



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION  
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DIRECTOR OF PERSONNEL

April 17, 2024

Mr. Eric Hessler  
PANO 320 N. Carrollton Avenue #202  
New Orleans, LA 70119

Re: **Bob Finkelstein VS.  
Department of Police  
Docket Number: 9512**

Dear Mr. Hessler:

Attached is the action of the Civil Service Commission at the Commission's meeting on Friday, 4/12/2024.

Yours very truly,

A handwritten signature in blue ink that reads "Stacie Joseph".

Stacie Joseph  
Management Services Division

cc: Anne E. Kirkpatrick  
James M. Roquemore  
Bob Finkelstein

file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**BOB FINKELSTEIN,  
Appellant**

**Docket No. 9512**

**v.**

**DEPARTMENT OF POLICE,  
Appointing Authority**

**ORDER**

Mr. Finkelstein, a probationary employee, has filed an appeal based on age discrimination and sex discrimination. The Department of Police bases its motion for summary disposition on the timeliness of the appeal as to acts of discrimination occurring more than 30 days before the appeal was filed and the Commission's lack of jurisdiction over the age discrimination appeal. The Commission heard oral argument on the Department of Police's Motion for Summary Disposition at its March 8, 2024, regular meeting at the request of the parties. Both parties were represented by counsel. During oral argument, as to the Commission's jurisdiction over the age discrimination appeal, counsel for Mr. Finkelstein argued that the Commission's rules authorize an appeal based on age discrimination, and the Civil Service Department's discrimination form also references age discrimination.

The Commission continued the hearing to Commission's April 12, 2024, meeting. The Commission also instructed the parties to submit briefs on the issue of Mr. Finkelstein's detrimental reliance on the Civil Service Department's appeal forms and website about the Commission's jurisdiction over an appeal based on age discrimination. After considering the legal memoranda submitted by the parties, the Commission grants the motion for summary disposition as to the age discrimination appeal but denies the motion as to the sex discrimination appeal.

The current rules prohibiting discrimination, Civil Service Rule II, sections 4.5 and 4.6, include age discrimination. The Civil Service Department's forms also include age discrimination as a basis for an appeal under Rule II, section 4.5 or 4.6. The Louisiana Supreme Court has held that the State Civil Service Commission may not extend its jurisdiction beyond the bases for discrimination in the Louisiana Constitution. *Louisiana Dep't of Agriculture and Forestry v. Sumrall*, 98-1587 (La. 3/2/99), 728 So. 2d 1254. These bases are political beliefs, religious beliefs, sex, and race. La. Const., art. X, § 8(B). The Commission has failed to amend its rules to reflect court decisions limiting its jurisdiction, even though the Commission has dismissed age and disability discrimination appeals in whole or in part based on a lack of jurisdiction. *See Tennessee v. Dep't of Police*, 2009-1461 (La. App. 4 Cir. 2/24/10), 33 So. 3d 354, 357 (affirming Commission's dismissal of disability discrimination appeal based on lack of jurisdiction and relying on *Sumrall*). *But see Pike v. Off. of Alcohol & Tobacco Control of the Louisiana Dep't of Revenue*, 157 F. Supp. 3d 523, 537 (M.D. La. 2015) and *Johnson v. Louisiana State University Health Science Center*, 09-0691, 2011 WL 3117862 (W.D. La. July 26, 2011) (both making *Erie* guess that Louisiana Supreme Court would hold that State Civil Service Commission has jurisdiction over disability discrimination claim in context of termination of employment).

The Commission notes that Mr. Finkelstein may timely pursue an age discrimination claim in another forum. Therefore, Mr. Finkelstein's reliance on Rule II, section 4.6 and the Department's discrimination appeal form have not prejudiced his ability to assert this claim.

The Commission denies the Department of Police's motion for summary disposition as to the sex discrimination appeal. Because Mr. Finkelstein filed his appeal within 30 days of his termination and he alleges his termination was based on his sex, the sex discrimination appeal is timely under Rule II, section 4.7. Evidence of acts occurring before September 4, 2023, may be

admissible as background evidence in support of his allegation that the termination was based on sex. *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002); *Everett v. Cent. Mississippi, Inc. Head Start Program*, 444 F. App'x 38 (5th Cir. 2011); *Rodriguez v. Schindler Elevator Corp.*, No. CIV.A. 11-1218, 2011 WL 6934697, at \*2 (E.D. La. Dec. 30, 2011).

In addition, Mr. Finkelstein has met the requirements of Civil Service Rule II, section 4.7, governing the factual information an appellant must provide when completing the appeal form. Section 4.7 requires an appellant to provide the type of discrimination, the identity of the persons committing the discriminatory act, the date of the discriminatory act, and the location and manner of the discriminatory act. Mr. Finkelstein alleges in his appeal that his termination was based on his sex, and he offered specific facts in support of this allegation in the single-spaced two page narrative attached to his appeal form. For example, he alleges that three female police investigative specialists were assigned to the domestic violence unit, and that these women had an office, a desk, and a telephone. In addition, Mr. Finkelstein alleges NOPD gave these women investigative work, while Mr. Finkelstein claims he was relegated to making copies, scanning documents, and shredding documents. Mr. Finkelstein also identifies his immediate supervisor by name as one of the persons committing one or more of the discriminatory acts, and Mr. Finkelstein has provided the dates of the alleged discriminatory acts.

Therefore, the Commission grants the motion for summary disposition as to Mr. Finkelstein's age discrimination appeal but denies the motion for summary disposition as to Mr. Finkelstein's sex discrimination appeal.

J H Korn

J H Korn (Apr 17, 2024 12:37 CDT)

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JOHN KORN, VICE-CHAIRPERSON

Mark C. Surprenant

Mark C. Surprenant (Apr 16, 2024 11:24 CDT)

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MARK SURPRENANT, COMMISSIONER



Andrew Monteverde (Apr 16, 2024 21:06 CDT)

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ANDREW MONTEVERDE, COMMISSIONER