

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-2954
Summary Calendar

ANDREW McCOY,

Plaintiff-Appellant,

VERSUS

CITY OF HOUSTON, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Southern District of Texas
(CA-H-92-2386)

(October 14, 1994)

Before KING, JOLLY and DeMOSS, Circuit Judges.

PER CURIAM:*

Andrew McCoy ("McCoy"), a long-time employee of the City of Houston, Department of Public Utilities, sustained an injury in an automobile accident on May 29, 1991 while driving a vehicle belonging to the City of Houston. The injuries from this accident resulted in McCoy losing time from his job. The City of Houston

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

drug policy requires a drug test to be administered to any individual who sustains an injury in an automobile accident for which he lost time. McCoy was drug tested on May 31, 1991, and the results indicated that he was positive for cocaine. McCoy was given the opportunity to have a second test performed on his original urine sample at his own expense, but he declined such offer. In a conference with his department director, McCoy was unable to provide an explanation for his conduct. The department director recommended to the Mayor that McCoy be indefinitely suspended, and that recommendation was accepted and acted upon by the Mayor. McCoy appealed his indefinite suspension to the City of Houston Civil Service Commission. After a hearing on September 5, 1991, at which McCoy, represented by counsel presented witnesses and evidence in an effort to get his job back, the Civil Service Commission concluded that McCoy's indefinite suspension should be sustained.

On August 7, 1992, McCoy filed this action against the City of Houston and various individuals who were supervisory personnel or co-employees of McCoy. In March, 1993, the district court dismissed the individual defendants on motions to dismiss under Fed. R. Civ. P. 12(b)(6). In December, 1993, the district court granted the City of Houston's motion for summary and entered a final judgment thereon. McCoy timely appealed from such final judgment.

We have carefully reviewed the briefs, the record excerpts and relevant portions of the record itself; and for the reasons stated

by the trial judge in his Summary Judgment Order entered December 3, 1993, we are satisfied that McCoy raised no substantial issue of material fact and that the City of Houston was entitled to judgment as a matter of law.

Accordingly, we AFFIRM the final judgment entered under date of December 3, 1993.