

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2008 CA 0923

DENEEN MONTGOMERY SMITH

VERSUS

**DEPARTMENT OF HEALTH & HOSPITALS,
BUREAU OF ADULT PROTECTIVE SERVICES**

Judgment Rendered: October 31, 2008

**Appealed from a Decision
of the State Civil Service Commission
Case No. 16213**

**Honorable James A. Smith, Chairman
Anne S. Soileau, Director**

**David L. Coleman, II
New Orleans, Louisiana**

**Counsel for Plaintiff/Appellant
Deneen Montgomery Smith**

**Adrienne T. Bordelon
Neal R. Elliott, Jr.
Baton Rouge, Louisiana**

**Counsel for Defendant/Appellee

Louisiana Department of Health
and Hospitals**

BEFORE: KUHN, GUIDRY, AND GAIDRY, JJ.

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JMS
By EGS

GAIDRY, J.

SUMMARY DISPOSITION

The plaintiff, Deneen Montgomery-Smith, appeals the denial by the Louisiana Civil Service Commission (the Commission) of her application for review of a referee's decision on her appeal relating to a reassignment in her employment with the Louisiana Department of Health and Hospitals (the Department). We affirm.

On April 13, 2007, plaintiff filed a lawsuit in the Civil District Court for the Parish of Orleans against the Department seeking damages for racial discrimination based upon various earlier actions by plaintiff's supervisor and program manager occurring from 2004 through 2006. On July 3, 2007, the trial court rendered a default judgment against the Department, reciting that plaintiff had made a *prima facie* showing of discrimination pursuant to La. R.S. 23:332.

By letter dated July 20, 2007, the Department reassigned plaintiff as a program monitor in its Office of Public Health – Vital Records Program from her position as an Adult Protective Services supervisor in its Office of Aging and Adult Services. Plaintiff appealed that action to the Commission, alleging that her reassignment amounted to a disciplinary action in disguise, was without cause, and was in retaliation for the filing of her lawsuit. She further asserted that her prior appeal of an unfavorable Performance Planning and Review (PPR) evaluation was mishandled by the Department and that the PPR evaluation should have been removed from her records. Finally, she sought to appeal the administrative denial of a merit increase in salary for 2006.

Plaintiff's appeal was assigned to a referee, who after reviewing the appeal issued a notice of possible defects in the appeal. Plaintiff then

amended her appeal to allege that her reassignment was a disciplinary action motivated by racial discrimination, citing as proof the default judgment rendered against the Department. On December 6, 2007, the referee issued a written decision dismissing plaintiff's claims of rule violations by the Department as to the issues of her PPR evaluation, the denial of her merit increase in salary for 2006 (also determined to be untimely appealed), and her qualifications for the position to which she was reassigned. The referee also dismissed plaintiff's claim of racial discrimination in the amended appeal on the grounds of lack of specificity of allegations and insufficient proof. However, the referee found that plaintiff was entitled to proceed to the merits of her appeal on the claim that her reassignment amounted to a disciplinary action in disguise. The referee's decision was subsequently adopted as the final decision of the Commission. Plaintiff appeals.

Initially, we note that most of plaintiff's purported assignments or specifications of error are simply statements of the allegedly wrongful and discriminatory prior actions taken by the Department, rather than proper specifications of error on the part of the Commission. Additionally, plaintiff's brief does not set forth any concise argument directed to those issues, nor does it cite any legal authority in support of her contentions on those issues.¹ Under Rule 2-12.4 of the Uniform Rules of the Louisiana Courts of Appeal, the court may consider as abandoned any specification or assignment of error that has not been briefed, and accordingly we will not address those purported assignments of error.

¹ Although plaintiff's brief contains a table of legal authorities listing three opinions from Louisiana jurisprudence, not one of those cases is actually cited or discussed in the body of the brief. The statement of the case in plaintiff's brief is virtually a word-for-word recitation of the factual allegations of her petition for damages, omitting the paragraph numbering and substituting "appellant" for "petitioner." It omits any recitation of pertinent events or actions after December 19, 2006 or facts relating to plaintiff's reassignment, effective July 30, 2007, although plaintiff briefly summarizes her reassignment in the argument section of her brief.

Factual findings and decisions of the Commission and Commission referees are subject to the manifest error standard of review. *Marsellus v. Dep't of Public Safety and Corr.*, 04-0860, pp. 4-5 (La. App. 1st Cir. 9/23/05), 923 So.2d 656, 659-60. Our review of the record discloses no such error by the referee or the Commission. Additionally, we note that our constitution limits the Commission's jurisdiction to hear appeals to two categories of claims: discrimination claims (La. Const. art. 10, § 8(B)) and removal or disciplinary claims (La. Const. art. 10, §§ 8(A) and 12(A)). The denial of a merit increase in pay is not considered a disciplinary action. *Malone v. Dep't of Corr., La. Training Institution-Ball*, 468 So.2d 839, 841 (La. App. 1st Cir. 1985).

Plaintiff seems to imply, without expressly urging the point, that the default judgment somehow supplies the basis for application of *res judicata* or collateral estoppel on the issue of racial discrimination in her reassignment. We disagree. Her administrative reassignment was not even raised as a factual issue in her petition for damages forming the basis of the default judgment, and the relief sought in her lawsuit was substantively different from that of the present dispute. Based upon the record in this matter, the Commission's decision on this issue was not manifestly erroneous.

DECREE

We accordingly affirm the decision of the Commission through this summary disposition, in accordance with Rules 2-16.2(A)(5), (6), (7), and (8) of the Uniform Rules of the Louisiana Courts of Appeal. All costs of this appeal are assessed to the plaintiff, Deneen Montgomery-Smith.

AFFIRMED.