

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2008 CA 0017

VICKEY V. LYONS

VERSUS

GRAMBLING STATE UNIVERSITY

Judgment Rendered: May 2, 2008

WJH
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Appealed from the
State Civil Service Commission
Honorable James A. Smith, Chairman;
Burl Cain, Vice-Chairman;
Chatham Reed, David Duplantier, G. Lee Griffin,
Rosa B. Jackson and John McLure

Docket Number S-15931

Paul St. Dizier, Referee Presiding

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Vickey Lyons**

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Grambling State University**

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

BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.

Guidry, J.D. concurs.

WHIPPLE, J.

Vickey V. Lyons was employed as an Administrative Assistant 3, serving with permanent status, in the Favrot Student Union at Grambling State University (“GSU”).¹ Ms. Lyons received a pre-termination letter dated March 24, 2006, wherein she was advised that she was charged with violations of the Classified Personnel handbook Work Policy #11, “Employees must perform their job duties in a truthful, accurate, and thorough manner,” and Work Policy #32, “Employees shall not falsify, or alter any University record or report, such as an ...expense account.” After a due process hearing held on March 31, 2006, Ms. Lyons received a letter dated April 21, 2006, notifying her that she was terminated from her employment for forging students’ names to travel documentation in order to wrongfully procure per diem payments and travel expenses, and for the creation and submission of falsified hotel receipts, which resulted in payment of fraudulent travel expenses, in violation of the above policies.

Ms. Lyons appealed her termination to the State Civil Service Commission. The matter was heard before a Civil Service Referee on June 15, 2007. On July 13, 2007, the referee rendered a decision finding that the evidence showed that Ms. Lyons assisted her supervisor in defrauding GSU of funds in excess of \$5,000.00, that GSU proved legal cause for discipline, and that the penalty of dismissal imposed by the appointing authority was commensurate with the

¹Although the decision of the referee stated that Ms. Lyons was serving in a “Secretary 2” position, her letter of termination stated that she was employed as an “Administrative Assistant 3” and Ms. Lyons testified that she held the position of Administrative Assistant 3.

offense.²

By order filed September 14, 2007, the State Civil Service Commission upheld her termination. Ms. Lyons filed the instant appeal, assigning error to several of the referee's findings of fact and contending that the law does not support her dismissal. Although she admits she participated in the actions as charged, she contends that she was improperly terminated, noting that she was aware of no GSU policy prohibiting her conduct, that she received no monies or payment as a result of this fraudulent conduct, that she was instructed to conduct this fraudulent conduct by her supervisor, and that she had previously reported fraudulent behaviors of a past supervisor to no avail.

As a general rule, a civil service employee's failure to follow a supervisory directive is insubordination, provided that the order is not manifestly illegal or immoral. Bannister v. Department of Streets, 95-0404 (La. 1/16/96), 666 So. 2d 641, 647-648. Because Ms. Lyons was not bound to obey an illegal order, we find the referee correctly rejected her claim that she was ordered to conduct these illegal and fraudulent acts by her supervisor as a defense or justification for her actions. Likewise, we conclude that the referee further correctly rejected her argument that because her prior attempts to report fraudulent behaviors to a prior administration were unsuccessful, she was thereby justified in conducting illegal and fraudulent acts as allegedly ordered by her supervisor. Moreover, the commission of wrongful conduct under instruction from superiors does not relieve

²Transcripts admitted into evidence of an interview conducted by Lisa Tucker, a Louisiana Legislative Compliance Auditor, in connection with the Legislative Auditor's investigation of this matter, reveal that Ms. Lyons admitted that she forged students' signatures to establish event attendance and receipt of payment of per diem pay and that she provided false information to alter or create hotel receipts. After the interview with Ms. Tucker, Ms. Lyons wrote a letter acknowledging that the information she provided to Ms. Tucker was true, that she "did sign some of the travelers['] name[s]" when she knew "they didn't go," and that some of the hotel "invoices were created by [her] at Mr. Fontenot's request." In her testimony before the referee, Ms. Lyons again admitted to forging students signatures on travel expense forms, but denied altering hotel receipts. At the hearing before the referee, Ms. Lyons claimed that her supervisor, Mr. Fontenot, had altered the hotel invoices and asked her to make a copy of them and turn them in.

an employee from responsibility for the wrongful conduct where the employee has reason to know the practice is irregular and improper and the employee does not question such instructions or orders. Barnes v. Department of Highways, 154 So. 2d 255, 260 (La. App. 1st Cir. 1963); see also In re Wingate, 184 So. 2d 237, 239-240 (La. App. 1st Cir.), writ denied, 249 La. 387, 186 So. 2d 631 (La. 1996).

After a thorough review of the record and the applicable law and jurisprudence, we find no manifest error in the factual findings made by the referee and upheld by the Commission. We further find the determination of legal cause and the disciplinary action meted herein are fully supported by the record and are not arbitrary and capricious, nor an abuse of discretion. Accordingly, we affirm the decision of the Commission, finding on the record before us that appellant's termination was based on legal cause and commensurate with the infractions.

Accordingly, the decision of the Commission terminating the employment of Ms. Lyons is hereby affirmed. This opinion is issued in accordance with Uniform Rules – Courts of Appeal, Rule 2-16.2 (5), (6), (7), and (8). Costs of this appeal are assessed against the plaintiff/appellant, Ms. Vickey V. Lyons.

AFFIRMED.