



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J.,
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LISA M. HUDSON
DIRECTOR OF PERSONNEL

Thursday, April 11, 2013

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

Re: **Richard Welch VS.
Department of Police
Docket Number: 7985**

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 - 4/11/2013 - 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,

Germaine Bartholomew
Chief, Management Services Division

cc: Ronal Serpas.
Victor Papai
Jay Ginsberg

RICHARD WELCH

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

DOCKET NO. 7985

The Department of Police (“Appointing Authority”) employs Richard Welch (“Appellant”) as a police sergeant with permanent status. The Appointing Authority suspended the Appellant for two days after its investigation determined that the Appellant violated internal rules regarding Neglect of Duty. According to the February 26, 2012 disciplinary letter:

This investigation determined that on September 24, 2010, you were the supervisor of the Third District Narcotics Unit. You were aware officers assigned to your unit were conducting a narcotics investigation in another police district unsupervised. You failed to supervise your unit during the investigation and did not make provisions with another supervisor to supervise your officers during your absence in the investigation. As such, you violated Rule 4: Performance of Duty, paragraph 4 – Neglect of Duty, sub-paragraph b.

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 June 21, 2012. 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 Appellant denies that he neglected his duties. He also asserts that the Commission should grant his appeal because the Appointing Authority failed to comply with the requirements contained La. R.S. 40:2531(B)(7) routinely referenced as the “Sixty Day Rule”. First, the Appellant contends that the Appointing Authority failed to notify the Commission that the Appellant was the subject of an investigation for which it was requesting a sixty day extension. As a consequence, the Appellant did not receive

R. Welch
#7985

notice of the extension request or the opportunity to present evidence and arguments against the extension. Sgt. Darryl Watson requested the extension, and acknowledged that he only named the Appellant's subordinates Officers Russell Green, Nigel Daggs, Angela Joanos and Chadwick Taylor in his correspondence to the Department of Civil Service requesting an extension. At the time the request was made, Sgt. Watson was aware that the Appellant was also the subject of the investigation. However, he offered no explanation why the Appellant was omitted from the request.

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 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, 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

R. Welch
#7985

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.*

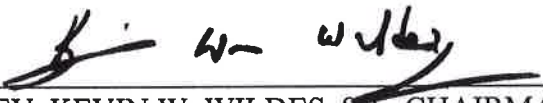
FINDINGS

We are compelled to grant the appeal based upon the Appointing Authority's failure to follow the requirements of *La. R.S. 40:2531*. The Appointing Authority failed to name the Appellant in its request for an extension when it was aware that he was part of the investigation. As a consequence, the Appellant was deprived of this statutory right to attend the extension hearing and present evidence and arguments against the extension.

THEREFORE AND ACCORDINGLY, the appeal is GRANTED and the Appointing Authority is ordered to pay the Appellant two days of back pay with emoluments of employment.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 11th DAY OF APRIL, 2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



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

CONCUR:



DEBRA S. NEVEU, COMMISSIONER



JOSEPH S. CLARK, COMMISSIONER