

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 0503

CHARLES METHVIEN, JR.

VERSUS

**DEPARTMENT OF HEALTH & HOSPITALS,
OFFICE OF PUBLIC HEALTH**

Judgment Rendered: October 29, 2010

Appealed from the
State Civil Service Commission
In and for the State of Louisiana, Department of State Civil Service
Docket Number 16670

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

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BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.

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WHIPPLE, J.

This matter is before us on appeal by the Department of Health and Hospitals, Office of Public Health (hereinafter "DHH-OPH") from a decision of the State Civil Service Commission (hereinafter "the Commission") reversing a disciplinary action imposed by the appointing authority against Charles Methvien, Jr. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

At all pertinent times, Charles Methvien was employed by the DHH-OPH as a Sanitarian 5, serving with permanent status. In this capacity, Methvien was the head Sanitarian (or Parish Manager) for Ascension Parish. On April 22, 2009, Methvien received a phone call from Brenda Melancon, the Mayor of the Town of Sorrento. Mayor Melancon called Methvien for assistance with problems associated with a sewerage collection system at Oakwood Estates Mobile Home Park, which was located outside the city limits of Sorrento, but was "hooked" into the town's sewerage collection system. After their phone conversation, Mayor Melancon attempted to email Methvien copies of letters written by her on behalf of the Town of Sorrento to the owner of the property, outlining the history and details of this particular problem. However, Methvien did not receive the emails because Mayor Melancon had inadvertently misspelled his name in his email address.

On April 24, 2009, Methvien's supervisor, Silas Corkern, who was a DHH-OPH Regional Director for Region 2, received an email from Lauren Mendes, the Public Information Officer for DHH, inquiring whether anyone in Region 2 had reported a complaint being lodged by the Mayor of Sorrento about raw sewage being discharged onto the ground near Oakwood Estates Mobile Home Park in Sorrento. In her email, Ms. Mendes indicated that she had received a phone call from Channel 2 News claiming that the Mayor of

Sorrento had contacted DHH-OPH about this problem, and wanted to know what DHH-OPH was going to do about the leaky sewerage discharge, which had resulted in raw sewage spilling onto the ground. Corkern contacted Methvien to see if he had any information about the alleged complaint. Methvien acknowledged that he had received a phone call from Mayor Melancon, but indicated that he was not aware that raw sewage was being discharged on the ground. Thus, he did not categorize the mayor's phone call as an official "complaint"¹ necessitating implementation of DHH-OPH's Standard Operating Procedures for Sewage Complaints ("SOPSC"), which would require him to inspect the sewerage lines or system or dispatch someone from DHH-OPH to perform an inspection. Upon learning that the mayor had, in fact, spoken to Methvien to advise DHH-OPH of the problem, Corkern dispatched Caryn Benjamin, a DHH-OPH engineer, to inspect the area. Upon inspection, Benjamin discovered that raw sewage was being discharged onto the ground in the area of Oakwood Estates.

On May 21, 2009, Methvien received a letter from Melissa Guillory, the Regional Administrator for Region 2 and the appointing authority for DHH-OPH advising that a disciplinary action was being taken against him, consisting of a reduction of his pay by ten percent, the equivalent of a one-day suspension, for one pay period commencing June 1, 2009, and ending on June 14, 2009, for his "failure to follow standard operating procedures in response to a sewage complaint [that he] received on April 22, 2009 for Oakwood Estates Mobile Home Park in Sorrento, Louisiana." The letter further set forth the actions and series of events constituting the offense for which Methvien was being disciplined, as follows:

¹Corkern testified that a "complaint" is **information** received by the public or public official of public health significance, while Methvien testified that a "complaint" is a **report** of an imminent health hazard.

On Friday, April 24, 2009, around 11:30 a.m., Silas Corkern contacted you by phone regarding the above noted complaint. You informed Mr. Corkern that the Mayor of the Town of Sorrento, Brenda Melancon, contacted you on April 22, 2009, regarding the layout of the collection lines in Oakwood Estates Mobile Home Park in Sorrento. You assured Mr. Corkern that there was no raw sewage being discharged. You failed to log the complaint received on April 22, 2009. You also failed to send someone to investigate the complaint. On April 24, 2009, Silas Corkern sent Caryn Benjamin, Engineer 5, to Oakwood Estates to investigate and she determined that raw sewage was being discharged onto the surface of the ground at Lot #1, between Lots #23 and #24 and between Lots #34 and #36.

Methvien appealed the disciplinary action to the State Civil Service Commission. A two-day public hearing was held before a referee appointed by the Commission. On November 9, 2009, the referee rendered a decision finding as fact that Ms. Melancon had spoken with Methvien and told him that "there was a problem with the layout of the sewer collection system for Oakwood Estates and the ability of its collection lines to adequately convey waste to the community system . . . that this was an ongoing problem and that the town of Sorrento had mailed a letter to the owner of Oakwood Estates regarding the sewage concern." The referee further found as fact that Ms. Melancon "did not tell Mr. Methvien that there was raw sewage on the ground at Oakwood Estates." The referee also found that because Methvien had concluded, based on the information relayed by Mayor Melancon, that there was no imminent public health hazard, and, thus, that no "complaint" existed, there was no reason for him to follow DHH-OPH's Standard Operating Procedures for Sewage Complaints. Finding that DHH-OPH failed to prove the charge, the referee reversed the disciplinary action imposed by DHH-OPH. On November 24, 2009, DHH-OPH filed an application for review of the referee's decision by the Commission. The Commission denied DHH-OPH's application for review on January 14, 2010, upholding the decision of the referee.

DHH-OPH filed the instant appeal, contending that the Commission erred: (1) in reversing the disciplinary action imposed by DHH-OPH against Methvien by finding that no “complaint” existed since Methvien determined that the facts reported by Ms. Melancon did not present an imminent public health hazard; and (2) substituting its legal conclusion of what constitutes a “complaint” under the SOPSC for that of the public health agency’s management.

STANDARD OF REVIEW

On appeal, factual determinations of the Commission or a referee are entitled to great weight and should not be reversed unless clearly wrong or manifestly erroneous. James v. LSU Health Sciences Center Medical Center of Louisiana at New Orleans, 2001-1853 (La. App. 1st Cir. 11/8/02), 834 So. 2d 470, 472, writ denied, 2003-0214 (La. 4/21/03), 841 So. 2d 792. Additionally, decisions of the Commission or the referee as to whether the discipline imposed was based on legal cause and commensurate with the infraction should not be reversed unless such decisions are arbitrary, capricious, or an abuse of discretion. “Arbitrary or capricious” means that there is no rational basis for the action taken by the Commission. Bannister v. Department of Streets, 95-0404 (La. 1/16/96), 666 So. 2d 641, 647. However, with respect to the Commission’s decisions as to jurisdiction, procedure, and interpretation of laws and regulations, the judicial review function is not so limited. Rather, the court performs its traditional plenary functions and applies the “error of law” standard. James v. LSU Health Sciences Center Medical Center of Louisiana at New Orleans, 834 So. 2d at 472.

ASSIGNMENT OF ERROR NUMBER ONE

In its first assignment of error, DHH-OPH contends that the civil service referee improperly focused on defining a “complaint” rather than on Methvien’s

failure to promptly address the reported situation and initiate a prompt investigation, i.e. to implement DHH-OPH's SOPSC,² and whether this failure harmed the public health service he is charged with protecting.

The stated basis for the disciplinary action which DHH-OPH sought to impose against Methvien was his "failure to follow standard operating procedures in response to a sewerage complaint [that Methvien] received on April 22, 2009 for Oakwood Estates Mobile Home Park in Sorrento,

²DHH-OPH's Standard Operating Procedures for Sewerage Complaints provide the following "Step-by-Step Instructions" for the handling of sewerage complaints:

Step 1) Complete the top of the complaint form when the complaint is received.

Step 2) Complainant must sign the complaint.

Step 3) Assign the complaint a number and log the information in the Complaint Log Book. The complaint number will begin with the month of the complaint. (Examples: Nov01, Nov02, Dec01, Dec02, etc).

Step 4) Notify regional and central offices by fax or e-mail that action is being taken on the complaint.

Step 5) Make a field inspection of the subject premise to determine the validity of the complaint and record all the information using the complaint form, appropriate sewage form, and Extra Data Sheet for additional notes and comments.

A) Take detailed photographs, if possible, of noted violations.

Step 6) When conditions warrant, the property owner must be issued a Notice of Violations either by issuing a Notice of Unsanitary Conditions (Form LHS 10) or by appropriate regulatory letter (see sewage manual).

Step 7) Follow the appropriate SOP (see manual) and enforcement procedures if necessary according to Part 1 of the State Sanitary Code.

Step 8) When the problem concerning the complaint is corrected, record the information on the complaint form or extra data sheet and file the complaint as bated.

Step 9) Advise regional and central offices by fax or e-mail of the status of the complaint.

Step 10) The complainant (person who made the complaint) should be notified of actions taken.

NOTE: All violations of Part 13 of the Louisiana Administrative Code must be addressed!

Louisiana.” In reversing the appointing authority’s disciplinary action, the referee concluded, as follows:

DHH-OPH charges Mr. Methvien with failing to follow its Standard Operating Procedures for [S]ewerage [C]omplaints in response to a sewage complaint that he received on April 22, 2009, from Mayor Melancon regarding Oakwood Estates. The Standard Operating Procedures for sewerage complaints require that all complaints be logged and a field inspection made. A complaint is the report of an imminent public health hazard. All telephone calls received by the Ascension Parish Health Unit are not complaints. Mr. Methvien, as [Parish] Manager of the Ascension Parish Health Unit, has discretion in determining what telephone calls constitute complaints. Mayor Melancon did not inform Mr. Methvien that raw sewerage was on the ground; she merely expressed a general concern about the design of the Oakwood Estates system.

Based on the information received from Mayor Melancon, Mr. Methvien determined that there was no imminent public health hazard and thus no “complaint” existed. Therefore, since there was no complaint made to Mr. Methvien, there was no reason for him to follow DHH-OPH’s Standard Operating Procedures for sewerage complaints. I find that DHH-OPH has failed to prove the charge.

In support of this assignment of error on appeal, DHH-OPH contends that Methvien’s failure to properly identify and treat the issues presented by the mayor as a “complaint” and to promptly initiate an investigation by implementing the SOPSC constituted improper conduct on his part. According to DHH-OPH, Methvien’s failure to log and address the reported sewage problem harmed the public health service Methvien was charged with protecting. DHH-OPH contends that had the news media not been contacted after Mayor Melancon reported the problem, the situation may have gone unaddressed for many more days.

In response, Methvien contends that he specifically chose not to implement the SOPSC, given the information relayed to him in the phone call by Mayor Melancon, which, in his view, did not amount to a “complaint.” Methvien testified that his understanding of a “complaint” as would warrant such action involved situations in which the DHH-OPH is notified of an

imminent health hazard, sewage on the ground, or of a “bad” situation in a restaurant. Also, he specifically denied that Mayor Melancon told him that there was raw sewage on the ground. Instead, Methvien testified that his conversation with Mayor Melancon dealt with the set-up of the sewage collection transition line, which carries sewage from Oakwood Estates to the oxidation pond for the Town of Sorrento. Methvien testified that he asked Mayor Melancon to send him copies of the letters she had sent to the property owner and advised her that he would forward them to an engineer from DHH-OPH to review. He testified that if there was a problem with the design and construction of the sewerage lines, an engineer would have been the proper person to address it. As such, he classified the information provided by Melancon as a “call” and candidly acknowledged that he did not go out to inspect the lines or system at the scene, nor did he dispatch anyone else from DHH-OPH to the scene. Methvien explained that a “call” differed from a “complaint” in that a “call” is an “information scenario” in which someone calls the OPH and needs to retrieve information on how to handle a situation in reference to the Louisiana Sanitary Code.

Mayor Melancon testified that she called the DHH-OPH several times and eventually spoke to Methvien.³ Although Mayor Melancon could not recall whether she specifically advised Methvien that raw sewage was being discharged onto the ground, she testified that she remembered telling him that there were “serious sewage problems” at Oakwood Estates Mobile Home Park. After her conversation with Methvien, she attempted to email Methvien copies of two letters that she had sent to the owner of the property, wherein she

³Mayor Melancon testified that she called the Board of Health, and after she told them about the “serious sewage problems” herein, they told her that she needed to speak to Methvien. Mayor Melancon testified that she then called for Methvien several times and he was not in the office, but that she eventually “did catch” him there and was able to speak to him.

specifically stated in one, "I am asking the Board of Health to help the Town of Sorrento in making them fix their sewer problems or shut them down. Please help." In another, dated September 30, 2008, she stated, "According to the Louisiana Rural Water Association (LRWA) there were sewer pipes above ground, broken sewer lines; [and] raw [sewage] on the grounds." Methvien testified that although he did not receive these emails, had he known of their content, he would have immediately implemented the standard operating procedures. Melancon testified that by calling the DHH-OPH, she was filing a complaint.

Supervisor Corkern testified and admitted that DHH-OPH's standard operating procedure does not define "complaint." However, he contended that any phone call of public health significance is considered a complaint. Corkern testified that although a Parish Manager has some discretion in determining whether a call constitutes a "complaint," any time a call is received by a public official, an investigation should be initiated. Corkern further testified that Methvien told him that during their conversation, Mayor Melancon advised Methvien that the sewer lines at Oakwood Estates were installed backwards. Corkern testified that given this information by the mayor, Methvien should have known that if the design of the lines was such that the lines were installed backwards, raw sewage was being discharged onto the ground. Methvien denied reporting this to Corkern and testified that he did not know the lines were tied in backwards until June 9, 2009, when the city dug up the collection line and found that the "tie in" was backwards and there was a six inch hole in the collection line.

Undisputedly, Methvien did not follow the standard operating procedures for a sewage "complaint," given his candid testimony that he did not consider faulty infiltration or faulty construction of the collection lines to be a sewage

“complaint.” Instead, based on the information received, the matter appeared to involve a problem of “faulty construction.” In reversing the disciplinary action, the referee noted that considering Mayor Melancon did not advise Methvien that raw sewage was on the ground, Methvien utilized his discretion and determined that there was no imminent health hazard and, accordingly, no need to implement the SOPSC. Although we may have determined otherwise, given the standard of review by which we are bound, we cannot say that the referee’s factual findings are manifestly erroneous or that the decision to reverse the disciplinary action was arbitrary, capricious, or an abuse of discretion.

In doing so, we are mindful that on appeal, the issue to be resolved by a reviewing court is not whether the trier-of-fact was right or wrong, but whether the factfinder’s conclusion was a reasonable one. Stobart v. State, Department of Transportation and Development, 617 So. 2d 880, 882 (La. 1993). Where factual findings are based on determinations regarding the credibility of witnesses, the trier-of-fact’s findings demand great deference. Boudreaux v. Jeff, 2003-1932 (La. App. 1st Cir. 9/17/04), 884 So. 2d 665, 671. As the trier of fact, the referee was empowered to accept or reject, in whole or in part, the testimony of any witness deemed lacking in credibility. See Verges v. Verges, 2001-0208 (La. App. 1st Cir. 3/28/02), 815 So. 2d 356, 363, writ denied, 2002-1528 (La. 9/20/02), 825 So. 2d 1179. Where, as here, there are two permissible views of the evidence, the factfinder’s choice between them cannot be manifestly erroneous or clearly wrong. Stobart v. State, Department of Transportation and Development, 617 So. 2d at 882.

Mayor Melancon’s testimony that she did not recall advising Methvien that raw sewage was being discharged on the on the ground, combined with the discretion afforded Methvien in determining which calls constitute a complaint,

provide a rational basis for the action taken by the Commission. Thus, on review, we find no merit to this assignment of error.

ASSIGNMENT OF ERROR NUMBER TWO

In its second assignment of error, DHH-OPH contends that the referee erred and abused its discretion in substituting its interpretation of what qualifies as a “complaint” under the SOPSC for that of the administering DHH-OHP management. DHH-OPH argues that the referee accepted Methvien’s self-serving interpretation of what constitutes a “complaint” over that of his supervisor, Corkern.

While acknowledging that DHH-OPH’s SOPSC requires that “a complaint be assigned a number, that the complaint information be logged into the appropriate Complaint Log Book, and that a field inspection of the subject premises be conducted by a sanitarian or an engineer to determine the validity of the complaint,” the referee also apparently recognized that a “complaint” is not specifically defined in the SOPSC. The referee determined that a “complaint” as contemplated therein is “a report by anyone to DHH-OPH which indicates an imminent public health hazard. Not all telephone calls received at the Ascension Parish Health Unit or by Mr. Methvien personally are considered complaints. As the Parish Manager, Mr. Methvien has the discretion to determine which telephone calls are considered complaints. The information reported to Mr. Methvien by Mayor Melancon on April 22, 2009, did not rise to the level of a complaint, as no imminent public health hazard was indicated.” Thus, the referee rejected the testimony of Corkern as to what he (and others, including Methvien) knew would constitute a “complaint.”

In rejecting this claim by DHH-OPH, the referee obviously weighed two permissible views of the evidence as to what constitutes a “complaint.” Although Methvien’s testimony may have been self-serving in his respect, his

testimony was accepted by the referee and the Commission. Thus, we will not reweigh it on appeal. See Alford v. Sewerage and Water Board of New Orleans, 562 So. 2d 1167, 1168-1169 (La. App. 4th Cir. 1990).

Accordingly, we also find no merit to this assignment of error.

CONCLUSION

For the above and foregoing reasons, the November 9, 2009 decision of the Commission is affirmed. Costs of this appeal in the amount of \$513.50 are assessed against the State of Louisiana, Department of Health and Hospitals, Office of Public Health.

AFFIRMED.