

Decision

Filed: June 21, 2013

State of Louisiana
Civil Service Commission

Docket No. 17658

James Rhodus

Versus

Department of Health and Hospitals, Eastern Louisiana Mental Health System

Rule(s): 12.2

Topic(s): Reduction in pay of ten percent for ten pay periods; insubordination

Appearances: James Rhodus, in proper person
Jenna Young, representing DHH, ELMHS

Statement of the Appeal

The Department of Health and Hospitals (DHH) employs James Rhodus as a Corrections Guard-Therapeutic at the Eastern Louisiana Mental Health System (ELMHS) and he serves with permanent status.

By letter dated January 18, 2013, DHH disciplinarily reduced Mr. Rhodus' pay by ten percent for ten pay periods effective February 4, 2013. DHH alleges that Mr. Rhodus was insubordinate on August 30, 2012, by his failure to obey a supervisory directive to work mandatory overtime. In support of the severity of the penalty, DHH refers to three disciplinary actions it previously imposed upon Mr. Rhodus.

On February 11, 2013, Mr. Rhodus appealed his reduction in pay. In his appeal, he denies the allegations of the disciplinary letter. As relief, Mr. Rhodus requests rescission of the disciplinary action and back pay.

I held a public hearing on April 30, 2013, in Jackson, Louisiana. Based upon the evidence presented and pursuant to the provisions of Article X, § 12(A) of the Louisiana Constitution of 1974, as amended, I make the following findings and reach the following conclusions.

Findings of Fact

1. DHH employs James Rhodus as a Corrections Guard-Therapeutic at the ELMHS and he serves with permanent status.
2. On August 29, 2012, Mr. Rhodus worked the 5:45 p.m. to 5:45 a.m. shift at the main compound of ELMHS's forensic division. At the end of his shift at 5:45 a.m. on August 30, 2012, Mr. Rhodus was directed by Roy Price, Corrections Lieutenant-Therapeutic, to remain, as some corrections guards would have to work the next "stay-over" shift because Hurricane Isaac was approaching. Mr. Rhodus waited in the 20' by 20' lobby of the ASSA building with Bykee Williams, Corrections Captain-Therapeutic, Lieutenant (Lt.) Price, and five other corrections guards.
3. At 7:05 a.m., Captain (Capt.) Williams told Lt. Price to select four correction guards to stay over for the next shift from the "stay-over" list. The stay-over list contains the corrections guards' names. If a need for overtime arises, the employees whose names are at the top of the list are required to work mandatory overtime. After employees work overtime, their names rotate to the end of the list.
4. Mr. Rhodus' name was one of the top four names on stay-over list, so Lt. Price selected him and the other three correctional guards whose names were at the top of the list to stay and work mandatory overtime. Lt. Price then twice called out the four names, including Mr. Rhodus', within earshot of the correctional guards who were gathered in the lobby of the ASSA building. The lobby was quiet as the names were called out.
5. After the names of the four correctional guards were called, Mr. Rhodus and the correctional guards whose names were not called began walking toward ELMHS's front gate. One of the other correctional guards told Mr. Rhodus that he (Mr. Rhodus) had to stay and work mandatory overtime. Mr. Rhodus responded, "Fuck no; I didn't hear nobody call my name!" Mr. Rhodus then got into his vehicle and left the premises.
6. Prior to the incident at issue in this appeal, DHH imposed the following disciplinary actions upon Mr. Rhodus:

September 24, 2007 - ten percent (10%) reduction in pay for one (1) pay period for violation of the agency's "call-back" policy.

December 14, 2009 – ten percent (10%) reduction in pay for two (2) pay periods for violation of the agency's "call-back" policy.

April 16, 2012 – ten percent (10%) reduction in pay for one (1) pay period for possession of a cellular telephone while on duty in violation of agency policy.

Discussion and Conclusions of Law

An employee with permanent status in the classified civil service may be disciplined only for cause expressed in writing. Cause for disciplinary action is conduct of the employee that is prejudicial to the public service or detrimental to its efficient operation. *Bannister v. Dept. of Streets*, 666 So.2d 641 (La. 1996). The right of a classified state employee with permanent status to appeal disciplinary actions is provided for in Article X, § 8(A) of the Louisiana Constitution of 1974. That section states that “[t]he burden of proof on appeal, as to the facts, shall be on the appointing authority.” The appointing authority is required to prove its case by a preponderance of the evidence, which is evidence that is of greater weight or more convincing than that which is offered in opposition thereto. Proof is sufficient to constitute a preponderance when, taken as a whole, it shows the fact or causation sought to be proved as more probable than not. *Wopara v. State Employees’ Group Benefits Program*, 2002-2641 (La. App. 1 Cir. 7/2/03); 859 So.2d 67.

DHH charges Mr. Rhodus with insubordination for failing to obey a supervisory directive to work mandatory overtime on August 30, 2012.

On the morning of August 30, 2012, Mr. Rhodus was directed by Lt. Price to work mandatory overtime, i.e. to remain for the stay-over shift necessitated by the imminent arrival of Hurricane Isaac. In the lobby with Mr. Rhodus present, Lt. Price twice called out the names of the correctional guards who had to remain for the stay-over shift, including Mr. Rhodus. Despite his supervisor’s directive, Mr. Rhodus left ELMHS’ premises and did not work the mandatory stay-over shift.

At the hearing, Mr. Rhodus testified that he has poor hearing and did not hear Lt. Price call his name. I do not find this explanation persuasive. The lobby was quiet, and the other correctional guards had no problem hearing Lt. Price. A coworker told Mr. Rhodus on their way to the front gate that Mr. Rhodus was supposed to remain and work the stay-over shift, but Mr. Rhodus did not go back to the lobby and seek clarification from Lt. Price. Instead, he went to his vehicle and quickly left in violation of his orders.

State classified employees must obey the orders of their superiors, and failure to do so impairs the efficiency of the public service. *Ben vs. Housing Authority of New Orleans*, 2003-1664, (La.App. 1 Cir. 5/14/04); 879 So.2d 803. Insubordination by its very nature is detrimental to the state service. *Housing Authority of Morgan City v. Gibson*, 598 So.2d 545 (La.App. 1 Cir. 1992). DHH has thus proved cause for discipline against Mr. Rhodus with this charge.

The Supreme Court of Louisiana has held that it is the duty of the Commission and its Referees to independently decide from the facts presented whether the appointing authority has legal cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. *AFSCME, Council #17 v. State ex rel. Dept. of Health and Hospitals*, 789 So.2d 1263 (La., 2001). Mr. Rhodus

contends that the penalty imposed by DHH is too severe. I disagree. Mr. Rhodus disobeyed a supervisory directive to work mandatory overtime required by an approaching hurricane. Based upon the foregoing reasons, I conclude that DHH proved legal cause for discipline and that the penalty imposed, a reduction in pay of ten percent for ten pay periods, is commensurate with the offense, particularly in view of the fact that DHH had previously disciplined Mr. Rhodus on three occasions.

Accordingly, this appeal is hereby denied.

Brent C. Frederick
Civil Service Commission Referee