

NOT DESIGNATED FOR PUBLICATION

RHESA THOMAS-CLAY * **NO. 2011-CA-0281**
VERSUS *
DEPARTMENT OF POLICE * **COURT OF APPEAL**
* **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
* * * * *

APPEAL FROM
CITY CIVIL SERVICE COMMISSION ORLEANS
NO. 7192
* * * * *

Judge Terri F. Love
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(Court composed of Chief Judge Joan Bernard Armstrong, Judge Michael E. Kirby, Judge Terri F. Love)

Rhesa Thomas-Clay
1610 Robert E. Lee Boulevard
Apartment 721
New Orleans, LA 70122--2869

IN PROPER PERSON, PLAINTIFF/APPELLANT

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AFFIRMED
AUGUST 3, 2011

Rhesa Thomas-Clay was terminated from her position as a New Orleans Police Officer after she vacated her duty post in the days following Hurricane Katrina. Mrs. Thomas-Clay contends that a June 12, 2009 letter was an offer of employment and that the Civil Service Commission (CSC) should reemploy her with pay retroactive from the date of the letter. The CSC found that Mrs. Thomas-Clay had no valid claim. We find that the CSC's dismissal of Mrs. Thomas-Clay's appeal was not arbitrary or capricious and affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Rhesa Thomas-Clay was an officer with the New Orleans Police Department ("NOPD") when Hurricane Katrina struck the City of New Orleans. Mrs. Thomas-Clay vacated her duty post on September 02, 2005, and did not return to duty until forty days later. She was subsequently terminated from NOPD.

On or about June 15, 2009, Mrs. Thomas-Clay spoke with Assistant Superintendent Bruce Adams of the Public Integrity Bureau, who informed her that he was advocating on her behalf and she would be reinstated as a police officer once he could obtain the signature of Superintendent Warren Riley on a letter stating the details of the Mrs. Thomas-Clay's reemployment due to mitigating

circumstances surrounding her termination.

Mrs. Thomas-Clay states that Assistant Superintendent Adams informed her that Superintendent Riley would more likely than not sign the letter. Assistant Superintendent Adams also instructed Mrs. Thomas-Clay about the process of reinstating her due to mitigating circumstances, particularly rumors that Thomas-Clay was granted permission to leave her assignment by Captain Robert Brady. However, the rumors could not be confirmed and Superintendent Riley did not sign the letter. Mrs. Thomas-Clay contends that even though the letter was not signed by Superintendent Riley, it serves as an offer to reemploy, and she accepted.

The CSC found that there were no mitigating circumstances justifying Mrs. Thomas-Clay's reemployment. Therefore, there was no viable claim for the CSC to address.

STANDARD OF REVIEW

The CSC shall have “exclusive power and authority to hear and decide all removal and disciplinary cases. The decisions of a 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.” La. Const. Art X, § 12(B).

This Court will not disturb the ruling of the CSC absent evidence of arbitrariness, capriciousness, or characteristics of an abuse of discretion. *Cure v. Dep't of Police*, 07-0166, p. 2 (La. App. 4 Cir. 8/1/07) 964 So. 2d 1093, 1094-95. A CSC decision is arbitrary and capricious if no rational basis exists as a foundation for the decision. *Id.*, 07-0166, p. 2, 964 So. 2d at 1095.

UNSIGNED REEMPLOYMENT LETTER

The employer-employee relationship is contractual. The terms of the employment contract may be negotiated and agreed upon as long as not prohibited

by law or public policy. *May v. Harris Mgmt. Corp.*, 04-2657 (La. App. 1 Cir. 12/22/05), 928 So. 2d 140. As the signature of Superintendent Riley was omitted, no offer was made for Mrs. Thomas-Clay to accept. Therefore, no contract for employment was formed. The discussions between Assistant Superintendent Adams and Mrs. Thomas-Clay, as well as the letter, would only be relevant had Superintendent Riley's signature been procured.

Mrs. Clay-Thomas's testimony reveals that she knew the contract could not be finalized without Superintendent Riley's signature. Mrs. Thomas-Clay was told that the letter had to be presented and signed and an investigation had to be conducted before Mrs. Thomas-Clay could be reemployed. Due to all of this, we find that the unsigned letter was not an offer for reemployment.

MITIGATING CIRCUMSTANCES

The unsigned reemployment letter states that there were mitigating circumstances that would allow the appellant to be reemployed. However, after Assistant Superintendent Adams conducted an investigation, he was unable to confirm rumors that Mrs. Thomas-Clay had been granted permission to leave her duty post; therefore, nothing justified Mrs. Thomas-Clay's reemployment.

Accordingly, for the reasons stated herein, the ruling of the CSC that there is no viable claim to address is affirmed.

AFFIRMED