

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 1163

GENEVA PITCHER

VERSUS

DEPARTMENT OF SOCIAL SERVICES
OFFICE OF COMMUNITY SERVICES

Judgment Rendered: February 10, 2012

APPEALED FROM THE STATE CIVIL SERVICE COMMISSION
HONORABLE DAVID DUPLANTIER, CHAIRMAN; JOHN MCCLURE,
VICE-CHAIRMAN; WILFRED PIERRE, G. LEE GRIFFIN, D. SCOTT
HUGHES, KENNETH POLITE, JR. AND HELEN JONES, MEMBERS
STATE OF LOUISIANA
DOCKET NUMBER S-16750

THE HONORABLE SHANNON S. TEMPLET, DIRECTOR
DEPARTMENT OF STATE CIVIL SERVICE

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BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

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McDONALD, J.

The appellant in this matter appeals the decision of the Civil Service Commission to terminate her employment. For the following reasons, we affirm.

Geneva Pitcher was hired by the Department of Social Services (DSS) – Office of Community Services (OCS) (now called the Department of Children and Family Services) on March 7, 2007. She was serving with permanent status as a Child Protection Investigator (CPI), which she had achieved on September 14, 2008, when she was terminated by letter dated August 6, 2009. As cause for termination, DSS accused appellant of insubordination, unprofessional behavior and substandard performance dating back to September 15, 2007. DSS alleged that appellant had two substandard Performance Planning and Review (PPR) evaluations, and that she failed to meet deadlines and properly document the case files assigned to her. The letter of termination referenced 23 separate case files where DSS claimed appellant failed to meet one or more deadlines for case action ranging from the initial contact to case closure.

Appellant timely appealed her termination wherein she denied the charges and alleged disparate treatment, in that her performance was on par with or exceeded that of other Child Welfare Specialists in the Baton Rouge Office.

Civil Service Referee Roxie F. Goynes held a public hearing on June 30, 2010, October 20, 2010, and October 21, 2010. After taking the matter under advisement, Referee Goynes upheld appellant's termination by decision dated March 4, 2011. The referee concluded that the appointing authority had proven that appellant violated agency policy by failing to comply with response priority deadlines, validity decision deadlines and case closure deadlines and failing to timely enter such case file information into the ACCESS system. The referee further concluded that appellant's failure to adhere to the directives in the work plan constituted insubordination, that DSS proved cause for discipline, and that the

penalty imposed, dismissal, was commensurate with the offenses. This appeal followed.

Appellant alleges seven errors by the referee. She contends that the referee's findings of fact on two issues are erroneous; that the appointing authority failed to prove that no valid reasons existed for appellant failing to meet response priority, validity decision and case closure deadlines; that substantial evidence was ignored; that the alleged failure of appellant to meet deadlines was not her fault but rather was indicative of matters beyond appellant's control and a systemic problem of the Baton Rouge Office; that the referee erred in rejecting appellant's claim that she was singled out for discipline where others were performing at the same level for which she was terminated yet no disciplinary action was taken against those employees; that the referee erred in concluding that termination was an appropriate penalty; and erred in failing to award attorney's fees.

Decisions of the Civil Service Commission are subject to the same standard of review as a decision of a state district court. The standard is well-established and was discussed by this court in *Usun v. LSU Health Sciences Center Medical Center of Louisiana at New Orleans*, 2002-0295, 2002-0296, p. 4, 5 (La. App. 1 Cir. 2/14/03), 845 So.2d 491, 494, as follows:

[D]ecisions of the Civil Service Commission Referees are subject to the same standard of review as a decision of the Commission itself. Decisions of the Civil Service Commission are subject to the same standard of review as a district court. *Johnson v. Department of Health and Hospitals*, 00-0071, p.3. (La. App. 1 Cir. 2/16/01), 808 So.2d 436, 437-438. When reviewing the Commission's findings of fact, the appellate court is required to apply the manifestly erroneous or clearly wrong standard of review. However, in evaluating the Commission's determination as to whether the disciplinary action taken by the appointing authority is based on legal cause and commensurate with the infraction, the reviewing court should not modify or reverse the Commission's order unless it is arbitrary, capricious, or characterized by abuse of discretion. *Jackson v. Department of Health and Hospitals, Office for Citizens with Developmental Disabilities*, 98-2772, p.2. n.1 (La. App. 1 Cir. 2/18/00), 752 So.2d 357, 359 n.1.

The definition of the terms “capricious” and “arbitrary” in this context were provided by the court in *Marsellus v. Department of Public Safety and Corrections*, 2004-0860 (La. App. 1 Cir. 9/23/05), 923 So.2d 656, 661. “An administrative agency’s conclusion is ‘capricious’ when it has no *substantial* evidence to support it. Likewise, the word ‘arbitrary’ implies a disregard of evidence or of the proper weight thereof. See also *Sterling v. Department of Public Safety and Corrections, Louisiana State Penitentiary*, 97-1959, 97-1960, 97-1961, p. 13 (La. App. 1 Cir. 9/25/98), 723 So.2d 448, 455”.

There is no conflict in the parties’ contention of how this court is to review the matter. The dispute is over the conclusions reached by the civil service referee. We have examined the entire record, applying the applicable law. It is not our function to determine what disciplinary action should be taken by the appointing authority in this matter. The civil service referee is the appropriate person to determine if the action was warranted. Our purpose is to ensure that the disciplinary action taken was substantiated by competent evidence and that it is commensurate with the offense. After careful review of the record and the evidence, we conclude that it was.

Accordingly, we affirm the decision of the Civil Service Commission terminating the employment of Geneva Pitcher. Costs are assessed against appellant. This opinion is issued in accordance with Uniform Rules, Court of Appeal Rule 2-16.2A(1).

AFFIRMED.