

**NOT DESIGNATED FOR PUBLICATION**

**DARRYL COULON** \* **NO. 2002-CA-1688**  
**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. 6126**

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**Judge Dennis R. Bagneris Sr.**

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(Court composed of Judge Joan Bernard Armstrong, Judge Dennis R. Bagneris Sr., and Judge Edwin A. Lombard)

Patrick R. Bossetta  
Assistant City Attorney  
Franz L. Zibilich  
Chief Deputy City Attorney  
Charles L. Rice, Jr.  
City Attorney  
1300 Perdido Street  
City Hall - Room 5E03  
New Orleans, LA 70112

**COUNSEL FOR DEFENDANT/APPELLEE**

Frank G. DeSalvo  
FRANK G. DeSALVO, A P.L.C.  
201 South Galvez Street  
New Orleans, LA 70119

**COUNSEL FOR PLAINTIFF/APPELLANT**

**AFFIRMED**

Officer Darryl Coulon (“Officer Coulon”) appeals the decision of the Civil Commission (“the Commission”), which denied his appeal of his termination from the New Orleans Police Department (“ the NOPD”). We affirm.

Officer Coulon became a Police Officer with permanent status in 1992. On September 20, 2001, Officer Coulon was dismissed from the NOPD for theft. Specifically, the termination letter stated in part:

An administrative investigative report alleging violations of Departmental Rules and/or Procedures, regarding Adherence to Law, Truthfulness, Professionalism, Instructions From Authoritative Source and Neglect of Duty has been submitted ...for the determination of disciplinary action. This investigation was conducted by...the Public Integrity Division.

This investigation determined that on February 14, 1999 and February 18, 1999, at unknown times, while at 730 Canal Street, you entered the Foot Locker Shoe Store, while attired in full uniform and used stolen credit cards in order to purchase several hundred dollars worth of clothing and tennis shoes. Four (4) of the store employees gave taped and written statements that you used a victim’s stolen identification and credit cards to purchase these items. You stated to store employees that the credit cards and identification belonged to your disabled cousin.

\* \* \*

After a thorough and complete review of the entire investigative report, I find that your conduct, as outlined above, constitutes a violation of Adherence to Law, Truthfulness,

Professionalism, Instructions From Authoritative Source and Neglect of Duty.

\* \* \*

...Therefore, in light of the above investigation, a review of any disciplinary record and due to the serious nature of your violations, you are hereby notified that you are suspended from the New Orleans Police Department for one hundred and eighteen (118) calendar days and dismissed from the New Orleans Police Department effective Thursday, September 20, 2001. This suspension has already been served as an emergency suspension from January 19, 2000 through May 15, 2000.

Officer Coulon appealed his termination from NOPD to the Commission, arguing that the Appointing Authority's decision was "arbitrary, unreasonable, and without any basis in fact or law to support the conclusion reached and the penalty imposed...." The matter was assigned to a Civil Service Hearing Examiner, who conducted a hearing on November 7, 2001 and December 5, 2001.

Sergeant Paul Moretti, an investigator for the Public Integrity Division, testified at the hearing that he was assigned to investigate the criminal allegations against Officer Coulon after Venitar Corporation, the managing corporation for Foot Locker, made a complaint. Sergeant Moretti testified that during his investigation, he took six or seven statements from employees at the Foot Locker located on Canal Street. From the statements given, Sergeant Moretti testified to the following alleged facts:

In general, it's alleged that Officer Coulon came into the store to purchase some items. He went to the cashier to check

out, had a credit card in another name. The store manager told one of the employees to check him out. The employee notified the assistant manager about the card being a different name. The purchase was made.

The assistant manager tried to call the credit card company to no avail on that particular day. The card had not been reported lost or stolen on that particular date by the holder.

When – a couple of days later – actually, there were two purchases made on the same day, one in the morning, one in the afternoon with the same card. When – a couple of days later when the assistant manager was able to check with the credit card company, again, it was learned the card had been reported lost or stolen with them.

Sergeant Moretti continued his investigation by gathering the sales slips, conducting photographic lineups, and speaking to Luke Davis, the credit card owner. From this investigation, Sergeant Moretti concluded, “it appeared that Officer Coulon used this credit card” and that “he used this credit card without authorization and made these purchases.”

Ms. Alicia Ray, an employee of the Foot Locker located on Canal Street, testified at the hearing that she remembered Officer Coulon entering the store on February 14, 1999, and making a purchase for \$501.39 worth of merchandise. Ms. Ray testified that she was the cashier on duty that morning and that she observed Officer Coulon affix Mr. Luke Davis’ signature to the sales slip in question. Specifically, Ms. Ray testified as follows:

Q. Now, when you swiped the card the second time, was it his card or

a card in his name?

A. It was Luke Davis, I think.

Q. Did you ask any questions about that or do anything?

A. I think the manager told me that, something about an elderly person or disabled. It was Mardi Gras and a lot of streets were closed and a lot of crowds. He asked me would I just do it because somebody couldn't make it downtown, so I just did it. And he was standing there anyway so.

\* \* \*

Q. Can you recall whether or not this is the sales slip in the sale that you handled for Mr. Coulon?

A. It is.

Q. It is?

A. That's my handwriting.

Q. That's your handwriting on this document?

A. Uh-huh.

Q. There's a signature on the bottom of the sales slip. Did you watch Mr. Coulon affix that signature to that sales slip?

A. I did.

\* \* \*

Q. Was there any other incident, Ms. Ray, when you were working at the Foot Locker involving any purchases with Mr. Coulon that you really didn't particularly want to handle?

A. Yes. A couple of days later he came in and by that time, everyone in the store knew that it was probably, more than likely a stolen credit card. So I said, Gene, what do you want me to do? Gene was the Assistant Manager. What do you want me to do when he comes in?

Gene said, well just ask for I.D. no matter what Neil says – he was the manager – just ask for I.D. If he can't provide I.D. with the name on the credit card no matter what the manager says, don't take it.

\* \* \*

Q. And you didn't call another store manager or superior and say, hey, I suspect that this thing is stolen or they have problems? You didn't tell anybody in some position of authority?

A. Well, by that time, everybody in the store was kind of talking about it. Everybody realized, I don't know if they were paying attention to what was happening at the register or what, but everybody in the store, it was like a buzz. Everybody was like well what do you think is going on.

Q. So did you do anything? Did you report it to the police that you suspected a stolen credit card was used in the store?

A. That's what the manager said. He would take care of it, which was Gene.

Ms. Ray further testified that she identified Officer Coulon from a photographic lineup at the Public Integrity Division Police Department.

Following the Civil Service Hearing, the Commission denied Officer Coulon's appeal. The Commission determined that the Appointing Authority correctly had proven its case against Officer Coulon by a preponderance of the evidence. In rendering its decision, the Commission made the following findings:

We agree with the Hearing Examiner that the evidence is not sufficient to support a criminal conviction. However, we find that Sgt. Moretti's testimony in conjunction with that of Ms. Ray supports the Appointing Authority's action by a

preponderance of the evidence. Ms. Ray clearly identified the Appellant (Officer Coulon) as the individual that made the purchases on the stolen credit card. This in conjunction with the other evidence uncovered during the investigation supports the Appointing Authority's conclusion that the Appellant (Officer Coulon) engaged in criminal conduct that warranted his termination.

On appeal, Officer Coulon argues that the Commission's decision to deny his appeal was clearly erroneous, arbitrary and capricious because the Appointing Authority failed to prove its case by a preponderance of evidence.

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action except for cause expressed in writing, and he may appeal disciplinary action taken against him to the Civil Service Commission. La. Const. art. X, § 8(A). On appeal, the Civil Service Commission has a duty to decide if the appointing authority had good or lawful cause for taking the disciplinary action, and, if so, whether the punishment is commensurate with the offense. *Walters v. Department of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 6/25/84). Legal cause for disciplinary action exists whenever an employee's conduct impairs the efficiency of the public service in which that employee is engaged. *Cittadino v. Department of Police*, 558 So.2d 1311, 1315 (La.App. 4 Cir. 3/14/90). The appointing authority has the burden of

proving by a preponderance of the evidence not only that the complained-of conduct occurred but also that it impaired the efficient operation of the governmental entity. *Macelli v. Department of Police*, 98-0253 p.3 (La.App. 4 Cir. 9/9/98), 718 So.2d 1021, 1023. The Commission's decision is subject to review by the court of appeal on questions of law or fact. *Walters*, 454 So.2d at 113.

In civil service disciplinary cases, an appellate court is presented with a multifaceted review function. *Id.* First, as in other civil matters, deference will be given to the factual conclusion of the Commission. Hence, in deciding whether to affirm the Commission's factual finding, a reviewing court should apply the clearly wrong or manifest error rule prescribed generally for appellate review. *Walters*, 454 So.2d at 114.

Second, in evaluating the Commission's determination as to whether the disciplinary action is based on legal cause and the punishment is commensurate with the infraction, this Court should not modify the Commission's order unless it is arbitrary, capricious or characterized by an abuse of discretion. *Id.* "Arbitrary or capricious" means that there is no rational basis for the action taken by the Commission. *Bannister v. Department of Streets*, 95-0404 p. 8 (La.1/16/96), 666 So.2d 641, 647.

In the present case, the Commission found that the testimony of



Sergeant Moretti and Ms. Ray supports the Appointing Authority's action by a preponderance of the evidence. The Commission concluded that the investigation supports the Appointing Authority's conclusion that Officer Coulon engaged in criminal conduct that warranted his termination. After a review of the record, we agree that the Appointing Authority proved its case by a preponderance of the evidence that Officer Coulon engaged in criminal conduct that warranted his termination. Accordingly, we find that the Commission's decision to deny Officer Coulon's appeal was not arbitrary and capricious, nor was it manifestly erroneous or clearly wrong. The judgment of the Civil Service Commission is affirmed.

**AFFIRMED**

