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**IN THE SUPREME COURT OF MISSISSIPPI**

**NO. 2008-CA-01848**

**RONDELL YOUNG**

**APPELLANT**

**VERSUS**

**CITY OF BILOXI**

**APPELLEE**

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**ON APPEAL FROM THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI  
SECOND JUDICIAL DISTRICT  
CAUSE NO. A2402-2007-00082**

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**APPELLANT'S BRIEF**

**(ORAL ARGUMENT REQUESTED)**

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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. The representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Rondell Young, Appellant
2. Russell S. Gill and RUSSELL S. GILL, P.L.L.C., Attorney for Appellant
3. Shannon Ladner and RUSSELL S. GILL, P.L.L.C., Attorney for Appellant
4. City of Biloxi, Appellee
5. City of Biloxi Civil Service Commission
6. Gina Bardwell Tompkins and PAGE, MANNINO, PERESICH &  
McDERMOTT, PLLC, Attorney for Appellee

Respectfully submitted, this the 24<sup>th</sup> day of April, 2009.

RONDELL YOUNG, APPELLANT

BY:

*Shannon Ladner*

SHANNON LADNER, [REDACTED]

RUSSELL S. GILL, [REDACTED]

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## **STATEMENT OF THE ISSUES**

The Appellant, Rondell Young, presents the following issues for the Court's consideration:

1. Whether the Biloxi Civil Service Commission's discipline of Rondell Young was not made in good faith for cause and not supported by substantial credible evidence and, therefore, whether said discipline was arbitrary and capricious, and contrary to the overwhelming weight of evidence and authority; and
2. Whether the Biloxi Civil Service Commission properly found that Rondell Young failed to satisfy his burden of proof by either testimony or written materials.

## **STATEMENT OF THE CASE**

### **Nature of the Case and Course of Proceedings Below**

This appeal stems from a three (3) day suspension without pay imposed on Rondell Young ("Young"), a Code Enforcement Administrator for the City of Biloxi. (R. at 34-38, 413-418)<sup>1</sup>; (R.E. at 1-5, 17-22)<sup>2</sup>. The initiating official of the discipline was Jerry Creel ("Creel")<sup>3</sup>, who is Mr. Young's immediate supervisor. (*Id.*). Creel initiated two (2) disciplinary actions against Mr. Young simultaneously on November 27, 2006. (R. at 28-33, 34-38, 413-418, 419-424); (R.E. at 23-28, 1-5, 17-22, 29-33).

The first disciplinary action served as a letter of reprimand to Mr. Young, which addressed alleged unperformed inspections. (R. at 28-33, 419-424); (R.E. at 28-33). The Notice of Intent to Initiate Disciplinary Action stated the following reasons for the disciplinary action:

(a) Civil Service Regulation 10.01 (a) 1 regarding malfeasance, misfeasance, or nonfeasance in the performance of work or in work related activities including incompetency, inefficiency, or inattention of duty and

(b) Civil Service Regulation 10.01 (a) 2 regarding conduct detrimental to the department or City including dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee, or any

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<sup>1</sup> "R." is the abbreviation used by Appellant to cite to the page number of the Record prepared by the Circuit Court of Harrison County, Mississippi, Second Judicial District.

<sup>2</sup> "R.E." is the abbreviation used by Appellant to cite to Appellant's Record Excerpts, which are submitted herewith pursuant to M.R.A.P. 30.

<sup>3</sup> Mr. Creel simultaneously acted in dual positions for the City of Biloxi, as Director of Community Development and as Building Official.

other act of omission or commission tending to injure the public service.

(c) Civil Service Regulation 10.01 (a) 3 conduct detrimental to, or in prejudice of, good order and discipline.

[I]n that on or about the November 16, 2006 it was determined that: your inspection were not current. You submitted a request for annual leave to participate in a non-city related activity to be held on November 16, 2006, I made a note on the request form granting conditional approval provided that all of your inspections were current.

When you left at mid-day Thursday the 16<sup>th</sup> of November there were several inspections from Tuesday (November 14, 2006) through Thursday (November 16, 2006) left unperformed.

(R. at 31, 422); (R.E. at 26, 32). Mr. Young acknowledged the proposed disciplinary action, but considered it to be inappropriate. (Id.).

The second disciplinary action initiated by Mr. Creel on November 27, 2006, proposed the three (3) day suspension without pay, which is the subject of the instant appeal. (R. at 34-38, 413-418); (R.E. at 1-5, 17-22). The Notice of Intent to Initiate Disciplinary Action stated the following reasons for the disciplinary action:

(a) Civil Service Regulation 10.01 (a) 1 regarding malfeasance, misfeasance, or nonfeasance in the performance of work or in work related activities including incompetency, inefficiency, or inattention of duty and

(b) Civil Service Regulation 10.01 (a) 2 regarding conduct detrimental to the department or City including dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee, or any



other act of omission or commission tending to injure the public service.

(c) Civil Service Regulation 10.01 (a) 3 conduct detrimental to, or in prejudice of, good order and discipline.

(d) Civil Service Regulation 10.01 (a) 4 violation of any rule or regulation of this code.

(e) Civil Service Regulation 10.01 (a) 6 repeated incidents of carelessness or a pattern of errors, neglect, and/or inattentiveness to job performance which are of a serious nature.

(f) Civil Service Regulation 10.01 (b) disciplinary action may be taken for any violation of law or of these Rules and Regulations. Generally, member misconduct will be addressed using a progression of disciplinary action. Exceptions to this progressive system may be made in cases of major misconduct.

[I]n that on or about the November 17, 2006 it was determined that: Caryle Draper called you on the Radio to ask if you could perform an inspection. You responded by telling her that you had just been with a difficult customer and that you could not perform the inspection that day and "if they did not like it they could kiss your ass".

This entire conversation took place over the Radio and at the time there were two (2) customers at the counter who not only heard the comments but commented on them.

(R. at 36, 415); (R.E. at 3, 19). Mr. Young acknowledged the proposed disciplinary action, but considered it to be inappropriate. (Id.). On or about November 30, 2006, the Director of Administration, David Staehling, and Mayor A. J. Holloway concurred in the disciplinary action imposed by Mr. Creel and imposed the suspension dates of December 6, 7, and 8, 2006. (R. at 34,

413); (R.E. at 1, 17).

Thus, on or about December 6, 2006, Mr. Young filed a Notice of Appeal to the Biloxi Civil Service Commission. (R. at 39-49, 425-435); (R.E. at 6-17, 34-44f). Mr. Young appealed both disciplinary actions imposed on him, which include the letter of reprimand and the three (3) day suspension without pay. (*Id.*). The Biloxi Civil Service Commission declined to review the letter of reprimand imposed on Mr. Young; however, evidence involving the letter or reprimand served an explanatory purpose as to why the three (3) day suspension without pay was ordered. (R. at 492); (R.E. at 45).

This appeal arises from the decision of the Commission, which sustained the discipline of Mr. Young. (R. at 378-379); (R.E. at 46-47). As a result of the Commission findings, Young filed his Notice of Appeal to the Circuit Court of Harrison County, Mississippi, Second Judicial District, on April 27, 2007. (R. at 380-383); (R.E. at 48-51). After an oral argument before the Honorable Jerry O. Terry, Circuit Court Judge of the Second Judicial District of Harrison County, Mississippi, on October 3, 2008, the decision of the Commission was affirmed on October 10, 2008. (R. at 570-574); (R.E. at 52-56).

#### **Statement of the Facts**

Rondell Young has been employed with the City of Biloxi for approximately thirty-one (31) years, and is currently a Code Enforcement Administrator as a Residential Building Inspector. (R. at 510); (R.E. at 57). Mr. Young has received inspection training with the Southern Standard Building Codes and the International Building Code. (*Id.*). The responsibilities particular to a Residential Building Inspector entail inspecting the structural portion of a residence, including, but not limited to concrete slab, foundation, walls, framing, and the final inspection. (R. at 511); (R.E. at 58). As a

result, Mr. Young will visit an individual residence numerous times for inspection until the job is complete. (Id.). Mr. Young testified that he takes his job very seriously, as the inspection of a home is a life safety issue. (R. at 512); (R.E. at 59). As a result of his dedication to his job, homeowners have written letters throughout his tenure to praise Mr. Young for his job performance. (R. at 442-454); (R.E. at 60-72).

Due to Mr. Young's belief that life safety is of the utmost importance, he is compelled to uphold the building code governing the residences he inspects. (R. at 519); (R.E. at 73). As such, Mr. Young has the occasion to fail some of his inspections, whereupon the homeowner or contractor must bring the inspected items up to code to gain approval. Based on the knowledge that Creel had been overruling some of Mr. Young's code inspections (R. at 455-461); (R.E. at 74-80), Mr. Young prepared a memorandum dated July 10, 2006, to Creel that explained the effect this retroactive approval had on his job (R. at 462, 516); (R.E. at 81, 83). In his memorandum, Mr. Young stated, "I was under the impression....that Mayor Holloway requested 'the most stringent code possible, and enforced to the letter of the law'". (R. at 462); (R.E. at 81). Young's memorandum asks for Creel's help in preventing the problems from getting worse, i.e. contractors bypassing the failed inspections of Mr. Young and obtaining Creel's retroactive approval. (R. at 462, 516-518); (R.E. at 81, 83-85). It was further revealed in the testimony of Lionel Sentell ("Sentell"), Assistant Electrical Inspector for the City of Biloxi, that Creel does, in fact, overturn failed inspections:

Q. You have had failures be overturned by Mr. Creel; is that fair?

A. Everybody has that done, not just me.

Q. I understand. But it happens; right?

A. Yes.

(R. at 504); (R.E. at 86).

Mr. Young prepared a second memorandum to Creel on July 10, 2006, regarding the order in which residential inspections are performed, as Mr. Young was experiencing repetitive calls for inspections, which resulted in poor time efficiency. (R. at 463, 516-518); (R.E. at 87, 83-85). The aforementioned memoranda to Mr. Creel were prepared and executed in a respectful manner with the intended purpose of asking for Creel's help in resolving the issues mentioned therein. (R. at 463); (R.E. at 87). Notwithstanding the professional and respectful intent of the memoranda, Mr. Young received a responsive memorandum from Creel dated July 12, 2006, which stated the following, in pertinent part: "Knee jerk reactions to one-sided information and writing disrespectful memos is both unprofessional and immature." (R. at 464, 520-521); (R.E. at 88-90).

In or about October, 2000, Rondell Young was appointed to serve on the Harrison County Planning and Zoning Commission. (R. at 522); (R.E. at 91). Prior to accepting this appointment, Mr. Young obtained the approval of his superiors<sup>4</sup>, who approved the position with the knowledge that he would attend one (1) monthly meeting consisting of three (3) hours per meeting. (R. at 499, 522); (R.E. at 91-92). Mr. Young had not experienced any difficulty in taking three (3) hours of his annual leave per month from work to attend the meetings until September, 2006. (R. at 523); (R.E. at 93). On or about September 8, 2006, Creel held a staff meeting wherein he addressed several issues, including the approval of annual leave for non-City related functions. (Id.). However, the memorandum to all Community Development personnel memorializing the meeting made no mention of this issue. (R. at 465-466); (R.E. at 94-95). Following the staff meeting, Young

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<sup>4</sup> At this time, the Director of Community Development was David Staehling. Mr. Young also sought approval from the City Attorney for the City of Biloxi at that time, Ronnie

submitted a request for annual leave for three (3) days during the week of Thanksgiving, which Creel then approved without condition. (R. at 480, 524); (R.E. at 96-97). Next, Young submitted a request for three (3) hours of leave with the stated reason of a Harrison County Planning and Zoning Commission meeting. (R. at 481, 524); (R.E. at 98, 97). Creel approved said request, but placed a condition on the approval and stated, "[i]f inspections are caught up at time of meeting." (Id.) Creel's conditional approval continued where it appeared that Mr. Young was requesting annual leave to attend a Harrison County Planning and Zoning Commission meeting, which is indicated by a request for three to four hours. (R. at 481, 483-486, 524-526); (R.E. at 98-102, 97, 103-104). In fact, subsequent to Creel's letter of reprimand to Mr. Young on November 27, 2006, he placed the following condition on a leave request dated December 11, 2006: "If for HC Planning Commission (non-City), this is approved only if all inspections are current!" (R. at 486, 525); (R.E. at 102-103). It is of note that the testimony of Jerry Rose, Electrical Inspector for the City of Biloxi, and Lionel Sentell revealed that Creel had never placed a condition on them requiring that all inspections be current for the approval of annual leave. (R. at 500, 501, 506); (R.E. at 105-107).

Prior to Hurricane Katrina, Creel issued a memorandum dated August 5, 2005, to all inspectors within the Community Development Department. (R. at 488); (R.E. at 108). Said memorandum reinforced the main points discussed in an inspectors meeting on August 5, 2005, and particularly required that "[a]ll inspections should be performed within 24 hours of being called in." (Id.). Mr. Young responded to Creel via memorandum dated August 8, 2005, wherein he expressed his reasoning for the difficulty in meeting such a requirement. (R. at 489); (R.E. at 109). Creel was unmoved by Mr. Young's reasoning and the policy remained in effect. (R. at 490); (R.E. at 110).

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Cochran, and the Chief Administrative Officer, David Nicholson.

The Commission heard testimony from employees of the Community Development Department as to the difficulty in fulfilling this requirement due to the high volume of inspection calls it received per day and the inspectors' inability to remain current. (R. at 497, 505, 526-527, 528); (R.E. at 111, 112, 104, 113, 114). This was intensified as a result of the devastating effects of Hurricane Katrina. (R. at 497); (R.E. at 111 ). Patricia Rose ("Rose")<sup>5</sup> testified that "getting caught up would mean when everybody leaves there [are] calls on the nails. And I mean they pick up what they got and when they come in they have calls on their nails." (Id.).

Notwithstanding this inability to stay up to date, Mr. Young was not disciplined for his three (3) day absence from work during the week of Thanksgiving, but was instead disciplined for three (3) hours of annual leave taken in the same month for a Harrison County Planning and Zoning Commission meeting. (R. at 529-530); (R.E. at 115-116). Commissioner Birdrow questioned Mr. Young in order to clarify annual leave:

COMMISSIONER BIRDROW: Okay. As you understand the City's annual leave policy, I would like for you to clarify for me when you decided to take your annual leave whether it is to attend a non-City function or to go on vacation with your family what is the difference?

THE WITNESS: To be honest with you I did not think there was a difference. I have 275 days plus with the City and I thought if you turn it in it is either approved or not approved, and if it is not approved you don't go. And I have never known of anybody to be turned down.

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<sup>5</sup> Patricia Rose has been an employee of the City of Biloxi for twenty-eight (28) years and is currently a Code Enforcement Officer, where she works at the permit counter located in the

COMMISSIONER BIRDROW: So in your view your annual leave can be used for whatever you see fit?

THE WITNESS: Yes, sir.

(R. at 531); (R.E. at 117).

Although the foregoing discipline is not the subject of the instant appeal, Appellant believes that it is factually pertinent, as its discriminatory nature serves as a precursor to the aggrieved three (3) day suspension without pay. Rondell Young was suspended for three (3) days without pay pursuant to an alleged comment he made to a fellow Community Development Department employee, Caryle Draper ("Draper")<sup>6</sup>, on or about November 17, 2006. (R. at 414, 513); (R.E. at 18, 118). Ms. Draper alleges that on said date, she was working the Community Development Department counter by herself and a customer called to inquire as to when an inspection would be performed. (R. at 491, 533); (R.E. at 119-120). Ms. Draper next alleges that upon searching for the service call without success, she called Mr. Young on the City of Biloxi radio to ask if he had the service call and if the inspection would be performed that day. (*Id.*). In the memorandum<sup>7</sup> prepared by Draper to memorialize the alleged events on November 17, 2006, she further states: **"I had a couple of customers at the counter at the time so I missed a couple of words but the next**

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Community Development Building. (R. at 494-495); (R.E. at 82-83).

<sup>6</sup> Caryle Draper has been an employee of the City of Biloxi Community Development Department as a Building Permit Clerk for four (4) years, with duties that include answering the phone, taking service calls, receiving and logging in plans, issuing permits, customer relations, and weekly, monthly and yearly reports for the Building Department. (R. at 120, 535-536); (R.E. at 120, 123-124).

<sup>7</sup> Although the alleged event occurred on Friday, November 17, 2006, Caryle Draper did not prepare this memorandum until Tuesday, November 21, 2006, at the direction of Creel pursuant to her meeting with him on Monday, November 20, 2006. (R. at 538); (R.E. at 126).

statement made by Rondell was 'if they don't like it they can kiss my ass.'" (R. at 491); (R.E. at 119) (emphasis added). Ms. Draper testified that the customers at the counter overheard the alleged remark and made a comment to her in response. (R. at 534); (R.E. at 121). To further evidence Ms. Draper's uncertainty about the facts surrounding the alleged incident, she was unable to produce the identities of said customers. (R. at 537); (R.E. at 122).

In a prior incident involving Ms. Draper, Patricia Rose was forced to confront Creel regarding an alleged statement Draper had reported to Creel:

Q. You personally, have you ever talked to Mr. Creel about Caryle Draper?

A. I had one incident where she had come up to the counter and just out of the blue had said that I had said something that I hadn't. And so I went to Mr. Creel and told him I said, "I just want to make you aware of the fact I did not say what she said I said." And he said, you know - -

Q. What did he say?

A. He said, "Well, don't worry about it. **You know I know how she is** and you are doing a good job at the permit counter."

(R. at 498); (R.E. at 123) (emphasis added).

Notwithstanding Draper's questionable credibility, upon learning of Ms. Draper's vague account of the incident involving Mr. Young, Mr. Creel initiated the aggrieved suspension without consulting Mr. Young as to his side of the story. (R. at 515); (R.E. at 82). At no time did Creel have a conversation with Mr. Young regarding the alleged incident prior to handing him the disciplinary documents. (Id.). Furthermore, Creel did not give Mr. Young an opportunity to rebut the allegations



of either of the aforementioned disciplinary actions, as they were both presented to him on the same day, November 27, 2006. (Id.).

In his testimony before the Commission, Mr. Young emphatically denied the allegations of Draper and further explained the reasoning behind his denial:

A. No, ma'am. I would not use that type language over the [radio], and I will tell you the reason why....Years ago Mr. Gillis, I worked for him as a Director. He, when we first acquired radios, that sounds unusual, but he made it clear that when you keyed that button you never know who is on the other end. It could be the Mayor standing there. Be careful in the words you chose [sic]. And I never forgot that.

Q. And how long have you followed that advice?

A. Twenty years. Twenty-five years ago.

(R. at 513-514); (R.E. at 118, 124). Furthermore, Mr. Young is not aware of any complaints being made against him from the customers who Draper alleged witnessed the incident. (R. at 514); (R.E. at 124).

Ms. Rose was not at work on November 17, 2006; however, she has worked with Mr. Young for twenty-eight (28) years and testified that she had no recollection of him ever saying cuss words over the radio. (R. at 496); (R.E. at 125). Ms. Rose acknowledged that there have been other City employees who have used profanity over the radio, but she had not heard of any of those employees being disciplined for that action. (Id.). In fact, Mr. Sentell testified about an incident where he admittedly used profanity on WLOX television news and received no discipline for his actions. (R. at 502-503); (R.E. at 126-127). In opposition to Mr. Sentell, who was not disciplined for his

admitted use of profanity on television, Mr. Young was disciplined for an alleged remark that he did not make. (R. at 513); (R.E. at 118). Upon receiving both the letter of reprimand and the three (3) day suspension without pay from Creel on the same date, Mr. Young proceeded with his appeal to the Commission of both disciplinary actions.

## **SUMMARY OF THE ARGUMENT**

There was a lack of substantial evidence before the Biloxi Civil Service Commission to support its findings that the discipline of Rondell Young was made in good faith for cause and without political or religious motivation. It follows that the suspension imposed on Rondell Young was arbitrary and capricious and contrary to the overwhelming weight of evidence and authority. Jerry Creel initiated two forms of discipline on Mr. Young on the same day for separate alleged acts. Appellant maintains that the motive for the discipline against him stems from memoranda exchanged between Creel and Young in July, 2006, and the resulting friction between them. Young was singled out by Creel with regard to Creel's conditional approval for annual leave requests submitted by Young to attend monthly Harrison County Planning and Zoning Commission meetings. To his surprise, Young received a letter of reprimand for his inability to satisfy Creel's unreasonable condition that Young must have all inspections complete before he is able to attend the monthly meeting. On the same date, Creel initiated discipline in the form of a three (3) day suspension without pay for an alleged uncorroborated remark made by Young over the City radio. Based on his vendetta against Young, Creel failed to investigate the allegations of Caryle Draper prior to initiating the subject discipline. Without first interviewing Young about the matter, Creel resorted to immediately initiating discipline against him.

The Commission erred in finding that Rondell Young failed to satisfy his burden of proof by either testimony or written materials, as Young presented ample testimony to rebut the allegations in support of the disciplinary actions taken against him. The Appellant respectfully requests this Court to reverse the Commission Findings, which sustains the City of Biloxi's action in suspending Young for three (3) days without pay.

## ARGUMENT

- I.     **The Circuit Court erred in affirming the decision of the Commission, finding that the discipline of Rondell Young was made in good faith for cause, as it was not supported by substantial credible evidence and, therefore, said discipline was arbitrary and capricious, and contrary to the overwhelming weight of evidence and authority.**

The employment decisions of a city regarding the removal, suspension, demotion or discharge of a civil service employee are reviewed by the civil service commission. Patterson v. City of Biloxi, 965 So.2d 765, 766 (Miss.Ct.App. 2007) (citing City of Laurel v. Brewer, 919 So.2d 217, 221 (Miss.Ct.App. 2005)). In City of Jackson v. Froshour, 530 So.2d 1348 (Miss. 1988), the Mississippi Supreme Court stated the following: "The function of the Civil Service Commission is to investigate and determine whether the disciplinary action taken by the City 'was or was not made for political or religious reasons *and* was or was not made in good faith for cause.'" City of Jackson v. Froshour, 530 So.2d 1348, 1354 (Miss. 1988) (emphasis in original); see also Miss. Code Ann. § 21-31-23 (1972). Additionally, rules regarding the admission of testimony and evidence before an administrative body, such as a Civil Service Commission, are relaxed and such a body has the authority to admit or refuse evidence as it reasonably sees fit. Riddle v. Mississippi State Bd. of Pharmacy, 592 So.2d 37, 43 (Miss. 1991) (formalities of practice, procedure and evidence as in courtroom proceedings are relaxed in all administrative proceedings).

On appeal, the circuit court sat as an appellate court in its review of the Commission's decision affirming Rondell Young's three (3) day suspension without pay. City of Gulfport v. Saxton, 437 So.2d 1215, 1217 (Miss. 1983). The Mississippi Supreme Court has also held that the scope of the circuit court's appellate review is limited to an examination of the record to determine

whether credible evidence exists in the record of the Commission hearing to substantiate the Commission's action. Froshour, 530 So.2d at 1354-55; City of Meridian v. Johnson, 593 So.2d 35, 38 (Miss. 1992); City of Meridian v. Hill, 447 So.2d 641, 643-44 (Miss. 1984); City of Jackson Police Dept. v. Ruddick, 243 So.2d 566, 567 (Miss. 1971); City of Hattiesburg v. Jackson, 108 So.2d 596, 599 (Miss. 1959); City of Meridian v. Davidson, 53 So.2d 48, 52-54, 60 (Miss. 1951).

In Patterson, the Mississippi Court of Appeals stated the following regarding its standard of review: "This Court follows the same standard of review as the circuit court and evaluates whether the commission's ruling is supported by substantial evidence." Patterson, 965 So.2d at 766 (citing Froshour, 530 So.2d at 1355). On appeal from the circuit court's review of a decision of the Workers' Compensation Commission, which is subject to a limited standard of appellate review, this Court stated, "[o]ur review for all practical purposes is a review of the Commission's order, not that of the circuit court." Ameristar Casino-Vicksburg v. Rawls, 2 So.3d 675, 681 (Miss.Ct.App. 2008) (citing Delta CMI v. Speck, 586 So.2d 768, 773 (Miss. 1991)). The Court went on to state, "[a]s we said in Posey v. United Methodist Senior Servs., 773 So.2d 976, 978(¶ 5) (Miss.Ct.App.2000), '[o]ur task is to review the Commission's decision for validity, even though the appeal is technically from the circuit court.'" Id. Therefore, on appeal to this Court, intertwined with the question of good faith is whether or not there was substantial evidence before the Civil Service Commission to support its Order and whether it is arbitrary, unreasonable, confiscatory and capricious. Froshour, 530 So.2d at 1355; City of Meridian v. Hill, 447 So.2d 641, 643 (Miss. 1984). See also Eidt v. City of Natchez, 421 So.2d 1225, 1231 (Miss. 1982); City of Jackson Police Dept. v. Ruddick, 243 So.2d 566 (Miss. 1971); City of Hattiesburg v. Jackson, 235 Miss. 109, 108 So.2d 596 (1959). "Substantial evidence", in the context of this Court's review of the Civil Service Commission's findings, has been defined as

"such evidence 'as a reasonable mind might accept as adequate to support a conclusion. Substantial evidence means evidence which is substantial, that is, affording a substantial basis of fact from which the fact in issue can be reasonably inferred.'" Ladnier v. City of Biloxi, 749 So.2d 139, 147-48 (Miss. 1999) (quoting State Oil & Gas Bd. v. Mississippi Mineral & Royalty Owners Assoc., 258 So.2d 767, 779 (Miss. 1971)). See also Burleson v. Hancock County Sheriff's Dep't Civil Service, 872 So.2d 43, 51 (Miss. 2003); Bd. of Law Enforcement Officers Standards and Training v. Butler, 672 So.2d 1196, 1199 (Miss. 1996).

In observation of the standard set forth above, Mr. Young submits to the Court that the disciplinary action taken against him was not made in good faith for cause and not supported by substantial credible evidence and, therefore, said discipline was arbitrary and capricious, and contrary to the overwhelming weight of evidence and authority. In the preliminary stages of the hearing, the Commission ruled that it did not have jurisdiction over the letter of reprimand of November 27, 2006; however, evidence surrounding said disciplinary action was heard by the Commission, as it was relevant and probative to the suspension imposed. (R. at 492); (R.E. at 45). Counsel for Mr. Young also made a motion *ore tenus* to exclude Jerry Creel as the City of Biloxi's corporate representative, as this would permit him to remain present during the hearing and would provide an unnecessary opportunity for undue influence and pressure on testifying witnesses<sup>8</sup>. (*Id.*). Counsel suggested that the City of Biloxi replace its corporate representative with a neutral party to the appeal, such as the Director of Administration, David Staehling. (*Id.*). The purpose of said *ore*

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<sup>8</sup> In his capacity as Director of Community Development and Building Official for the City of Biloxi, Jerry Creel is the immediate supervisor of five of the six testifying witnesses (excluding Creel and David Staehling), who include: Patricia Rose, Jerry Rose, Lionel Sentell, Rondell Young, and Caryle Draper.

*tenus* motion was to ensure Appellant's right to a fair hearing, as it is questionable whether the witnesses were able to openly testify about events involving Creel, while Creel (their immediate supervisor) sat at the table watching the witnesses give their testimony. The Commission denied Appellant's motion and Creel remained the City of Biloxi's corporate representative for the purposes of the hearing. (R. at 493); (R.E. at 128).

Additionally, Appellant's counsel made a proffer as to the anticipated testimony of Bill Prince ("Prince"), former Building Official for the City of Biloxi. (R. at 509); (R.E. at 129). Counsel opposite objected to his testimony due to an alleged lack of notice of Mr. Prince as a witness. (R. at 507); (R.E. at 130). The Commission sustained Appellee's objection and disallowed the witness from testifying. (R. at 508); (R.E. at 131). Appellant avers that the exclusion of Mr. Prince as a witness resulted in undue prejudice to his right to a fair and adequate hearing, as the inclusion of Mr. Prince as a witness would not have resulted in prejudice to the City of Biloxi. (R. at 507-508); (R.E. at 130-131). Thus, Appellant's counsel proffered the following anticipated testimony of Mr. Prince: "From 1988 to 2005 Mr. Prince was the City Building Official; that during that period of time he came to know Rondell Young very well; and that as far as he can determine that he did not have recollection of Rondell cussing on the radio." (R. at 509); (R.E. at 129).

In seeking to prove that the disciplinary action taken by the City of Biloxi was not made in good faith, Appellant presented testimony and documentary evidence regarding Creel's motive. When Young was questioned about the reason he felt he was disciplined, he stated that he thinks it is related to two memoranda he sent to Creel on July 10, 2006. (R. at 515); (R.E. at 82). Said memoranda, discussed *supra*, establish Mr. Young's attempts to obtain Creel's help in resolving two issues that greatly impact the effectiveness of Mr. Young's job performance. (R. at 462-463); (R.E.

at 81, 87). In response, however, Creel chastised Young in a memorandum dated July 12, 2006, which stated, in pertinent part: "Knee jerk reactions to one-sided information and writing disrespectful memos is both unprofessional and immature." (R. at 464); (R.E. at 88). Following the exchange of these memos, the resultant friction between Young and Creel was pronounced and ultimately led to the three (3) day suspension without pay of Mr. Young.

Pursuant to Creel's staff meeting on September 8, 2006, Young suddenly experienced difficulty in taking his earned annual leave time to attend Harrison County Planning and Zoning Commission meetings that he had attended since his appointment in October, 2000. Creel instituted a new policy for the Community Development Department, which conditioned his subjective approval of annual leave requests upon the inspectors having their inspections current, which is a formidable task at best. (R. at 540); (R.E. at 132). Commissioner Birdrow questioned Creel regarding the issue of annual leave in the following manner:

COMMISSIONER BIRDROW: Mr. Young's annual leave it seems to be there has been some testimony that if I'm taking my annual leave to go on vacation that is okay, but if I decide to use my annual leave for some other purpose such as going to a Commission Meeting there is contingency placed on that.

THE WITNESS: Yes, sir....

COMMISSIONER BIRDROW: But if I have accumulated some annual leave are you telling me it matters to the City when and how I use it? I can't use it within my own discretion?

THE WITNESS: No, sir....

COMMISSIONER BIRDROW: I understand that and I don't want to badger



you about this but I want to understand. I can't use my leave when I want to in other words is what you are telling me. There is some difference for the purpose of my leave in your eyes. You are not going to let me use the leave I accumulated for whatever the purpose I see fit?

THE WITNESS: Well, I feel like it is part of my responsibility as Director of the department to evaluate the workload that is there and if there is an unnecessary request that is interfering with the ability to get the job done I think it is my place to make sure that the City's responsibilities to the City needs are taken care of first.

(R. at 539-542); (R.E. at 132-135). It follows that Creel's policy regarding annual leave seemingly only adversely affected Mr. Young within the Community Development Department. Subsequent to the staff meeting on September 8, 2006, Creel took the first opportunity to single out Mr. Young for his monthly Harrison County Planning and Zoning Commission meeting leave request by placing the condition at the bottom of the page: "Approved, if inspections are caught up at time of meeting." (R. at 481); (R.E. at 98). The Commission heard testimony from fellow inspectors Jerry Rose and Lionel Sentell that they had never received such a condition on their leave request forms. (R. at 500, 501, 506); (R.E. at 105-107). Creel solidified his pattern of behavior toward Young in finally initiating discipline in the form of a letter of reprimand. (R. at 419-420); (R.E. at 29-30).

Creel then acted in bad faith in initiating discipline against Young in the form of a three (3) day suspension without pay based on unverified information from Caryle Draper, a source with no credibility. The Commission heard testimony from Patricia Rose, who provided another example of a false statement made by Draper and Creel's knowledge of Draper's lack of credibility. (R. at 498); (R.E. at 123). Creel's problem with Mr. Young is further manifested in the fact that he never even

asked Young whether he made the alleged remark before initiating the suspension that is the subject of this appeal. (R. at 515); (R.E. at 82).

**II. The Commission erred in finding that Rondell Young failed to satisfy his burden of proof by either testimony or written materials.**

Rondell Young acknowledges that it is the employee's burden to show that the Commission acted without substantial evidence. Ladnier v. City of Biloxi, 749 So.2d 139, 154 (Miss. 1999). As stated above, in deciding whether the Commission's decision sustaining Mr. Young's three (3) day suspension without pay was in good faith for cause, this Court is confined to a review of the record that was made before the Commission. City of Jackson v. Froshour, 530 So.2d at 1354-55; City of Meridian v. Johnson, 593 So.2d at 38; City of Meridian v. Hill, 447 So.2d at 643-44; City of Jackson Police Dept. v. Ruddick, 243 So.2d at 567; City of Hattiesburg v. Jackson, 108 So.2d at 599; City of Meridian v. Davidson, 53 So.2d at 52-54, 60.

At the Biloxi Civil Service Commission hearing on March 2, 2007, Mr. Young presented overwhelming witness testimony and documentary evidence in support of the assertion that the discipline imposed on him was erroneous. Appellant elicited witness testimony of Patricia Rose, who works alongside Caryle Draper at the permit counter (R. at 495); (R.E. at 136), which brought into question Draper's credibility and propensity for reporting untrue statements to Creel (R. at 498); (R.E. at 123). Thus, the veracity of Draper's accusatory statement regarding Mr. Young lacks credibility. Furthermore, Young provided testimony and documentary evidence establishing a motive for Creel's disciplinary actions against him. In doing so, Mr. Young displayed to the Commission a chain of events leading up to the disciplinary action that is the subject of this appeal. The evidence presented surrounding the letter of reprimand is compelling in establishing that Young

had been singled out by Creel. Additionally, evidence was presented to prove the source of the friction between Creel and Young, i.e. the two (2) memoranda to Creel from Young dated July 10, 2006, and the responsive memorandum from Creel to Young dated July 12, 2006. (R. at 462-464); (R.E. at 81, 87-88). As a result of the foregoing, Rondell Young has satisfied his burden of proof, as the record will show that there is not substantial evidence to support the Commission's decision to sustain Young's three (3) day suspension without pay.

### CONCLUSION

The Commission erred in sustaining the three (3) day suspension without pay imposed on Appellant Rondell Young. Appellant avers that the Commission failed to act in good faith for cause and not based on substantial credible evidence. The City of Biloxi's disciplinary action was not made in good faith for cause, as substantial evidence exists in the record to support Appellant's position.

For the reasons stated herein, Appellant Rondell Young respectfully requests this Court to reverse the decision of the Circuit Court, thereby reversing the Commission Findings, and further rescind the three (3) day suspension without pay imposed on Mr. Young.

Respectfully submitted, this the 24<sup>th</sup> day of April, 2009.

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**CERTIFICATE OF SERVICE**

Pursuant to M.R.A.P. 31(c), I hereby certify that I have delivered, via United States first class mail, the original and three (3) true and correct copies of the above and foregoing Appellant's Brief to Betty W. Sephton, Clerk, Mississippi Supreme Court, Post Office Box 249, Jackson, Mississippi 39205-0249.

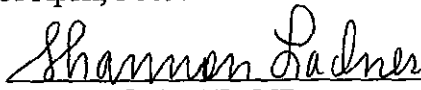
I further certify that I have this date delivered, via Hand Delivery, a true and correct copy of the above and foregoing Appellant's Brief to the following:



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I further certify that, pursuant to M.R.A.P. Rule 28(m), I have also mailed an electronic copy of the above and foregoing on an electronic disk and state that this brief was written on Microsoft Word format.

SO CERTIFIED, this the 24<sup>th</sup> day of April, 2009.

  
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