



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

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MAYOR

Friday, November 15, 2013

Mr. Donovan A. Livaccari  
101 W. Robert E. Lee, Suite 402  
New Orleans, LA 70124

Re: **Travis Trahan VS.**  
**Department of Safety & Permits**  
**Docket Number: 7857**

Dear Mr Livaccari:

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 - 11/15/2013 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Amoco Building, New Orleans, Louisiana.

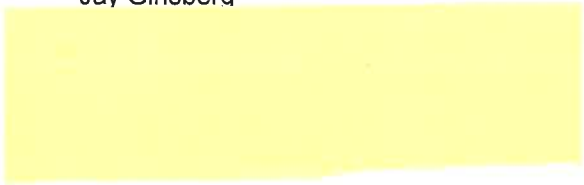
If you choose to appeal this decision, such appeal shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,

A handwritten signature in blue ink that reads "Germaine Bartholomew".

Germaine Bartholomew  
Chief, Management Services Division

cc: Jared Munster  
Shawn Lindsay  
Jay Ginsberg



**TRAVIS TRAHAN**

**CIVIL SERVICE COMMISSION**

**VS.**

**CITY OF NEW ORLEANS**

**DEPARTMENT OF SAFETY AND PERMITS DOCKET NO. 7857**

The Department of Safety and Permits (“Appointing Authority”) employed Travis Trahan (“Appellant”) as a Taxicab Investigator with permanent status. The Appointing Authority placed the Appellant on a one hundred and twenty (120) day emergency suspension during which time the department conducted an administrative review of allegations of payroll fraud. However, prior to the Appointing Authority taking final disciplinary action, the Appellant accepted a position with the New Orleans Aviation Board and resigned his position with the Appointing Authority after serving one hundred and eighteen (118) days of his emergency suspension. Consequently, there is no final disciplinary letter that sets forth the basis for the disciplinary action.

For purposes of this appeal, both parties agreed that the August 5, 2011, pre-termination hearing notice best described the reasons for the disciplinary action taken. The infractions contained in the hearing notice were as follows:

- Being untruthful and submitting Daily Activity Reports with false information on April 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> of 2011.
- Failure to properly submit accurate time sheets for April 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> of 2011.
- Failure to comply with a mandate given on February 21, 2011 and April 4, 2011 to all Bureau investigators that Daily Activity Reports shall be prepared and submitted on a daily basis.
- Failure to provide documentation that would enable verification of hours, which you claimed you worked during the period of April 2009 through April 2011.

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 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.

**1. Being untruthful and submitting Daily Activity Reports with false information on April 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> of 2011.**

The Appointing Authority introduced documentation that it contends established that on the three days in question the Appellant was not at the location that he provided on his Daily Activity Report. On these three dates, the Appellant reported that he worked the final hours of his shift performing "Data Entry / ETOD" at the Inspection Station located in New Orleans East. The Appointing Authority concluded that the Appellant provided false information based on the fact that he was not assigned to work at the Inspection Station on the dates in question and that there was no evidence of the Appellant having logged onto the computer located at the Inspection Station on those dates.

The Appointing Authority did not at any time confront the Appellant regarding his Daily Activity Reports. He was placed on Emergency Suspension without being questioned regarding his activities on the dates at issue. When called to testify before the Hearing Examiner, the Appellant stated that his Daily Activity Reports accurately documented where he was and what he was doing on those particular dates. He testified that Michael Lentz, Chief Administrative Officer of the Taxicab Bureau - Ground Transportation Bureau, directed him to spend part of his days at the Inspection Station where he separated and organized receipts generated by other Taxicab Inspectors that had not been entered into the system. The Appellant testified that on the dates in question he was compiling disorganized inspection receipts and separating them into three categories for the for-hire vehicles that were previously inspected. The three categories were (1) vehicles that passed; (2) vehicles that failed; and (3) vehicles that required equipment

changes. The Appellant testified that he was organizing receipts on some days and entering the receipts into the system on other days. On the dates focused on by the Appointing Authority, the Appellant testified that did not log onto the computer because he was sorting through paper receipts, which does not require use of a computer.

Mr. Lentz confirmed the Appellant's testimony that it was at his direction that the Appellant was performing work at the Inspection Station. He confirmed the type of work the Appellant was performing and why he was asked to perform that particular type of work.<sup>1</sup>

The Appellant's explanation for working at the Inspection Station is credible; particularly so considering the corroboration by his superior, Mr. Lentz. The Appointing Authority reached unsubstantiated conclusions without performing a complete and thorough investigation, which is the purpose for placing someone on emergency suspension prior to taking final action. The Appointing Authority should have questioned the Appellant prior to setting the pre-termination hearing so that they could obtain the Appellant's explanation for those documented activities that it could not otherwise reconcile. The Appointing Authority could have easily determined whether the Appellant's version of events was accurate if it had taken the time to ask.

Considering the foregoing, the Appointing Authority has failed to establish by a preponderance of evidence that the Appellant was untruthful or that he falsified his Daily Activity Reports.

**2. Failure to properly submit accurate time sheets for April 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> of 2011.**

Based upon the same documentation relied upon to conclude that the Appellant provided false Daily Activity Reports, the Appointing Authority determined that the Appellant's time

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<sup>1</sup> Mr. Lentz was suspended on the same date as the Appellant and ultimately terminated for failure to properly supervise. The Appointing Authority did not question Mr. Lentz prior to taking action against the Appellant.

sheets did not reflect the hours that he actually worked. According to Deputy Chief Administrative Officer Ann Duplessis, her determination that the Appellant was not at the Inspection Station during the hours reported on the Appellant's time sheets, led her to conclude that he was paid for hours he did not work, which she characterized as payroll fraud.

For the same reasons as stated above, the Appointing Authority has failed to establish by a preponderance of evidence that the Appellant falsified his time sheets. The Appellant's testimony that he was working at the Inspection Station sorting receipts at the instruction of his supervisor is a valid and credible use of his time and is not payroll fraud.

**3. Failure to comply with a mandate given on February 21, 2011 and April 4, 2011 to all Bureau investigators that Daily Activity Reports shall be prepared and submitted on a daily basis.**

The Appointing Authority contends that the Appellant failed to submit Daily Activity Reports on a daily basis after attending a meeting on February 21, 2011. The Appointing Authority's conclusion is based upon its inability to locate the documentation. Deputy Chief Administrative Officer Duplessis testified that the Appellant was aware of the requirement based on his attendance at a meeting regarding the issue on February 21, 2011. However, the inter-office memorandum identified as City Exhibit 13, introduced as evidence by the Appointing Authority, reflects that the Appellant did not attend the meeting. The Appellant's supervisors were the only persons in attendance. The Appointing Authority testified that Kewana Fortune was responsible for the collection of the Appellant's Daily Activity Reports. However, Ms. Fortune did not testify regarding whether or not she received reports from the Appellant.

The Appellant testified that he complied with the requirement once he was instructed to do so by his supervisor and placed his reports in Ms. Fortune's in box on a daily basis from that date going forward.

The Appointing Authority has failed to establish by a preponderance of evidence that the Appellant disregarded instructions to submit daily activity reports. He testified credibly that he submitted reports after receiving instructions to do so. The Appointing Authority was unable to explain the absence of the reports and we cannot say that its inability to locate the reports established that they were not submitted. Further, if the Appellant was in fact not submitting reports, it was his supervisor's responsibility to make sure he complied with the policy.

**4. Failure to provide documentation that would enable verification of hours, which Appellant claimed to have worked during the period of April 2009 through April 2011.**

Deputy CAO Ann Duplessis testified that she was responsible for oversight of the Department of Safety and Permits and that she began an assessment of the department in 2010. She assigned her executive assistant, Karen Thibodeaux, to work inside the department to assist with the assessment. Ms. Duplessis testified that she focused her concerns on the Taxicab Bureau and, more particularly, on the activities of the Appellant. She discovered that the Appellant was receiving a full time salary without any documentation to show that he was indeed working a full time schedule.

Ms. Duplessis spoke to Sidney Bournes, Deputy Director of Grounds Transportation Bureau, and Michael Lentz, Chief Administrative Officer of the Grounds Transportation Bureau, who informed her that they were working with the New Orleans Police Department on an

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undercover matter. In response, she contacted Deputy Supt. Kirk Bouyelas of the New Orleans Police Department, who informed her that he was only aware of a sting operation that occurred sometime in 2009. He confirmed in a June 9, 2011 email that the New Orleans Police Department did not give Sidney Bournes or Michael Lentz authorization to conduct an undercover investigation of the Taxicab Bureau. She deduced that the Appellant was receiving pay without working because she found no evidence that the Appellant was actually working undercover. Further, after the Appellant began working openly as an inspector, she found little or no evidence that the Appellant logged into the computer system to input his work.

The Appellant's testimony regarding his employment history, all of which was corroborated by Mr. Lentz, is as follows: He began his employment in April of 2009. He was hired by Mr. Bournes and Mr. Lentz to drive a taxicab while undercover to investigate possible corruption within the for-hire industry and within the Taxicab Bureau. To this end, and at the direction of his supervisors, he obtained employment with the United Cab Company for which he worked approximately fifteen months. He never reported to the Taxicab Bureau during this period so as not to compromise his assignment. He met with Mr. Lentz and/or Mr. Bournes once or twice a week and he provided Mr. Lentz with daily activity reports, delivered to him on a weekly basis on a "thumb drive". The Appellant introduced a sampling of his reports to illustrate his mode of operation. Mr. Lentz testified that he received complete documentation for the entire period the Appellant worked undercover.

The Appellant testified that the Director of Human Resources was aware of his activities and processed his time sheets. The Appellant also received compensation from United Cab,

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which he used to pay expenses. He deposited all additional compensation into a single bank account where it remained until he transferred the funds to the City of New Orleans.

The Appellant discovered that United Cab was obtaining inspection stickers under the table from the Inspection Station located in New Orleans East. He stated that he met with the FBI four or five times beginning in 2009 through mid-2010 to report activities of City inspectors and United Cab. As confirmed by Mr. Lentz, the FBI instructed the Appellant to report the results of his undercover activities to the New Orleans Police Department. Both the Appellant and Mr. Lentz confirmed that they were not working undercover for the New Orleans Police Department. The undercover operation was independent from and not connected with the Police Department.

In June of 2010, the Appellant's undercover assignment ended and he was treated as a new employee performing traditional inspection activities. He received field training from another investigator, Mr. Dugas, and was trained on the computer by Dewana Fortune. He stated that he did not receive a log in password until the beginning of 2011 and he used Investigator Dugas' password or other investigators' passwords until that time. The Appellant insisted that he worked all of the hours for which he received pay. His supervisor, Mr. Lentz, supported his testimony, confirming the challenges with obtaining passwords and the need to use other employees' passwords pending the receipt of a personal password.

As detailed above, the Appellant was placed on emergency suspension on April 14, 2011. As with the other justifications for suspension and recommended removal, the Appointing Authority reached conclusions without reasonable efforts to obtain complete and accurate information. They made assumptions that the record does not support. Also, as stated above, we



cannot stress the importance of using emergency suspensions for their intended purpose: to provide an opportunity for thorough investigation. A thorough investigation should include an interview of the person suspected of misconduct, which may confirm those suspicions on the one hand or it may provide a reasonable explanation to allay those suspicions. In the instant case, the Appointing Authority could have saved a significant amount of time and may have either avoided a mistake or presented a stronger case had it followed this practice.

Again, the Appointing Authority has failed to establish that it disciplined the Appellant for cause. The Appellant testified credibly that he turned in his documentation to his supervisor, Mr. Lentz. It was not the Appellant's responsibility to retain a copy of the documentation that he provided to his supervisor. Further, the Appointing Authority never asked for this documentation after the Appellant was placed on emergency suspension or before contemplating final disciplinary action. Finally, the Appellant's supervisors devised the undercover scheme. The Appellant was only hired to carry it out. If the Appointing Authority concluded that the actions of the Appellant's supervisors were ill-advised or outside of their authority, it cannot penalize the Appellant for performing the duties that he reasonably assumed were sanctioned by the department.

#### 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

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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, based on 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.

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Based upon the foregoing, the Appellant's appeal is GRANTED. The Appointing Authority is ordered to return to the Appellant one hundred and eighteen days of retroactive pay.

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

CITY OF NEW ORLEANS  
CIVIL SERVICE COMMISSION



AMY L. GLOVINSKY, COMMISSIONER

CONCUR:



JOSEPH S. CLARK, COMMISSIONER



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