appellant's eyes were closed.

When called to testify, the Appellant denied that he was sleeping while working the paid detail.

LEGAL PRECEPTS

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer 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 limited evidence provided by the Appointing Authority fails to establish that the Appellant was disciplined for cause. The photographs alone, without any supporting testimony, merely show the Appellant sitting in a vehicle with his eyes closed. This hardly proves by any burden of proof that the Appellant was sleeping or that he was sitting in his vehicle with his eyes closed for any period of time that could be perceived as unprofessional.

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Considering the foregoing, the Appellant's appeal is GRANTED. The Appointing Authority is ordered to return to the Appellant three days of back pay and emoluments of employment.

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

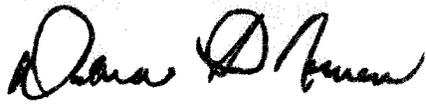
CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS


JOSEPH S. CLARK, COMMISSIONER

CONCUR:



AMY L. GLOVINSKY, COMMISSIONER



DEBRA S. NEVEU, COMMISSIONER