NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 0139

LEANDER CHESTER, JR.

VERSUS

CITY OF PONCHATOULA; MARIANNE SULLIVAN, ADMINISTRATOR, OFFICE OF UNEMPLOYMENT INSURANCE, LOUISIANA WORKFORCE COMMISSION

Judgment Rendered: September 10, 2010

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Appealed from the
21st Judicial District Court
In and for the Parish of Tangipahoa
State of Louisiana
Case No. 2009-0001111

The Honorable Robert H. Morrison, III, Judge Presiding

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Thomas J. Hogan, Jr. **Hammond, Louisiana**	**Counsel for Plaintiff/Appellant** **Leander Chester, Jr.**
Thomas B. Waterman **Ponchatoula, Louisiana**	**Counsel for Defendant/Appellee** **City of Ponchatoula**
J. Jerome Burden **Baton Rouge, Louisiana**	**Counsel for Defendant/Appellee** **Louisiana Workforce Commission**

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BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

GAIDRY, J.

MEMORANDUM OPINION

The plaintiff, Leander Chester, Jr., was discharged from his employment as a police officer for the City of Ponchatoula (the City), and his subsequent claim for unemployment compensation benefits was denied on the grounds that his discharge was due to misconduct connected with his employment. He now appeals a judgment of the 21st Judicial District Court for the Parish of Tangipahoa, dismissing the claims of his petition for judicial review of the decision of the Board of Review of the Office of Unemployment Insurance Administration (the Board). We affirm.

On August 5, 2008, plaintiff and his girlfriend, Candas Green, were involved in an argument and altercation while he was off duty. Ms. Green filed a complaint in which she accused plaintiff of grabbing her around the neck during the course of their argument. The original incident report, dated August 5, 2008, was an "initial" report prepared by Officer Glynn T. Cacioppo, and named Sergeant Jeffery Miller as the shift supervisor. It listed the "incident type (signal)" as "35 D Simple Battery Dom" and the "offense" as "Simple Battery – Domestic Violence 35 D" under La. R.S. 14:35.3. It also described the "type weapon/force involved" as "40 personal weapons."

On August 6, 2008, the day after the incident, it was discovered that the initial incident report prepared by Officer Cacioppo by computer entry had been accessed and unauthorized alterations made. The evidence shows that as a computer system security measure, any amendments or changes to incident reports had to be approved by the sergeant acting as shift supervisor, who was responsible for "locking" the reports for his shift. The entry for the "incident type (signal)" was changed to "35 Simple Battery;"

the "offense" was changed to "Simple Battery PCC 30-108" under La. R.S. 14:35; and the "type weapon/force involved" was changed to "99 none." The chief of police requested the Louisiana state police to conduct an independent investigation, in the course of which a computer access audit identified plaintiff as the person altering the report. On August 19, 2008, plaintiff met with a state police investigator and admitted in writing to accessing and altering the initial incident report.

Following the conclusion of the state police investigation, plaintiff was discharged on August 27, 2008.[1] In its "Separation Notice Alleging Disqualification," the City stated that plaintiff was "terminated for violation of [Department] policy, unlawful access, [and] injuring public records." The last-stated ground for termination was based upon the language of the criminal offenses of "injuring public records" set forth in La. R.S. 14:132.[2] Plaintiff applied for unemployment compensation benefits, but his claim was denied. He appealed the agency determination to an appeal referee, and following a hearing on December 22, 2008, the administrative law judge (ALJ) serving as appeal referee issued her findings of fact and decision affirming the agency determination. The Board affirmed the ALJ's decision, adopting her findings of fact and conclusions of law. Plaintiff then filed a

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[1] *See* La. R.S. 40:2531.

[2] The statute provides, in pertinent part:

> A. First degree injuring public records is the intentional removal, mutilation, destruction, alteration, falsification, or concealment of any record, document, or other thing, filed or deposited, by authority of law, in any public office or with any public officer.
>
> B. Second degree injuring public records is the intentional removal, mutilation, destruction, alteration, falsification, or concealment of any record, document, or other thing, defined as a public record pursuant to R.S. 44:1 et seq. and required to be preserved in any public office or by any person or public officer pursuant to R.S. 44:36.

petition for judicial review, and the trial court's judgment affirming the Board's legal conclusions is the subject of this appeal.

The scope of judicial review of the Board's decision is limited to determining whether its factual findings are supported by sufficient and competent evidence and whether the facts, as a matter of law, justify the action taken. La. R.S. 23:1634(B); *Fontenot v. Cypress Bayou Casino*, 06-0300, p. 4 (La. App. 1st Cir. 6/8/07), 964 So.2d 1035, 1038 (*en banc*).

Plaintiff claims that the trial court and the Board erred in their rulings, in that there was no evidence of "intentional wrongdoing" on his part, citing *Banks v. Adm'r of Dep't of Employment Sec., State of La.*, 393 So.2d 696, 699 (La. 1981). In *Fontenot*, 06-0300 at pp. 7-8, 964 So.2d at 1040-41, however, this court held that the statutory definition of "misconduct" added in 1990 to La. R.S. 23:1601(2)(a) served to supplant the prior jurisprudential definition, and that there is no longer any requirement that the proscribed wrongful conduct be "intentional" in the sense of requiring an intent to do wrong.

Plaintiff emphasizes that he was unaware of any department policy forbidding the alteration of incident reports, and that no evidence of a specific written policy to that effect was offered. He further emphasizes that there is no evidence supporting the ALJ's factual findings, adopted by the Board, that he "signed an acknowledgement of receipt of receiving and understanding the employer's policy manual," and that the manual stated that "falsifying or altering company documentation would lead to disciplinary action up to and including termination." While we agree that the quoted findings are unsupported by any evidence and are therefore not conclusive, other evidence supports the conclusion that misconduct justifying termination occurred.

The incident report altered by plaintiff was unquestionably a "public record" within the meaning of La. R.S. 14:132. *See* La. R.S. 44:3(A)(4). In his discharge disclosure statement, plaintiff admitted to violating a "policy or rule" by "changing a report without authority," although he claimed he was unaware of the policy. Plaintiff also attempted to justify his alteration of the report by testifying that, by virtue of his status as a senior officer, he occasionally acted as assistant shift supervisor in the absence of his shift supervisor, Sergeant McGary, and that in such capacity he had the authority to "make sure the reports are done right." It was clear from plaintiff's testimony, however, that he acted as assistant shift supervisor only when Sergeant McGary was off duty. Thus, the evidence refuted plaintiff's defense that he had supervisory authority to alter the incident report, which did not issue from Sergeant McGary's shift.

Plaintiff's admitted conduct, given its context, clearly amounted to "wrongdoing" and, quite probably, "violation of a law" under the statutory definition of "misconduct." *See* La. R.S. 23:1601(2)(a). It is self-evident that a police department charged with the enforcement of the laws of this state has the right and obligation to require its officers to abide by those laws, especially a law relating to public records maintained by police departments as public agencies. *See Rigney v. Dep't of Police*, 08-1435, pp. 3-4 (La. App. 4th Cir. 4/15/09), 10 So.3d 861, 863-64, *writ denied*, 09-1069 (La. 9/25/09), 18 So.3d 79, and *State v. Brown*, 467 So.2d 1151, 1157-59 (La. App. 2nd Cir.), *writ denied*, 474 So.2d 945 (La. 1985).[3] Given the fact that plaintiff himself was the subject of the battery complaint, the intentional character of his alteration of the report is likewise self-evident. Even under the prior jurisprudential definition of misconduct, plaintiff's conduct

[3] *See, e.g.*, La. R.S. 14:132(A), 14:133(A)(2), and 40:2401.

exhibited a "direct disregard of standards of behavior which the employer has the right to expect from his employees." *See Charbonnet v. Gerace*, 457 So.2d 676, 678 (La. 1984). After a careful review of the record, we conclude that sufficient evidence existed to support the Board's factual finding of misconduct and that the Board's decision was justified and legally correct.

The judgment of the trial court is affirmed, and all costs of this appeal are assessed to the plaintiff-appellant, Leander Chester, Jr. This memorandum opinion is issued pursuant to Rule 2-16.1(B) of the Uniform Rules of Louisiana Courts of Appeal.

AFFIRMED.