

**JOSEPH LEBLANC** \* **NO. 2007-CA-1168**  
**VERSUS** \* **COURT OF APPEAL**  
**DEPARTMENT OF POLICE** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**

\* \* \* \* \*

APPEAL FROM  
CITY CIVIL SERVICE COMMISSION ORLEANS  
NO. 7147

\* \* \* \* \*

**Judge Edwin A. Lombard**

\* \* \* \* \*

(Court composed of Judge Charles R. Jones, Judge Edwin A. Lombard, Judge  
Leon A. Cannizzaro Jr.)

**CANNIZZARO, J., CONCURS WITH REASONS**

Gary M. Pendergast  
GARY M. PENDERGAST, L.L.C.  
1515 Poydras Street  
Suite 2260  
New Orleans, LA 70112

COUNSEL FOR PLAINTIFF/APPELLANT

James B. Mullaly  
Assistant City Attorney  
Penya Moses-Fields  
City Attorney  
Joseph V. DiRosa, Jr.  
Chief Deputy City Attorney  
1300 Perdido Street  
City Hall - Room 5E03  
New Orleans, LA 70112

COUNSEL FOR DEFENDANT/APPELLEE

**AFFIRMED**

**NOVEMBER 21, 2007**



This appeal is from a decision of the Civil Service Commission of the City of New Orleans upholding the termination of the plaintiff/appellant, Joseph LeBlanc, by the New Orleans Police Department. After review of the record in light of the applicable law and arguments of the parties, the decision of the Civil Service Commission is affirmed.

***Relevant Facts and Procedural History***

The plaintiff, an 11 year veteran of the New Orleans Police Department failed to report to duty on August 28, 2005, and did not return to New Orleans. On September 19, 2005, when he attempted to return to duty, he was placed on a thirty-day suspension. He returned to work on October 20, 2005, and was terminated after a disciplinary hearing on November 22, 2005. He filed a timely appeal with the Civil Service Commission. A hearing was conducted on April 4, 2006, and more than a year later, on July 17, 2007 the Civil Service Commission rendered its decision dismissing the plaintiff's appeal. The plaintiff filed this timely appeal.

### ***Applicable Law***

Review of the Commission's decision extends to both the law and facts. La. Const. 1974, Art. X, §12. The Commission's findings of fact should be given the same deference as those made by a judge or jury and, accordingly, the standard of review does not differ from that in other civil cases and the Commission's determination should be affirmed unless it is manifestly erroneous or clearly wrong. *Bruno v. Department of Police*, 462 So.2d 139, 141 (La. 1985) (citations omitted).

Based on the facts presented, the Civil Service Commission determines 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. The Civil Service Commission defines cause for termination as “conduct which impairs the efficient or orderly operation of the public service.” Civil Service Rule 1.5.2.01. “Legal cause for disciplinary action exists if the facts found by the commission disclose that the conduct of the employee impairs the efficiency of the public service ... [T]here must be a real and substantial relation between the conduct of the employee and the efficient operation of the public service....” *Leggett v. Northwestern State College*, 140 So.2d 927 (La. 1962).

### ***Discussion***

On appeal, the plaintiff argues that the decision of the Civil Service Commission is arbitrary and capricious because the appointing authority introduced no evidence that his failure to report to duty between August 28, 2005, and September 19, 2005, “in any way impaired the efficiency of the public service”

or that the responsibility of a police officer is greater to the Police Department than to his family. The plaintiff contends that his absence was due to liver disease and because he evacuated his family to north Alabama on August 28, 2005, because his father-in-law – the only other licensed driver in his family – was not feeling well. According to the plaintiff he did not return to New Orleans until after September 17, 2005, because he did not want to leave his family without a car.

The plaintiff's arguments are without merit. At the hearing before the Civil Service Commission, the plaintiff conceded he was aware that as a result of the approaching hurricane the New Orleans Police Department was on emergency activation status, that police officers were essential personnel and thereby required to report to duty, that he received the notification to report to duty on August 28, 2005, and that he left the city without authorization from the Superintendent of Police and did not return until September 17, 2005. Based upon this evidence, we do not find that the Civil Service Commission was manifestly erroneous in finding that the appointing authority's action was based on lawful cause and commensurate with the plaintiff's dereliction of duty.

### ***Conclusion***

For the foregoing reasons, the decision of the Civil Service Commission is affirmed.

**AFFIRMED**