

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2014 CA 0702

EDDIE WALLER

VERSUS

ALEXANDRIA HOUSING AUTHORITY

JMM  
EP

Judgment Rendered: JAN 08 2015

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Appealed from the

State Civil Service Commission

Docket Number S-17757

Honorable David Duplantier, Chairman, John McClure, Vice-Chairman, D. Scott Hughes, G. Lee Griffin, C. Pete Fremin, Ronald M. Carrerre, and Sidney Tobias, Members

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Malcolm X. Larvadain  
Alexandria, Louisiana

Attorney for Plaintiff/Appellant,  
Eddie Waller

Lewis O. Lauve, Jr.  
Alexandria, Louisiana  
Attorney for Defendant – Appellee

Attorney for Defendant/Appellee,  
Alexandria Housing Authority

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**BEFORE: McDONALD, CRAIN, AND HOLDRIDGE,<sup>1</sup> JJ.**

<sup>1</sup> Holdridge, J., serving as Supernumerary Judge *pro tempore* of the Court of Appeal, First Circuit, by special appointment of the Louisiana Supreme Court.

JJ - Crain, J. concurs

**HOLDRIDGE, J.**

This appeal challenges a decision of the State Civil Service Commission. For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

Eddie Waller was hired by the Alexandria Housing Authority (AHA) in March, 1992 as a repairman. He was twice promoted and in 2004 became a Facility Maintenance Manager 2. In correspondence dated June 14, 2013, Waller was informed that he would be laid off from his position. Waller appealed to the Civil Service Commission contending that his layoff violates Chapter 17 of the Civil Service Rules.<sup>2</sup> AHA requested a summary disposition of Waller's appeal. In response to that request, the Civil Service Commission Referee agreed that Waller did not sufficiently detail how the AHA violated Chapter 17, but gave Waller fifteen days to amend the appeal to comply with the Civil Service Rules. Waller amended his appeal, but it was summarily dismissed by the Civil Service Referee. On February 5, 2014, the Civil Service Commission denied Waller's application for review and the decision of the referee became the final decision of the Commission. Waller appeals that decision, contending that the Civil Service Commission erred in summarily dismissing his appeal prior to a hearing. For the following reasons, we affirm the decision of the Civil Service Commission.

**LAW AND ANALYSIS**

Decisions of the Commission are subject to the same standard of review as decisions of a district court. Factual determinations should not be reversed or modified unless clearly wrong or manifestly erroneous. If the issue before the court, however, is a procedural one involving a determination of the sufficiency of an allegation rather than a factual finding, the deferential standard of review afforded to factual findings is inapplicable to a review of the Commission's

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<sup>2</sup> Chapter 17 of the Civil Service Commission rules provides the requirements for layoffs involving state classified employees in all state agencies and departments.

decision for legal error. See **Ellis v. Alexandria Housing Authority**, 2014-0592, 2014 WL 5800554, at \*1 (La. App. 1 Cir. 11/7/14) (unpublished).

The Commission's jurisdiction to hear appeals is limited to two categories of claims: discrimination claims under Article X, § 8(B) of the Louisiana Constitution, and removal or disciplinary claims under Article X, § 12(A). **Louisiana Dept. of Agriculture and Forestry v. Sumrall**, 98-1587 (La. 3/2/99), 728 So.2d 1254, 1260. Only four categories of discrimination are prohibited: those based on political or religious beliefs, sex or race. *Id.* at 1258. Accordingly, Civil Service Rule 13.10 provides that 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.

Rule 13.11 mandates that a notice of appeal must contain a clear and concise statement of the actions complained against and a clear and concise statement of the basis of the appeal. Specific facts supporting a conclusion of discrimination or a rule violation must be alleged in sufficient detail to enable the agency to prepare a defense; a conclusion is not sufficient.

Rule 13.14 authorizes a Referee to summarily dismiss an appeal if the appellant has no legal right to appeal. Whether an employee has the right to appeal a decision to the Commission is analogous to the question of whether a plaintiff has stated a cause of action. **Ellis v. Alexandria Housing Authority**, 2014 WL 5800554, at \*1. When a petition states a cause of action as to any ground or portion of the demand, an exception raising the objection of no cause of action must be overruled. Similarly, if the classified employee has alleged grounds upon

which appeals are allowed, he has the right to appeal. The correctness of conclusions of law is not conceded for the purposes of a ruling on an exception raising the objection of no cause of action. *Id.*

Waller argues here that his amended appeal to the Commission presented a sufficient factual basis to show his layoff violated Chapter 17 of the Civil Service Rules, which addresses layoff procedures. Thus, Waller contends that the Commission erred in summarily dismissing his appeal. In Waller's amended appeal, he alleged that he was appealing because of the contradictory reasons given by AHA for his layoff. Specifically, the initial correspondence sent by AHA's executive director notified Waller of pending layoff action "due to lack of work at the agency; the elimination of positions for cost effectiveness under the Asset Management Model." AHA subsequently notified Waller that he was eligible for a relocation offer as his position was being abolished or vacated "due to lack of funding." Waller contended in his appeal that "the conflicting positions questions the true reason for the layoff." He claimed his layoff was not due to either lack of work or funding; rather, he claims he was laid off "because he questioned the management and leadership practices" of AHA's executive director. Waller asserted "a layoff was the most efficient way to end" his employment as there was no legal cause for his termination. Also, Waller stated he believed the layoff was retaliatory because he successfully appealed a prior disciplinary action imposed against him by AHA.

First, the Civil Service Commission Referee noted that retaliation is a form of non-merit factor discrimination. The Referee stated that employees appealing a layoff do not have a right of appeal to the Commission for retaliation alleged to have occurred in the layoff.

Further, the Referee determined that Waller "failed to allege sufficient specific facts supporting a conclusion that he has been adversely affected by the

violation of the Civil Service Rules or Article, or that he has been discriminated against because of his political or religious beliefs, sex, or race.” The Referee concluded therefore that Waller failed to allege a right of appeal to the Commission.

After thorough review of the record, we agree that the allegations, as pleaded, are conclusory and do not set forth facts sufficient to establish Waller’s right to appeal. Waller’s amended appeal does not allege any specific violations of Chapter 17 of the Civil Service Rules. Further, as retaliation is not one of the four prohibited forms of discrimination, the Referee correctly found that Waller had no right of appeal to the Commission on that issue. Accordingly, we affirm the judgment of the Civil Service Commission.

#### **CONCLUSION**

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

**MOTION FOR LEAVE OF COURT TO ATTACH EXHIBITS TO BRIEF DENIED; JUDGMENT AFFIRMED.**