

JAMES ADAMS

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 6840

The Department of Police ("Appointing Authority") employed James Adams ("Appellant") as a Police Officer III with permanent status. The Appointing Authority placed the Appellant on a one hundred and twenty ("120") day emergency suspension after he was charged with aggravated kidnapping, extortion, and malfeasance in office. All charges were dismissed by the Court on July 9, 2008. The Appointing Authority failed to complete its administrative investigation prior to terminating the Appellant for unrelated reasons. Thus, the Appointing Authority was unable to provide any evidence that the Appellant engaged in any misconduct or violated any of its internal rules. Mr. Adams appealed the 120 day emergency suspension and seeks return of the resulting lost wages.

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 18, 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.

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

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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 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 failed to establish by a preponderance of evidence that it suspended the Appellant for good cause. The imposition of an emergency suspension is a device to allow the Appointing Authority to temporarily remove an employee from duty pending a formal investigation, a pre-disciplinary hearing, and final disciplinary action. This device is often used when an employee is charged with a criminal offense. Once the formal investigation is completed there are only two possible outcomes: If the formal charges are sustained and disciplinary action is taken, the appeal of the emergency suspension and the appeal of the final disciplinary action are

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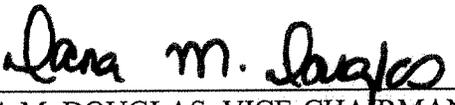
consolidated for hearing. If the formal charges are non-sustained, the Appointing Authority has determined that the Appellant has not engaged in misconduct and the days the employee was placed on emergency suspension are returned.

In the instant case, the Appointing Authority failed to complete a formal investigation prior to terminating the Appellant for unrelated reasons and the Appointing Authority never reached a conclusion regarding the Appellant's guilt or innocence. The record only establishes that the criminal charges that formed the basis of the emergency suspension were dismissed.

Consequently, there is no evidence of misconduct. Accordingly, the Appellant's appeal is GRANTED and the Appointing Authority is ordered to pay the Appellant one hundred and twenty days of back pay.

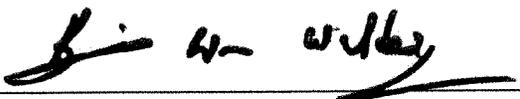
RENDERED AT NEW ORLEANS, LOUISIANA THIS 20TH DAY OF
FEBRUARY, 2012.

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

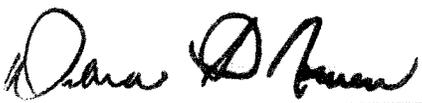


DANA M. DOUGLAS, VICE-CHAIRMAN

CONCUR:



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



DEBRA S. NEVEU, COMMISSIONER