

SIDNEY THORNABAR * **NO. 2008-CA-0464**
VERSUS * **COURT OF APPEAL**
DEPARTMENT OF POLICE * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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BONIN, J., DISSENTS WITH REASONS

I respectfully dissent from the majority opinion affirming the decision of the Civil Service Commission which upheld the one-day suspension imposed upon Officer Thornabar by the appointing authority.

The Civil Service Commission has a duty to decide independently from the facts presented whether the appointing authority had good or lawful cause for taking the disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. *Walters v. Department of Police of the City of New Orleans*, 454 So. 2d 106 (La. 1984).

Legal cause exists whenever an employee’s conduct impairs the efficiency of the public service in which the employee is engaged. *Beba v. Department of Fire*, 2005-1209, p. 4 (La. App. 4 Cir. 5/31/06), 933 So. 2d 871, 874, *citing Fisher v. Department of Health and Human Resources, Office of Human Development*, 517 So. 2d 318 (La. App. 1 Cir. 1987). The appointing authority has the burden of proving, by a preponderance of the evidence, that the dereliction occurred, and that such dereliction bore a real and substantial relationship to the efficient operation of the appointing authority. *Cure v. Dept. of Police*, 2007-0166, p. 2 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094, *citing Marziale v. Dept. of Police*, 2006-0459, p. 10 (La. App. 4 Cir. 11/8/06), 944 So.2d 760, 767.

After reviewing the record in this matter, I find that the Commission erred by dismissing the appeal as the appointing authority, the NOPD, failed to demonstrate that Officer Thornabar's failure to appear in court pursuant to the subpoena impaired the efficient and orderly operation of the public service.

In this case, Officer Thornabar acknowledged at the hearing that a dereliction occurred when he failed to appear in court on April 29, 2005, pursuant to the subpoena. The appointing authority then questioned Officer Thornabar regarding the NOPD's policy relative to court appearances and his failure to appear in court. The appointing authority, however, called no witnesses and offered no evidence other than the disciplinary letter. Officer Thornabar testified the April 29, 2005 matter was continued and thereafter, the offender pled guilty. The appointing authority failed to obtain proof via witnesses or other evidence as to the cause of the continuance. Without such evidence, the appointing authority failed to prove Officer Thornabar's dereliction bore a real and substantial relationship to the efficient operation of the NOPD. Furthermore, I do not agree with the majority that Officer Thornabar's failure to honor the subpoena in and of itself impaired the efficiency of the public service and was grounds for discipline. Thus, I find no rational basis for the Commission's upholding the one-day suspension imposed by the Appointing Authority and denying Officer Thornabar's appeal.