

**DONALD PAISANT**

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**NO. 2001-CA-0874**

**VERSUS**

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**COURT OF APPEAL**

**NEW ORLEANS POLICE  
DEPARTMENT**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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APPEAL FROM  
CITY CIVIL SERVICE COMMISSION ORLEANS  
NO. 5777

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**JOAN BERNARD ARMSTRONG**

**JUDGE**

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(Court composed of Judge Joan Bernard Armstrong, Judge Patricia Rivet  
Murray and Judge Dennis R. Bagneris, Sr.)

**ALAN B. TUSA**  
**CAROL T. RICHARDS**  
TUSA & RICHARDS, L.L.C.  
3801 NORTH CAUSEWAY BOULEVARD  
SUITE 301  
METAIRIE, LA 70002

COUNSEL FOR PLAINTIFF/APPELLEE

**JOSEPH V. DIROSA, JR.,** DEPUTY CITY ATTORNEY  
**FRANZ L. ZIBILICH,** CHIEF DEPUTY CITY ATTORNEY

**MAVIS S. EARLY, CITY ATTORNEY**  
1300 PERDIDO STREET  
CITY HALL - ROOM 5E03  
NEW ORLEANS, LA 70112

COUNSEL FOR DEFENDANT/APPELLANT

**AFFIRMED.**

This is an appeal from a decision of the Civil Service Commission of the City of New Orleans (“the Commission”) in a police disciplinary case.

The Department of Police (“NOPD”) suspended and demoted a police officer. The police officer appealed to the Commission. The Commission reversed the decision of the NOPD. The NOPD brings the present appeal.

As we find that the Commission was not clearly wrong-manifestly erroneous, we affirm.

Two police officers, including Officer Paulette Owens (but not including the appellee in this appeal), were under investigation for payroll fraud. It was suspected that the two officers were working paid details at the Superdome at the same time that they were being paid for being on duty with NOPD. The appellee, Lieutenant Donald Paisant, was one of the supervisors of the Superdome detail. Lieutenant Paisant was not suspected or accused of engaging in payroll fraud or of knowing about payroll fraud by others.

However, he was told about the payroll fraud investigation and he was asked to, and did, supply the NOPD with the Superdome time-records for Officer Owens and the other officer suspected of payroll fraud. Lieutenant Paisant was told to keep the investigation “under his hat.”

Later, Lieutenant Paisant was told by Officer Owens that she knew about the investigation and that NOPD had her Superdome time records. She asked Lieutenant Paisant if NOPD had gotten her Superdome time records from him. He avoided answering her, at least in part. She then asked him to give her copies of her Superdome time records. Lieutenant Paisant gave her either a copy of her Superdome time records or information from those records.

On November 12, 1996, NOPD took a recorded statement from Lieutenant Paisant in connection with the NOPD’s payroll fraud investigation. In that statement, he was asked one question as to whether he had told Officer Owens that NOPD was “looking for” her Superdome time records. He answered that he did not and added that he had heard that Officer Owens and the other officer under investigation knew about the investigation but that “it didn’t come from me.”

On June 25, 1997, NOPD took a recorded statement from Lieutenant Paisant in connection with an investigation of whether he had been untruthful in his November 12, 1996 statement. In the June 25, 1997 statement, he was asked whether he had “discussed” the payroll fraud investigation with Officer Owens and he replied that he had not.

On August 12, 1997, NOPD took another recorded statement from Lieutenant Paisant in connection with its investigation of whether he had been untruthful in his November 12, 1996 statement. In the August 12, 1997 statement, Lieutenant Paisant related the conversation in which Officer Owens had told him that she knew of the payroll fraud investigation and said that she knew that NOPD had obtained her Superdome time records. He also explained that, when he stated in his June 25, 1997 statement that he had not discussed the payroll fraud investigation with Officer Owens, it was in the context of his having been told that he was suspected of interfering with the investigation, and he meant that Officer Owens had not learned of the payroll fraud investigation from him, because she already knew of the investigation when he discussed it with her. Lieutenant Paisant explained further that he thought that what the questioner in his June 25, 1997

statement wanted to know was whether he had compromised the payroll fraud investigation and that his answer was based on the fact that he had not compromised the investigation.

The NOPD determined that Officer Paisant had interfered with an investigation (the payroll fraud investigation) and had committed two acts of untruthfulness, one in his November 12, 1996 statement and one in his June 25, 1997 statement. The NOPD suspended Lieutenant Paisant for 30 days and demoted him to sergeant.

Lieutenant Paisant appealed his suspension and demotion to the Commission. The Commission found that Lieutenant Paisant had not been untruthful in either the November 12, 1996 statement or in the June 12, 1997 statement and that he had not interfered in the payroll fraud investigation. The NOPD argues on appeal that the Commission erred in making these findings.

The dispositive issues in this case are all factual. In particular, they involve determinations of credibility and of the inferences to be drawn from the evidence. Thus, the Commission's findings are subject to appellate review under the clearly wrong-manifestly erroneous standard of review.

E.g., Walters v. Department of Police City of New Orleans, 454 So.2d 106 (La. 1984); Bannister v. Department of Streets, 666 So.2d 641 (La. 1996). Thus, so long as the Commission's findings are reasonable, they cannot be disturbed upon appeal. Id.

We have no difficulty in determining that the Commission was not clearly wrong-manifestly erroneous in finding that the November 12, 1996 statement was not untruthful. Both Lieutenant Paisant and Officer Owens testified that she did not learn of the payroll fraud investigation from him. Two NOPD witnesses testified that Officer Owens had previously said that she did learn of the investigation from Lieutenant Paisant. This is a straightforward credibility determination and there is nothing that suggests that the Commission's finding of fact was unreasonable.

With respect to the charge of untruthfulness in the June 25, 1997 statement, a closer case is presented to us. There is no dispute that, in the June 25, 1997 statement, Lieutenant Paisant did reply that he had not discussed the payroll fraud investigation with Officer Owens. Also, there is no dispute that there was a conversation between Officer Owens and Lieutenant Paisant as to the payroll fraud investigation. Thus, on a literal

level, and taking no account of the context, Lieutenant Paisant did answer inaccurately in the June 25, 1997 statement. However, that does not wholly answer the question of whether he was untruthful. Lieutenant Paisant explained that, in context, he understood that he was being asked whether Officer Owens learned of the payroll fraud investigation from him, and that his answer was intended to mean that she did not learn of it from him. We have, above, found the Commission not clearly wrong-manifestly erroneous in finding that Officer Owens did not learn of the investigation from Lieutenant Paisant. The real issue is whether Lieutenant Paisant answered the question with the intent to deceive or the intent to give a false answer. The Commission found that Lieutenant Paisant intended no deception or falsity. The Commission based this upon its determination that Lieutenant Paisant was credible which determination the Commission based in part upon Lieutenant Paisant's long record of service which the Commission described as "spotless." We cannot say that the Commission was clearly wrong-manifestly erroneous in finding that Lieutenant Paisant did not intend deception or falsity.

The NOPD's charge of interfering with an investigation is based upon

its allegations that (1) Lieutenant Paisant told Officer Owens about the investigation after having been told to “keep it under the lid” and (2) that he gave to Officer Owens copies of or information from her Superdome time records. As to the allegation that Lieutenant Paisant told Officer Owens of the investigation, we already have determined above that the Commission was not clearly wrong-manifestly erroneous in finding that Officer Owens did not learn of the investigation from Lieutenant Paisant.

As to Lieutenant Paisant’s providing to Officer Owens copies of or information from her Superdome time records, the Commission found that this information was available to police officers working the Superdome detail, that Officer Owens had a right to the information, and that, as Lieutenant Paisant was her supervisor for the Superdome detail, it was appropriate for her to ask him for the information. Lieutenant Paisant obtained Officer Owens’ Superdome time records from Ellodie Boyd at the office where those records were maintained. Ellodie Boyd testified that any officer who worked the Superdome detail could obtain his or her time records just by asking for them. The fact that Lieutenant Paisant provided Officer Owens only with information that was freely and routinely available



to her shows that, in fact, he did not interfere with the investigation by providing her with that information. Also, Lieutenant Paisant testified that he knew that Officer Owens' NOPD time records were "locked in" and could not be altered, so he was not concerned that he was interfering in the investigation. The NOPD regulation at issue provides that a police officer should not reveal information that he or she "knows or should know" might interfere with an investigation. Therefore, Lieutenant Paisants' contention that he knew that Officer Owens' NOPD time records were "locked in" was relevant to show that he did not know and should not have known that giving the Superdome detail time information to Officer Owens would interfere in the investigation. Thus, we cannot say that the Commission was clearly wrong-manifestly erroneous in determining that Lieutenant Paisant had not violated regulations by interfering with an investigation.

Lastly, NOPD argues that the Commission erred by not allowing NOPD a suspensive appeal. However, as we have affirmed the Commission, that decision is moot.

For the foregoing reasons, the decision of the Commission is affirmed.

**AFFIRMED.**

