

ZEPPORIAH EDMONDS * **NO. 2018-CA-0203**
VERSUS * **COURT OF APPEAL**
DEPARTMENT OF PUBLIC * **FOURTH CIRCUIT**
WORKS * **STATE OF LOUISIANA**
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CONSOLIDATED WITH: **CONSOLIDATED WITH:**
ZEPPORIAH EDMONDS **NO. 2018-CA-0319**
VERSUS
DEPARTMENT OF PUBLIC
WORKS

CONSOLIDATED WITH: **CONSOLIDATED WITH:**
ZEPPORIAH EDMONDS **NO. 2018-CA-0320**
VERSUS
DEPARTMENT OF PUBLIC
WORKS

CONSOLIDATED WITH: **CONSOLIDATED WITH:**
ZEPPORIAH EDMONDS **NO. 2018-CA-0342**
VERSUS
DEPARTMENT OF PUBLIC
WORKS

LOBRANO, J., CONCURS IN THE RESULT AND ASSIGNS REASONS.

I respectfully concur. I agree with the majority’s conclusion that the Civil Service Commission (“CSC”) abused its discretion in disciplining Zepporiah Edmonds by imposing a demotion and that Edmonds should be reinstated to her former position as parking administrator with all back pay and emoluments. I find, however, that the CSC manifestly erred and was clearly wrong in finding that the

Department of Public Works (“DPW”) satisfied its burden of proving that legal cause existed for Edmonds’ discipline.

An employer cannot subject a permanent classified civil service employee to disciplinary action except for legal cause expressed in writing. La. Const. Art. X, § 8(A). To establish that it had legal cause, the appointing authority had the burden of proving two factors: (i) that the complained of conduct occurred, and (ii) that the complained of conduct impaired the efficiency of the department. *Abbott v. New Orleans Police Dep’t*, 2014-0993, p. 9 (La. App. 4 Cir. 2/11/15), 165 So. 3d 191, 198 (citations omitted). The decision of the CSC “is subject to review on any question of law or fact upon appeal to this Court, and this Court may only review findings of fact using the manifestly erroneous/clearly wrong standard of review.” *Cure v. Dep’t of Police*, 2007-0166, p. 2 (La. App. 4 Cir. 8/1/07), 964 So.2d 1093, 1094 (citing La. Const. art. X, § 12). “In determining whether the disciplinary action was based on good cause and whether the punishment is commensurate with the infraction, this Court should not modify the CSC order unless it was arbitrary, capricious, or characterized by an abuse of discretion.” *Id.*, 2007-0166, p. 2, 964 So.2d at 1094-95.

The record reflects that the hearing examiner, after hearing evidence and taking testimony in this matter, concluded and recommended to the CSC that DPW failed to prove legal cause for discipline by a preponderance of the evidence. The CSC, however, rejected the hearing examiner’s recommendation. In his report, the hearing examiner noted OIG investigator Eduardo Hernandez’s testimony that he merely scribbled notes on a scrap of paper, which he did not retain, and could not recall with particularity what documents he had requested of Edmonds. Thereafter, Edmonds took extended sick leave. Edmonds’ supervisor, DPW Director, Col. Jernigan specifically testified that Edmonds was not allowed to work from home or direct other employees while out on sick leave. Edmonds, nevertheless, assigned

another employee, Sherida Emery, to assist Hernandez in her absence. Emery told Hernandez that she could not provide him with the disputed documents and provided Hernandez with the names and contact information for Xerox employees to assist him.

I cannot reconcile this testimony with the CSC's conclusion that Edmonds "did fail to fully and expediently cooperate with Mr. Hernandez regarding the OIG's investigation." The CSC's finding is manifestly erroneous.