

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 CA 2062

ROSEMARI E. GAHN

VERSUS

LSU HEALTH SCIENCES CENTER-UNIVERSITY MEDICAL CENTER

RHP by jmm
JEK by jmm

jmm

—————
**On Appeal from a Decision of the
State Civil Service Commission
Docket No. 16533**

**Honorable James A. Smith, Chairman;
John McLure, Vice-Chairman;
Chatham H. Reed, David L. Duplantier, G. Lee Griffin,
Wilfred Pierre, and Burl Cain, Members**

—————

**Mark E. Falcon
Daniel L. Avant
Avant & Falcon
Baton Rouge, LA**

**Attorneys for
Plaintiff-Appellee
Rosemari E. Gahn**

**Laura D. Holmes
Appeal Counsel
St. Francisville, LA**

**Attorney for
Defendant-Appellant
LSU Health Sciences Center —
University Medical Center**

BEFORE: PARRO, KUHN, AND McDONALD, JJ.

Judgment rendered JUL - 9 2010

PARRO, J.

In this appeal, Louisiana State University, Health Sciences Center, University Medical Center (LSU) challenges the Louisiana State Civil Service Commission's (Commission) decision that granted a civil service employee's appeal, reversed the reduction in her pay, awarded reimbursement for the pay reduction with interest, and awarded attorney fees in favor of the employee. On appeal, LSU seeks reversal of the judgment on the ground that the Commission erred in its factual findings, in its weighing of the evidence, in its determination of cause, and in its awarding of attorney fees.

Appeals of final decisions of the Commission are subject to review on any question of law or fact by the court of appeal wherein the Commission is located. LSA-Const. art. X, § 12(A). A reviewing court should not disturb the factual findings made by the Commission in the absence of manifest error. Walters v. Department of Police of City of New Orleans, 454 So.2d 106, 113 (La. 1984). We have carefully reviewed the record and find no manifest error by the Commission.

No person who has gained permanent status in the classified state or city service shall be subjected to disciplinary action except for cause expressed in writing. LSA-Const. art. X, § 8(A). Cause exists whenever the employee's conduct is detrimental to the efficient and orderly operation of the public service that employed him. Greenleaf v. DHH, Metropolitan Developmental Center, 594 So.2d 418, 427 (La. App. 1st Cir. 1991), writ denied, 596 So.2d 196 (La. 1992). An appellate court should not reverse the Commission's determination of the existence or non-existence of cause for a disciplinary action unless the decision is arbitrary, capricious, or an abuse of discretion. See Walters v. Department of Police of City of New Orleans, 454 So.2d at 113. The burden of proof, as to the facts, in an appeal to the Commission of a disciplinary action is on the appointing authority. See LSA-Const. art. X, § 8(A); Civil Service Rule 13.19(c). After a thorough review of the record, we are unable to find that the Commission was arbitrary or capricious or abused its discretion in finding that LSU failed to prove cause for subjecting its employee, Rosemari E. Gahn, to disciplinary action.

Civil Service Rule 13.35 grants the Commission the discretionary power to award attorney fees when the action of an appointing authority is modified or reversed, and an abuse of that discretion must be shown for this court to modify or vacate the award.¹ Morgan v. Louisiana State University, 06-0570 (La. App. 1st Cir. 4/4/07), 960 So.2d 1002, 1007. Having found no manifest error with the Commission's factual findings, and having concluded the Commission's reversal of the disciplinary action and order of reimbursement for the reduction in pay with interest were not arbitrary or capricious and did not constitute an abuse of discretion, we find the Commission acted well within its discretion in awarding attorney fees in this case.

Accordingly, we affirm the decision of the State Civil Service Commission in accordance with URCA Rule 2-16.2(A)(4), (5), (6), (7), and (8). The costs of this appeal in the amount of \$1,121.50 are assessed to LSU Health Sciences Center, University Medical Center.

AFFIRMED.

¹ Civil Service Rule 13.35(a) provides:

When the Commission or a referee approves a settlement, recision, or modification of an action that has been appealed, or renders a decision, including a decision on application for review, which reverses or modifies an action that has been appealed, the appellee may be ordered to pay attorney's fees in amount not to exceed \$1,500.