

Room 5E03 – City Hall
New Orleans, LA 70112
COUNSEL FOR DEFENDANT/APPELLEE

AFFIRMED

In this appeal, plaintiff, Harlene Banks, contends that the Civil Service Commission (“CSC”) erred in dismissing the appeal of her demotion by the New Orleans Health Department (“Health Department”). For the reasons set forth below, we affirm.

FACTS AND PROCEDURAL HISTORY

In 1994, plaintiff began working as a Quality Control Nurse at the Ida Hymel Clinic. The title of Quality Control Nurse carries with it an LPN III classification. An LPN III performs essentially the same functions as an LPN II, with the added duties of quality control.

As a Quality Control Nurse, plaintiff was responsible for reviewing records for quality control and accuracy that were screened through the KidMed program. Funds for this program are disbursed through the State of Louisiana Department of Health. The State monitors all KidMed providers to ensure that the funds are properly disbursed and efficiently used. Audits

of patient files are periodically conducted to confirm that the relevant file documentation reflects a comprehensive screening before being submitted to the State for payment.

On November 6, 1996, the State conducted an audit of the Ida Hymel Clinic. It pulled and reviewed twenty patient files. The State discovered problems with the medical records documentation, so it notified the Health Department, the Appointing Authority. The State met with Ms. Banks to implement a corrective action plan. Subsequently, during a follow-up, on-site visit, the State pulled and examined ten patient files. After reviewing them, the State concluded that significant deficiencies still existed. As a result, the State blocked the Ida Hymel Clinic from participating in the KidMed program until the problems could be corrected.

The Appointing Authority, through its Director of Nursing, Donna Malus, conducted an investigation that included her own audit of files. She found additional errors. Consequently, on September 29, 1997, the Appointing Authority took away plaintiff's quality control responsibilities and demoted her to her previous position of LPN II. On October 27, 1997, Ms. Banks appealed this demotion to the CSC. On June 14, 2000, the CSC

affirmed the demotion. Plaintiff subsequently filed this appeal.

DISCUSSION

Plaintiff avers that the decision of the CSC is clearly wrong and an arbitrary and capricious abuse of its power.

The CSC has a duty to decide independently from the facts presented whether the Appointing Authority has good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with dereliction. *Walters v. Dept. of Police of New Orleans*, 454 So.2d 106 (La. 1984). Legal cause exists whenever the employee's conduct impairs the efficiency of the public service in which the employee is engaged. *Cittadino v. Department of Police*, 558 So.2d 1311 (La. App. 4 Cir. 1990). The Appointing Authority has the burden of proving by a preponderance of the evidence the occurrence of the complained activity and that the conduct complained of impaired the efficiency of public service. *Id.* The appointing authority must also prove the actions complained of bear a real and substantial relationship to the efficient operation of public service. *Id.* While these facts must be clearly established, they need not be

established beyond a reasonable doubt. *Id.*

The CSC's finding of fact should be given the same deference as those made by a judge or jury. *Walters, supra.* Indeed, this standard of review does not differ from that in other civil cases. A court of appeal may not set aside a trial court's or a jury's finding of fact in the absence of "manifest error" or unless it is "clearly wrong." *Rosell v. ESCO*, 549 So.2d 840 (La. 1989). In *Mart v. Hill*, 505 So.2d 1120 (La. 1987), the Louisiana Supreme Court posited a two-part test for the reversal of a factfinder's determinations:

- 1) The appellate court must find from the record that a reasonable factual basis does not exist for the finding of the trial court, and
- 2) The appellate court must further determine that the record establishes that the finding is clearly wrong (manifestly erroneous). *Id.* at 1127 (quoting *Arceneaux v. Domingue*, 365 So.2d at 1333 (La. 1978)).

This test dictates that the appellate court must do more than simply review the record for some evidence that supports or controverts the trial court's finding. *Id.* The appellate court must review the record in its entirety to determine whether the trial court's finding was clearly wrong or manifestly erroneous.

Nevertheless, 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. See generally, *Cosse v. Allen-Bradley Co.*, 601 So.2d 1349, 1351 (La.1992); *Housley v. Cerise*, 579 So.2d 973, 976 (La.1991); *Sistler v. Liberty Mutual Ins. Co.*, 558 So.2d 1106, 1112 (La.1990). Even though an appellate court may feel its own evaluations and inferences are more reasonable than those of the factfinder's, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review where conflict exists in the testimony. *Arceneaux v. Domingue*, 365 So.2d 1330 (La.1978). However, where documents or objective evidence so contradict the witness's story, or the story itself is so internally inconsistent or implausible on its face, that a reasonable factfinder would not credit the witness's story, the court of appeal may find manifest error or clear wrongness even in a finding purportedly based upon a credibility determination. *Rosell*, 549 So.2d at 844-45. Nonetheless, this court has emphasized that "the reviewing court must always keep in mind that 'if the trial court or jury's findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse, even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently.'" *Housley v. Cerise*, 579 So.2d 973, 976 (La. 1991), (quoting *Sistler v. Liberty Mutual Ins. Co.*, 558 So.2d 1106, 1112

(La.1990)).

Courts have recognized that "[t]he reason for this well-settled principle of review is based not only upon the trial court's better capacity to evaluate live witnesses (as compared with the appellate court's access only to a cold record), but also upon the proper allocation of trial and appellate functions between the respective courts." *Canter v. Koehring Co.*, 283 So.2d 716, 724 (La.1973). Thus, where two permissible views of the evidence exist, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. *Id.*

Plaintiff argues that the quality assurance problems were actually caused by Theresa Bush, her supervisor. Ms. Bush ordered the staff of the clinic to bill for services not performed and diverted the flow of paperwork to herself, making it almost impossible to stop the fraudulent billing practices. Ms. Banks contends that she was made a "scapegoat" by the Health Department for her supervisor's crimes, and that her punishment was not commensurate with her alleged derelictions. We disagree. As the CSC pointed out in its decision, "Her job as Quality Control Nurse [was] to find the mistakes and correct them before funding is withdrawn." Ms. Banks failed to do so, and as a result, the clinic was removed from the KidMed program. Demotion was proper based on her inadequate work performance,

despite the fact that no prior disciplinary measures were instituted.

Employing the foregoing appellate standards, we cannot say that, in light of the entire record, the ruling of the CSC was manifestly erroneous or clearly wrong. The evidence and testimony provided a reasonable factual basis for the CSC to conclude that the plaintiff's conduct impaired the efficient operation of the department. As a result of the plaintiff's inadequate record keeping, the clinic lost linking privileges with an important KidMed program. Only after the plaintiff was demoted did the clinic regain linking privileges. The Appointing Authority was justified in removing the plaintiff from her position and replacing her with someone else who could competently perform the necessary tasks.

CONCLUSION

Accordingly, for the foregoing reasons, the judgment of the CSC is affirmed.

AFFIRMED