

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 0291

DIANNE BEARD

VERSUS

LOUISIANA STATE UNIVERSITY HEALTH CARE SERVICES DIVISION,
EARL K. LONG MEDICAL CENTER AND CALVIN MCKNIGHT

NOV 21 2013

Judgment Rendered: _____

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APPEALED FROM THE STATE CIVIL SERVICE COMMISSION
IN AND FOR THE
STATE OF LOUISIANA
DOCKET NUMBER S-17377

HONORABLE DAVID L. DUPLANTIER, CHAIRMAN

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BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

McDONALD, J.

Plaintiff/appellant appeals a decision of the State Civil Service Commission (Commission) asserting four assignments of error in violation of Civil Service Rules 17.15(a), 13.12(a)(2), and 13.11(d). For the following reasons, we affirm the Commission's decision.

FACTS

The appellant, Dianne Beard (Beard), maintains that she has nineteen years experience in the biomedical instrumentation field. In February 2012, she was employed by Louisiana State University Health Care Services Division (LSU-HCSD) and worked at Earl K. Long Medical Center (Earl K. Long) as an electronic technician. Due to loss of federal funding, Earl K. Long proposed massive lay offs and abolished approximately one hundred positions. Over sixty-five employees were laid off, including Beard.

Beard filed an appeal to the Commission on March 21, 2012, appealing (1) her lay off; (2) alleging discrimination by Earl K. Long regarding her lay off, and (3) alleging discrimination by Earl K. Long regarding a promotional opportunity. She alleged:

Discriminatory actions and disparate treatments occurred when the Electronic Technician Supervisor's position became vacant and was posted at the LSU Health Sciences Center, Earl K. Long main campus, but was not posted at the LSU Surgical Center, located in the Biomedical Instrumentation Departments on Perkins Road in East Baton Rouge Parish. As a result, a less qualified male co-employee, Mr. Calvin McKnight, was promoted into that position. Appellant's most recent Performance Planning and Review rating equaled and/or exceeded that of the co-employee that was subsequently hired in the position. Thus had Earl K. Long Medical Center, properly posted notice of the job vacancy at Appellant's job site at Biomedical Instrumentation Department on Perkins Road, she would have had an equal opportunity to apply for this job. The non-posting of the job vacancy caused her to be passed over for a promotion in violation of the LSU Health Sciences Center, Earl K. Long Medical Center's employment policy number 02-02-010, effective 1995 and as amended and as it relates [to] announcements of vacancies and hiring procedures. . . . Furthermore, LSU Health Sciences Center, Earl K. Long Medical Center, intentionally and implicitly only posted notices of the vacancy where males were employed.

On August 2, 2012, Civil Service Commission Referee Kathe Zolman-Russell issued a Notice to Employee of Possible Defects in Appeal. By this notice, the referee presented what she saw as defects in Beard's appeal. First, she believed Beard failed to allege a right of appeal regarding her wrongful lay off claim pursuant to Civil Service Rule (CSR) 13.10. Second, the referee found that Beard's claim that she was a victim of discrimination relative to the lay off plan did not appear to comport with CSR 13.11(d). Third, she found that Beard's claim of discrimination based on gender relative to Earl K. Long's alleged failure to post a notice of the supervisor position vacancy at her work location also failed to include required specific and detailed factual allegations. Lastly, the referee questioned whether Beard's appeal was timely.

Civil Service Rule 13.11(d) provides, in pertinent part, "[w]here a violation of the Article or a Rule is alleged to be a basis for appeal, specific facts supporting the conclusion that a violation has occurred must be alleged in sufficient detail to enable the agency to prepare a defense."

Moreover, CSR 13.10, Appeals to the Commission, provides the exclusive listing of those persons who have a right of appeal to the Commission. It states:

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.
- (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.

The referee did not address any civil service rules regarding appeals, finding that the submission of Beard's appeal was untimely. She issued a notice to Beard on

August 2, 2012, questioning whether Beard had filed her appeal timely as to her sexual discrimination claim, and whether she had alleged a right of appeal to the Commission. Beard was given ten calendar days to amend her appeal and/or to show cause in writing why the referee should not summarily dismiss it.

Upon her request, Beard was given an extension of time to amend her pleadings. She filed a supplemental pleading, re-asserting that LSU-HCSD violated its own policies as it relates to announcements of vacancies and hiring procedures. She alleged that posted notices of vacancies were only posted at locations where males were employed. In Beard's pleadings, she contended that Calvin McKnight should not have been considered a supervisor because he was actually performing the duties of a technician. Further, in conflict with her initial allegations that she became aware of McKnight serving as a supervisor in September 2011, she maintained that she originally believed McKnight was serving as a temporary supervisor, because the actual then supervisor was on medical leave. But, in a conversation with the Human Resources Director on February 8, 2012, she was told that McKnight was a supervisor. Beard asserts she did not receive written notice until February 23, 2012, making her appeal on March 21, 2012 timely.

DISCUSSION

We review the factual decisions of the Commission under a manifest error/clearly wrong standard. Therefore, regardless of what factual findings were established, or what decision we think should be made, unless it is clearly or legally wrong, we are not empowered to substitute our judgment. See *Barnett v. Saizon*, 08–0336 (La. App. 1 Cir. 9/23/08), 994 So.2d 668, 672.

The referee concluded from Beard's pleadings that she received an email in late September 2011 that made her aware of McKnight's promotion to supervisor. Civil Service Rule 13.12(a)(2) requires an appeal to be made within thirty days of finding out the facts that give rise to an appeal. Beard's appeal, filed in March 2012, was filed

considerably after September 2011.

Regarding Beard's lay-off claims, the referee noted that pursuant to CSR 13.10, an employee appealing any action other than a removal or disciplinary action only has a right of appeal to the Commission if the employee alleges being adversely affected by a violation of a civil service article or rule, or being discriminated against because of religious or political beliefs, sex, or race. Civil Service Rule 13.10(b) establishes the types of discrimination claims that can be appealed to the Commission in non-disciplinary matters.

Civil Service Rule 13.11(d) requires that the notice of appeal allege detailed facts sufficient to enable the agency to prepare a defense. The referee concluded that Beard failed to allege specific facts to support her allegation of discrimination in Earl K. Long's decision to abolish her position and that there was no evidence that Earl K. Long violated any civil service article or rule when deciding which positions to include in the lay off and/or to abolish.

In further addressing Beard's allegation that her lay off violated civil service rules, the referee noted that CSR 17.15(c) provides, in relevant part that: "[b]ased on the budget and organizational priorities, the appointing authority will determine which positions are to be abolished." Beard complained that McKnight's years of service were considerably less than hers and that CSR 17.15(c) provides that employees shall be laid off on the basis of the least years of service. However, CSR 17.15(d) states that employees in positions targeted for abolishment shall move into **vacant** positions, and there were no vacant positions to move Beard into. In accordance with CSR 17.18(e), McKnight's position as Electronic Technician Supervisor, being of a higher pay range than Beard's Electronic Technician position, made Beard ineligible for the supervisory position even if it had been vacant. The referee concluded that Beard's greater years of service were irrelevant as to McKnight's position.

In response to the referee's decision to summarily dismiss Beard's appeal, Beard

submitted a letter to the Director of Civil Service requesting a review by the Commission of the summary dismissal of her appeal. Subsequently, the Commission notified the parties that it had denied Beard's request for review and this final decision by the Commission is the basis for this appeal.

After carefully reviewing the applicable law and the entire record, even on rulings that technically are not subject to appeal (for example, violation of LSU-HCSD's internal policies) we find no discrimination or violation of law. Accordingly, the decision of the Civil Service Commission is affirmed.

Costs of this appeal are assessed to the appellant, Dianne Beard.

AFFIRMED.