

## Decision

Filed: December 6, 2013

State of Louisiana  
Civil Service Commission

### Docket No. S-17767

Lorne Cortez

Versus

Department of Transportation and Development

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Rule(s): 12.2

Topic(s): Dismissal; insubordination, engaging in inappropriate and unprofessional behavior, impeding an investigation, violation of agency policy

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Appearances: John Brumfield, Jr., counsel for Lorne Cortez  
Stephen Carleton, counsel for DOTD

### Statement of the Appeal

The Department of Transportation and Development (DOTD) employed Lorne Cortez as an Information Technology Technical Support Specialist 1 and he served with permanent status.

By letter dated June 26, 2013, DOTD dismissed Mr. Cortez from his employment effective June 26, 2013 at 4:00 p.m. DOTD alleges that Mr. Cortez was insubordinate, engaged in inappropriate and unprofessional behavior, impeded an investigation, and violated agency policy.

On July 12, 2013, Mr. Cortez appealed his dismissal. In his appeal, he denies the allegations of the disciplinary letter. As relief, Mr. Cortez requests reinstatement, back pay, and reasonable attorney's fees.

On October 3, 2013, Mr. Cortez filed a motion to preclude DOTD from introducing any evidence at the hearing, or in the alternative, to have me recused from hearing his appeal. I denied his motion on October 7, 2013.

I held a public hearing on October 8, 2013, in Baton Rouge, 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. DOTD employed Mr. Cortez as an Information Technology Technical Support Specialist 1 and he served with permanent status. His job duties included the installation, maintenance and repair of communication equipment. At the time of his dismissal, Mr. Cortez had been employed at DOTD for approximately eight and one-half years.
2. During February and March 2012, Mr. Cortez was on Family and Medical Leave Act (FMLA) leave for mental health problems (Social Anxiety Disorder and depression) that required inpatient treatment. Stephen Glascock, Engineer 8 and Information Technology Systems Director, was aware of Mr. Cortez's absence and the underlying reasons. Mr. Glascock was Mr. Cortez's appointing authority.
3. At the end of January 2013, and in connection with his job duties, Mr. Cortez was taking photographs of a contract welder using a cutting torch when the contract welder threatened him with bodily harm. As a result of this incident, the contract welder was terminated from the project, and Mr. Cortez never saw him again. John Blaquiere, a project manager with HNTB Engineering Consulting, prepared a report of the incident that Mr. Cortez disagreed with.
4. On January 30, 2013, Mr. Cortez met with Joseph Drago, Information Technology Services Supervisor and Mr. Cortez's supervisor, Erik Smith, Engineer 7, and Mr. Glascock. Mr. Cortez and Mr. Smith requested that Mr. Glascock have Mr. Blaquiere amend his report regarding the incident with the contract welder. Mr. Cortez also complained about DOTD employees violating agency policy, and accused Mr. Glascock of divulging information about his mental health issues to DOTD employees. Mr. Glascock informed Mr. Cortez that he would address all of Mr. Cortez's concerns in writing.
5. Mr. Glascock went to the office of Carryn Ferrier, Information Technology Technical Support Supervisor, who did not supervise Mr. Cortez. Mr. Glascock told Ms. Ferrier about the incident with the contract welder and Mr. Cortez. He also told Ms. Ferrier about Mr. Cortez's mental health history and stated that he was becoming mentally unstable as he had been in the past. Ms. Ferrier had not known about Mr. Cortez's mental health treatment. She advised Mr. Glascock that she did not need to know this information about Mr. Cortez.
6. Sometime prior to January 30, 2013, Mr. Glascock had directed Mr. Cortez not to work overtime without his approval.
7. On February 21, 2013, Mr. Cortez met with Susan Pellegrin, Human Resources Director 3, Nakesla Blount, Human Resources Specialist, Elena Branzaru, Attorney 3, Mr. Drago, and Mr. Smith. Mr. Cortez had requested the meeting to discuss the incident involving the contract welder. During the meeting, Mr. Cortez stated that the

“media” was following him, he felt “threatened” and was in contact with the Governor’s office, and that he believed Mr. Glascock was “out to get” Mr. Cortez and Mr. Smith.

8. After the February 21, 2013 meeting, Ms. Blount mailed a letter to Mr. Cortez dated February 28, 2013. In the letter, Ms. Blount thanks Mr. Cortez for bringing his concerns to her attention and refers him to DOTD’s agency grievance procedure, which requires that complaints be in writing and specific. Mr. Cortez never filed any grievances with DOTD as to the issues he raised at the January 30, 2013, and February 21, 2013 meetings.

9. As of April 17, 2013, Mr. Glascock had not addressed in writing the issues raised by Mr. Cortez at the January 30, 2013, and February 21, 2013 meetings, which upset Mr. Cortez.

10. On April 18, 2013, at 7:23 a.m., Mr. Cortez sent the following email to Mr. Glascock using the agency email system:

*Good morning Mr. Glascock,*

*Late last night at approximately 10:30 p.m. while in my personal vehicle trying to enjoy my personal time as we all are entitled to do, I was approached by two strangers claiming to be reporters for the local news media. They informed me that they are getting complaints from several Leeville and Grand Isle residents concerning the malfunctions of the new LA 1 Toll Machines and how it is dramatically affecting their lively hood (sic). The reporters went on to say that these concerned tax paying residents are demanding answers to how the DOTD is spending their hard earned tax paying dollars on this entire LA 1 operation which in their personal opinions is getting worse as the DOTD continues to sink more tax dollars into (sic). I then asked the reporters why they are singling me out on my own personal time and they said that the local residents informed them that they use (sic) to see Me down in Leeville working on that operation more than anyone in the DOTD and then they said they noticed that I suddenly vanished from the operation which in their opinion now has more issues as time roles (sic) on. The reporters then informed me that the concerned residents are saying that they overheard conversations from current Workers of the bridge suggesting that some of us are being taking (sic) on Golf outings completely paid for by someone other than ourselves. Sir, no one but Lorne Cortez has ever paid for my golf outings so I take accusations like this very personal.*

*This was very disturbing to me so I got in my vehicle and left immediately. This is not the first time I’ve been approached with disturbing concerns and questions about the LA 1 Toll Bridge as you and others in the department well know. In my sincere opinion this entire ordeal is quickly growing out of control.*

*Please advise ASAP!*

11. At 8:16 a.m., Mr. Cortez sent the following email to Mr. Glascock using the agency email system, with the subject line "Confidential." Mr. Cortez also sent the email to Mr. Drago, Mr. Smith and Ms. Ferrier.

*Mr. Glascock,*

*I got to know you over six years ago and the Steve I knew then displayed a sincere compassion for all, had a positive attitude that shine (sic) like the sun, would help the helpless, displayed the beliefs of a true Christian which I truly admired, was an awesome person to know, had a Christian moral value with exemplary dignity, and last but not least fully believed and always reminded me that the truth will always set one free. Sir, you and your family will always be in my prayers.*

*Sir, if I may say from one Christian to another (sic). We all experience personal difficulties through our life's journey as I know all too well of my own and have shared with you in the past, so I truly sympathize. You sir positively inspired me several times in my times of need and I will forever be grateful. You are a very intelligent human being who I truly admired. In my opinion several of us in your department are sincerely concerned and confused of your actions or lack thereof here lately. Please be dignified enough to do what you know deep in your God giving heart and soul is the morally honest and totally truthful thing to do. Please practice what you use (sic) to preach to Me, Paul Hsu, Jamie, and John by allowing the truth to free you from whatever it is in my opinion only is obviously troubling you. If you find it too difficult do (sic) for you (sic) own personal dignity, please do it for your innocent children.*

*God Bless you Sir.*

12. At 10:42 a.m., Mr. Drago telephoned Mr. Cortez, who was in Houma. As ordered by Mr. Glascock, Mr. Drago directed Mr. Cortez to travel to Baton Rouge to meet with John Rollins, Compliance Investigator 4A at 1:00 p.m. Mr. Cortez left for Baton Rouge at noon, as that was the earliest he could get a state vehicle. He used a DOTD truck for the trip, which usually takes two hours.

13. At 1:00 p.m., Mr. Cortez called Mr. Drago and advised him that he would not be at the meeting at 1:00 p.m., as he was having problems with the DOTD truck. Mr. Cortez also told Mr. Drago that he would try to be there by 2:30 p.m. Mr. Drago relayed this information to Mr. Glascock.

14. At 1:14 p.m., Mr. Glascock called Mr. Cortez. During the call, Mr. Glascock was rude and yelled at Mr. Cortez, who felt threatened by Mr. Glascock. As a result of the

call, Mr. Cortez mistakenly believed that Mr. Glascock was coming to Sorrento to pick him up.

15. At 2:00 p.m., Mr. Cortez called Mr. Drago and told him that he was at a McDonald's restaurant in Sorrento. Mr. Cortez told him he had stopped at McDonald's because he was too sick to drive and that he could not attend the meeting in Baton Rouge with Mr. Rollins.

16. Mr. Drago immediately called Mr. Glascock, who instructed him to drive to the McDonald's in Sorrento and pick up Mr. Cortez, and then drive him back to the DOTD office in Houma. Mr. Glascock also told Mr. Drago to advise Mr. Cortez that the meeting with Mr. Rollins was rescheduled for Friday, April 19, 2013, at 9:00 a.m., and further directed Mr. Drago to either bring Mr. Cortez to a doctor's office or tell him to bring a medical excuse for April 18, 2013, to the meeting with Mr. Rollins on April 19, 2013.

17. At 2:41 p.m., Mr. Cortez called 911 and was transferred to the Sorrento Police Department. In response to his call, Officer Cathy Gil went to McDonald's and met with Mr. Cortez at 2:44 p.m. Mr. Cortez told Officer Gil that Mr. Glascock had yelled at him in a telephone conversation and was coming to get him. Mr. Cortez also told Officer Gil that he felt threatened by Mr. Glascock and that he did not want to ride with him.

18. At 2:45 p.m., Mr. Drago arrived at McDonald's. Mr. Cortez advised Officer Gil that he did not feel threatened by Mr. Drago and that she could leave, which she did. Mr. Cortez told Mr. Drago that he felt sick, he had not eaten, and that the DOTD truck had mechanical problems; however, he did not mention that he lacked a DOTD credit card and could not buy fuel for the truck. Mr. Cortez informed Mr. Drago that he was going to obtain a restraining order against Mr. Glascock; however, he never did.

19. By 3:30 p.m., Donald Bastin, Information Technology Technical Support Specialist 3, had been dropped off at McDonald's to pick up the DOTD truck used by Mr. Cortez. Mr. Drago told Mr. Cortez that Mr. Glascock had directed that he see a doctor immediately or bring a medical excuse for April 18, 2013, to the meeting the next morning with Mr. Rollins. Mr. Cortez advised Mr. Drago that he did not want to see a doctor, so Mr. Drago directed him to bring the medical excuse. By then, Mr. Cortez had eaten lunch at McDonald's, but he did not tell Mr. Drago that he felt better after eating.

20. Mr. Drago drove Mr. Cortez back to Houma, followed by Mr. Bastin in the DOTD truck, which did not exhibit any mechanical problems on the trip.

21. At 6:22 p.m., Mr. Cortez called Mr. Glascock's office telephone and left the following message on Mr. Glascock's voicemail recorder:

*Hey Mr. Glascock, this is Lorne Cortez. It is 6:21, I am off the clock. I have physically worked my obligated 40 hours today, Thursday. You told...you sent an e-mail and you reiterated in every meeting since*

*January 30<sup>th</sup> of 2012, that I can only work my normal 40 hours. I have done that, sir. You wouldn't even allow Joe Drago my first line manager, Erik Smith my second line manager to approve it. I've done my 40 hours. You keep calling me on the cell phone and...and in my opinion you are threatening me, sir. This is ridiculous. We were friends at one time. All we need to do is to get through this legally and that's what I'm doing. I have not been served any papers, I've done my 40 hours, ya'll have not had me arrested. I have called 911 because I feel very threatened by you. Me and Joe Drago talked to an official police officer. There is an official 911 report explaining the reason why this is taking place. They advised me what to do. I plan to take a restraining order against you, sir. Until this is over with I feel very threatened by you. You are not, and you know it, you are not following the PPMs. It would be a different story if all of this the entire time would be going through the correct, official, professional, and ethical PPMs. You know that's not what you are doing. Everyone in your department that has anything to do with this knows that. Everyone, everybody is wondering what is going on. Let's do the professional thing. You again, you will be contacted personally, so will Headquarters HR...a legal outside attorney, sir. I have legal rights. You know that. Why? I have to meet my legal attorney on my scheduled day off. I did my 40 hours plus, sir. Please, please don't call me. You will be contacted. I feel very threatened by you, that's what I told them.*

22. At 7:04 p.m., Mr. Cortez called Mr. Glascock's secretary's office telephone and left the following message on her voicemail recorder:

*Hey Ms. Louise, It's Lorne Cortez. It is Thursday evening at 7:03 p.m. Ah! Since you are Mr. Glascock's secretary I really need you to help me to understand what is going on. I was told to go to Baton Rouge - there is certain reason why I couldn't make it. And Steve is aware of it, Joe is aware of it, Erik's aware of it. But, I have not been served any papers, I have not been arrested, I have not been told anything. I've done my 40 hours. I am not using sick leave. I physically did my 40 hours. Mr. Steve Glascock instructed Joe, Erik and myself that I cannot work more than 40 hours in a week until further notice. I have not gotten anything telling me that I can work more than 40 hours. I have a meeting with my private attorney tomorrow on my normally scheduled day off. I explained that to Mr. Glascock and he keeps calling me. I feel very threatened by him. Because he is not following the protocol and the and and and (sic) the rules. He today, Mr. officially on official administrative leave. That's what he told Jamie and Carryn. Why would he tell Jamie and Carryn that when they have nothing to do with all these unresolved matters? Yet Joe Drago and Erik Smith it's at 7:00 at night they still say they have not been told that I'm on Administrative leave. They have no proof of it. They have not been told that. He has not told me that. John Rollins has not told me that. John has not contacted me. I've been served nothing. But yet he told*

*Jamie Glynn and Carryn. I don't work for them and they don't work for me. I do respect them dearly and I know they respect me. Why would Steve Glascock tell Jamie Glynn and Carryn? Please verify this for me. Thank you ma'am! Bye*

23. On April 19, 2013, at 9:00 a.m., Mr. Cortez was interviewed by Mr. Rollins, who was investigating whether Mr. Cortez had violated DOTD's media and violence in the workplace policies, as well as Mr. Cortez's failure to meet with him the day before. During the interview, Mr. Cortez provided the following information to Mr. Rollins. On April 17, 2013, at 10:30 p.m., Mr. Cortez was checking his email in his vehicle parked on the side of a remote road when "two white men that had their pants on" approached his vehicle from the rear. He could not see them well due to the glare of their headlights, nor could he see whether their vehicle had a media designation. Mr. Cortez partially lowered his window so that he could converse with the men, but he kept his hand on his steering wheel and looked straight ahead. Mr. Cortez's only statement to the men was, "I'm listening," and he did not ask them for identification. They asked Mr. Cortez about DOTD employees playing golf with HNTB Engineering Consulting employees at HNTB's expense. Mr. Cortez told Mr. Rollins that he stayed and listened to the two men because he is a dedicated state employee.

24. Mr. Cortez refused to give Mr. Rollins a medical excuse for April 18, 2013, as he told Mr. Rollins that he was not sick that day and had already worked his normal forty-hour work week.

25. DOTD Policy and Procedure Memorandum (PPM) Number 29 prohibits insubordination, failing to cooperate with or giving false information during an investigation, filing unjustified complaints against coworkers, engaging in threatening or verbally harassing behavior, and failing to submit a medical excuse when directed to do so by a supervisor.

26. DOTD PPM Number 51 prohibits employees from using agency computers and email for inappropriate, unprofessional, and non-business-related purposes.

27. DOTD PPM Number 53 prohibits employees from making threats of violence and false charges against other persons.

### **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.

DOTD alleges that Mr. Cortez was insubordinate, engaged in inappropriate and unprofessional behavior, impeded an investigation, and violated agency policy.

*The April 18, 2013 emails*

On April 18, 2013, Mr. Cortez sent two emails to Mr. Glascock using the agency email system. In his 7:23 a.m. email, he reports to Mr. Glascock the incident that allegedly occurred on April 17, 2013, i.e. Mr. Cortez's interaction with two reporters on the side of the road. I conclude that it is more probable than not that the described incident never occurred.

On its face, the April 17, 2013 incident is highly implausible and melodramatic: late night, deserted road, Mr. Cortez alone in his parked car, unexpectedly confronted by two mysterious, unidentified reporters about alleged DOTD ethical violations. Moreover, Mr. Cortez told two versions of this incident which differ in very significant respects. In the 7:23 a.m. email version, Mr. Cortez gets out of his vehicle and asks the men why they are singling him out on his personal time. In his interview with Mr. Rollins, he stated that he stayed in his vehicle with his hands on the steering wheel and his only statement to the men was, "I'm listening." I conclude the April 17, 2013 incident was fabricated by Mr. Cortez, and that he intentionally provided false information to Mr. Glascock in the 7:23 a.m. email. An employee's untruthfulness to his supervisor has been held to constitute cause for discipline. *Barquet v. Department of Welfare*, 620 So.2d 501 (La.App. 4 Cir. 1993). DOTD has proved cause for discipline against Mr. Cortez with this charge.

In his second email sent to Mr. Glascock at 8:16 a.m., Mr. Cortez pleads for him to take some unspecified action for his "personal dignity" or, if Mr. Glascock finds that too difficult, to do "it for your innocent children." While I do not find the email to be threatening, it certainly is unprofessional, improper, and disrespectful, as it constitutes a personal attack on the integrity of Mr. Glascock without any factual basis and in violation of DOTD policy.

Mr. Cortez testified at the hearing that the reasons he sent the 8:16 a.m. email was he wanted Mr. Glascock to respond in writing to the issues Mr. Cortez had raised at the January 30, 2013 meeting, and because Mr. Glascock had been telling other DOTD employees about Mr. Cortez's mental health issues. However, these assertions do not excuse the inappropriate tone and content of the email, which Mr. Cortez also sent to Mr. Drago, Mr. Smith and Ms. Ferrier. An employee's respect for supervisors is essential to the operation of a public agency. *Portis v. Department of Corrections*, 407



So.2d 435 (La.App. 1st Cir. 1981). DOTD has proved cause for discipline against Mr. Cortez with this charge.

#### *Insubordination*

On April 18, 2013, at 10:42 a.m., Mr. Cortez was directed by Messrs. Glascock and Drago to come to Baton Rouge for a meeting with Mr. Rollins at 1:00 p.m. Mr. Cortez did not comply with this directive. Instead, he falsely stated to Mr. Drago that the DOTD truck was having mechanical problems, and then stated that he was too sick to drive. However, when Mr. Rollins later asked him for a medical excuse for April 18, 2013, he told Mr. Rollins that he was not sick that day, and Mr. Drago testified that Mr. Cortez never said that he felt better after eating at McDonald's.

At the hearing, Mr. Cortez contended that he could not drive to Baton Rouge because he did not have the DOTD credit card to buy fuel for the truck. I reject this contention, as Mr. Drago testified that Mr. Cortez never mentioned that excuse to him on April 18, 2013. Mr. Cortez further contended that he did not have to come to Baton Rouge because Mr. Glascock had not approved his overtime for the trip. This contention is manifestly without merit, as it was Mr. Glascock who ordered him to come to Baton Rouge to meet with Mr. Rollins.

On April 18, 2013, Messrs. Glascock and Drago also directed Mr. Cortez to see a doctor immediately or bring a medical excuse to the meeting with Mr. Rollins. Mr. Cortez did not comply with this directive either. He seeks to justify his non-compliance by contending that he was not sick on April 18, 2013, but he had told Mr. Drago twice that day that he was.

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). Mr. Cortez failed to comply with the directives of Messrs. Glascock and Drago, and was thereby insubordinate. DOTD has proved cause for discipline against Mr. Cortez with these charges.

#### *Unjustified complaints against Mr. Glascock*

DOTD alleges that Mr. Cortez's 911 call and his statements to Officer Gill about Mr. Glascock on April 18, 2013, were unjustified complaints against a coworker in violation of DOTD policy. However, even though Mr. Cortez's actions were misguided and unjustified, I conclude that he truly believed that Mr. Glascock was a threat to him and his actions were motivated by that belief rather than malice. DOTD has failed to prove cause for discipline against Mr. Cortez with this charge.

*The investigation by Mr. Rollins*

In violation of agency policy, Mr. Cortez failed to cooperate with Mr. Rollins' investigation by not attending the meeting with him on April 18, 2013, and his statements to Mr. Rollins on April 19, 2013, regarding the alleged April 17, 2013 late-night incident with the reporters were false. Mr. Cortez's misconduct in connection with the investigation was an impediment to its completion. DOTD has proved cause for discipline against Mr. Cortez with these charges.

*Conclusion*

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. Cortez contends that his dismissal is too severe. I disagree. Although DOTD failed to prove all of its charges, it did prove that Mr. Cortez was insubordinate to his superiors, engaged in inappropriate and unprofessional behavior, impeded an investigation, and violated agency policy, all to the detriment of the state service. Based upon the forgoing reasons, I conclude that DOTD proved legal cause for discipline and that the penalty imposed, dismissal, is commensurate with the offenses.

Accordingly, I hereby deny this appeal.

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Brent C. Frederick  
Civil Service Commission Referee