

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 CA 0522

LISA PIKE

VERSUS

DEPARTMENT OF REVENUE,
OFFICE OF ALCOHOL AND TOBACCO CONTROL

Judgment Rendered: DEC 27 2013

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On Appeal from the
State Civil Service Commission,
State of Louisiana
Trial Court No. 17276

David Duplantier, Chairman; John McLure, 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

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J. Arthur Smith, III
Baton Rouge, LA

Attorney for Plaintiff-Appellant,
Lisa Pike

Jessica Starns
Baton Rouge, LA

Attorneys for Defendant-Appellee,
Department of Revenue, Office of Alcohol
and Tobacco

Sheri M. Morris
Carlton Jones, III
Baton Rouge, LA

Adrienne Bordelon
Baton Rouge, LA

Attorney for Defendant-Appellee,
Shannon S. Templet, Director,
Department of State Civil Service

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BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

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by
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HIGGINBOTHAM, J.

The primary issue in this Civil Service Commission appeal is whether the appointing authority has proven by a preponderance of the evidence charges sufficient to justify the disciplinary action, a three-day suspension without pay, taken against appellant. We affirm the Commission's decision.

BACKGROUND

Appellant, Lisa Pike, was employed by the Department of Revenue, Office of Alcohol and Tobacco Control (ATC) as an Administrative Assistant 3 with permanent status.¹ On September 19, 2011, Ms. Pike was notified by letter that she was suspended for three days without pay for insubordination because she had failed to comply with a directive by the appointing authority, ATC Commissioner Troy Hebert, to timely produce weekly medical statements from her health care provider to verify that she was unable to work due to illness or medical condition. Ms. Pike filed a timely appeal of the disciplinary action with the Civil Service Commission (the Commission), denying that she was insubordinate because she made a good faith attempt to comply with Mr. Hebert's directive, but it was difficult since her treating physician initially preferred issuing a monthly report.

Following a hearing before a referee assigned to Ms. Pike's appeal, the referee concluded that the ATC failed to prove cause for discipline because Mr. Hebert's directive requiring weekly medical statements was unreasonable. Thus, the referee granted Ms. Pike's appeal, reversed the appointing authority's disciplinary action, and awarded attorney's fees to Ms. Pike. The ATC timely filed an application for review of the referee's decision with the Commission. On December 13, 2012, the Commission rendered an opinion reversing the referee's decision, reinstating the three-day suspension, and denying the attorney's fees awarded by the referee. Ms. Pike appealed to this court.

¹ Ms. Pike was removed from her position on October 24, 2011.

DISCUSSION

Legal cause exists for disciplinary action against a permanent, classified civil service employee whenever that employee's conduct is detrimental to the efficient and orderly operation of the public service for which she was employed. **Ferguson v. Dept. of Health and Human Resources, Office of Management and Finance**, 451 So.2d 165, 168 (La. App. 1st Cir. 1984). The appointing authority bears the burden of proving such conduct by a preponderance of the evidence, which means the evidence, as a whole, must show the fact sought to be proven as more probable than not. **Id.** Each case must be decided on its own facts with substantial deference afforded to the appointing authority. Reviewing courts should not second guess the appointing authority's decision, but only intervene when decisions are arbitrary and capricious or characterized by an abuse of discretion. See **Mathieu v. New Orleans Public Library**, 2009-2746 (La. 10/19/10), 50 So.3d 1259, 1262-63.

Commission decisions are reviewed on both questions of law and fact. La. Const. art. 10, § 12. The Commission has the exclusive power and authority to hear and decide all disciplinary cases, and it may appoint a referee to hear and decide such cases. **Williams v. Orleans Levee Dist., Bd. of Com'rs**, 2000-0297 (La. App. 1st Cir. 3/28/01), 784 So.2d 657, 659, writ denied, 2001-1730 (La. 9/14/01), 796 So.2d 686. The decision of the referee is subject to review by the Commission on any question of law or fact upon the filing of a timely application for review with the Commission. La. Const. art. 10, § 12. A reviewing court should not disturb the factual findings made by the Commission in the absence of manifest error. **Williams**, 784 So.2d 659. Additionally, the standard of review of the Commission's conclusion as to the existence or absence of cause for suspension of a permanent status employee is whether the decision is arbitrary, capricious, or an abuse of the Commission's discretion. **McGee v. Department of**

Transportation and Development, 99-2628 (La. App. 1st Cir. 12/22/00), 774 So.2d 1280, 1282, writ denied, 2001-0232 (La. 3/23/01), 788 So.2d 432. An arbitrary conclusion is one that disregards evidence or the proper weight thereof; and a capricious conclusion is when there is no substantial evidence to support it or the conclusion is contrary to substantiated competent evidence. **Burst v. Board of Commissioners, Port of New Orleans**, 93-2069 (La. App. 1st Cir. 10/7/94), 646 So.2d 955, 958, writ not considered, 95-0265 (La. 3/24/95), 651 So.2d 284.

An employee must follow an order unless it calls upon her to do something illegal, immoral, unethical, or in dereliction of her duties. See **Department of Corrections, Louisiana State Penitentiary v. Cage**, 418 So.2d 3, 5 (La. App. 1st Cir.), writ denied, 422 So.2d 164 (La. 1982). Refusing to obey orders constitutes insubordination and is an action which, by its very nature, impairs the efficient operation of public service, thereby justifying disciplinary action. See **Ennis v. Dept. of Public Safety and Corrections, Dixon Correctional Institute**, 558 So.2d 617, 623-24. See also, **Ben v. Housing Authority of New Orleans**, 2003-1664 (La. App. 1st Cir. 5/14/04), 879 So.2d 803, 807; **Ferguson**, 451 So.2d at 169. In essence, the appointing authority must show that Ms. Pike was given a lawful directive that she disregarded or refused to obey without justification and that her refusal had a direct relation to the impairment of the public service for which she was employed.

Although Mr. Hebert's directive for weekly medical statements from Ms. Pike's health care provider may be considered unusual and considered by her to be somewhat difficult to comply with, it was not an unlawful directive and it was understandable and reasonable in light of Ms. Pike's excessive absences. Civil Service Rule 11.14 allows an appointing authority to require employees to provide medical excuses stating the cause of the absence. The record establishes that Ms. Pike had been absent from work for approximately four months, causing a burden

on her ATC division. The record further shows that Ms. Pike's return-to-work date during her absence was constantly changing with no specific determination that she was unable to work due to a medical condition. The record also establishes that although Ms. Pike's treating physician initially resisted weekly updates, it was not impossible to comply with Mr. Hebert's directive because she eventually did comply. Furthermore, it was undisputed that Ms. Pike never communicated directly with Mr. Hebert about her difficulty in providing weekly updates from her physician until she responded to the letter notifying her of the proposed disciplinary action.

Since there is competent evidence in the record that supports the Commission's finding that Ms. Pike failed to furnish acceptable weekly medical statements as lawfully required by the appointing authority, we find that the appointing authority was justified in suspending Ms. Pike for three days without pay. Accordingly, from our independent review of the record, and considering this case's unique pattern of facts, we find the Commission's conclusions were not arbitrary, capricious, or an abuse of discretion. Likewise, we find no manifest error in the factual findings of the Commission.

CONCLUSION

For the stated reasons, we find no merit to the appellant's assignments of error. Therefore, we affirm the Commission's reversal of the referee's decision and reinstatement of the appointing authority's disciplinary action. All costs of this appeal are assessed to appellant, Lisa Pike.

AFFIRMED.