

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

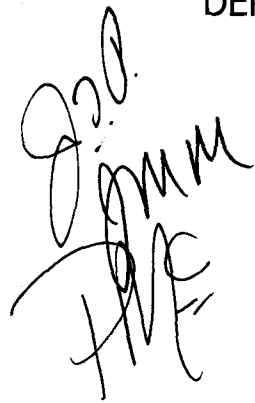
NO. 2013 CA 2215

KERRY MYERS

VERSUS

DEPARTMENT OF PUBLIC SAFETY & CORRECTIONS

Judgment rendered June 6, 2014.



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Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. C602263
Honorable William Morvant, Judge

* * * * *

KERRY MYERS
ANGOLA, LA

TERRI L. CANNON
ANGOLA, LA

PRO SE
PLAINTIFF-APPELLANT

ATTORNEY FOR
DEFENDANT-APPELLEE
LOUISIANA DEPARTMENT OF
PUBLIC SAFETY & CORRECTIONS

* * * * *

BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

PETTIGREW, J.

This is an appeal by inmate, Kerry Myers, of a trial court judgment that adopted the Commissioner's recommendation and denied the inmate's petition for judicial review. After a thorough review of the record and the inmate's arguments reiterated on appeal, we find no error below, and affirm the trial court's judgment.

PROCEDURAL HISTORY

Myers instituted this administrative procedure, complaining that his incentive pay wages were improperly reduced when he was transferred from one inmate work program job to another, and then back to his original position. He claimed that the regulation in effect at the time of his job transfer prohibited the department from reducing his wages when his job was changed.

Myers was denied relief at both the first and second steps of the administrative remedy procedure. He then requested judicial review. Oral arguments were heard at hearings on October 9, 2012, and on April 18, 2013, following which the Commissioner issued a detailed report on September 12, 2013, and recommended that Myers' relief be denied and that the agency decision be affirmed.

Myers traversed the Commissioner's report. After a *de novo* review, the trial court adopted the reasons given in the Commissioner's report, affirmed the agency's decision, and dismissed Myers' action with prejudice at his cost, by judgment dated October 10, 2013. Myers appealed.

APPEAL

On appeal, Myers reiterates the same arguments regarding the alleged impropriety of the department's reducing his incentive pay when his job was changed. Additionally, he claims that the decision rendered by the Commissioner in this case failed to address the issues raised by him and, instead, denied the relief sought based on a prior decision by another Commissioner on November 8, 2011, in an entirely different matter, concerning another inmate who raised similar issues. Myers alleges the Commissioner in this case simply "cut and pasted" the reasons given by the other Commissioner in the previous case, and did not even consider the evidence or arguments presented by him.

Moreover, he complains that the trial court in this matter did not, as stated, conduct a *de novo* review, but, instead, merely affirmed without reviewing the record. After this court's thorough review of the record before us, including the Commissioner's report in this matter, as well as the alleged "cut and pasted" report in the separate matter, we find no merit in Myers' egregious allegations.

Our review reveals a Commissioner's report that is very detailed in the facts presented, the applicable law (i.e., including the departmental regulation applicable based on the particular dates relevant to the issues presented), and the analysis applied, in reaching what we find to be a correct conclusion. While we agree that the prior Commissioner's report and recommendation in another inmate's matter is similar, those similarities are grounded in the fact that the same arguments regarding the applications of the same departmental regulations concerning incentive pay were involved. However, it is abundantly clear by a full reading of both reports that each report was based on the particular facts presented in each matter and a correct application of the law applicable to those facts and circumstances. Therefore, we expressly reject Myers' allegations and arguments in this regard.

As to the merits of Myers' grievance, we find the Commissioner's report thoroughly and correctly addresses all the issues raised and supports the conclusion that his grievance has no merit. There is nothing in the record to support the baseless claim that the trial court did not, as stated, conduct a *de novo* review of the record prior to adopting the Commissioner's report as its reasons for affirming the decision of the agency.

CONCLUSION

Accordingly, as did the trial court, we also adopt the Commissioner's well reasoned and thorough report, as our reasons, for affirming the agency's decision and for affirming the trial court's judgment, denying relief, and dismissing Myers' action with prejudice. Costs of this appeal are assessed to Kerry Myers.

This memorandum opinion is issued in compliance with URCA Rule 2-16.1.B.

AFFIRMED.