

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2022 CA 0458

ASHLEY MUSE

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS,  
OFFICE OF PROBATION AND PAROLE

**Judgment Rendered: NOV 04 2022**

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On appeal from the  
State Civil Service Commission  
State of Louisiana  
Docket Number 18720

Honorable David L. Duplantier, Chairman

\* \* \* \* \*

Ashley Muse  
Monroe, LA

Plaintiff/Appellant  
In Proper Person

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Baton Rouge, LA

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Department of Public Safety  
and Corrections

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State Civil Service

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BEFORE: WHIPPLE, C.J., GUIDRY, AND WOLFE, JJ.

## **GUIDRY, J.**

The plaintiff seeks review of the dismissal of her appeal to the Civil Service Commission. For the reasons that follow, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

Plaintiff Ashley Muse was employed by the Department of Public Safety and Corrections, Division of Probation and Parole (the “Department”), as a probation and parole officer. On February 8, 2021, Ms. Muse was separated from employment. On February 12, 2021, Ms. Muse appealed that decision, alleging that her separation was not taken by the proper appointing authority; that the separation was the result of political, religious, race, and sex discrimination; that the decision to separate her from employment was due to her “personality”; that given her successful rating, she could not be separated; and that her separation was in violation of civil service rules.<sup>1</sup>

On April 6, 2021, a motion for summary disposition was filed by the Department. Following arguments on May 21, 2021, the civil service referee granted the Department’s summary disposition as to certain claims and denied it as to others, with the latter being referred to the merits. Thereafter, a hearing on the merits was held on August 17, 18, and 19, 2021. The referee rendered a decision on November 18, 2021, upholding Ms. Muse’s separation from employment and finding that Ms. Muse had not proved discrimination or a rule violation. The decision of the referee became final after the Civil Service Commission denied Ms. Muse’s application for review. This appeal followed, with Ms. Muse assigning fourteen errors.

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<sup>1</sup> Ms. Muse was allowed to amend her appeal.

## MOTION TO STRIKE APPELLATE BRIEF

As a preliminary matter, the Department filed a motion to strike Ms. Muse's appellate brief on the ground that it fails to comply with the Uniform Rules of the Courts of Appeal. The Department notes that Ms. Muse's brief is 41 pages long, on letter size paper, and single-spaced. The Department references Rule 2-12.2(B) of the Uniform Rules, which provides in part, that "[t]he text of briefs shall be double-spaced except for matters which are customarily single spaced." Ms. Muse, in response, contends that she "was not attempting to gain any advantage and wanted to ensure that all her arguments are considered and heard."

Noting that this court has generally considered non-compliant briefs when *pro se* litigants have not complied with the Uniform Rules, see Carr v. St. Tammany Parish, 20-0146 (La. App. 1st Cir. 2/24/21), 2021WL717283, \*2; Montecino v. Louisiana Department of Public Safety and Corrections, 17-0735, p. 2 (La. App. 1st Cir. 12/21/17), 240 So. 3d 229, 230; Sheridan v. Pride & Hope Ministry Family Support Services, 13-1666, p. 4 (La. App. 1st Cir. 5/2/14), 147 So. 3d 717, 719, in this instance we will consider Ms. Muse's appellate brief, despite the improper form. The motion to strike is therefore denied.

### ASSIGNMENTS OF ERROR

1. The Referee erred in granting the Summary Disposition of DPSC-Office of Probation and Parole, in regards to Black Lives Matter, Blue Lives Matter and Thin Blue Line on the basis of Appellant alleging political discrimination, because Appellant factually alleged the incident was race discrimination in the appeal[.]

2. The Referee erred, in the decision, placing the burden of proof on the Appellee to establish cause because Appellant was a probationary employee, no cause was provided to Appellant, and the burden of proof was on the Appellant; therefore denying Appellant due process.

3. The Referee erred in not applying the same principles established in Christopher Milligan vs. Baton Rouge Community College because the same question of law and fact existed.<sup>2</sup>

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<sup>2</sup> In her appellate brief, Ms. Muse argues that the referee in the cited case, Milligan v. Baton Rouge Community College, did not give weight to the supervisor's position that the plaintiff therein was not a "good fit" for the position.

4. The Referee erred in basing the decision on comments noted in appellant's Performance evaluation, because the referee dismissed any claims in regards to documentation of the Performance evaluation due to an overall successful rating and Appellant not suffering any adverse action.
5. The Referee erred in dismissing Appellant's claims on discrimination on the basis of personality, when appellant's adverse action was removal from employment.
6. The referee erred in denying Appellant's request for subpoena and testimony for Bobby "Jaime" Lee, the delegated appointing authority, and several other witnesses, thus denying Appellant due process.
7. The Referee erred in summarily dismissing any issue of appointing authority because the delegation of authority to Mr. Lee does not state what agency, district or division, within the department, Mr. Lee was given authority to affect all human resources actions of a disciplinary and non-disciplinary nature.
8. The Referee erred in excluding or ignoring the testimony of Cole [Graylape], in rendering the decision because Mr. [Graylape] was subpoenaed to testify, specifically, as to the reasons and process involved in separating Appellant.
9. The Referee erred in allowing the Department to add additional requirements for Appellant to attain permanent status because the requirements are in contrast to the requirements noted in Civil Service Rule 9.2(a).
10. The Referee erred in the Findings of Facts because the findings include issues outside of Appellant's scope of appeal, are not supported by any evidence and clearly erroneous.
11. The Referee erred in deciding that every incident that Appellant presented as Disparate Treatment or Race discrimination, the department had valid, credible, non-discriminatory reason or explanation for what took place, when there was controverting evidence.
12. The Civil Service Commission erred in allowing a member, Kristi Folse, to vote and participate in the Review of the Referee's Decision because Ms. Folse's employer is the subject of the Appeal (Louisiana Department of Public Safety and Corrections).
13. The referee erred in granting the Appellees's subpoena duces tecum for Appellant's documents and exhibits because Appellee's request failed to comply with 13.21(b) and is in the form of a discovery request.
14. The Referee erred in finding that the Appellee did not violate Civil Service Rule 9.1(a) because the Appellant's direct supervisor, Maria

Danna, testified that she had no clue about Civil Service Chapter 9 rules.

### STANDARD OF REVIEW

Generally, decisions of Civil Service Commission Referees are subject to the same standard of review as decisions of the Commission itself. Ragona v. Louisiana Workforce Commission, 19-0020, p. 6 (La. App. 1st Cir. 9/27/19), 287 So. 3d 772, 776. The factual conclusions of the Referee and Commission are subject to the manifest error standard of review, meaning that the factual determinations will be reversed only if the appellate court finds that a reasonable basis does not exist for the Commission's finding and the record establishes the finding is clearly wrong. Cole v. Division of Administration, 14-0936, pp. 5-6 (La. App. 1st Cir. 1/26/15), 170 So. 3d 180, 184.

### DISCUSSION

At the outset, we note that Ms. Muse was employed with the Department in a probationary status, and according to State Civil Service Rule 13.10, only the following persons have a right of appeal to the Commission:

- (a) a state classified employee with permanent status who has been removed or subjected to one of the disciplinary actions listed in Rule 12.2(b);
- (b) a state classified employee who has been discriminated against in any employment action or decision because of his political or religious beliefs, sex or race; and/or
- (c) a state classified employee who has been adversely affected by a violation of any provision in the Civil Service Article or of any Civil Service Rule other than a rule in Chapter 10.<sup>3</sup>

While Ms. Muse has alleged discrimination based upon her support for or opposition to Black Lives Matter, Blue Lives Matter, and the Thin Blue Line, and due to her "personality," her claims regarding "personality" are not appealable to the Civil Service Commission, as they fall outside of the scope of the Commission's limited jurisdiction. See Civil Service Rule 13.10; see also

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<sup>3</sup> Chapter 10 of the Civil Service Rules is entitled "Performance Evaluation System."

Louisiana Department of Agriculture and Forestry v. Sumrall, 98-1587, p. 5 (La. 3/2/99), 728 So. 2d 1254, 1258-1259. In addition, nothing in the record ties Ms. Muse's employment separation to her support for or opposition to the aforesaid organizations. Thus, we find no merit in Ms. Muse's assignments of error one and five, wherein she contends the referee erred in granting the Department's summary disposition in regard to Black Lives Matter, Blue Lives Matter, and the Thin Blue Line and on the basis of her personality.<sup>4</sup>

In assignments of error two, three, four, nine, eleven, and fourteen, Ms. Muse essentially contests the referee's determination that she did not prove racial discrimination or a civil service rule violation. The Louisiana Constitution Article 10, Section 8 provides for appeals of classified civil service employees as follows:

**(B) Discrimination.** No classified employee shall be discriminated against because of his political or religious beliefs, sex, or race. A classified employee so discriminated against shall have the right of appeal to the appropriate commission ... The burden of proof on appeal, as to the facts, shall be on the employee.

An employee in a civil service discrimination action must prove his claim by a preponderance of evidence. Hargrove v. New Orleans Police Dept., 01-0659, p. 23 (La. App. 4th Cir. 5/22/02), 822 So. 2d 629, 640, writ denied, 02-2387 (La. 12/13/02), 831 So. 2d 985. Once the employee establishes a prima facie case of racial discrimination, a presumption is created that the employer has unlawfully discriminated against the employee and the burden shifts to the employer to prove that the adverse employment actions were taken for a legitimate nondiscriminatory reason. Moore v. Ware, 01-3341, p. 14 (La. 2/25/03), 839 So. 2d 940, 950.

In addition, pursuant to Civil Service Rule 9.1(a), probationary periods of no less than six months or more than twenty-four months shall be served by employees following appointments to permanent positions. The probationary

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<sup>4</sup> Ms. Muse asserts that her support for or opposition to Black Lives Matter, Blue Lives Matter, and the Thin Blue Line is race discrimination as opposed to discrimination on the basis of her political beliefs. Nevertheless, Civil Service Rule 13.11 requires that any claims of discrimination be supported by specific and detailed factual allegations, which are absent here.

period shall be an essential part of the examination process and shall be used for the most effective adjustment of a new employee and for the elimination of any probationary employee whose performance does not meet the required standard of work. Civil Service Rule 9.1(a). Pursuant to Rule 9.1(e), a probationary employee may be separated by the appointing authority at any time.<sup>5</sup>

In her appeal to the Civil Service Commission, Ms. Muse raised numerous issues and made numerous allegations. Ms. Muse stated during her testimony that Officer Brown, a black officer, told her she was trying to “lay low and make it.” Officer Riser, a white officer, was not assigned to office duties or intake. Deborah Bradford, a black supervisor, told her “we blacks have to work harder.” Ms. Muse also indicated that Maria Danna, Ms. Muse’s supervisor, changed Ms. Muse’s voicemail because Ms. Muse “sounds black.”

Ms. Muse’s State Civil Service planning and evaluation form shows that following Ms. Muse’s September 23, 2019 hire date, Ms. Muse was evaluated in August 2020. Ms. Muse received a rating of “Successful” in a number of performance areas. However, Ms. Muse received a rating of “Needs Improvement/Unsuccessful” for “Task 4: Work Habits.” Comments related to Ms. Muse’s work habits included: “[Ms.] Muse has been advised to work on being more of a team player. Repeated requests for information or documents is required before a response is received.” Also noted on the performance evaluation was that, due to COVID, Ms. Muse had been unable to complete the Department Academy.

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<sup>5</sup> Civil Service Rule 9.2, titled “Permanent Appointment Action Following Probationary Period,” provides as follows:

- (a) Permanent appointment of a probationary employee shall begin upon certification by the appointing authority that the employee has met the required standard of work during the probationary period.
- (b) A permanent appointment must be reported to the Director in the manner he prescribes.
- (c) The appointing authority shall separate employees who have not been certified as permanent at the end of the twenty-four month probationary period in accordance with the provisions of Rule 9.1(e).

By a document dated July 28, 2020, Ms. Muse's probation was extended by six months, until March 2021. And in a letter dated July 22, 2020, Ms. Muse's supervisor, Ms. Danna, stated, "[Ms.] Muse has not been able to complete the [Department] Academy due to COVID. In addition, there are some concerns as to whether or not she is a good fit for this job. We are hopeful the additional time will help determine her suitability for the job."

Further, at the hearing before the referee, Ms. Bradford, a retired district manager with the Department, stated that she did not recommend hiring Ms. Muse, and that it was "always something" with Ms. Muse. Ms. Bradford agreed she never observed Ms. Danna treating her subordinates differently based on race. However, Ms. Bradford did admit that Ms. Danna received one racially motivated complaint against her, which Ms. Bradford found to be without merit.<sup>6</sup>

Ms. Danna, who initially voted to hire Ms. Muse, explained that Ms. Muse was very difficult to supervise. According to Ms. Danna, Ms. Muse was passive-aggressive, challenged even the smallest things, and was confrontational and antagonistic. Ms. Danna testified about several "incidents" between Ms. Muse and her coworkers. Ms. Danna indicated that Ms. Muse was not a "team player."

Additionally, Ms. Danna testified that she told Cole Graylape, a regional administrator, she didn't feel the position was "right" for Ms. Muse, and that she was not comfortable making Ms. Muse a permanent employee. Ms. Danna further stated: "I would like to point out that I made tremendous changes during the time of supervising [Ms. Muse]. I was more aware of the way I spoke to [Ms. Muse]. ... I changed completely ... as to how I dealt with [Ms. Muse], but I did not ever see a whole lot of change from [Ms. Muse]." Ms. Danna testified that she changed

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<sup>6</sup> While being questioned by Ms. Muse, Ms. Bradford disputed that she told Ms. Muse "we blacks have to work harder." She stated that Ms. Muse's probation period was extended for field training, as opposed to performance issues. She also stated that she asked Ms. Danna to remove certain incidents from Ms. Muse's performance evaluation due to lack of documentation.



the voicemails of both black and white officers to “get everybody in the correct numbers and offices.”

Mr. Graylape, who was retired at the time of the hearing, testified that he encouraged the Department to continue to work with Ms. Muse.<sup>7</sup> However, Mr. Graylape did not believe Ms. Muse’s separation was due to racial discrimination. According to Mr. Graylape, proper procedure was followed in separating Ms. Muse from employment.

Michael LaCroix, a district manager, testified that he was aware of problems that Ms. Danna was having with Ms. Muse after June of 2020 and through February of 2021. Some of those problems included issues with interpersonal communication, issues with “showing up,” and issues with showing a full day’s work on travel logs.<sup>8</sup> Mr. LaCroix explained that he supported Ms. Danna’s recommendation to separate Ms. Muse from her employment. According to Mr. LaCroix, all of the supervisors supported Ms. Muse’s separation.

While Ms. Muse complains she was discriminated against because of her race and that civil service rules were violated in the process of her separation, we find no evidence that supports Ms. Muse’s contentions. Rather, after extending Ms. Muse’s probation period in accordance with Department and civil service rules, and for her benefit, Ms. Muse was separated from employment, prior to the end of her probation period. The testimony at the hearing and the evidence submitted show that the Department had both performance related issues with Ms. Muse and non-discriminatory reasons to separate Ms. Muse from employment, and the reasons given for Ms. Muse’s separation are supported by the evidence of

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<sup>7</sup> Mr. Graylape was concerned that Ms. Muse may have been influenced by or lumped into other employees’ actions. Mr. Graylape wanted Ms. Muse to have a chance to “stand on her own.” He instructed the supervisors to keep working with Ms. Muse and to document her actions.

<sup>8</sup> Mr. LaCroix also explained that Ms. Danna was “heavy-handed” and stated that he asked her to work on that.

record.<sup>9</sup> Ms. Muse's conclusions that her separation was racially motivated and in violation of civil service rules are not sufficient to support her claims. We therefore conclude, as did the referee, that Ms. Muse did not satisfy her burden of proving racial discrimination in the presentation of her case, nor did she prove a civil service rule violation. We find no merit in these assignments of error.

We next address assignments of error six, seven, and thirteen, wherein Ms. Muse contends the referee erred in summarily dismissing "any issue of appointing authority," in denying her request for Bobby "Jaime" Lee and "several other witnesses" to appear,<sup>10</sup> and in granting the Department's subpoena duces tecum. In doing so, we emphasize that the decisions or actions of the Civil Service Commission or a referee should not be reversed unless they are arbitrary, capricious, or an abuse of discretion.<sup>11</sup> See James v. LSU Health Sciences Center Medical Center of Louisiana at New Orleans, 01-1853, p. 3 (La. App. 1st Cir. 11/8/02), 834 So. 2d 470, 472, writ denied, 03-0214 (La. 4/21/03), 841 So. 2d 792.

Here, the referee's decision concerning the Department's summary disposition states:

[The Department] filed an Affidavit of Delegation of Appointing Authority whereby James LeBlanc, Secretary of [Department of Public Safety and Corrections], *delegated appointing authority "to effect all human resources actions" ... to Jamie Lee, Director of Probation and Parole. ... Thus, no evidence will be introduced during the hearing on the merits regarding the appointing authority of Mr. Lee. [Emphasis Added.]*

Thereafter, in regard to Ms. Muse's subpoena request, which included a subpoena for Jamie Lee, the referee's decision states:

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<sup>9</sup> We note that we find no rule which would preclude the Department from using Ms. Muse's performance evaluation and the comments therein to prove Ms. Muse's separation was taken for legitimate, non-discriminatory reasons. In addition, we find no evidence that the Department added additional requirements in assessing Ms. Muse's performance.

<sup>10</sup> Ms. Muse's argument in brief is limited to her subpoena request for Jamie Lee.

<sup>11</sup> A decision by the Civil Service Commission is "arbitrary or capricious" if there is no rational basis for the action taken by the Civil Service Commission. Bannister v. Department of Streets, 95-0404, p. 8 (La. 1/16/96), 666 So. 2d 641, 647.

Having reviewed the pleadings, I hereby rule as follows:

Subpoenas to appear will be granted, compelling the attendance of Maria Dann[a], Debra Bradford, and Mike LaCroix.

All other requests for subpoenas to appear are denied, and to that extent, [the Department's] Motion to Quash is granted. Appellant has failed to provide a statement as to the specific facts or issues each witness will testify to pursuant to CSR 13.2[1](b) ... .

As it concerns the delegated appointing authority, Jamie Lee, we find a rational basis for the actions taken by the referee. It is clear from the record that Jamie Lee merely signed off on Ms. Muse's separation and was the proper appointing authority.<sup>12</sup> Therefore, we find no abuse of discretion in the referee's decisions.

We likewise find no abuse of discretion regarding the Department's request for a subpoena duces tecum, as the Department followed appropriate procedure, and the Commission and any referee appointed by the Commission has the power to compel the production of books and papers pertinent to the issues involved in any appeal. See Civil Service Rules 13.21(a) and (b). Accordingly, we find no merit in these assignments of error.

Finally, we find no merit in Ms. Muse's remaining assignments of error, eight, ten, and twelve. After a thorough review, we conclude that the findings of fact are supported by the record. There is no evidence that the testimony of Mr. Graylape was ignored by the referee.<sup>13</sup> And where the referee made no ruling regarding Kristi Folsi and her role with the Civil Service Commission, the issue is not properly before us. See Uniform Rules-Courts of Appeal, Rule 1-3.<sup>14</sup>

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<sup>12</sup> Civil Service Rule 12.1 states, "An appointing authority may discipline, remove, or separate an employee under his or her jurisdiction."

<sup>13</sup> The trier of fact is charged with assessing the credibility of the witnesses and, in doing so, is free to accept or reject, in whole or in part, the testimony of any witness. Johnson v. State through Department of Transportation and Development, 17-0973, p. 25 (La. App. 1st Cir. 4/3/19), 275 So. 3d 879, 898, writ denied, 19-00676 (La. 9/6/19), 278 So. 3d 970.

<sup>14</sup> Rule 1-3 provides in part that "[t]he Courts of Appeal will review only issues which were submitted to the trial court."

## **CONCLUSION**

For the above and foregoing reasons, we affirm the decision of the referee, which was adopted by the Civil Service Commission. All costs of this appeal are assessed to the plaintiff/appellant, Ashley Muse.

**MOTION TO STRIKE APPELLATE BRIEF DENIED; AFFIRMED.**