

DINAH BREAUX

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

NEW ORLEANS MUSEUM OF ART

NO. 7779

The Appointing Authority employs the Appellant as a Maintenance Engineer with permanent status primarily to monitor the museum's mechanical equipment. The Appointing Authority suspended the Appellant for three days for violating internal policy requiring her to remain on the premises when the museum is open to the public.

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 December 16, 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 Appointing Authority established that on September 22, 2010 a small electrical fire occurred in the backstage area of the museum's auditorium. The incident alarmed those museum employees who were present. The museum was open, and students from the New Orleans Center for Creative Arts (NOCCA) were performing. The Appellant was not present when this occurred. Attempts were made to locate her. The Appellant was taking a scheduled lunch break. The problem was that she was off premises attending to her elderly mother at the time.

The Appointing Authority also provided testimony that the Appellant received a memorandum dated July 5, 2006 notifying her that the museum requires an engineer on the premises during all hours when the museum is open to the public. Susan Hayne testified that she copied the memorandum from the Appellant's personnel file.

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The Appellant testified that she was not aware of the policy and that she had openly left the premises during her lunch break for the last several years without incident. She further testified that her mother requires her care and that is why she left. Finally, the Appellant stated that she was never questioned after the incident, but only told that she was receiving a suspension because of her failure to follow policy.

Deon Danna is the Appointing Authority's chief engineer. He testified that all engineers under his supervision, including the Appellant, were aware that they were not to leave the premises while the general public was occupying the building.

#### 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).

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 not be established beyond a reasonable doubt. Id.

While the Appellant may have established that the Appointing Authority has not done a very good job enforcing its policy, it appears that the Appellant knew or should have known that she was supposed to remain on the premises when the museum was open to the public. The Appellant's disregard of the policy only became an issue when the Appointing Authority needed her and she was not there.

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CONSIDERING THE FOREGOING, the Appointing Authority has established that it disciplined the Appellant for cause, and the Appellant's appeal is DENIED.

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

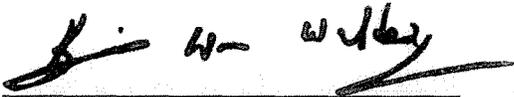
CITY OF NEW ORLEANS  
CIVIL SERVICE COMMISSION



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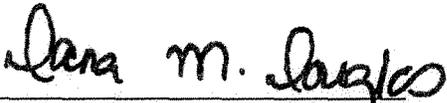
DEBRA S. NEVEU, COMMISSIONER

CONCUR:



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



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DANA M. DOUGLAS, VICE-CHAIRMAN