

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 CA 0270

SHERMAN AUGUSTINE

VERSUS

**DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS -
LOUISIANA STATE PENITENTIARY**

Judgment Rendered: June 6, 2008

On Appeal from a Decision of the State Civil Service Commission
Honorable James A. Smith, Chairman
Burl Cain, Vice-Chairman

Chatman H. Reed, David Duplantier, G. Lee Griffin, Rosa B. Jackson and
John McLure
State of Louisiana
Docket No. 16254

Anne Soileau, Director
Department of State Civil Service

Sherman Augustine
Cottonport, Louisiana

Plaintiff/Appellant
In Proper Person

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BEFORE: GAIDRY, McDONALD, AND McCLENDON, JJ.

McCLENDON, J.

The plaintiff, Sherman Augustine, appeals the decision of the Civil Service Commission (Commission), summarily dismissing his appeal. Finding no error in the Commission's decision, we affirm.

Mr. Augustine, a classified employee with permanent status, is employed as a Corrections Master Sergeant with the Department of Public Safety and Corrections at Louisiana State Penitentiary in Angola, Louisiana. On September 8, 2007, Mr. Augustine filed an appeal with the Department of State Civil Service, asserting that he was denied his earned vacation time without cause and that he was being retaliated against for using his sick and compensatory leave.¹ On September 14, 2007, the Commission referee issued notice to Mr. Augustine of possible defects in the appeal. In particular, Mr. Augustine was notified that, in accordance with Civil Service Rule 13.10, an action or decision was appealable only if the employee alleged that the action or decision violated a Civil Service rule or discriminated against the employee. He was further notified that the appeal lacked specific facts, alleged in detail, to support a rule violation or discrimination. Mr. Augustine was given fifteen days to file a written response or amend his appeal. On September 27, 2007, Mr. Augustine responded, again asserting that he was denied his vacation request not only in retaliation or punishment for using his sick and compensatory leave, but also because he complained about unreasonable on-call procedures, low morale, prefabricated counseling letters, and the Rule 12.6(a)2 unscheduled absence policy.

On October 19, 2007, the referee found that Mr. Augustine pleaded no facts to support his conclusion that a Civil Service rule had been violated or

¹ On Mr. Augustine's vacation request form, the reason given for the denial was "184.95 Hours Past Absence since Sept. 2006. 136.95 Hours over 48.0."

that would establish a prima facie case of discrimination. Further, the referee stated that “[a]n agency has the right to make administrative and managerial decisions, which include an employee’s use of annual and compensatory leave and the need for an employee to be on call.” Thus, the referee concluded that because Mr. Augustine failed to provide specific details of any alleged violation of the Civil Service Rules or of discrimination in accordance with Civil Service Rule 13.11(d) and LSA-Const. art. X, § 8, he failed to establish a right to appeal. Accordingly, the referee summarily dismissed the appeal.

Thereafter, on December 14, 2007, the Commission denied Mr. Augustine’s application for review, and the decision of the referee became the decision of the Commission. La. Const. art. X, § 12(A). Mr. Augustine appealed.²

Pursuant to Article X of the Louisiana Constitution, the Commission’s jurisdiction is limited to two categories of claims: (1) discrimination claims on the bases of political beliefs, religious beliefs, sex and race, as provided for in § 8(B) of article X; and (2) removal and disciplinary claims provided for in §§ 12(A) and 8(A) of article X. **Louisiana Department of Agriculture and Forestry v. Sumrall**, 98-1587, p. 7 (La. 3/2/99), 728 So.2d 1254, 1260. Thus, the Commission has jurisdiction to hear only the four enumerated discrimination claims and removal and disciplinary claims. **Flanagan v. Department of Environmental Quality**, 99-1332, p. 4 (La.App. 1 Cir. 12/28/99), 747 So.2d 763, 765.

The determination as to what constitutes a disciplinary action is within the authority of the Commission through its rule-making powers granted by

² Neither the Department of Public Safety and Corrections nor the Department of State Civil Service have responded to the appeal.

LSA-Const. art. X, § 10. **King v. LSU Health Sciences Center**, 03-1138, p. 5 (La.App. 1 Cir. 4/2/04), 878 So.2d 544, 547.

Mr. Augustine asserts that the denial of his vacation time was an unauthorized disciplinary action subject to review on appeal. However, Civil Service Rule 21.2(b) provides that “[d]isciplinary actions can only include: reassignments; suspensions without pay; reductions in pay; involuntary demotions and dismissals.” A disciplinary action does not include decisions involving the use of an employee’s annual or compensatory leave.

Since this is neither a removal nor a disciplinary claim, and Mr. Augustine has pleaded no facts to support a rule violation or a prima facie case of discrimination, we must agree with the referee’s conclusion that Mr. Augustine has no right to appeal.

For the above and foregoing reasons, we affirm the Commission’s summary dismissal of Mr. Augustine’s appeal and assess all costs associated with this appeal against Mr. Augustine. We issue this memorandum opinion in accordance with Uniform Rules-Courts of Appeal, Rule 2-16.1B.

AFFIRMED.