

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2008 CA 2294**

**DANNY WILLIAMS**

**VERSUS**

**DEPARTMENT OF PUBLIC SAFETY AND  
CORRECTIONS – ELAYN HUNT CORRECTIONAL CENTER**

*RHP by JMC  
Jew by JMC*

**On Appeal from a Decision of the  
State Civil Service Commission  
Docket No. 16329**

**Honorable James A. Smith, Chairman;  
Burl Cain, Vice-Chairman;  
Charles W. Dobie, David L. Duplantier, G. Lee Griffin,  
Rosa B. Jackson, and John McLure, Members**

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Corrections–Elayn Hunt Correctional Center**

**BEFORE: PARRO, McCLENDON, AND WELCH, JJ.**

Judgment rendered OCT - 8 2009

*JMC McCleendon, J. Concurs with the Result Reached by the majority.*

**PARRO, J.**

This is an appeal from a final decision of the Louisiana State Civil Service Commission (Commission) that summarily dismissed Danny Williams' petition for an appeal to the Commission relating to the proposed termination of him from his job with the Louisiana Department of Public Safety and Corrections (DPSC). For the following reasons, we affirm.

**Factual Background and Procedural History**

By letter dated December 3, 2007, Danny Williams, who served with permanent status as the mental health director at Elayn Hunt Correctional Center (Hunt), was notified that he would be terminated from employment effective Monday, December 17, 2007, for violating specified rules and policies. Once Mr. Williams received word that he was going to be terminated, he inquired about his options and decided to retire. On December 11, 2007, he completed an application for retirement indicating his termination date for purposes of retirement as December 17, 2007. He also applied for continued health insurance benefits.

On December 21, 2007, Mr. Williams filed a petition with the Commission for an appeal of the disciplinary action allegedly taken by the DPSC. In his petition, Mr. Williams sought rescission of the alleged disciplinary action or reduction in the penalty imposed, expungement of his personnel record, back pay and emoluments, interest, and attorney fees. On account of Mr. Williams' retirement, the DPSC sought a summary dismissal of his petition, urging that Mr. Williams' voluntary separation from his employment rendered the disciplinary action moot. Mr. Williams was ordered to show cause why his petition should not be dismissed as moot. Mr. Williams countered that he intended that his retirement become effective immediately on his termination. Although Mr. Williams contended that his separation was not voluntary, he admitted that he "simply elected to retire as was his right at the time of his involuntary termination." Following a hearing, Mr. Williams' appeal was dismissed as moot, and any

reference in his personnel file to the proposed disciplinary action was ordered to be removed. Mr. Williams appealed.

### **Discussion**

Article X, § 8(A) of the Louisiana Constitution provides:

No person who has gained permanent status in the classified state or city service shall be subjected to disciplinary action except for cause expressed in writing. A classified employee subjected to such disciplinary action shall have the right of appeal to the appropriate commission pursuant to Section 12 of this Part. The burden of proof on appeal, as to the facts, shall be on the appointing authority.

This constitutional provision recognizes that a classified state employee enjoys a property right in continued employment that he cannot be deprived of without due process of law. See AFSCME, Council # 17 v. State ex rel. Dept. of Health & Hospitals, 01-0422 (La. 6/29/01), 789 So.2d 1263, 1269.

Ordinarily, a classified state employee who voluntarily resigns his position has no right of appeal relative to a pending disciplinary action. See Pugh v. Dept. of Culture, Recreation and Tourism, Sabine River Authority, 597 So.2d 38, 41 (La. App. 1st Cir. 1992). However, a right to appeal has been recognized in favor of a classified state employee who has voluntarily "resigned" under circumstances suggesting that the resignation was forced or chosen to avoid disciplinary action. See Stern v. New Orleans City Planning Com'n, 03-0817 (La. App. 4th Cir. 9/17/03), 859 So.2d 696, 700; Pugh, 597 So.2d at 42. A resignation is not voluntary if it was obtained by fraud, mistake, duress, or other vices of consent. Sanderson v. Dept. of Public Safety, Division of State Police, 351 So.2d 813, 815 (La. App. 1st Cir. 1977).

On appeal, Mr. Williams seeks reversal of the Commission's decision on the ground that the referee erred in summarily dismissing his appeal to the Commission in light of facts indicating that he desired to initiate his retirement benefits, following his notice of termination, in such a way that he would retain his right to challenge his proposed termination. Despite Mr. Williams' intention, his employment was terminated

due to his retirement at the end of his work day on December 17, 2007, as requested.<sup>1</sup> On the other hand, his separation from employment pursuant to the proposed disciplinary action would not become effective until December 18, 2007,<sup>2</sup> the day after the date that appeared in his notice of termination. Mr. Williams contends that the referee erred in finding that he retired prior to his separation from employment as the evidence shows that his retirement and termination dates were the same and that his intent was to retire contemporaneously with the termination date specified in the notice of his termination. Alternatively, he urges that, in light of the agency coding of the termination in connection with the disciplinary action as being effective on December 18th, his December 17th retirement was a mistake, thus rendering his retirement involuntary.

Louisiana State Civil Service Rule 12.11, pertaining to resignations, provides:

- (a) An employee's oral or written resignation becomes effective on the date and time specified by the employee. An oral resignation must be documented by the person receiving it.
- (b) An employee may not withdraw or modify the resignation after the appointing authority accepts it, unless the appointing authority agrees.
- (c) When, after receiving notice that dismissal has been proposed, an employee resigns to avoid dismissal, the resignation must be reported as such.

Mr. Williams testified that he did not resign from his employment with the DPSC on his own volition in that he was forced to make a choice. His research disclosed that the available choices were termination due to disciplinary action or retirement. Although he freely chose to retire and he did not retire to avoid disciplinary action, because he had not planned to retire for another five or six years, Mr. Williams urges that his retirement on December 17, 2007, was not voluntary. According to Mr. Williams, while completing the retirement paperwork, he informed all concerned that he

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<sup>1</sup> With regard to his retirement, Mr. Williams testified that it was his understanding "[t]hat I would be retired at the end of the day on December 17<sup>th</sup> and that I would be a fully retired person on the 18<sup>th</sup>."

<sup>2</sup> The agency coding department, Integrated Statewide Information Systems (ISIS), viewed December 17th as being Mr. Williams' last official workday, with his separation beginning the next day, December 18th.

was going to appeal the proposed disciplinary action, which he attempted to do within four days of his last day of work.

Mr. Williams explained that when completing the retirement paperwork, he was uncertain as to what date to use as his retirement termination date. He had not attended any of the training sessions that were offered by LASERS since he had not anticipated retirement; instead, he relied on the advice of workers in the personnel department at Hunt in designating a retirement date. When asked if he chose retirement over termination, he said that he "chose retirement that was continuous with termination, so that [he] could continue an appeal." Mr. Williams stated that he would have used another date had he known that the use of December 17th would have jeopardized his right to challenge the proposed disciplinary action. He explained that he wanted to preserve his right to have a hearing on the proposed disciplinary action while retiring, if possible. Mr. Williams testified that he was not concerned about having his personnel file reflect that he had been terminated for disciplinary reasons. He did not believe that having a bad personnel record would prevent him from obtaining employment in the future. Yet, in applying for other state jobs, he did not mention that he had been terminated from his job with Hunt as a result of disciplinary action. Rather, he stated that he had retired.

Mr. Williams testified that, when he selected his retirement termination date, he was unaware that he could retire after leaving state service. He believed that retirement was an option only while he was still in state service. He explained that knowledge of the fact that he could have retired outside of state service "could" have influenced his choices. He chose retirement while in state service thinking that he would lose his right to retire if he waited until after he was terminated due to the disciplinary action. He thought that December 17th was the most proficient date to retire and to continue an appeal.

Based on his choice of a retirement date, Mr. Williams was paid his salary

through December 17, 2007. Because Mr. Williams retired while in state service, he was entitled to better insurance benefits than if he would have opted to retire after he left state service. Mr. Williams admitted that he never received notice from the DPSC that he had been separated from employment for disciplinary reasons.

Considering these facts, the referee found that Mr. Williams chose the date of retirement in such a way that he received all the enhanced insurance benefits while creating a situation of ambiguity. The referee found that the ambiguity created by Mr. Williams' selected retirement date, coupled with his subsequent behavior in applying for state employment and noting that he was retired rather than terminated, lead her to believe that Mr. Williams actually retired prior to the effective date of his proposed disciplinary separation from employment.

A final decision of the Commission is subject to review by the court of appeal on any question of law or fact as mandated by LSA-Const. art. X, § 12(A).<sup>3</sup> Accordingly, the standard of review set forth in Stobart v. State, Dept. of Transp. and Development, 617 So.2d 880, 882 (La. 1993), is applicable, and a reviewing court should not disturb

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<sup>3</sup> LSA-Const. art. X, § 12(A) provides:

The State Civil Service Commission shall have the exclusive power and authority to hear and decide all removal and disciplinary cases, with subpoena power and power to administer oaths. It may appoint a referee, with subpoena power and power to administer oaths, to take testimony, hear, and decide removal and disciplinary cases. The decision of a referee is subject to review by the commission on any question of law or fact upon the filing of an application for review with the commission within fifteen calendar days after the decision of the referee is rendered. If an application for review is not timely filed with the commission, the decision of the referee becomes the final decision of the commission as of the date the decision was rendered. If an application for review is timely filed with the commission and, after a review of the application by the commission, the application is denied, the decision of the referee becomes the final decision of the commission as of the date the application is denied. The final decision of the commission shall be subject to review on any question of law or fact upon appeal to the court of appeal wherein the commission is located, upon application filed with the commission within thirty calendar days after its decision becomes final. Any referee appointed by the commission shall have been admitted to the practice of law in this state for at least three years prior to his appointment.

factual findings made by the Commission in the absence of manifest error.<sup>4</sup> Therefore, in order to reverse a factual finding made by the trier-of-fact, the appellate court must (1) find from the record that a reasonable factual basis does not exist for the finding, and (2) determine that the record establishes that the finding is clearly wrong (manifestly erroneous). See Burst v. Board of Com'rs, Port of New Orleans, 93-2069 (La. App. 1st Cir. 10/7/94), 646 So.2d 955, 958, writ not considered, 95-0265 (La. 3/24/95), 651 So.2d 284.

After thoroughly reviewing the record in this matter, we are unable to say the Commission's decision, which essentially found that Mr. Williams' resignation was voluntarily given, was manifestly erroneous or legally incorrect. Mr. Williams clearly intended to retire so that he would continue to have an income stream following his proposed termination. Thus, we are unable to say that his retirement was not voluntary.<sup>5</sup>

The DPSC's manager of human resources testified that pursuant to the December 3, 2007 letter's statement that Mr. Williams would be "terminated from [his] employment effective Monday[,] December 17, 2007," Mr. Williams was paid through December 17, 2007, which was considered his last day of work. According to the manager, December 18th would have been Mr. Williams' separation date with respect to the proposed disciplinary action. The manager's testimony to this effect, which was obviously found by the referee to be credible, was not contradicted.

When Mr. Williams voluntarily retired effective December 17, 2007, this constituted his last day of work, which coincided with the "proposed" last day of work if the disciplinary action had gone into effect on Tuesday, December 18, 2007. Thus, the

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<sup>4</sup> The standard of review set forth in LSA-R.S. 49:964(G) applies to district courts when they sit in an appellate capacity and review an administrative agency's final decision or order in an adjudication proceeding. Judicial review of final decisions of the Commission does not lie in any district court but is constitutionally vested essentially in the First Circuit Court of Appeal pursuant to LSA-Const. art. X, § 12. Thus, the standard of review contained in LSA-R.S. 49:964(G) does not apply to review of decisions of the Commission. Ward v. Dept. of Public Safety and Corrections, 97-1109 (La. App. 1st Cir. 9/18/98), 718 So.2d 1042, 1044.

<sup>5</sup> Notably, being placed in the position of having to make a choice does not automatically render a resignation involuntary. See Sanderson, 351 So.2d at 815.

last day of work chosen by him for retirement purposes happened to be the day before the separation from his employment would have taken effect due to the proposed disciplinary action.<sup>6</sup> Because of his retirement, the separation from his employment due to the proposed disciplinary action never occurred. Mr. Williams' personnel file reflects that his separation from employment was due to retirement, as opposed to termination or dismissal. Since the proposed disciplinary action never occurred, Mr. Williams has failed to assert a claim for which the Commission has subject matter jurisdiction. See LSA-Const. art. X, § 8(A). In other words, Mr. Williams' December 17th retirement preempted the proposed disciplinary action and any appeal regarding such action is moot. Accordingly, the Commission's refusal to consider Mr. Williams' request for an appeal of the proposed disciplinary action was therefore proper.

#### **Decree**

For the foregoing reasons, we affirm the decision of the Louisiana State Civil Service Commission. The costs of this appeal are assessed to Danny Williams.

**AFFIRMED.**

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<sup>6</sup> Under the facts of this case, we conclude that the fact that Mr. Williams selected a retirement termination date that precluded him from challenging the proposed disciplinary action was insufficient to render his resignation/retirement involuntary. As in Sanderson, 351 So.2d at 815, any misunderstanding concerning Mr. Williams' resignation/retirement date was of his own making.