

MARK WILLOW * **NO. 2007-CA-0167**
VERSUS * **COURT OF APPEAL**
DEPARTMENT OF POLICE * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

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APPEAL FROM
CITY CIVIL SERVICE COMMISSION ORLEANS
NO. 7286

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Judge Terri F. Love

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(Court composed of Judge James F. McKay, III, Judge Michael E. Kirby, Judge Terri F. Love)

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August 22, 2007
AFFIRMED

Mark Willow appeals the Civil Service Commission's granting of a motion for summary disposition. Mark Willow sought to appeal a DI-2, Citation of Disciplinary Action, issued by the New Orleans Police Department, asserting that it was an appealable disciplinary action. We find that the Civil Service Commission did not err and affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Mark Willow ("Mr. Willow") received a DI-2,¹ Citation of Disciplinary Action ("Citation") from the New Orleans Police Department ("NOPD") stating that he violated Rule 3, Paragraph 1 regarding professionalism. The Citation ordered Mr. Willow to counseling for allegedly making "inappropriate comments to the principle accused officer in the presence" of subordinates "[d]uring the taking of statements in an official disciplinary investigation at the PIB office."

Mr. Willow sought to appeal the Citation. The NOPD filed a motion for summary disposition with the Civil Service Commission ("CSC") alleging that the

¹ The New Orleans Police Department's Operations Manual states that a DI-2 is the "documentation of corrective action taken by a supervisor upon confirming an employee's behavior involving a minor violation of a Departmental regulation, order, or procedure. This behavior must be considered so minor that it is correctable by simply counseling or minimal intervention by a supervisor."

Citation was not appealable. The CSC, in its ruling found that the “DI-2 cannot be used in future discipline and is represented by the Appointing Authority to be only temporary in nature.” Therefore, the CSC granted the motion summary disposition. Mr. Willow’s timely appeal followed asserting that the Citation was a disciplinary action and that he was entitled to an appeal.

STANDARD OF REVIEW

An appellate court reviews actions of the CSC by determining if the CSC action was “arbitrary, capricious or characterized by an abuse of discretion.” *McElrath v. Dep’t of Police*, 06-1288, 2007 WL 1575212, *2 (La. App. 4 Cir. 5/23/07), ___ So. 2d ___, ___, citing *Alongi v. Dep’t of Police*, 452 So. 2d 798 (La. App. 4 Cir. 1984). The factual findings of the CSC are “governed by the manifest error or clearly erroneous standard.” *Moore v. Dep’t of Police*, 06-1217, p. 3 (La. App. 4 Cir. 1/17/07), 950 So. 2d 96, 98. Appellate courts “review questions of law and render judgment on the record,” giving CSC decisions involving procedure or the interpretation of laws or regulations “no special weight.” *Id.*

DISCIPLINE/PERMANENCY OF DI-2

Mr. Willow asserts that the Citation he received was a disciplinary action, which should have prevented the summary disposition, entitled him to an appeal, and a full hearing on the merits.

CSC rules dictate when an employee has the right to appeal disciplinary actions. The New Orleans Civil Service Rule, 4.1, applicable to appeals states, in pertinent part: “Regular employees in the classified service shall have the right to appeal disciplinary actions to the Commission, including dismissal, involuntary retirement, demotion, suspension, fine or reduction in pay.”

The CSC’s ruling referenced *Hebert v. New Orleans Police Dep’t*, 01-1165,

p. 10, (La. App. 4 Cir. 12/19/01), 805 So. 2d 345, 351, in which this Court held that a letter of reprimand that is permanent in the employee's personnel file may be appealed to the CSC. We held that "due to the *present* nature of a letter of reprimand, a reprimand may be challenged when the underlying charges and evidence relative to those charges are fresh." *Id.* In *Hebert*, the NOPD stated that letters of reprimand are maintained in the officer's file. *Id.*, 01-1165 at p. 7, 805 So. 2d at 350. However, unlike *Hebert*, the CSC stated that Mr. Willow's DI-2 cannot be used for future discipline and is only temporary. Therefore, it deemed Mr. Willow's DI-2 not appealable.

The original DI-2 form is given to the employee and a photocopy is forwarded to the Public Integrity Bureau ("PIB"), the employee's unit, Division, and Bureau. The NOPD's Operations Manual ("Manual") does not state that a photocopy of the DI-2 goes into the employee's personnel file. The Manual does not state that the photocopies of the DI-2 remain with PIB, the employee's unit, Division, or Bureau indefinitely.

We find *Hebert* distinguishable from the case *sub judice*, as the record in *Hebert* contained evidence of the letter of reprimand's permanency; such as, the NOPD stating that the letter of reprimand was kept in the employee's file. We find this record lacking of evidence of the permanency of Mr. Willow's DI-2. Therefore, we find the record does not establish that the CSC was manifestly erroneous in its factual conclusion that the DI-2 was temporary and not appealable. Further, we do not find that the CSC acted arbitrarily, capriciously, abused its discretion, or committed a legal error and affirm.

DECREE

For the above mentioned reasons, we find that the CSC did not err and affirm.

AFFIRMED