

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

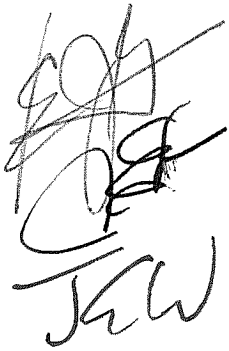
FIRST CIRCUIT

NO. 2006 CA 0951

CALLEAH HAMMORK

VERSUS

**DEPARTMENT OF HEALTH & HOSPITALS,
METROPOLITAN DEVELOPMENTAL CENTER**

Handwritten signature and initials, including 'JAW' at the bottom.

Judgment Rendered: March 23, 2007

* * * * *

**Appealed from the
State Civil Service Commission
State of Louisiana
Case No. S-15125**

The Honorable James A. Smith, Chairman

* * * * *

**Joel P. Loeffelholz
New Orleans, Louisiana**

**Counsel for Plaintiff/Appellant
Calleah Hammork**

**Gina M. Recasner
New Orleans, Louisiana**

**Counsel for Defendant/Appellee
Department of Health and
Hospitals, Metropolitan
Developmental Center**

* * * * *

BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

GAIDRY, J.

Calleah Hammork appeals a decision by the State Civil Service Commission upholding her termination from her position at the Metropolitan Development Center for physically abusing a resident in her care. We affirm, in accordance with Uniform Rules – Courts of Appeal Rule 2-16.1(B).

DISCUSSION

Hammork was employed by the Department of Health and Hospitals as a Resident Training Specialist serving with permanent status at the Metropolitan Development Center. By letter dated July 2, 2003, Hammork was informed by Administrator Robert D. Sanders that she was dismissed from her position effective July 8, 2003 for physically abusing a resident. Hammork’s counsel filed a notice of appeal of her termination on July 29, 2003. Hammork denied the charges against her and sought reinstatement with back pay as well as other benefits and attorney’s fees.

A public hearing was held on February 15, 2005¹ before a referee appointed by the Civil Service Commission, after which the referee found that Hammork had in fact “engaged in a scuffle” with a resident and had “walloped” her on the back of the head at least twice and that employees of the Metropolitan Development center are not permitted to physically abuse the residents. Although Hammork had testified at the hearing that she was attacked by the resident and merely tried to defend herself, the referee concluded that Hammork’s testimony about the incident was self-serving. The referee found that the witnesses called by the agency gave a more reliable account of the incident, that the agency carried its burden of proving the charges against Hammork, and that her termination was justified. The referee denied Hammork’s appeal of the agency decision in an August 1, 2005 decision. On

¹ This hearing was originally set for September 22, 2003, but was continued while criminal charges filed against Hammork were pending.

February 14, 2006, the State Civil Service Commission denied Hammork's application for review, upholding the decision of the referee.

Hammork filed the instant appeal, arguing that she should not have been terminated for defending herself against an attack by a violent resident and that an adverse presumption should have been applied to the testimony of two alleged eyewitnesses who were not called to testify.

This is essentially a case based on credibility determinations. After a thorough review of the record, we find no manifest error in the referee's factual determinations. *See Walters v. Department of Police of the City of New Orleans*, 454 So.2d 106, 113 (La. 1984). Based on those factual determinations, we cannot say that the disciplinary actions taken by the appointing authority were arbitrary or capricious, or an abuse of discretion. *Id.*

As for Hammork's argument regarding the adverse presumption, this matter was adequately addressed by the referee at the hearing. The July 2, 2003 letter sent to Hammork by the authority notifying her of the charges against her and of her termination contained allegations by several eyewitnesses. Two of these eyewitnesses, Yllolexy Gonzalez and Paz Rodriguez, were no longer employed by the authority and were living outside of the country by the time of the hearing. Because their unavailability deprived Hammork of the opportunity to cross examine and attempt to impeach them, the referee struck those charges related to Gonzalez and Rodriguez's eyewitness accounts. After the referee struck these charges, counsel for Hammork requested that the referee apply an adverse presumption that the testimony of Gonzalez and Rodriguez would have been unfavorable to the authority, based upon the fact that they were not called to testify. Because their statements were stricken from the charges, the referee denied this request, and we find no error in this denial as this situation had been adequately addressed.

DECREE

For the above reasons, the decision of the State Civil Service Commission upholding Hammork's termination is affirmed. Costs of this appeal are to be borne by Calleah Hammork.

AFFIRMED.