

Decision

Filed: January 27, 2015

State of Louisiana
Civil Service Commission

Docket No. S-17877

Angela Jones

Versus

Southeastern Louisiana State University

Rule(s): 12.2; 13.19(s)2

Topic(s): Dismissal; poor work performance, insubordination, abuse of authority, unprofessional conduct; retaliation; race and sex discrimination

Appearances: Elton Heron, counsel for Angela Jones
Linda Law Clark, counsel for SLU

Statement of the Appeal

Southeastern Louisiana State University (SLU) employed Angela Jones as a Police Officer 1A in the Southeastern Louisiana State University Police Department (SLU-PD) and she served with permanent status. By letter dated April 2, 2014, SLU dismissed Ms. Jones from her position effective that day for poor work performance, insubordination, abuse of authority, and unprofessional conduct. In support of the severity of the penalty, SLU references a prior letter of reprimand and two disciplinary actions it previously imposed on Ms. Jones.

On April 3, 2014, Ms. Jones appealed her dismissal. In her appeal, she denies the allegations of the dismissal letter, and alleges that she is the victim of retaliation and discrimination based on race and sex. As relief, Ms. Jones requests reinstatement and back pay.

I held public hearings on August 15, 2014, October 22, 2014, and October 23, 2014, in Hammond, 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. SLU employed Angela Jones as a Police Officer 1A in the SLU-PD and she served with permanent status. At the time of her dismissal, she had been employed with SLU for approximately fifteen years, and was assigned to the SLU-PD's Parking Division. Pursuant to SU-PD practice, Ms. Jones did not have the authority to make arrests. Her primary duties involved the enforcement of parking regulations and traffic control.
2. On May 16, 2011, Michael Prescott¹, SLU-PD's Police Chief, issued a written directive that all SLU-PD employees are forbidden from "dumpster diving" on the SLU campus while in uniform and on state time. Dumpster diving is the practice of climbing into a garbage dumpster to retrieve discarded items for one's personal use.
3. On January 4, 2012, Ms. Jones filed an agency grievance with SLU's Human Resources department because she was not selected for a promotion to a Police Officer 1A position. After she filed her grievance, the successful candidate declined the position. SLU then offered the promotion to Ms. Jones, who accepted and was placed in the position on January 24, 2012. Shortly thereafter, Ms. Jones withdrew her agency grievance.
4. Sometime between March 1, 2012, and March 18, 2012, Kevin Knudsen, Police Sergeant A and Ms. Jones supervisor, observed Ms. Jones as she performed her duties at a campus crosswalk. Ms. Jones had previously complained to Sergeant (Sgt.) Knudsen that students at the crosswalks were not obeying her instructions.
5. Sgt. Knudsen observed that Ms. Jones did not stand in the correct position in the crosswalk. The correct position for an officer performing crosswalk duty is to stand directly facing oncoming vehicular traffic. He also observed that she talked to a staff member while performing her crosswalk duties. Sgt. Knudsen counselled Ms. Jones regarding these deficiencies and obtained a handheld "Stop" sign for Ms. Jones' use.
6. On March 19, 2012, Sgt. Knudsen observed Ms. Jones performing her crosswalk duties at SLU's Friendship Circle. He again observed that Ms. Jones was not standing in the correct place in the crosswalk and that she was talking to a staff member while performing her crosswalk duties.
7. On April 19, 2012, Sgt. Knudsen sent an email to Ms. Jones with a copy to Chief Prescott. In the email, Sgt. Knudsen summarized his observations of Ms. Jones crosswalk duty deficiencies, and directed her to refrain from talking to other staff members while on crosswalk duty. He also directed her to arrive for crosswalk duty a few minutes before her scheduled time when possible, and offered to provide her with additional training if necessary.
8. On April 25, 2012, Ms. Jones was issued a "Crosswalk Checklist" that set forth the required times of her crosswalk duties and other instructions regarding them.

¹ Chief Prescott retired from SLU in July of 2012.

9. From May 1, 2012, through May 17, 2012, Ms. Jones received ten hours of training in “Traffic Control – Pedestrian Cross Walks.”

10. On May 30, 2012, Sgt. Knudsen gave Ms. Jones an overall rating of “Needs Improvement/Unsatisfactory” on her annual Performance Evaluation System (PES) evaluation for the rating period of July 1, 2011, through June 30, 2012.

11. On July 15, 2013, Sgt. Knudsen gave Ms. Jones an overall rating of “Needs Improvement/Unsatisfactory” on her annual Performance Evaluation System (PES) evaluation for the rating period of July 1, 2012, through June 30, 2013.

12. On October 12, 2013, Ms. Jones was assigned to Gate 1 of SLU’s stadium during a football game. Her duties included monitoring incoming ticketholders, and she was required to remain at the gate until at least the third quarter of the game.

13. Present at Gate 1 was Ms. Jones and two student ticket-takers. At Ms. Jones’ behest, one of the student ticket-takers asked Heather Thompson, Business Manager, if they could close Gate 1 during the second quarter of the game. Ms. Thompson told the student ticket-takers and Ms. Jones that Gate 1 must remain open to collect tickets until at least the third quarter. Ms. Jones told Ms. Thompson that there were an insufficient number of people coming through Gate 1, there were too many mosquitoes, and that they needed bug spray or they would contract West Nile Virus. Ms. Thompson reiterated that Gate 1 must remain open until the third quarter. Ms. Jones responded that it was too hot, there were too many mosquitoes, no one was coming through Gate 1, and jokingly stated, “We will be dead from West Nile Virus!” Ms. Jones kept Gate 1 open until the third quarter as instructed by Ms. Thompson.

14. On October 16 -17, 2013, Ms. Jones attended two hours of “Remedial Cross Walk Training.”

15. On November 6, 2013, Sgt. Knudsen observed Ms. Jones performing her crosswalk duties at Friendship Circle during her 10:40 a.m. to 10:55 a.m. shift and her 1:40 p.m. to 1:55 p.m. shift. During her first shift, Sgt. Knudsen observed that Ms. Jones did not stand in the correct position in the crosswalk and that she talked to staff members while performing her crosswalk duties. During her second shift, Sgt. Knudsen observed that Ms. Jones arrived five minutes late, she again did not stand in the correct position in the crosswalk, and that she talked to a staff member while performing her crosswalk duties.

16. On November 7, 2013, Ms. Jones was on crosswalk duty at Friendship Circle. An SLU student, Brennan Carney, began crossing the street in the crosswalk before Ms. Jones had lowered her handheld stop sign. Ms. Jones instructed Mr. Carney to stop, but he refused, and continued to walk across the street, which was free of traffic. Ms. Jones forcefully grabbed the shoulder strap of the backpack Mr. Carney had slung over his shoulder. Ms. Jones detained Mr. Carney until another officer who responded to her

call for backup had arrived. A few days after the incident, Mr. Carney alleged in writing to SLU in a student disciplinary proceeding that Ms. Jones had exceeded her authority and assaulted him in the presence of multiple students. He also threatened to file a civil rights lawsuit against the university and later did so.

17. On November 13, 2013, Michael McGill, Police Captain and SU-PD's Assistant Director, sent an email to Ms. Jones. In the email, Captain (Capt.) McGill informed her that she would be handling an absent officer's parking assignment at the intersection of N. General Pershing Street and W. Ned Magee Street on November 16, 2013, from 7:00 a.m. to 2:30 p.m. Ms. Jones' written instructions for this assignment included the following directive: "Stay at your assigned intersection from 0700 until 1430 hours and ensure that only authorized persons pass through the intersections. This intersection is at the entrance/exit for Lot B, Handicap Parking, RV, and the Visiting Team Buses."

18. On November 16, 2013, at 7:00 a.m., Ms. Jones was stationed at the entrance/exit for Lot B as directed by Capt. McGill. Shortly after 7:00 a.m., holders of RV parking passes issued by the university began calling the SLU PD to complain that they were not being allowed to park in Lot B. Capt. McGill dispatched Daniel Bergeron, Police Officer 2, to check on this issue. Officer Bergeron went to speak with Ms. Jones. She told him she would not allow parking of vehicles with RV parking passes until 9:00 a.m. Officer Bergeron instructed Ms. Jones to allow vehicles with RV parking passes to park in Lot B immediately, as they were authorized to park there beginning at 7:00 a.m. that morning. Ms. Jones complied with Officer Bergeron's instructions.

19. On December 3, 2013, Sgt. Knudsen observed Ms. Jones arrive at 10:44 a.m. for her crosswalk duty at Friendship Circle, which was scheduled to begin at 10:40 a.m. Jerry Harper, Parking Guard, had arrived at Friendship Circle for crosswalk duty at 10:42 a.m. For the remainder of her crosswalk duty shift, he and Ms. Jones engaged in conversation. Sgt. Knudsen observed that Ms. Jones did not stand in the correct position in the crosswalk and that she held the handheld stop sign at an improper angle to avoid reflected sunlight, in violation of his previous instructions.

20. On December 6, 2013, Johnathan Edwards, Police Officer 2, accompanied Ms. Jones on her shift so she could provide field training to him. This was Officer Edwards' fourth day on the job.

21. During their shift together, Officer Edwards observed Ms. Jones, wearing her uniform and on state time, climb into an SLU garbage dumpster to obtain discarded toilet paper. Ms. Jones informed Officer Edwards that: 1) many SLU police officers who were former Jefferson Parish deputy sheriffs were "gangsters or mob bosses"; 2) Officer Edwards should not trust any of the SLU PD supervisors, except maybe Sgt. George Giron; 3) she would not let Sgt. Knudsen ride with her because she was afraid he would shoot her and claim self-defense; and 4) she did not like SLU student worker Rachel Hecht. Ms. Jones also drove the state vehicle to visit with a relative during the shift.

22. SLU Classified Employees Handbook Part IV., Section A. Basic Duties of Classified Employees, states in relevant part as follows:

APPROPRIATE CONDUCT AND WORK RULES

Types of behavior and conduct that Southeastern Louisiana University consider inappropriate include, but are not limited to, the following:

Unscheduled, unexcused absence or tardiness

Leaving the assigned work area or University premises during work hours without permission

Failure to follow established work procedures (skipping steps in processes) or concealing defective work

Insubordination and/or refusal to follow instructions of a supervisor, including but not limited to:

- Refusal to do an assigned job*
- Refusal to work overtime when required*
- Refusal to render assistance*
- Refusal to accept holiday work when assigned*
- Insolent response to a work order*
- Delay in carrying out an assignment*

Failure or inability to produce quality and/or quantity of work desired or wasting University owned materials

Restricting one's own production or interfering with the work or production of another employee (causing disruption)-visiting or interfering with others while at work

Loafing, roaming, loitering, or leaving workstation without proper notification or permission (quitting early without notification or permission, standing around time clock longer than necessary)

Conducting personal business on University time. . .

Creating conflict or instigating situations with coworkers, supervisors, students or other staff that negatively impact the working relationship

Unauthorized use of University vehicles, including but not limited to

- Picking up lunch*
- Running a personal errand off campus while on duty*
- Giving unauthorized passengers rides*

Violation of institutional regulations and policies

When work performance, work habits, overall behavior, conduct or demeanor become unsatisfactory in the judgment of the University, based on violations of either of the above or of any other Southeastern Louisiana University policies, rules, or regulations, the employee will be subject to disciplinary action, up to and including dismissal.

COURTESY

Keep in mind at all times that as employees of Southeastern Louisiana University all of us are public servants. As such, we are obligated in both direct and indirect dealings with citizens of our State to serve efficiently and courteously. Visitors to Southeastern Louisiana University, for business or other reasons, are to be received politely. They should be treated with the same courtesy and consideration that we would expect to receive if we visited another state agency or private business. All employees are expected to be pleasant, courteous and cooperative at all times. They are expected to refrain from any evidence of bad mouthing, talking down to anyone, or negatively representing their department, themselves, co-workers, students, or any member of our University family.

23. SLU PD Policy Number 8 entitled "Conduct and Discipline" states in relevant part as follows:

8.1 Purpose and Availability

A. The purpose of this policy is to establish acceptable standards of conduct for University Police Department employees so the behavior, discipline, and uniformity necessary for the University Police Department to meet its mission and carry out its activities in a professional manner can be ensured.

...

8.3 Obedience to Orders

A. University Police Department employees shall promptly obey any lawful order from their supervisor or from any other employee in a supervisory position or of higher rank.

...

8.9 Neglect of Duty

...

D. Employees shall not engage in any activities or personal business which would cause them to neglect or be inattentive to duty.

...

G. Upon arrival and throughout the work period employees will be cognizant of information required for the proper performance of their duties.

8.10 Unbecoming Conduct

A. Unbecoming conduct shall include that which brings the Department into disrepute or reflects discredit upon the employee as a member of the Department or the University, or that which impairs the operation or efficiency of the Department or any of its employees.

B. Employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the Department and the University.

...

8.11 Abuse of Authority

A. Employees shall not exercise the authority granted by their affiliation with the University Police Department outside of the scope of their employment except as specifically allowed under Federal, State, and Local law and University and Department policies.

8.12 Reporting for Duty and Use of Leave

A. Employees shall report for duty at the time and place required by assignment or specific orders.

...

C. Any employee of the Southeastern Louisiana University Police Department who fails to report for duty at the prescribed date, time, and place without the consent of the Director, University Police or his/her designee is absent from duty.

...

E. An employee who realizes he/she will be unable to report to work at the scheduled time will, at the earliest reasonable opportunity, notify his/her supervisor and/or the University Police Department dispatch office of the tardiness and reason(s).

24. Prior to the disciplinary action at issue herein, SLU previously issued the following improvement letter to Ms. Jones:

October 10, 2012 letter of reprimand for failing to discharge her crosswalk duties and insubordination.

25. Prior to the disciplinary action at issue herein, SLU previously imposed the following disciplinary actions upon Ms. Jones:

July 9, 2013 - two (2) day suspension for three instances of rude and discourteous behavior to an SLU student, a staff member, and a visitor.

August 16, 2013 - five (5) day suspension for insubordination for failing to follow a supervisory directive

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.

SLU charges Ms. Jones with poor work performance, insubordination, abuse of authority, and unprofessional conduct.

Failure to properly perform crosswalk duties

From March 18, 2012, through December 3, 2013, on four separate dates, Ms. Jones performed her crosswalk duties improperly, despite having received extensive training regarding this relatively simple law enforcement task. Her transgressions included: 1) failing to stand in the proper position facing oncoming vehicular traffic, 2) engaging in conversation with staff members, 3) arriving late for crosswalk duty, and 4) holding the handheld stop sign at an improper angle. Ms. Jones’ deficient performance of her crosswalk duties could have led to injured pedestrians and/or automobile accidents.

I also note that Ms. Jones repeatedly violated the directives contained in Sgt. Knudsen’s April 19, 2012 email regarding the discharge of her crosswalk duties, i.e. to refrain from

talking to other staff members while on crosswalk duty and to arrive timely for her shift. Her failure to comply with Sgt. Knudsen's directives constituted insubordination. 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). SLU has proved cause for discipline against Ms. Jones with these charges.

The October 12, 2013 incident at Gate 1 of the football stadium

On October 12, 2013, Ms. Jones tried to convince Ms. Thompson to allow her to close Gate 1 of the football stadium in the second quarter of the game, citing heat, mosquitos and a lack of business. However, after Ms. Thompson stated that Gate 1 must remain open until the third quarter, Ms. Jones followed her instructions, and SLU did not present any evidence that Ms. Jones' entreaties to Ms. Thompson were rude, disrespectful, unduly argumentative, or untrue. Under these circumstances, I do not find that Ms. Jones' efforts to induce Ms. Thompson to close the gate warrant disciplinary action. SLU has failed to prove cause for discipline against Ms. Jones with this charge.

Detention of SLU student Brennan Carney

On November 7, 2013, Ms. Jones detained SLU student Brennan Carney at the Friendship Circle crosswalk by grabbing the shoulder strap of his backpack. She detained Mr. Carney until a backup officer arrived because he had crossed the street in defiance of her instructions. However, under agency practice, Ms. Jones, like all SU-PD Police Officer 1As, lacked the authority to make arrests.

At the hearing, Ms. Jones testified that she merely grabbed Mr. Carney's backpack, so he could have abandoned it and walked away. I reject this self-serving explanation by Ms. Jones. It is both offensive and absurd to contend that Ms. Jones' unauthorized detention of Mr. Carney is somehow justified because he could have abandoned his personal property and walked away from a law enforcement officer apparently attempting to arrest him. Ms. Jones abused her authority by detaining Mr. Carney, who has filed civil proceedings for damages against SLU as a result of the incident. Her detention of Mr. Carney exhibited a serious lack of judgment on her part and reflected poorly on the SLU-PD. I therefore conclude that SLU has proved cause for discipline against Ms. Jones with this charge.

November 16, 2013 Parking Lot B incident

On November 16, 2013, Ms. Jones was standing-in for an absent officer by monitoring parking at Lot B from 7:00 a.m. until 2:30 p.m. Her only instructions for this assignment were contained in an email from Capt. McGill, which provided as follows: "Stay at your assigned intersection from 0700 until 1430 hours and ensure that only authorized

persons pass through the intersections. This intersection is at the entrance/exit for Lot B, Handicap Parking, RV, and the Visiting Team Buses.”

Ms. Jones believed that vehicles with RV parking passes were not allowed in Lot B until 9:00 a.m., so she turned them away until Officer Bergeron told her that they were authorized to park in the lot at 7:00 a.m.

Capt. McGill’s email does not specify that vehicles were allowed into the lot at 7:00 a.m.; it only states that Ms. Jones had to be on duty at the lot at 7:00 a.m., which she was. As her duties included both keeping unauthorized vehicles out of the lot and letting authorized vehicles in, it does not necessarily follow that being on duty at 7:00 a.m. meant letting authorized vehicles in the lot at 7:00 a.m. Capt. McGill’s instructions to Ms. Jones were thus incomplete, and Ms. Jones’ understanding of the lot’s opening time to vehicles with RV parking passes, though incorrect, was not inconsistent with his instructions. After receiving clarification from Officer Bergeron, Ms. Jones immediately began allowing the vehicles into the lot. I conclude that SLU has failed to prove cause for discipline against Ms. Jones with this charge.

December 6, 2013 training of Officer Edwards

On December 6, 2013, Ms. Jones was assigned to train Officer Edwards, who had been on the job for four days. During their shift together, Ms. Jones engaged in “dumpster diving” in direct violation of Chief Prescott’s directives, a flagrant act of insubordination. She made a host of inappropriate statements to Officer Edwards, including referring to fellow SLU-PD officers as “gangsters” and “mob bosses”, accusing Sgt. Knudsen of wanting to kill her, and advising him not to trust his superiors.

Ms. Jones’ statements to Officer Edwards were highly unprofessional and disruptive to the operations of the SLU-PD, especially when made to a new employee still in the training stage. To complete the horrible example she was setting for Officer Edwards, she used the university’s vehicle to go visit with a relative during the shift, a clear abuse of state time and property. SLU has proved cause for discipline against Ms. Jones with these charges.

Discrimination/retaliation claims

In her appeal, Ms. Jones claims that she a victim of retaliation and discrimination based on race and sex. Under Civil Service Rule 13.19(s)2, Ms. Jones had the burden of proof on these claims.

Ms. Jones alleges that SLU dismissed her in retaliation for her having filed her January 4, 2012 agency grievance regarding not being promoted. I find this claim to be highly implausible, as SLU selected her for the promotion after the successful candidate declined the position, and Ms. Jones withdrew her grievance. If SLU had sought to retaliate against Ms. Jones for filing her grievance, it would not have promoted her. I conclude that Ms. Jones failed to prove that she is the victim of retaliation.

To establish her discrimination claim, Ms. Jones had to prove that SLU dismissed her because of her sex or race, but the testimony she presented in support of her claim was vague, unsubstantiated and conclusory. Ms. Jones testified that racial epithets were addressed to her at SLU, but she failed to indicate who made these statements and when they were made. She also testified that Sgt. Knudsen and others made derogatory statements about women on a few occasions. However, she did not connect these statements in any way to SLU's decision to discipline her, which I find was amply supported by legal cause. I therefore conclude that Ms. Jones failed to prove that she is the victim of discrimination based on race or sex.

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).

Ms. Jones contends that the penalty imposed is too severe. I disagree. Although SLU failed to prove all of the charges, it did prove that Ms. Jones is guilty of poor work performance, insubordination, abuse of authority, and unprofessional conduct. These charges constitute legal cause for discipline and dismissal is commensurate with the offenses, particularly in view of the fact that SLU previously issued a letter of reprimand to Ms. Jones for similar misconduct and imposed disciplinary suspensions upon her on two earlier occasions.

Accordingly, this appeal is hereby denied.

Brent C. Frederick
Civil Service Commission Referee