

**NOT DESIGNATED FOR PUBLICATION**

**EDWIN THOMAS** \* **NO. 2004-CA-1326**  
**VERSUS** \* **COURT OF APPEAL**  
**NEW ORLEANS POLICE** \* **FOURTH CIRCUIT**  
**DEPARTMENT** \* **STATE OF LOUISIANA**  
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**APPEAL FROM**  
**CITY CIVIL SERVICE COMMISSION ORLEANS**  
**NO. 6713**

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**Judge Dennis R. Bagneris, Sr.**

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(Court composed of Judge Dennis R. Bagneris, Sr., Judge Michael E. Kirby,  
and Judge Terri F. Love)

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**IN PROPER PERSON, PLAINTIFF/APPELLANT**

## **AFFIRMED**

The Appellant, Edwin Thomas, appeals the judgment of the Civil Service Commission terminating him from the New Orleans Police Department. We affirm the judgment of the Appointing Authority.

On May 13, 2000, Mr. Thomas, a 13 year police veteran, attempted to cash checks totaling \$4,000 at Wagner's Meat located on Claiborne Ave. in New Orleans. The store's manager, Keith Wolfe, refused to cash the checks for Mr. Thomas. Mr. Thomas displayed his police identification and intimidated Mr. Wolfe by asking which way Mr. Wolfe had to go home and threatening Mr. Wolfe with a ticket. Mr. Edwin Merritt, another Wagner's Meat employee witnessed the incident.

Sgt. Gregory Chiles of the New Orleans Police Department conducted an investigation and took the statements of Mr. Wolfe and Mr. Merritt. In an effort to further the investigation, Sgt. Chiles sought Mr. Thomas' statement, however, Mr. Thomas had relocated without forwarding his new address. When Mr. Thomas was subsequently found, his testimony denied that the incident at Wagner's Meat ever took place.

A hearing on the matter was held on November 4, 2003 and December 2, 2003 and the Appointing Authority terminated Mr. Thomas finding that

he “violated the internal regulation concerning Truthfulness, Verbal intimidation, Abuse of Position, Instructions from Authoritative Source - - Verbal Orders (3-counts), and Instructions from an Authoritative Source...”

Mr. Thomas’ appeal to the Commission was denied. He is now before this Court arguing that the evidence presented at the hearings was hearsay and that the Commission erred in its findings.

The Civil Service Commission's decision is subject to review on any question of law or fact upon appeal to the appropriate court of appeal. La. Const. art. X, § 12(B). Thus, the reviewing court should apply the clearly wrong or manifest error rule prescribed generally for appellate review in deciding whether to affirm the Civil Service Commission's factual findings. *Walters v. Department of Police*, 454 So.2d. at 113; *Arceneaux v. Domingue*, 365 So.2d 1330 (La.1978). In reviewing the Civil Service Commission's findings of fact, the court should not reverse or modify such a finding unless it is clearly wrong or manifestly erroneous. In judging the Civil Service Commission's exercise of its discretion in determining whether the disciplinary action is based on legal cause and the punishment is commensurate with the infraction, the court should not modify the commission's order unless it is arbitrary, capricious or characterized by an abuse of discretion. *Id.* at 112-14; *See also Evans v. DeRidder Municipal*

*Fire and Police Civil Service Board*, 2001-2466 (La.4/3/02), 815 So.2d 61;

*Delpit v. New Orleans Dept. of Utilities*, 2002-2008 (La.App. 4 Cir.

2/19/03), 841 So.2d 30.

In *Newman v. Department of Fire*, 425 So.2d 753 (La.1983), the Louisiana

Supreme Court discussed the meaning of "arbitrary and capricious" in the

context of a civil service commission hearing as well as the legal cause

necessary to impose disciplinary action on a civil service employee. The

Supreme Court stated:

Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the "efficient operation" of the public service. The appointing authority (Superintendent) must demonstrate, by a preponderance of the evidence, that the conduct did in fact impair the efficiency and orderly operation of the public service. *Id.* at 754.

*Williams v. Department of Utilities*, 2003-1473 (La. App. 4 Cir. 1/28/04)

867 So.2d 26.

Hearsay may be admitted in administrative hearings, and this practice

does not violate the constitution. *Taylor v. New Orleans Police Department*,

2000-1992, (La. App. 4 Cir. 12/12/01) 804 So.2d at 772, 773. However, the

findings of the Commission must be based upon competent evidence.

*Taylor*, p. 5, 804 So.2d at 773 citing *Cittadino v. Dep't of Police*, 558 So.2d

1311, 1315 (La.App. 4 Cir.1990). The appellate court will disregard incompetent evidence. Therefore, the question becomes whether the hearsay evidence was "competent evidence." *Taylor*, p. 5, 804 So.2d at 773. *Broaden v. Department of Police* 866 So.2d 318, \*321-322, 2003-1427 (La.App. 4 Cir. 1/14/04).

In the instant case, the record reflects that the Appointing Authority relied on the testimony of Sgt. Gregory Chiles who conducted the investigation. The sworn testimony of Sgt. Chiles was based upon the interviews of the eyewitnesses who called the police after the incident involving Mr. Thomas. The record further reveals that Mr. Thomas denied the allegations at first and then changed his statement causing the Commission to question his credibility. We find that the hearsay evidence was competent evidence necessary for the conclusion of this case. Further, Sgt. Chile's testimony was credible and trustworthy and the Commission was not erroneous in relying on his statements. We cannot say that the Civil Service Commission erred in the finding of fact, its conclusion of law, and the reliance of the testimony given at trial.

### **Decree**

For the reasons stated herein, we affirm the decision of the Civil Service Commission terminating Edwin Thomas from the New Orleans

Police Department.

**AFFIRMED**