

SHONTELL JULIAN

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

OFFICE OF INSPECTOR GENERAL DOCKET NO. 7709

CONSOLIDATED WITH

TERRENCE WIMBERLY

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

OFFICE OF INSPECTOR GENERAL DOCKET NO. 7710

Introduction

The Appellants are Shontell Julian and Terrence Wimberly. Ms. Julian was previously employed as a Criminal Investigator I, and Mr. Wimberly as a Criminal Investigator II, both with the Office of Inspector General (Appointing Authority). The Appointing Authority terminated the Appellants during their respective probationary periods. Because the Appellants were probationary employees at the time of their terminations, they were without appeal rights under Rule II, Section 4.1 of the Rules of the Civil Service Commission of the City of New Orleans. However, the Appellants have alleged that they have appeal rights under Rule II, Section 4.5 – the provision of the Civil Service Rules that prohibits employment discrimination. Rule II, Section 4.5 of the Rules of the Civil Service Commission of New Orleans states:

Employees in the classified service who allege that they have been discriminated against because of their political or religious beliefs, sex, race, age, disability or sexual orientation shall have the right to appeal to the Commission.

The Appellants failed to complete their probationary period for different reasons. Ms. Julian was terminated for alleged misconduct while Mr. Wimberly was terminated because his performance did not justify giving him permanent status. Both Appellants

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contend that they were terminated because of racial discrimination. As a consequence, they have a limited right of appeal and their appeals have been consolidated because their claims of discrimination are based upon the same proof.

The Appellants have the burden of proof to establish that the Appointing Authority terminated their employment because of racial discrimination. If the Appellants can establish a prima facie case, the Appointing Authority is required to rebut the Appellant's prima facie case, and provide a non-discriminatory justification for the adverse employment action. Rule II, Sec. 4.8 of the Rules of the Civil Service Commission of the City of New Orleans.

The consolidated matters were assigned by the Civil Service Commission to a Hearing Examiner pursuant to Article X, Section 12 of the Constitution of the State of Louisiana, 1974. The hearing was held on November 11, 2010. The testimony presented at the hearing was transcribed by a court reporter. The three undersigned members of the Civil Service Commission have reviewed a copy of the transcript and all documentary evidence.

At the conclusion of the Appellants' case in chief, the Appointing Authority moved for Summary Disposition contending that the Appellants' failed to establish a prima facie case of race discrimination. The Hearing Examiner after determining that the Appointing Authority's motion had merit adjourned the hearing for the Commission to review the record and come to a decision whether to grant the Appointing Authority's motion, or remand the matter for further testimony.

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Appellants' Evidence of Racial Discrimination

The Appellants were both previously employed by the now defunct Office of Municipal Investigations ("OMI"), and hired by the Appointing Authority at the same time by the current Inspector General's predecessor. Mr. Wimberly testified that he was a productive, experienced investigator who never received any indication prior to his termination that his performance was inadequate, or would justify not awarding him permanent status. He testified that he was not offered the same opportunities for advancement as other white employees. Mr. Wimberly complained that white employees had better seating assignments, received higher profile cases, were not required to answer the telephone when the receptionist was away from her desk, and not as closely monitored. Mr. Wimberly also complained that he was required to drive Ed Quatrevaux, the Inspector General, while white employees did not. Finally, Mr. Wimberly testified he was treated differently because he was previously employed by OMI, which has nothing to do with race.

On cross-examination, Mr. Wimberly acknowledged that eighty percent of the practices that he considered discriminatory occurred prior to Mr. Quatrevaux's tenure. When questioned regarding Mr. Quatrevaux's discriminatory practices, Mr. Wimberly stated that Carla Gendusa was transferred to the Inspections Division, that Greg Fahrenholt was promoted, and that he had to drive Mr. Quatrevaux. Mr. Wimberly also admitted that he and Ms. Julian were closer to the telephones, and that other white employees had similar seating arrangements. He provided no direct evidence of racial discrimination, and basically conceded that all of his contentions were based upon pure speculation.

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The parties stipulated that Ms. Julian's evidence of racial discrimination was the same as Mr. Wimberly's. Ms. Julian testified that she was told that she was terminated as the consequence of an exchange with Mr. Quatrevaux regarding an assignment. Mr. Quatrevaux directed Ms. Julian to drive another employee to a meeting. Ms. Julian complained that she was receiving different directions from Mr. Quatrevaux and her immediate supervisor. Ms. Julian also testified that she was told that Mr. Quatrevaux was upset that she pointed her finger in his face during their discussion. Ms. Julian stated that it was not her intention to act in an insubordinate manner, and that Mr. Quatrevaux was not justified in terminating her. She also speculated that race was a motivating factor even though the Appointing Authority continues to employ black employees in all areas of the Office at various levels of responsibility.

Conclusion

Civil Service employees who have reached permanent status cannot be terminated without a lawful cause. *Barquet v. Department of Welfare*, 620 So. 2d 501, 504 (La. App. 4 Cir. 1993); Louisiana Constitution Article X, Sec. 8. However, there is no such guarantee for probationary employees. Nevertheless, all employees have a right not to be subject to discipline based on discrimination. *Goins v. Department of Police*, 570 So. 2d 93, 94 (La. App. 4 Cir. 1990). As noted in *Scott v. New Orleans Dep't of Fin.*, 804 So.2d 836, 838 (La. App. 4th Cir. 2001), permanent status is an extraordinary employee benefit. A probationary period provides the Appointing Authority with an opportunity to train and observe a new employee without having to justify in a formal proceeding its decision not to retain that individual.

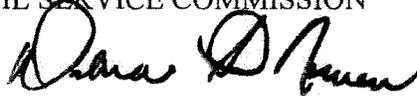
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The Appellants did not provide evidence sufficient to meet the burden of proving that the Appointing Authority's decision to terminate their employment was motivated by racial discrimination. Complaints regarding seating arrangements, answering the telephones and driving assignments are at best subjective and speculative, and there is no evidence that other employees were treated more favorably because of their race. Ultimately, there is insufficient evidence to establish a prima facie case of race discrimination that would justify requiring the Appointing Authority to go forward with its case.

After considering all of the evidence, the Appointing Authority's Motions for Summary Disposition are GRANTED, and consequently, Appellants' appeals are DISMISSED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 10TH DAY OF MAY,
2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



DEBRA S. NEVEU, COMMISSIONER

CONCUR:



AMY L. GLOVINSKY, COMMISSIONER



JOSEPH S. CLARK, COMMISSIONER