



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

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DIRECTOR OF PERSONNEL

Friday, October 26, 2012

Mr. Eric Hessler
PANO 2802 Tulane Avenue #101
New Orleans, LA 70119

Re: **Cody Castro VS.**
Department of Police
Docket Number: 7946

Dear Mr. Hessler:

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 - 10/26/2012 - 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, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Ronal Serpas
Victor Papai
Jay Ginsberg
Cody Castro

CODY CASTRO

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7946

Cody Castro (“Appellant”) is employed by the Department of Police (“Appointing Authority”) as a Police Officer with permanent status. The Appellant received a three day suspension for violation of the Appointing Authority’s internal rules concerning Instructions from an Authoritative Source. The factual basis for the violation is contained in the second paragraph of the September 19, 2011 disciplinary letter, which provides as follows:

This investigation determined that on November 1, 2010, at approximately 4:00 p.m., you reported an accidental TASER incident to the NOPD Police Academy, which occurred out of parish in June 2010. You admitted to Sgt. Young that there was a significant delay between the time of the accidental discharge and the time of the writing of the TASER discharge report, a Signal 21 – Miscellaneous Incident Report, and notifying the Police Academy concerning the incident. As such, you violated Rule 4: Performance of Duty, paragraph 2 – Instructions from an Authoritative Source to wit: Chapter 1.7.1 – Electronic Control Device (Issuing of the E.C.D.).

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 March 15, 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.

Officer Randall Knight is assigned to the NOPD Police Academy. He testified that the Appellant came to him on November 1, 2010 to obtain a replacement cartridge for his TASER. He reported to Officer Knight that he accidentally discharged his TASER sometime in June of 2010. Internal rules require that a police officer notify his

C. Castro
#7946

or her supervisor of the accidental discharge of a TASER and prepare a written report within seventy two hours of the incident, which the Appellant failed to do. He reported the incident to his supervisor Sgt. David Duplechain, who also spoke to the Appellant.

Both Officer Knight and Sgt. Duplechain testified that the Appellant failed to provide any explanation for his failure to report the discharge within the time limits contained in the Appointing Authority's internal rules.

The Appellant did not testify in support of his appeal.

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

C. Castro
#7946

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.*

CONCLUSION

The Appointing Authority has established by a preponderance of evidence that it suspended the Appellant for cause. The Appointing Authority closely monitors the use of weapons issued to its police officers including the TASER to make sure they are operated properly. Timely reporting of any discharge of weapons is clearly an important function of the job that the Appellant failed to perform.

Considering the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 26th DAY OF
OCTOBER, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION


AMY L. GLOVINSKY, COMMISSIONER

CONCUR:


JOSEPH S. CLARK, COMMISSIONER


DEBRA S. NEVEU, COMMISSIONER