

Decision

Filed: April 5, 2013

State of Louisiana
Civil Service Commission

Docket No. S-17504

Africa Arceneaux

Versus

Department of Children and Family Services

Rule(s): 12.6(a)1; 13.19(s)2

Topic(s): Removal, exhaustion of sick leave; disparate treatment; retaliation

Appearances: Africa Arceneaux, self-represented
Gail Holland, representing DPSC

Statement of the Appeal

Africa Arceneaux was employed by the Department of Children and Family Services (DCFS) as an Administrative Coordinator 3, with permanent status.

By letter dated October 9, 2012, DCFS notified Ms. Arceneaux that effective on October 17, 2012, she was being non-disciplinarily removed from her position under the provisions of Civil Service Rule (CSR) 12.6(a)1. DCFS alleges that on September 26, 2012, (the date that DCFS mailed the pre-deprivation notice to Ms. Arceneaux) she had fewer than eight hours of sick leave and was unable to perform the essential functions of her job due to an illness or medical disability.

On October 16, 2012, Ms. Arceneaux filed an appeal contesting her non-disciplinary removal. In her appeal, she alleges that she was injured on the job, DCFS discriminated against her based on her disability¹, and that numerous agency officials retaliated against her for a previous lawsuit she had filed against DCFS and complaints she had made regarding her superiors.

¹ The Commission lacks jurisdiction over disability discrimination claims under CSR 13.10 and *Louisiana Department of Agriculture and Forestry v. Sumrall*, 98-1587 (La. 3/2/99); 728 So.2d 1254, so this claim will not be discussed further.

On October 18, 2012, I issued a notice to Ms. Arceneaux questioning whether she is contesting the elements of a CSR 12.6(a)1 removal. This notice informed her that her failure to respond would result in a presumption that she is not contesting the elements of a CSR 12.6(a)1 removal, and gave her fifteen (15) calendar days to amend her appeal and/or show cause by written argument why her appeal should not be summarily dismissed.

Ms. Arceneaux responded to the notice on October 25, 2012. In her response, she alleges that she is the victim of disparate treatment, in that another employee, Veda Harness, was not removed despite having a sick leave balance of less than 8 hours. Ms. Arceneaux further alleges that she could have returned to work on September 3, 2012, and that her use of sick leave was caused by her medical treatment being denied or delayed. After reviewing Ms. Arceneaux's response, I recalled the October 18, 2012 notice.

I held a public hearing on February 13, 2013, in Lafayette, Louisiana. Based upon the evidence presented and pursuant to the provisions of Article X, § 12(A) of the Louisiana Constitution of 1974, as amended, I make the following findings and reach the following conclusions.

Findings of Fact

1. Africa Arceneaux was employed by DCFS as an Administrative Coordinator 3, with permanent status. She was assigned to the Child Welfare program and her work hours were 7:30 a.m. until 4:00 p.m., Monday through Friday. Ms. Arceneaux's supervisor was Andrea Bergeron, Administrative Supervisor 2.
2. In August of 2011, Ms. Arceneaux applied for and was granted intermittent leave under the Family and Medical Leave Act (FMLA) due to a family member's medical condition.
3. On February 17, 2012, Ms. Arceneaux sustained an on the job injury. On February 28, 2012, Ms. Arceneaux submitted a doctor's certificate to DCFS that indicated she was unable to work pending medical treatment. Ms. Arceneaux then applied for and was granted FMLA leave due to her injury.
4. Ms. Arceneaux exhausted her FMLA leave entitlement in August of 2012.
5. On August 15, 2012, Ms. Arceneaux submitted a doctor's certificate that indicated she would be absent from work until September 3, 2012, due to her injury. Ms. Arceneaux did not return to work on September 3, 2012, or thereafter.
6. On September 5, 2012, Ms. Arceneaux left a telephone message notifying Ms. Bergeron that she still unable to return to work. Ms. Arceneaux did not provide DCFS with any additional doctor's certificates.

7. On September 26, 2012, Ms. Arceneaux was on leave without pay, as she had exhausted her sick leave and had not been released by her doctor to return to work.
8. On September 26, 2012, DCFS mailed Ms. Arceneaux a pre-deprivation notice proposing her removal under Civil Service Rule 12.6(a)1, as she had fewer than eight hours of sick leave and was unable to perform the essential functions of her job due to an illness or medical condition.
9. On October 1, 2012, Ms. Arceneaux responded to the September 26, 2012 pre-deprivation notice. In her response, Ms. Arceneaux states that she had been injured on the job and asks for additional time to complete physical therapy.
10. By letter dated October 9, 2012, Ms. Arceneaux was removed from her position effective October 17, 2012, under the provisions of Civil Service Rule 12.6(a)1.
11. Sometime prior to Ms. Arceneaux's removal, Veda Harness, Social Services Specialist 1, while at work, had requested and been granted leave to take a trip by the Regional Administrator, even though Ms. Harness' leave balances were low. Ms. Harness returned to work after her trip.

Discussion and Conclusions of Law

DCFS removed Ms. Arceneaux under the provisions of Civil Service Rule 12.6(a)1, which states as follows:

12.6 Non-disciplinary Removals.

(a) An employee may be non-disciplinarily removed under the following circumstances:

1. *When, on the date the notice required by Rule 12.7 is mailed, hand delivered, or orally given, the employee is unable to perform the essential functions of his job due to illness or medical disability and has fewer than eight hours of sick leave. An employee removed under this provision shall be paid for all remaining sick leave.*

The grounds listed in Rule 12.6(a)1 constitute legal cause for separation. *Bradford v. Department of Hospitals*, 255 La. 888, 233 So.2d 553 (1970). Likewise, this rule can be used even when the medical disability results from an injury on the job. *Dickson v. Department of Highways*, 234 La. 1082, 102 So.2d 464 (1958) [termination reversed for other reasons].

On September 26, 2012, (the date that DCFS mailed the pre-deprivation notice to Ms. Arceneaux) she had fewer than eight hours of sick leave; in fact, she had exhausted her

sick leave and was on leave without pay. Ms. Arceneaux admits that she was absent from work on September 26, 2012, and that on that day she had not been released to return to work by her doctor.

At the hearing, Ms. Arceneaux contended that DCFS inaccurately calculated her sick leave balance. However, I find this contention without merit, as the only evidence offered by Ms. Arceneaux in support of it was her own self-serving testimony. DCFS has proved that Ms. Arceneaux's removal was proper under CSR 12.6(a)1.

Ms. Arceneaux claims that she is the victim of disparate treatment and retaliation, which are forms of non-merit factor discrimination. Under CSR 13.19(s)2, Ms. Arceneaux has the burden of proof on these claims.

Her disparate treatment claim is based on her allegation that Ms. Harness was not removed despite having a sick leave balance of less than 8 hours. However, the evidence adduced at the hearing only proved that Ms. Harness, while working and having low leave balances, had requested and been granted leave to take a trip, and that she returned to work after her trip was over. I thus conclude that Ms. Arceneaux failed to prove that she is the victim of disparate treatment.

Ms. Arceneaux's retaliation claim is based on her allegation that agency officials retaliated against her for a previous lawsuit she had filed against DCFS and complaints she had made regarding her superiors. However, the evidence was clear that her removal was justified under CSR 12.6(a)1 and the appointing authority testified that retaliation was not a factor in her removal. I thus conclude that Ms. Arceneaux failed to prove that she is the victim of retaliation.

On the date that DCFS mailed the pre-deprivation notice to Ms. Arceneaux, she had fewer than eight hours of sick leave and was unable to perform the essential functions of her job due to illness or medical disability. Based upon the foregoing reasons, I find that DCFS proved Ms. Arceneaux's removal was in accordance with the provisions of CSR 12.6(a)1. Accordingly, this appeal is hereby denied.

Pursuant to CSR 13.27(b) and (c), I hereby order DCFS to pay witness fees and mileage to the subpoenaed witness who is not a state employee, as follows: Connie Wagner - \$58.40.

Roxie F. Goynes
Civil Service Commission Referee