

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2009 CA 1058

IRMA GARCIA

VERSUS

HOUSING AUTHORITY OF NEW ORLEANS

Judgment Rendered:

DEC 23 2009

**On Appeal from a Decision of the State Civil Service Commission
Docket No. S-16605
State of Louisiana**

**Honorable James A. Smith, Chairman
Burl Cain, Vice-Chairman**

**Shannon Templet, Director
Department of State Civil Service**

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BEFORE: DOWNING, GAIDRY, AND McCLENDON, JJ.

 *McClendon, J. concurs.*

GAIDRY, J.

An employee appeals a judgment of the Civil Service Commission dismissing her civil service appeal. We affirm.

FACTS AND PROCEDURAL HISTORY

Plaintiff, Irma Garcia, was employed by the Housing Authority of New Orleans (HANO) from May 15, 1989 until her termination on January 30, 2009. At the time of her termination, her position was Human Resources Director-A.

In 1996, due to the occurrence of a substantial default by HANO, the United States Department of Housing and Urban Development (“HUD”) took control of HANO within the meaning of Section 6(j)(3)(A)(iv) of the United States Housing Act of 1937, 42 U.S.C. §1437d(j)(3)(A)(iv). In order to correct a substantial default, this provision authorizes the HUD Secretary to determine not to comply with “any State or local law relating to civil service requirements, employee rights (except civil rights), procurement, or financial or administrative controls that, in the Secretary's written determination (which shall include the basis for such determination), substantially impedes correction of the substantial default.” On August 30, 2001, a detailed report on HANO submitted by Acting Assistant Secretary for Public and Indian Housing, Paula Blunt, revealed that “the policies and procedures of the Louisiana Civil Service have impeded HANO’s recovery.” Blunt’s report listed the following difficulties, which she found had a serious impact on HANO: HANO staff spends substantial time and resources developing cases for Civil Service consideration; Civil Service rules regarding layoffs impede managerial flexibility; HANO has difficulty matching its employment needs to the classification categories approved by the Department of State Civil Service; the classified salary levels set by the

Department of State Civil Service are often lower than the salaries HANO would have to pay to attract qualified employees; and Civil Service rules create delays in hiring. In April of 2008, HUD Secretary Alphonso J. Jackson issued a “Determination Regarding Certain Provisions of the Louisiana Civil Service Law and Rules,” (“HUD Determination”) which stated that all of the problems noted in Blunt’s report with the application of Louisiana Civil Service rules to HANO in 2001 still exist at HANO in 2008, and have been exacerbated by new circumstances. Secretary Jackson further stated that the restrictions of the Louisiana Civil Service law and the Department of State Civil Service rules impede HANO’s ability to hire, fire, pay, and manage its employees, thereby substantially impeding HUD’s efforts to correct HANO’s default. For these reasons, Secretary Jackson declared that the individuals appointed to operate HANO under his authority shall not be required to comply with all Civil Service rules except Rules 14(a),¹ (b),² (c),³ (d),⁴ (e),⁵ (f),⁶ (g),⁷ (j),⁸ (k),⁹ (l),¹⁰ and (m).¹¹

Prior to Secretary Jackson’s April 2008 declaration regarding HANO employees, there had apparently been several attempts to terminate or demote Garcia, which were unsuccessful due to the application of civil

¹ Subsection (a) prohibits employment discrimination based upon political or religious affiliations, race, sex, or organizational membership.

² Subsection (b) prohibits payment or promise of payment of assessment, subscription, or contribution for political party, faction, or candidate.

³ Subsection (c) prohibits giving or receiving anything of value for a civil service position.

⁴ Subsection (d) prohibits political coercion.

⁵ Subsection (e) prohibits political activity.

⁶ Subsection (f) prohibits appointment of an elected official to a civil service position.

⁷ Subsection (g) provides that support of certain political issues shall not constitute prohibited political activity.

⁸ Subsection (j) prohibits the fraud and the making of false statements concerning civil service employment.

⁹ Subsection (k) prohibits attempts to affect the selection process by inducing, coercing, or persuading applicants not to apply or to withdraw from consideration.

¹⁰ Subsection (l) prohibits discrimination as defined in Rule 1.14.1 (consideration of religious or political beliefs, sex, race, or any other non-merit factors).

¹¹ Subsection (m) requires classified employees to assist the Civil Service Commission in effectively carrying out the Rules.

service rules. Garcia was terminated from her employment with HANO on January 30, 2009. According to the Notice of Termination, Garcia was provided with an opportunity to attend a hearing to respond to the recommendation from her supervisor proposing her termination and the reasons given for her termination, but she did not attend. Garcia was reminded in the letter notifying her of the termination decision that due to Secretary Jackson's determination, her termination was not required to conform with Chapters 12 (Discipline; Corrective Actions; Separations) and 13 (Appeals and Hearings) of the Civil Service rules.

In a February 27, 2009 letter to the Department of State Civil Service, Garcia requested a Civil Service appeal of her separation from employment on the basis that the action was taken without regard to the Civil Service rules. She alleged that she received no prior written notice from the Appointing Authority/Administrator Receiver of an impending layoff. In a March 10, 2009 notice issued to Garcia, the Civil Service Commission referee questioned whether she has a right to appeal to the Commission, in light of the fact that HANO employees "no longer enjoy all of the rights otherwise afforded to classified employees under the Civil Service Rules." The notice advised Garcia that she had fifteen calendar days to amend her appeal or respond in writing why her appeal should not be summarily dismissed.¹² The only response received by the Commission from Garcia after the notice was a letter from Garcia also dated March 10, 2009, in which she alleged that the employment action against her was "unwarranted, without merit, retaliatory for my filing other appeals, and without regards to Chapter 12 of the State Civil Service Rules." Garcia's appeal was

¹² Civil Service Rule 13.14(d) provides for summary disposition of an appeal on the referee's own motion when the Commission lacks jurisdiction of the subject matter or the person against whom relief is sought, or when the appellant has no legal right to appeal.

summarily dismissed by the Civil Service Commission in a March 26, 2009 decision on the grounds that she did not have a right of appeal to the Commission.

Garcia appealed this dismissal, assigning the following errors by the Civil Service Commission:

1. The Commission erred in dismissing her appeal dated April 9, 2009 because it had previously been decided by the Commission and was a final judgment.
2. The Commission erred in dismissing her appeal under the HUD Determination exempting HANO employees from application of Civil Service rules.
3. The Commission erred in dismissing her appeal since the HUD determination provides that HANO employees are still covered by Civil Service rules prohibiting racial and sexual discrimination.

DISCUSSION

Garcia argues that a 2007 decision by the Civil Service Commission, reinstating her to her prior position with back pay, was final and thus could not be affected by the Secretary's declaration. On the contrary, one of the reasons for Secretary Jackson's decision to exempt HANO from most Civil Service rules was that the restrictions of the Louisiana Civil Service law and the Department of State Civil Service rules impeded HANO's ability to hire, fire, pay, and manage its employees, thereby substantially impeding HUD's efforts to correct HANO's default. Secretary Jackson's decision to exempt HANO from state civil service is specifically authorized by 42 U.S.C. §1437d(j)(3)(A)(iv).

Garcia also alleges that the Commission erred in summarily dismissing her appeal because the grounds for her appeal were sexual and

race discrimination, from which HANO employees still enjoy civil service protection. However, in Garcia's February 27, 2009 letter requesting an appeal, she stated that the grounds for her appeal were that she received no prior written notice of an impending layoff.¹³ Her March 10, 2009 letter to the Civil Service Commission also did not mention any allegations of sex or race discrimination. The first mention of sex or race discrimination was in her appeal to this court, and even then, the discrimination was only vaguely referred to in Garcia's brief without any explanation as to how she believed she was discriminated against. Because her vague allegations of sex and race discrimination were made for the first time on appeal to this court, the Commission did not err in dismissing Garcia's Civil Service appeal.

CONCLUSION

The judgment of the Civil Service Commission summarily dismissing Irma Garcia's civil service appeal is affirmed. Costs of this appeal are assessed to appellant, Irma N. Garcia.

AFFIRMED.

¹³ Although we acknowledge that the civil service notice requirements do not apply to Garcia, it appears that Garcia did in fact receive prior notice of her proposed termination and an opportunity to respond. An October 21, 2008 letter from HANO to Garcia offered her an opportunity to attend a hearing to respond to the recommendation from her supervisor proposing termination for reasons outlined in the letter. Garcia did not attend the hearing. Garcia acknowledges receipt of this October 21, 2008 letter in her brief to this court.