

THELMA HAMILTON

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

SEWERAGE & WATER BOARD

NO. 7782

Thelma Hamilton ("Appellant") is employed by the Sewerage and Water Board ("Appointing Authority") as a Senior Office Support Specialist with permanent status. The Appointing Authority suspended the Appellant for one day for failing to follow the proper chain of command to report an incident involving herself and a co-worker. The Appointing Authority also determined that the Appellant's written version of events was unnecessarily inflammatory and inaccurate.

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 27, 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 confrontation that resulted in the Appellant's suspension occurred in the lobby of the Appointing Authority's St. Joseph Street office on September 8, 2010. The Appellant was transacting business on the first floor, which required a brief discussion with a co-worker named Gwen Nolan. Ms. Nolan's supervisor, Judith Jones, noticed the Appellant and Ms. Nolan in conversation, and commented from her office in a loud enough voice for the Appellant to hear, "I know Ms. Nolan did not leave her customers to go and talk to Ms. Hamilton". The Appellant was offended by Ms. Jones comment and entered her office to confront her. Ms. Jones was meeting with another employee, and asked the Appellant to leave. When the Appellant ignored

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her request and continued to press the issue, Ms. Jones became irritated and again instructed the Appellant to leave.

The Appellant left and walked towards the stairs to the third floor to return to her desk. Ms. Jones testified that she walked to the same area to go to the third floor and speak to the Appellant's supervisor. A second heated exchange of words occurred. However, there was no testimony that Ms. Jones threatened or attacked the Appellant. Ms. Jones received a written reprimand for unprofessional behavior. The Appellant received a one day suspension for failing to following the chain of command in preparing and distributing a written complaint that at best exaggerated the facts and at worse was a false representation of what occurred.

Jacqueline Shine, the Director of Revenue and Customer Services and Billing testified that the Appellant failed to follow the proper chain of command by sending an inter-office memorandum to Ms. Jones' supervisor and copying the Director and Deputy Director of the Sewerage and Water Board. According to Ms. Shine, the memorandum should have gone to Ms. Davis and/or herself for proper resolution. Ms. Shine also determined that the Appellant's version of events was inaccurate. Ms. Shine concluded that Ms. Jones made no threats towards the Appellant and did not attack her. Therefore, the Appellant's claims of workplace violence were false.

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

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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 by established beyond a reasonable doubt. Id.

The Appointing Authority has established by a preponderance of evidence that it

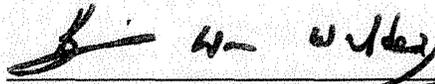
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suspended the Appellant for cause. The Appellant drafted a complaint that embellished the facts and forwarded the complaint to individuals outside of her chain of supervision.

Based upon the forgoing, the appeal is DISMISSED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 16TH DAY OF FEBRUARY,
2012.

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

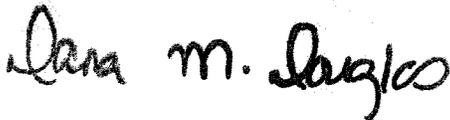


REV. KEVIN W. WILDES, S.J., CHAIRMAN

CONCUR:



JOSEPH S. CLARK, COMMISSIONER



DANA M. DOUGLAS, VICE-CHAIRMAN