



MITCHELL J. LANDRIEU  
MAYOR

# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

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DIRECTOR OF PERSONNEL

Tuesday, January 15, 2013

Ms. Lashawn Davis

Re: **Lashawn Davis VS.**  
**Department of Human Services**  
**Docket Number: 7963**

Dear Ms. Davis:

Attached is the decision of the City Civil Service Commission in the matter of your appeal.

This is to notify you that, in accordance with the rules of the Court of Appeal, Fourth Circuit, State of Louisiana, the decision for the above captioned matter is this date - 1/15/2013 - filed in the Office of the Civil Service Commission in Room 7W03, City Hall, 1300 Perdido Street, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,

A handwritten signature in cursive script, appearing to read "Germaine Bartholomew".

Germaine Bartholomew  
Chief, Management Services Division

cc: Seung Hong  
Victor Papai  
Jay Ginsberg  
file

**LASHAWN DAVIS**

**CIVIL SERVICE COMMISSION**

**VS.**

**CITY OF NEW ORLEANS**

**DEPARTMENT OF HUMAN SERVICES DOCKET NO. 7963**

The Department of Human Services (“Appointing Authority”) employs LaShawn Davis (“Appellant”) at its Youth Study Center as a Medical Assistant with permanent status. The Appointing Authority suspended the Appellant for ten (10) days after determining that on January 6, 2012, she allowed a juvenile resident of the Youth Study Center to use her cellular phone to make a personal telephone call. The Appointing Authority also determined that the Appellant failed to remove/”unfriend” a former juvenile resident from her Facebook page after her supervisor instructed her to do so.

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 April 12, 2012 and May 3, 2012. 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 Youth Study Center houses juveniles awaiting trial for criminal offenses before the Orleans Parish Juvenile and Criminal courts. Certain protocols are in place to protect the safety and security of the facility, the residents, and the community as a whole. The Appellant admits having a conversation with the Superintendent of the facility, Glenn Holt, regarding contact with former residents through social media. However, she testified that his instructions were non-specific, and that she did not realize that he wanted her to remove a former resident from her Facebook page. She stated that she complied with the instruction once she understood what was required of her. Supt. Holt testified that he was very clear in his instruction and that the

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Appellant knew or should have known that she could not continue to have a former resident as a Facebook friend for safety and security reasons.

The Appellant denies allowing a juvenile resident to use her cellular phone to make a personal call. She testified that she briefly gave the resident her phone to listen to music, but not to make a call.<sup>1</sup> However, Juanita Stewart, a counselor at the Center, testified that she observed and heard the resident speaking to someone on the Appellant's cellular phone. She also observed the resident return the phone to the Appellant. Supt. Holt and Supervisor Lydell Rogers both testified that they questioned the juvenile resident, who admitted to them that the Appellant allowed her to make a personal call on her cellular phone.

#### 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

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<sup>1</sup> The Hearing Examiner left the hearing open until May 3, 2012 for the Appellant to obtain a copy of her phone records, which she failed to do.

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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 established by a preponderance of evidence that it disciplined the Appellant for just cause. The Appellant failed to immediately follow her supervisor's instruction to remove a former resident from her Facebook account. She also violated a clearly established internal rule forbidding employees from loaning their personal cell phones to residents for personal calls. The Appellant's testimony that she only allowed the

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resident to use her phone to listen to music was not credible and contrary to the evidence.

Considering the foregoing, the appeal is DENIED.

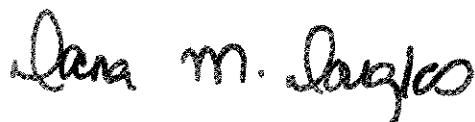
RENDERED AT NEW ORLEANS, LOUISIANA THIS 15th DAY OF JANUARY,  
2013.


CITY OF NEW ORLEANS  
CIVIL SERVICE COMMISSION

  
DEBRA S. NEVEU, COMMISSIONER

CONCUR:

I agree with the majority decision. It would be in the best interest of the Youth Center, however, to create a social media policy which specifically lays out the rules and regulations regarding the use of such websites by its employees and specifically with regard to contact with former residents or disclosure of any information regarding current or former residents of the Youth Center.

  
DANA M. DOUGLAS, VICE-CHAIRMAN

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