



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON
RONALD P. McCLAIN, VICE-
CHAIRPERSON
TANIA TETLOW
STEPHEN CAPUTO
CLIFTON J. MOORE, JR.

LATOYA CANTRELL
MAYOR

Friday, October 5, 2018

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Mr. Sheldon Howard

Re: **Sheldon Howard VS.
Sewerage & Water Board
Docket Number: 8747**

Dear Mr. Howard:

Attached is the decision of the City Civil Service Commission in the matter of your appeal.

This is to notify you that, in accordance with the rules of the Court of Appeal, Fourth Circuit, State of Louisiana, the decision for the above captioned matter is this date - 10/5/2018 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal must conform to the deadlines established by the Commission's Rules and Article X, Sec.12(B) of the Louisiana Constitution. Further, any such appeal shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,

A handwritten signature in blue ink that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Ghassan Korban
Darryl Harrison
Jay Ginsberg
file

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

SHELDON HOWARD vs. SEWERAGE AND WATER BOARD OF NEW ORLEANS	DOCKET No.: 8747
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I. INTRODUCTION

Appellant, Sheldon Howard, brings the instant appeal pursuant to Commission’s Rule II, §4.5. The Appointing Authority, the Sewerage and Water Board of New Orleans, (hereinafter the “S&WB” or “Appointing Authority”) contends that the instant appeal is procedurally deficient since Appellant’s appeal fall outside of the exclusive grounds upon which a classified employee may bring a discrimination claim under Article X, Section 8(B) of the Louisiana State Constitution.

On Tuesday, February 20, 2018, a referee appointed by the Commission presided over an appeal hearing during which both Parties had an opportunity to call witnesses and present evidence. The undersigned Commissioners have reviewed the transcript from this hearing, as well as the referee’s report. Based upon our review, we hereby DENY the appeal and render the following judgment.

II. PROCEDURAL BACKGROUND

A. Alleged Discrimination

Employees in the classified service who allege discrimination based on political or religious beliefs, sex or race may bring an appeal before the Commission. (C.S. Rule IV, § 4.5). Any employee availing him or herself of this rule must specifically identify the following information:

- (a) The type of alleged discrimination.
- (b) The name(s) of the person(s) alleged to have committed the discriminatory act(s).
- (c) The date(s) of such act(s).
- (d) Where and in what manner such act(s) occurred.

(C.S. Rule IV, § 4.7).

In his appeal, Appellant alleged that the S&WB discriminated against him because of an actual or perceived disability. (Tr. 6:18-8:1). Specifically, Appellant alleged that the S&WB terminated his employment because of a mental disability. *Id.* at 8:7-18.

III. ANALYSIS

A. Constitutional Limitation on Commission's Analysis

The Louisiana Constitution allows any employee in the classified service to file an appeal challenging an adverse employment action based upon discrimination. La. Con. art X, § 8(B). The protected categories are religious beliefs, political beliefs, sex and race. *Id.* To the categories specifically identified by the Louisiana Constitution, the Commission's Rules add "age, disability or sexual orientation." Rule II, § 4.5. The Louisiana Supreme Court has found that the Commission impermissibly expanded the scope of its jurisdiction by adding protected classes not

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specifically mentioned in the Louisiana Constitution. *Louisiana Dep't of Agric. & Forestry v. Sumrall*, 98-1587 (La. 3/2/99, 12), 728 So.2d 1254, 1262-63. The Commission recently recognized this restriction in the matter of *Patrick Lindsley v. NOPD*, C.S. No. 8406.

Since "disability" is not among the protected categories identified by Article X, Section 8(B) of the Louisiana Constitution, the Commission does not have subject matter jurisdiction over his disability discrimination appeal. Appellant may have recourse in another forum, but he may not pursue an appeal based upon discrimination before the Commission.

IV. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby DENIES the Appellant's appeal.

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SIGNATURES APPEAR ON THE FOLLOWING PAGE.

Judgment rendered this 5th day of October, 2018.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER



CLIFTON J. MOORE, Jr., COMMISSIONER

10/15/18

DATE

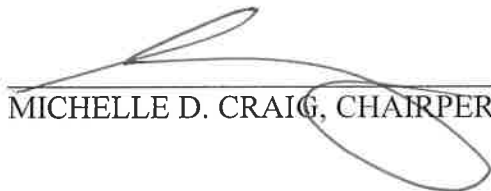
CONCUR



RON McCLAIN, VICE-CHAIRPERSON

9/13/18

DATE



MICHELLE D. CRAIG, CHAIRPERSON

10-2/2018

DATE