



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

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Friday, October 26, 2012

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

Re: **Jeardine Daniels-Sparks VS.**
Department of Police
Docket Number: 7888

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 - 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 that reads "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Ronal Serpas
Victor Papai
Jay Ginsberg
Jeardine Daniels-Sparks

JEARDINE DANIELS-SPARKS

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7888

Jeardine Daniels-Sparks (“Appellant”) is employed by the Department of Police (“Appointing Authority”) as a Police Officer with permanent status. The Appellant received a ten day suspension for violation of the Appointing Authority’s internal rules concerning Instructions from an Authoritative Source (five days), and Reporting for Duty (five days). According to the June 16, 2011 disciplinary letter, the two first-time violations were classified as Category 2 violations, which carry enhanced penalties. The factual basis for the violation is contained in the second paragraph of the disciplinary letter, which provides as follows:

This investigation determined that on Wednesday April 21, 2010, at 4:00 p.m., you failed to report for duty to the Administrative Task Force assignment. Your supervisor Sergeant Alfred Russell advised you of your reporting date and time. You claimed you did not report to duty due to an off-duty injury you sustained in March 2010.

You failed to notify the NOPD Administrative Duties Division that you were placed on limited duty status by your physician. You admitted that you did not notify the Administrative Duties Division of your sick/injury status...

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 29, 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.

According to the disciplinary letter, Sgt. Antoinette Deshotel conducted the internal investigation and sustained the violations. Capt. Rose Duryea conducted the pre-

J. Daniels-Sparks
#7888

disciplinary hearing and recommended the disciplinary actions and enhanced penalties. Neither Sgt. Deshotel nor Capt. Duryea testified at the March 29, 2012 hearing.

Sgt. Alfred Russell is the Appellant's immediate supervisor. Both are assigned to Central Evidence and Property ("CE&P"), an administrative assignment. Approximately once a month, all police officers with administrative assignments are required to work in one of the police districts to bolster police presence in the field. The monthly assignment is with the Administrative Task Force ("ATF"). Sgt. Russell testified that on April 21, 2010, the Appellant was scheduled to work ATF. However, she reported instead to her regular assignment. When Sgt. Russell informed her that she was supposed to report to ATF, she advised him that she was unable to wear her utility belt because of a back injury. She provided him with a note from her doctor that she had visited that morning. Sgt. Russell instructed the Appellant either to report to ATF or take sick leave for the remainder of the day because, when she reports for work, she is expected to be able to perform all of the functions of a police officer, even if she normally has an administrative assignment. Sgt. Alfred testified that he informed the Appellant of her assignment to ATF in person the previous day. However, on cross-examination, when confronted with evidence that the Appellant was on annual leave and not present for several days prior to her assignment, Sgt. Alfred stated that he could not be certain of his memory because of the passage of time.

The Appellant testified without challenge or contradiction that she was not informed of her assignment to ATF prior to the date she reported. She further testified that she normally receives advance notice of the assignment and has always reported to the district where assigned. On April 21, 2010, after a scheduled five day absence, the

J. Daniels-Sparks
#7888

Appellant reported to work. Earlier that day, she had a doctor's appointment to address a back injury. The doctor informed her that she could report to her regular desk job as her administrative duties did not require her to wear her utility belt. Once she arrived at work, she learned for the first time that it was her day to work in the districts, which required her to wear all of her police equipment. She informed Sgt. Russell that she could not report to ATF due to her back injury. As a consequence, Sgt. Russell instructed her to take sick leave.

The Appellant testified that she never informed her supervisor that she was on limited duty status nor was she requesting limited duty status. On April 21, she was experiencing back pain that prevented her from wearing her utility belt, which is a requirement if assigned to perform police work in the field. She testified that had she known in advance of the assignment to ATF, she would have informed her supervisor of her medical condition and followed his instructions as to how she should proceed.

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

J. Daniels-Sparks
#7888

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.*

CONCLUSION

The Appointing Authority has failed to establish by a preponderance of evidence that it suspended the Appellant for cause. The Appointing Authority's only witness was Sgt. Russell, whose testimony that the Appellant had advance notice of the assignment was not credible. In fact, when cross examined on the subject, his only response was that he could no longer remember. He did not otherwise contradict the Appellant's testimony that explained credibly the circumstances that prevented her from reporting to ATF on April 21, 2010. Further, neither Sgt. Deshotel the investigator, nor Capt. Duryea who recommended the disciplinary action and enhanced penalty testified at the hearing on this matter. Consequently, we do not know why Sgt. Deshotel sustained the violations nor do we know why Capt. Duryea made her recommendation or how she determined

J. Daniels-Sparks
#7888

that an enhanced penalty was appropriate.¹

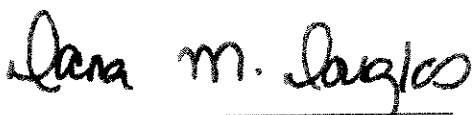
Considering the foregoing, the Appellant's appeal is GRANTED. The Appointing Authority is ordered to return to the Appellant ten days of back pay and all emoluments of employment.

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

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION


AMY L. GLOVINSKY, COMMISSIONER

CONCUR:


DANA M. DOUGLAS, VICE-CHAIRMAN


DEBRA S. NEVEU, COMMISSIONER

¹ The Appointing Authority's penalty schedule provides the following options for a first time offense:

Reporting for Duty – first offense
Category 1: 1 - 10 days
Category 2: 10 -30 days

Instructions from an Authoritative Source – first offense
Category 1: Reprimand – 3 days
Category 2 : 1 – 10 days