

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 CA 0774

SHAMEKA CHATMAN

VERSUS

WJW
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS,
ELAYN HUNT CORRECTIONAL CENTER

TMT
DMC
Judgment Rendered: DEC 23 2014

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On Appeal from the
State Civil Service Commission
State of Louisiana
Docket No. S-17831

David Duplantier, Chairman; John McLure, Vice-Chairman; Ronald M. Carrere,
C. Pete Fremin, G. Lee Griffin, D. Scott Hughes and Sidney Tobias

Shannon S. Templet, Director, Department of State Civil Service

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BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

HIGGINBOTHAM, J.

This is an appeal from a decision of the Civil Service Commission of the State of Louisiana. Shameka Chatman, a former corrections sergeant employed by the Department of Public Safety and Corrections at Elayn Hunt Correctional Center in St. Gabriel, Louisiana, challenges the dismissal of her appeal from her termination of employment. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Ms. Chatman, while employed by the DPSC, received a letter dated October, 28, 2013, notifying her that she was being dismissed from her position. Ms. Chatman received this dismissal letter on October 29, 2013. On December 2, 2013, the Civil Service Commission received Ms. Chatman's appeal of her termination. The post mark on the appeal was illegible. Subsequently, the DPSC filed a motion for summary disposition of the appeal contending that Ms. Chatman's appeal was untimely because it did not comply with Civil Service Rule 13.12, which required that the appeal be filed within thirty calendar days after Ms. Chatman received notice of her dismissal. The matter went before the Civil Service Referee on February 20, 2014, after which the Referee summarily dismissed the appeal as untimely.

Ms. Chatman filed an application for review of the Referee's decision with the Civil Service Commission. Her application was denied by the Commission on April 2, 2014. It is from this denial that Ms. Chatman appeals. In her appeal, Ms. Chatman asserts that the Referee erred in including the thirtieth day for filing her appeal when that day and the three subsequent days were legal holidays.¹ Further, Ms. Chatman contends that the Referee's interpretation of Civil Service Rule 13.12

¹ The last day for Ms. Chatman to appeal fell on November 28, 2013, which was Thanksgiving day, a legal holiday. The next day, November 29, 2013 was declared a legal holiday by the Governor, and Saturday and Sunday, November 30 and December 1, 2013 were legal holidays under La. R.S. 1:55.

conflicts with La. Const. art. X §12 and violates her rights to procedural due process.

LAW AND ANALYSIS

Louisiana Constitution art. X, §10 authorizes the State Civil Service Commission to adopt and enforce rules for the orderly administration of the Civil Service Act that protects the tenure of classified employees. It was under this constitutional authority that the Commission adopted Rule 13.12. The Commission is a quasi-judicial body. When the Commission's rules are reasonable, and do not violate basic constitutional rights, they must be recognized and enforced by the courts. See **Heinberg v. Department of Employment Security**, 256 So.2d 747, 381 (La. App. 1 Cir. 1971), writ ref., 260 La. 1135, 258 So.2d 381 (1972). Regarding the time period within which an appeal to the Commission must be made, Civil Service Rule 13.12 provides, in pertinent part, as follows:

(a) No appeal shall be effective unless a written notice complying with the requirements of Rule 13.11 is either (i) **received in the office of the Director of the Department of State Civil Service at Baton Rouge, Louisiana**, or (ii) is addressed to the Director of the Department of State Civil Service at Baton Rouge, Louisiana, with proper postage affixed, and is dated by the United States Post Office.

Within thirty (30) calendar days after the date on which appellant received written notice of the action on which the appeal is based when written notice before or after the action is required by these Rules;

* * *

(b) **Legal holidays and days on which the office of the Department of State Civil Service is closed shall not serve to extend the delay period specified in Sub-section (a) hereof.**

* * *

(e) Proof of the timeliness of mailing a request for appeal shall be shown only by a legible official United States postmark or by official receipt or certificate from the United State Postal Service made at the time of mailing which indicates the date thereof. **In the event that the postmark is absent or illegible, the date that the request is**

received in the Director's office shall determine whether the appeal was timely filed. [Emphasis added.]

First, we address Ms. Chatman's contention that Rule 13.12 conflicts with La. Const. art. X §12. Rule 13.12 unambiguously states that legal holidays will not serve to extend the thirty-day delay period, however, Ms. Chatman contends that Rule 13.12 conflicts with La. Const. art. X §12.

In favor of her position, she cites **Guillory v. Department of Transportation and Development**, 450 So.2d 1305 (La. 1984). In **Guillory**, the supreme court held that La. Const. art. X §12, requiring that an application for judicial review of a decision of the Civil Service Commission be filed within thirty calendar days after its decision became final, set forth a period of time prescribed by law and meant that, when the final day for filing an application for appeal in a case fell on a legal holiday, the applicant had until end of next business day to file his application. **Guillory**, 450 So.2d at 1308. However, in **Guillory**, the issue was the delay for appealing a decision of the Civil Service Commission to the court of appeal, which is governed by La. Const. art. X §12, rather than the delay provided for in Civil Service Rule 13.12 for filing an initial appeal with the Commission. The provision in La. Const. art. X §12, provides that an appeal shall be filed "within thirty calendar days after its decision becomes final." Unlike Civil Service Rule 13.12, there is no clear provision in La. Const. art. X §12 stating that legal holidays would not serve to extend the deadline. Louisiana Constitution art. X §12 addresses the authority of the Civil Service Referee, the delay for appealing a decision of the Referee to the Civil Service Commission, and the delay for appealing the decision of the Commission to the court of appeal. The article does not address the issue before us, the delay for an applicant to file his initial complaint to the Commission, and no provision of the article conflicts with Rule 13.12.

Further, in a previous decision, this court acknowledged that the Commission had the authority to enact a clarifying provision to Rule 13.12. See Perkins v. Director of Personnel, 197 So.2d 116, 118, (La. App. 1 Cir. 1967), In **Perkins**, which was decided before subsection (b) regarding legal holidays was added to Civil Service Rule 13.12, this court determined, in the absence of any clarifying provisions to the contrary, if the last day to file with the Civil Service Commission fell on a legal holiday that the notice for appeal could be filed the next day. However, in that case, this court noted that a clarifying provision regarding the legal holidays is within the Civil Service Commission's authority to enact. **Perkins**, 197 So.2d at 118. Subsequent to that case, that is exactly what the Civil Service Commission did by enacting subsection (b). Therefore, the Commission was within its authority in enacting Rule 13.12, including subsection (b), and nothing in the rule conflicts with La. Const. art. X §12

Secondly, we address Ms. Chatman's contention that the Referee's interpretation of Rule 13.12 violates procedural due process. Both the United States Constitution and the Louisiana Constitution provide that an individual cannot be deprived of property without due process of law. U.S. Const. amend. 14; La. Const. art. I, § 2. It is well established that a permanent, classified civil service employee has a property interest in retaining his job. Thus, such an employee cannot be terminated without due process of law. **Brown v. Housing Authority of New Orleans**, 590 So.2d 1258, 1260 (La. App. 1st Cir. 1991).

The fundamental requirement of procedural due process is notice and the opportunity to be heard at a meaningful time and in a meaningful manner. **Casse v. Sumrall**, 547 So.2d 1381, 1385 (La. App. 1st Cir.), writ denied, 551 So.2d 1322 (La. 1989). Ms. Chatman does not claim that she has been deprived of either of these requirements of due process. Instead she contends that the Referee's interpretation of Rule 13.12 violates procedural due process because it shortens the

time available to appeal when an applicant's thirtieth day is on a legal holiday. We disagree.

Civil Service Rule 13.12 provides for both notice and an opportunity to be heard in a meaningful time and manner. Although due process must be afforded, no one has a vested right in any given mode of procedure. **Grimmer v. Beaud**, 537 So.2d 299, 302 (La. App. 1st Cir.1988), writ denied, 538 So.2d 613 (La. 1989). The procedural aspects of an appeal are primarily a legislative function, or in this case, an administrative rule-making function. So long as the administratively established procedure provides reasonable time and opportunity for taking and perfecting an appeal, the constitutional requirement of due process of law is satisfied. See Darouse v. Mamon, 201 So.2d 362, 365 (La. App. 1st Cir. 1967).

Under the Commission's rules, Ms. Chatman was clearly entitled to her day in court to challenge her dismissal. She was given due notice of her dismissal and could have timely appealed therefrom. Had she appealed timely, she would have been entitled to an opportunity to produce whatever proof she had available to discharge the burden of establishing that her dismissal was undeserved. Having failed to avail herself of an adequate remedy, Ms. Chatman now has no ground for complaint.

If a Civil Service Rule is reasonable and not violative of basic constitutional rights, it must be recognized and enforced by the courts. **Rocque v. Department of Health and Human Resources, Office of Secretary**, 505 So.2d 726, 728 (La. 1987) (on rehearing). Having determined that Civil Service Rule 13.12 does not violate the constitutional provisions raised by Ms. Chatman; we must apply the rule as written. Ms. Chatman received notice of her dismissal on October 29, 2013, and the Commission did not receive Ms. Chatman's request for appeal until December 2, 2013, which was more than thirty days after she received her

dismissal letter.² Civil Service Rule 13.12 unambiguously provides that legal holidays will not extend the thirty-day period for appeal. Based on this rule, the Referee did not err in not extending Ms. Chatman's thirty days because the thirtieth day fell on a legal holiday.

CONCLUSION

For the foregoing reasons, the judgment of the Civil Service Commission summarily dismissing the petition of appeal filed by Shameka Chatman is affirmed. Costs are assessed to Shameka Chatman.

AFFIRMED.

² It is undisputed that the postmark date on Ms. Chatman's appeal request was illegible. Therefore, the date Ms. Chatman's request for appeal was received is the relevant date for determining the timeliness of her request. See Civil Service Rule 13.12(e).