

NEVILLE PAYNE

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

DOCKET NO. 7801

Neville Payne (“Appellant”) is employed by the Department of Police (“Appointing Authority”) as a Police Officer. The Appointing Authority suspended him for three days for violation of internal rules regarding Professionalism.

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 February 3, 2011. The testimony presented at the hearing was transcribed by a court reporter. Appellant was represented pro se. The three undersigned members of the Civil Service Commission have reviewed a copy of the transcript and all documentary evidence.

This case involves an incident on November 10, 2009 in the 3600 block of McArthur Boulevard. Appellant was pulled over by Officers Tomeka Anderson and Therasa Tucker for improper lane changing without a signal.

According to the testimony of Officer Anderson, after being pulled over Appellant exited his vehicle and began acting “hostile.” When Officer Anderson followed routine procedure and asked him for his driver’s license, registration and insurance ID card, he refused and continually said “Why are you pulling me over?” Furthermore, Appellant was in plain clothes and off duty and did not adequately identify himself as a police officer as required by police department regulations.

After being requested to “calm down,” but refusing, Appellant was handcuffed and Sergeant Bruce Glaudi was called in as back-up.

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Sergeant Glaudi testified that when he arrived on the scene Appellant was laying in the middle of the street (in traffic) and “acting crazy” by protesting being stopped and screaming that the handcuffs were causing him pain. After Sergeant Glaudi eventually learned that Appellant was a police officer, PIB was then summoned to the scene.

Appellant was given a three day suspension for lack of professionalism because under the Police Department’s Progressive Discipline Policy he had a prior suspension for lack of professionalism.

After reviewing the record, we conclude that the Appointing Authority has clearly proven its case. Neither Officers Anderson nor Glaudi knew Appellant and had no reason to misrepresent the nature of his misconduct in their testimony at the hearing.

The three day suspension was – if anything – minimal for the type of poor judgment and behavior shown by Appellant.

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

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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.

Accordingly, Appellant's appeal is denied.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 14TH DAY OF FEBRUARY,

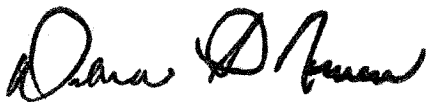
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CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

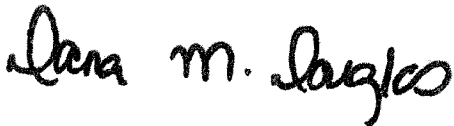


WILLIAM R. FORRESTER, JR.,
CHAIRMAN

CONCUR:



DEBRA S. NEVEU, COMMISSIONER



DANA M. DOUGLAS, COMMISSIONER