

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 CA 0944

**REBECCA R. KINCHEN
VERSUS
DEPARTMENT OF REVENUE OFFICE OF ALCOHOL
AND TOBACCO CONTROL**

CONSOLIDATED WITH

2009 CA 0945

**RONALD C. KINCHEN
VERSUS
DEPARTMENT OF REVENUE OFFICE OF ALCOHOL
AND TOBACCO CONTROL**

Judgment rendered: DEC 23 2009

**On Appeal from a Decision of the State Civil Service Commission
Docket Number: 16410 c/w 16414
The Honorable James A. Smith, Chairman;
Burl Cain, Vice-Chairman;
Chatham H. Reed, David Duplantier,
G. Lee Griffin, Rosa B. Jackson
and John McClure**

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Department of State Civil Service**

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**Counsel for Anne Soileau, Director
Department of State Civil Service**

BEFORE: DOWNING, GAIDRY AND McCLENDON, JJ.



DOWNING, J.

The Louisiana Department of Revenue – Office of Alcohol and Tobacco Control (LDR) appeals a decision of the Louisiana Civil Service Commission (Commission)¹ ordering among other things the reversal of a one-day reduction in pay LDR imposed on Rebecca Kinchen and Ronald Kinchen for not filing their state income taxes timely.² We affirm the Commission’s decision.

The hearing officer ruled that while LDR has a policy requiring its employees to file their state returns on time, mitigating circumstances existed such that the Kinchens’ actions did not “constitute cause for discipline.” Specifically, the hearing officer found as a mitigating factor that the Kinchens acted reasonably in taking steps that should have resulted in the filing of their state income tax returns, even though the returns were not filed with the LDR. LDR argues that the Commission abused its discretion in so ruling.

The Commission has a duty to decide whether the appointing authority had good or lawful cause for taking disciplinary action, and if so, whether the punishment imposed is commensurate with the infraction. In reviewing 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, this court should not modify the Commission’s order unless it is arbitrary, capricious or characterized by an abuse of discretion. **Bergeron v. Housing Authority of Morgan City**, 07-1605 (La.App. 1 Cir. 8/8/08), 993 So.2d 685, 687.

Upon thoroughly reviewing the record, we cannot conclude that the Commission erred in its factual findings or abused its discretion in ruling that no discipline should be imposed under the facts of this case. The opinion of the

¹ The Commission denied LDR’s application for review of the referee’s decision. This denial made the decision of the referee the final decision of the Commission. La. Civ. Serv. Rules 13.36(f)(4) and 13.36(g).

² Specifically, LDR was ordered to reimburse the Kinchens for the reductions in pay, with interest; it was also ordered to remove all documents concerning the disciplinary action from the Kinchens’ personnel files.

referee adequately explains the facts of the case and the rationale for the decision.

Accordingly, we find no merit in LDR's assignments of error.

DECREE

For the foregoing reasons, we affirm the decision of the Louisiana Civil Service Commission. Costs of this appeal are assessed to the Louisiana Department of Revenue – Office of Alcohol and Tobacco Control in the amount of \$720.50. We issue this memorandum opinion in compliance with URCA Rule 2-16.1.B.

AFFIRMED