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CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J.,
CHAIRMAN
AMY L. GLOVINSKY
JOSEPH S. CLARK
COLEMAN D. RIDLEY, JR.

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Friday, August 09, 2013

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

Re: **Neville Payne VS.**
Department of Police
Docket Number: 7990

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 - 8/9/2013 - 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: Ronal Serpas
Shawn Lindsay
Jay Ginsberg

NEVILLE PAYNE

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7990

Neville Payne (“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 Neglect of Duty. The factual basis for the violation is contained in the second paragraph of the February 26, 2012 disciplinary letter, which provides as follows:

The investigation determined that on June 19, 2011, approximately 2:00a.m., you responded to a call for service of a burglary alarm located at 7401 Read Road, (Walgreen’s Drug Store). At the location you met the key holder and you refused to walk through the business to ensure that there was no break-in, burglary or other unauthorized person at the store. Standing at the front door of the business and allowing the employees to check for signs of a burglary or intruders is neglectful. Your failure to walk through the premises of the store constitutes a failure to take appropriate and necessary police action...

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 October 25, 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.

Capt. Michael Glasser assigned to the Administrative Services Unit (ASU) conducted the internal investigation. He testified that he sustained the neglect of duty violation because the Appellant did not walk through the store in response to the burglar alarm. Instead, he allowed the key holder to check the store. Capt. Glasser credited the Appellant’s version of events but based upon the Appellant’s statement that he did not

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walk the store determined that he neglected his duty. Capt. Glasser testified that someone may have entered the premises from the roof and an outside inspection of the building would not have forewarned the Appellant of a potential intruder.

The Appellant testified without challenge that he responded to a burglar alarm maintained by the alarm service, ADT. The Appellant was familiar with the business and followed his normal protocol. He checked all of the doors and other entrance ways. He saw no evidence that anyone had tried to gain access to the building, including from the roof by the use of a ladder. He communicated with the dispatcher from ADT who reported that no motion sensors had been activated and that no sounds had been detected by the system inside the building. The Appellant testified that he waited approximately twenty-five minutes for the key holder. He then left the premises to respond to other calls. Later, the Appellant received another dispatch to return to the Walgreens because the key holder was now there. Upon arrival, the Appellant explained to the key holder that he had investigated the alarm and found no evidence that anyone had attempted to enter the building or that anyone was inside the building.

The key holder opened the front door of the store to reactivate the alarm system. The Appellant remained inside the store and maintained a visual of the key holder. She walked to the alarm system, reactivated it, and walked out. He estimated that the key holder took no more than two minutes to perform this task. The Appellant testified that no one requested that he search the premises, and as a consequence, he never refused a request to search. The Appellant also testified that the key holder did not search the premises, but merely walked into the store to reactivate the alarm while he stood guard.

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 the occurrence of the complained of activity by a preponderance of the evidence 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.*

CONCLUSIONS

The Appointing Authority has failed to establish by a preponderance of evidence

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that it disciplined the Appellant for good cause. The disciplinary letter was inaccurate. The Appointing Authority provided no evidence that the Appellant was requested to inspect the premises or that he refused to do so. Further, the Appointing Authority provided no evidence that any third parties inspected the premises. The Appellant credibly testified that the key holder merely walked into the store, reactivated the alarm, and walked out. Finally, the Appellant credibly testified that the alarm service equipment is sophisticated enough to alert the responder if someone was inside the building through motion detectors and audio devices.

The Appointing Authority provided no evidence that the Appellant failed to take appropriate and necessary police action. The Appellant, a veteran of almost thirty years, relied upon his judgment and experience in responding to a call and guarding the safety of the public.

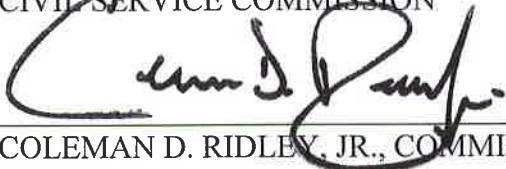
Considering the foregoing, the Appellant's appeal is GRANTED, and the

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Appointing Authority is ordered to return to the Appellant three days of back pay and emoluments of employment.

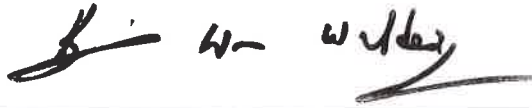
RENDERED AT NEW ORLEANS, LOUISIANA THIS 9th DAY OF AUGUST,
2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



COLEMAN D. RIDLEY, JR., COMMISSIONER

CONCUR:



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



AMY L. GLOVINSKY, COMMISSIONER