

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 2054

LIEUTENANT CHRISTOPHER IVEY

VERSUS

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS,
OFFICE OF STATE POLICE

Judgment Rendered: AUG - 7 2012

APPEALED FROM THE STATE POLICE COMMISSION
IN AND FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER 10-197-S

MARK OXLEY, CHAIRMAN;
JASON TURNER, VICE-CHAIRMAN, FRANKLIN KYLE,
WILLIAM GOLDRING, FREDDIE PITCHER AND JOPSEH S. CAGE, JR.
MEMBERS

Floyd J. Falcon, Jr.
Baton Rouge, Louisiana

Attorney for Plaintiff/Appellee
Lieutenant Christopher Ivey

Allison A. McLeary
Baton Rouge, Louisiana

Attorneys for Defendant/Appellant
Department of Public Safety and
Corrections, Office of State Police

William A. Norfolk
Baton Rouge, Louisiana

Attorney for Defendant/Appellant
State Police Commission

BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

McDONALD, J.

In this case, the Department of Public Safety and Corrections, Office of State Police, appeals a decision of the State Police Commission that had reversed a disciplinary action taken by the superintendant of the State Police. For the following reasons, the State Police Commission (Commission) decision is affirmed.

By letter dated December 1, 2010, from Colonel Michael D. Edmonson, Superintendant of the State Police, Lt. Christopher Ivey, (hereinafter Ivey), was suspended without pay or allowances for forty-eight (48) hours for having violated State Police Policy and Procedure Manual sections 901(12), Unsatisfactory Performance, and 901(19), Department Records. Ivey timely appealed the disciplinary action to the Commission. The matter was heard by a quorum of the Commission on May 12, 2011. On September 15, 2011, the Commission rendered a decision wherein it granted the appeal and ordered that Ivey be, "made whole, as to pay and allowances and the letter of suspension is to be removed from his file." The Commission also found that the appointing authority did not act unreasonably and as such, attorney's fees were not awarded.

Subsequently, the Office of State Police filed a Petition for Suspensive Appeal, which is the matter before us. Several assignments of error are alleged by the State Police challenging the Commission's decision, including that they used an improper standard of proof, relied on case law wholly inapplicable to the State Police Service, did not properly consider the detrimental effect to the efficient operation of the Office of State Police, and substituted its judgment for that of the appointing authority. All of these challenges resulted in two issues being presented for review: (1) whether the Commission applied an incorrect standard of cause for disciplinary actions and was arbitrary and capricious in its decision, contrary to the substantiated, competent evidence, as well as its own findings of fact; and (2)

whether the Commission was arbitrary and capricious in its decision to sustain a factual and legal finding that Christopher Ivey's actions did not violate Policy and Procedural Manual No. 910¹(12) and 910 (19) Unsatisfactory Performance and Department records, respectively, when there was sustained competent evidence to establish that Ivey's actions were not commensurate with the rank of Lieutenant nor were they appropriate on the occasion of a matter deserving of attention and he placed inaccurate information on a Department form.

The unsatisfactory conduct and the use of forms found to be inaccurate have to do with a Prescription Monitoring Program (PMP) report on another State Police officer. We do not need to recite the facts surrounding the other officer's conduct or his name to render this opinion. It is not Colonel Edmonson's disciplinary action on which we have to pass judgment. Our review is confined to the decision of the Commission to reverse Colonel Edmonson's disciplinary action against Ivey.

In July 2010, Ivey submitted to his superior officer a PMP report that included the state police officer's name on a form he had been filing out for the investigation of an Elton, Louisiana police officer, and the case number that referenced the Elton criminal investigation. The record confirms that in July 2010 there was no policy prohibiting multiple PMP requests on the same form, nor was there a requirement that requests must contain the criminal case number of the person being investigated. The current policy requires one name per form and a case number.

¹ The brief of State Police indicates the violation was of Louisiana State Police Policy and Procedural Manual Nos. 910(12) and 910(19). Earlier in the brief, Ivey's actions were alleged to be in violation of Sections 901(12) and 901(19). Further, the notice of suspension and suspension letters sent to Ivey by State Police Superintendent Edmonson also reference Sections 901(12) and 901(19). Pages of the manual were submitted in evidence, however, we cannot determine from the evidence if the sections are 901 or 910 and find it unnecessary to confirm the section numbers to render this opinion.

Ivey did not have authority to submit a PMP to the Pharmacy Board. The PMP was submitted to the Pharmacy Board by Ivey's superior officer and the listing of the State Police officer was included on the PMP report at his request.

State Police argues that the appointing authority must have the latitude within State Police Commission rules, to dictate what is acceptable in his department and what constitutes cause for disciplining a permanent employee. The information relayed to Ivey's superior officer was deemed by Edmonson to be stale and included statements that Ivey overheard and believed to be about the subject officer, but that were later denied by the speaker. The State Police contend that a supervisor's inability to rely on the accuracy of information provided to him by subordinates will impair and negatively impact the efficiency of that manager and his ability to run his section or command and will affect the efficient and orderly operation of the public service in which employees are engaged. The State Police observes that the "Louisiana State Police is a paramilitary organization, and as such the chain of command concept is one that allows for information to follow up the chain of supervision, and relying on such information supervisors issue orders and directives that must be followed by subordinates." They also point out that this court has held that the appointing authority must be able to set forth and enforce appropriate standards of conduct for its employees.

We recognize the importance of the work done by the State Police and support their contention that the appointing authority must be able to set forth and enforce appropriate standards of conduct for its employees.

In *Berry v. Department of Public Safety and Corrections*, 2001-2186 (La. App. 1 Cir. 9/27/02), 835 So. 2d 606, cited by State Police, the employee received a rating of "needs improvement" and a demotion for failing to turn in DPSSP form 4107 (Off-Duty Detail receipt) for 13 traffic details he worked in 1998 and 17 traffic details worked in 1999. It was also established that he had earned money

working as a real estate agent in 1997 but did not submit an application for approval of secondary employment until 2000. The failure to submit the traffic detail forms and the secondary employment forms were violations of the State Police rules. State Police rules have the effect of law. La. Const. art. X, §48 (A)(4). *Berry*, 835 So.2d at 613. The Commission upheld Berry's demotion, but found that it did not have authority to hear Berry's appeal of his "needs improvement" rating and granted State Police's motion for summary disposition and dismissed Berry's appeal of his service rating.

An employee who has gained permanent status in the classified state police service cannot be subjected to disciplinary action by his employer except for cause expressed in writing. La. Const. art. X, Section 46(A); *Berry*, 835 So.2d at 611. Such an employee may appeal to the Commission from any disciplinary action, and the burden of proof on such an appeal, as to the facts, is on the appointing authority. *Id.* The Commission shall have the exclusive power and authority to hear and decide all disciplinary cases. La. Const. art. X, Section 50; *Berry*, *supra*, 835 So.2d at 611. The Commission's authority "to hear and decide" cases involving disciplinary actions includes a duty to decide independently from the facts presented whether the appointing authority has good cause for taking the disciplinary action and, if so, whether the punishment imposed is commensurate with the cause. *Berry*, *supra*, 835 So.2d at 611. The decision of the Commission shall be subject to review on any question of law or fact upon appeal to the court of appeal wherein the Commission is located. La. Const. art. X, §50; *Berry*, *supra*, 835 So.2d at 611. The Commission's findings of fact will not be modified unless manifestly erroneous (clearly wrong). *Id.* In evaluating the Commission's exercise of its discretion in determining whether the disciplinary action is based on legal cause and the punishment is commensurate with the infraction, the reviewing

court should not modify the Commission's order unless it is arbitrary, capricious or characterized by abuse of discretion. *Id.*

State Police notes that the Commission found that Ivey could have and probably should have verified the information before he passed it on to his supervisor. They contend that the supervisor relied on Ivey's statements and ordered the PMP on the subject officer as a result of them. Some of the statements relayed by Ivey were overheard, not directly addressed to him, and later denied by the speaker. However, the record indicates that discussion of the subject officer was common and Ivey relayed what he had heard to his supervisor at the supervisor's request. We also note that the supervisor had requested that Ivey tell him anything he had heard, and did not specify that it had to be factually correct. The supervisor testified that he had heard, over an extended period of time, discussions, rumors, and jokes regarding the subject officer. Since the discussions lasted over a year and a half, he felt it was his duty "to find out if there was anything to it."

Further, Colonel Edmonson testified that he thought Lt. Ivey was a very good trooper, that Ivey did his job in a good manner and Edmonson relied on him and trusted him. We are not called upon to decide whether Edmonson's decision to discipline Ivey was warranted. Apparently Edmonson believed it was. While Edmonson has authority to invoke discipline when it is appropriate, that decision is appealable to the Commission. Moreover, it is not Edmonson's decision that is before us. The issue before us is the decision made by the Commission. Having carefully reviewed the record, we cannot say that the Commission's decision to reverse the appointing authority's decision to suspend Lt. Ivey for forty-eight (48) hours was arbitrary, capricious, or an abuse of discretion. Therefore, the decision appealed is affirmed.

The decision of the State Police Commission is affirmed. Costs of this appeal, in the amount of \$1,306.00, are assessed against the Department of Public Safety and Corrections, Office of the State Police.

AFFIRMED.