

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2013 CA 0380  
Consolidated With  
2013 CA 0381**

**THOMAS HARRISON**

**VERSUS**

**DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS,  
OFFICE OF PROBATION AND PAROLE**

**Judgment Rendered: NOV 01 2013**

\*\*\*\*\*

On Appeal from a Decision of the State Civil Service Commission  
In and for the State of Louisiana  
Honorable David Duplantier, Chairman;  
John McClure, Vice-Chairman;  
G. Lee Griffin, Kenneth Polite,  
D. Scott Hughes, C. Pete Fremin,  
and Sidney Tobias; Members

Shannon S. Templet, Director  
Department of State Civil Service

No. 17161 C/W No. 17218

\*\*\*\*\*

Daniel E. Broussard, Jr.  
Alexandria, Louisiana

Counsel for Plaintiff/Appellant  
Thomas Harrison

Susan Griffin  
Baton Rouge, Louisiana

Counsel for Defendant/Appellee  
Department of Public Safety &  
Corrections, Office of Probation  
And Parole

Adrienne Bordelon  
General Counsel  
Department of State Civil Service  
Baton Rouge, Louisiana

Counsel for Defendant/Appellee  
Shannon S. Templet, Director,  
Department of State Civil Service

\*\*\*\*\*

**BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.**

*Pettigrew, J. Concurs with Results and assigns  
Reasons,*

**McCLENDON, J.**

The plaintiff appeals an adverse ruling of the State Civil Service Commission (Commission), upholding his termination from his employment with the Louisiana Department of Public Safety and Corrections (DPSC), Office of Probation and Parole (OPP). For the reasons that follow, we affirm the Commission's decision.

**FACTS AND PROCEDURAL HISTORY**

Prior to his termination, the plaintiff, Thomas "Scotty" Harrison, was a permanent-status civil service employee, holding the position of Probation and Parole Officer 3. On April 29, 2011, Mr. Harrison was issued a disciplinary letter resulting from his conduct on October 12, 2010, when he stopped and restrained an individual walking down the street. Mr. Harrison was driving alone in an unmarked vehicle, when he saw seventeen-year-old Toddarius Dixon walking along Maryland Street in Alexandria, Louisiana. Mr. Harrison stopped the car and, without identifying himself, motioned to Mr. Dixon to approach his vehicle. When Mr. Dixon refused and continued walking, Mr. Harrison chased Mr. Dixon, grabbed him by his shirt, and handcuffed him. After checking Mr. Dixon's identification, Mr. Harrison called the Alexandria police station and was informed that there were no warrants against Mr. Dixon. Mr. Harrison then showed Mr. Dixon a photograph of an individual with an outstanding warrant and asked Mr. Dixon if he knew the man in the picture. When Mr. Dixon responded that he did not, Mr. Harrison released Mr. Dixon.

Mr. Dixon and his father filed a complaint against Mr. Harrison, and an internal investigation was conducted. As a result, Mr. Harrison was charged with failing to follow the DPSC Corrections Services Employee Manual concerning arrests. Specifically, Mr. Harrison was charged with violating Rule 6, "Failure to Follow Orders", and Rule 10, "Falsifying Documents or Making False Statements." As a result of the investigation, and after level 1 and level 2 hearings on March 1, 2011 and March 15, 2011, Mr. Harrison was suspended for ten days without pay, effective May 16, 2011 through May 27, 2011.

Thereafter, on June 22, 2011, Mr. Harrison received another disciplinary letter resulting from his conduct on February 22, 2011, when he and a fellow officer went to the Office of Child Support Services in Alexandria, and Mr. Harrison arrested Rebecca Fletcher on a probation warrant. Mr. Harrison had received a tip that Ms. Fletcher might be working at the child support services office. At approximately 4:20 p.m., he asked his junior parole officer, Trisha Maillet, to go with him to see if Ms. Fletcher did in fact work there. Ms. Maillet was not informed that they were going to make an arrest. Upon their arrival at the Office of Child Support Services, Mr. Harrison told the receptionist that he was a friend of Ms. Fletcher and asked if she was there. It was only after the receptionist recognized Mr. Harrison that he informed her who he was and why he was there. The receptionist called Moody Treadwell, the regional manager of the child support services office. Mr. Treadwell asked if the arrest could be made in his office, and he asked that the officers wait until the other employees and clients left the building, since the office closed at 4:30 p.m., to escort Ms. Fletcher out of the office. Mr. Harrison consented to these requests. While waiting, the conversation between Mr. Harrison and Mr. Treadwell escalated. Eventually, Ms. Fletcher was escorted out of the office and to the jail.

Later that afternoon, Mr. Treadwell called Mr. Harrison's supervisor, Michael Wynne, to complain about Mr. Harrison's conduct. An investigation followed that found that proper arrest procedures were not followed and that Mr. Harrison lied, failed to act professionally, and failed to cooperate in the investigation.<sup>1</sup> Based on his actions, Mr. Harrison was again charged with violating the DPSC Corrections Services Employee Manual. Specifically, Mr. Harrison was charged with violating Rule 1, "General Misconduct", and Rule 13q, "Malfeasance-Aggravated", as well as Rule 6, "Failure to Follow Orders", and Rule 10, "Falsifying Documents or Making False Statements." As a result of the

---

<sup>1</sup> The investigation also revealed that Mr. Treadwell banned Mr. Harrison from the Office of Child Support Services.

investigation, and after level 1 and level 2 hearings, Mr. Harrison was terminated from his employment, effective July 1, 2011.

Mr. Harrison appealed both disciplinary actions, which were consolidated. Mr. Harrison asserted that there was no cause for the discipline or, in the alternative, that the discipline imposed was too severe. Following a hearing on the consolidated appeals, held on January 12, 2012 and June 8, 2012, the Civil Service Referee rendered an opinion on August 7, 2012, sustaining the action of the appointing authority terminating Mr. Harrison. Thereafter, Mr. Harrison filed an application for review of the referee's decision with the Commission, which was denied. This appeal followed.

### **ASSIGNMENTS OF ERROR**

In his appeal, Mr. Harrison asserts:

1. The Commission erred in finding that the referee's decision was not erroneous based on improper evidence (both hearsay and double hearsay) and unsupported by the probative evidence and testimony offered and adduced at the hearing on the consolidated appeals.
2. The Commission erred in affirming the referee's decision that the appointing authority proved just cause sufficient to support Mr. Harrison's termination.
3. The conclusion of the referee that Mr. Harrison "rudely yelled" at Mr. Treadwell and that his testimony "lacked credibility" is not supported by the record and is arbitrary and/or capricious as is shown by the testimony of Mr. Treadwell and Mr. Harrison's co-employee, Tresha Maillet.
4. The referee ignored and gave no weight in his decision to the written entry recorded by Mr. Harrison in his daily travel log book about the contact he had with the complainant on October 12, 2010.
5. The referee erred in refusing to grant Mr. Harrison's request for summary disposition and motion in limine that were based on the following:
  - a) The disciplinary action of suspension taken against Mr. Harrison was based on an investigation by the appointing authority that did not comply with the deadline set forth in Division of Probation and

Parole/Adult Policy Number PER215. The internal investigation of this matter exceeded sixty days and because of the agency's non-compliance with its own written policy, his appeal on this disciplinary action should have been granted summarily.

b) The internal investigation by the appointing authority that led to Mr. Harrison's suspension did not comply with the minimum standards of LSA-R.S. 40:2531 – Police Officer's Bill of Rights and was an absolute nullity under the provisions of said statute.

6. The appointing authority's delay of over sixty days to impose the disciplinary action of the ten-day suspension of Mr. Harrison was unjustified.

### **DISCUSSION**

In civil service disciplinary cases, decisions of the Commission and its referees are subject to the same standard of review as a decision of a district court. **Harrell v. Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, Pinecrest Supports and Services Center**, 10-0281 (La.App. 1 Cir. 9/10/10), 48 So.3d 297, 301, writ not considered, 10-2310 (La. 12/10/10), 51 So.3d 715. Factual findings of the Commission referee are subject to the clearly wrong or manifest error standard of review. **Bannister v. Department of Streets**, 95-0404 (La. 1/16/96), 666 So.2d 641, 647. It is the province of the Commission referee to determine the weight to be given to evidence in an administrative hearing. **Evans v. DeRidder Mun. Fire**, 01-2466 (La. 4/3/02), 815 So.2d 61, 69, cert. denied, 537 U.S. 1108, 123 S.Ct. 884, 154 L.Ed.2d 779 (2003). As to the determination of whether the disciplinary action is based on legal cause and commensurate with the offense, the Commission's decision should not be modified unless it is arbitrary, capricious, or characterized by abuse of discretion. **Harrell**, 48 So.3d at 301. An administrative agency's determination is "capricious" when it has no substantial evidence to support it; it is "arbitrary" when the evidence has been disregarded or not given the proper weight. **Marsellus v. Dept. of Public Safety and Corrections**, 04-0860 (La.App. 1 Cir. 9/23/05), 923 So.2d 656, 661.

A classified employee with permanent status may not be subjected to disciplinary action except for cause expressed in writing. LSA-Const. art. 10, § 8(A). Cause sufficient for the imposition of discipline means conduct that impairs the efficiency of the public service and bears a real and substantial relation to the efficient and orderly operation of the public service in which the employee is engaged. **Wopara v. State Employees' Group Benefits Program**, 02-2641 (La.App. 1 Cir. 7/2/03), 859 So.2d 67, 69. The appointing authority must prove by a preponderance of the evidence that the employee's conduct did, in fact, impair the efficient and orderly operation of the public service. **Id.** A preponderance of the evidence means evidence which is of greater weight than that which is offered in opposition. Proof is sufficient to constitute a preponderance when, taken as a whole, it shows the fact of causation sought to be proved as more probable than not. **Harrell**, 48 So.3d at 301; **Brown v. Dept. of Health & Hospitals Eastern Louisiana Mental Health System**, 04-2348 (La.App. 1 Cir. 11/4/05), 917 So.2d 522, 527, writ denied, 06-0178 (La. 4/24/06), 926 So.2d 545.

Further, hearsay evidence is admissible in administrative hearings if competent and relevant. **Harrell**, 48 So.3d at 305. The general rule in administrative hearings is to allow hearsay evidence and to recognize that the inability to cross-examine the declarant affects the weight that the evidence carries. **Id.**

With regard to the incident involving Mr. Dixon, the referee found that his arrest was clearly unlawful, as Mr. Harrison had no legal cause to arrest Mr. Dixon. Further, the referee found that the arrest was unplanned and was not authorized by Mr. Wynne. Thus, the referee found that Mr. Harrison's actions violated the agency arrest policy and applicable law. The referee also found that Mr. Harrison made a false statement to his supervisor when he was questioned by Mr. Wynne and that he falsified his daily travel log when he failed to record Mr. Dixon's arrest. The referee concluded:

Mr. Harrison illegally arrested Mr. Dixon. In doing so, he violated agency policy designed to protect his safety and that of the public. Mr. Harrison then lied to his supervisor and falsified records to cover up the incident. DPSC has proved cause for discipline against Mr. Harrison with the charges arising out of this incident.

With regard to the arrest of Ms. Fletcher, the referee found that Mr. Harrison did not inform Mr. Wynne of his intentions to execute the arrest warrant against Ms. Fletcher so that the arrest could be planned and Mr. Wynne's consent could be obtained as required by agency policy. Also, the referee found that Mr. Harrison did not tell Ms. Maillet that they were going to arrest Ms. Fletcher, so Ms. Maillet was denied the opportunity to wear her bulletproof vest, as required by agency policy when making arrests. The referee also specifically found Mr. Harrison's testimony lacking in credibility. The referee stated:

Mr. Harrison's actions and inactions in connection with this arrest were in violation of the agency arrest policy and were unprofessional. His transgressions potentially placed himself, Ms. Maillet, and the public at risk, and his rude behavior toward Mr. Treadwell reflected poorly on the agency. DPSC has proved cause for discipline against Mr. Harrison with the charges arising out of this incident.

The referee then concluded:

Mr. Harrison contends his dismissal was too severe. I disagree. Mr. Harrison made an illegal arrest, lied about it to his supervisor, falsified records, committed several violations of the agency arrest policy on two separate occasions, and acted in an unprofessional manner; all to the manifest detriment of the state service. Based upon the forgoing reasons, I conclude that DPSC proved legal cause for discipline and that the penalty imposed, dismissal, is commensurate with the offense. Accordingly, I hereby deny this appeal.

Although Mr. Harrison maintains that the agency used improper hearsay evidence in its determinations, as previously noted, hearsay evidence is admissible in administrative hearings if competent and relevant. See Harrell, 48 So.3d at 305. The appointing authority submitted investigative reports, emails, statements, and VR-1 packets, all documents that are used in the business of the OPP. DPSC also presented evidence of a history of complaints, instructions, and reprimands regarding Mr. Harrison's prior conduct. Further, Mr. Treadwell, Ms. Maillet, and Mr. Wynne testified at the hearing, as did Debra Bradford, the appointed investigator in the Dixon matter, Kevin Hildago, the district manager

for the Covington district and the hearing officer for Mr. Harrison's second level hearing, and Gerald Starks, who at the relevant times herein was the Deputy Director of the OPP in charge of disciplinary matters.

After careful review of the record as a whole, we conclude that the factual findings of the Commission's referee were not manifestly erroneous. We cannot re-weigh the evidence, or make our own credibility determinations regarding the witnesses, or substitute our findings for those of the Commission and its referee. We are to determine whether a reasonable factual basis exists in the record to support the referee's determination. The evidence in the record reveals a sufficient factual basis to support the factual findings of the referee, which were adopted by the Commission. The record also contains ample evidence establishing an ongoing problem resulting from Mr. Harrison's aggressive and unprofessional behavior. Accordingly, we can find no manifest error in the findings of the referee, including the determination that Mr. Harrison's conduct did, in fact, impair the efficient and orderly operation of the public service of the OPP. Thus, we agree that the termination of Mr. Harrison was based on legal cause and was commensurate with the charged offenses, and we find no merit to Mr. Harrison's assignments of error.<sup>2</sup>

Because we find that the Commission's decision to terminate Mr. Harrison from his employment was not arbitrary, capricious, or characterized by an abuse of discretion, we will not modify or reverse the Commission's decision, and it is affirmed.

### **CONCLUSION**

Based on the above, we find that the record supports a finding of legal cause and the disciplinary action of termination. Therefore, the decision of the State Civil Service Commission terminating Mr. Harrison from his permanent position with the Department of Public Safety and Corrections, Office of

---

<sup>2</sup> Although we find no merit in Mr. Harrison's last two assignments of error regarding his suspension, we need not address them, having found just cause for his termination and given that Mr. Harrison has not sought any wages accrued during his suspension.



Probation and Parole is hereby affirmed. All costs of this appeal are assessed to  
Thomas Harrison.

**AFFIRMED.**

THOMAS HARRISON

NUMBER 2013 CA 0380 C/W  
NUMBER 2013 CA 0381

VERSUS

COURT OF APPEAL

DEPARTMENT OF PUBLIC SAFETY AND  
CORRECTIONS, OFFICE OF PROBATION  
AND PAROLE

FIRST CIRCUIT

STATE OF LOUISIANA

 BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

PETTIGREW, J., CONCURS WITH THE RESULTS, AND ASSIGNS REASONS.

I am of the humble opinion the majority should have addressed the legal issues raised by Mr. Harrison concerning whether La. R.S. 40:2531 is applicable to the facts of this case.

Even if La. R.S. 40:2531 may apply to the underlying facts of the disciplinary letter of April 29, 2011 (for Mr. Harrison's conduct of October 12, 2010, which resulted in a 10-day suspension without pay), Mr. Harrison does not argue to this court or to the Commission that there was a violation of La. R.S. 40:2531 as to the underlying facts of the disciplinary letter of June 22, 2011 (resulting from his conduct of February 22, 2011, which resulted in his termination effective July 1, 2011).

The termination of Mr. Harrison was based on legal cause and commensurate with the offenses arising out of the incident on February 22, 2011. For these reasons I concur with the results reached by the majority.