

Retirees Cannot Appeal Discipline

Deiro v. Los Angeles County Civil Service Commission

Court of Appeal of the State of California, 2nd Appellate District

B296926, Filed October 29, 2020

Facts

On May 30, 2012 Deputy Sheriff Martin Deiro was injured on duty. Following surgery, Deiro did not return to work and remained on leave.

On May 1, 2015, Deiro applied to the Los Angeles County Employees Retirement Association (LACERA) for a service-connected disability retirement. The Department did not oppose the application.

On July 17, 2015, the Department served Deiro with a letter of intent to terminate his employment, in connection with conduct the Department alleged brought discredit to the service. After a Skelly meeting, the Department notified Deiro that he was discharged, effective August 12, 2015. Deiro

timely appealed the discharge to the Civil Service Commission, and on September 15, 2015, the Commission referred the matter to a hearing officer for an evidentiary hearing.

On January 6, 2016, the LACERA Board of Retirement granted Deiro's application for a service-connected disability retirement. On August 22, 2016, LACERA issued a notice to Deiro stating that, "[p]er your discussion with LACERA staff, your effective date of retirement is August 13 2015," which was the day after Deiro's discharge.

On March 7, 2017, following a hearing, the hearing officer issued a proposed decision recommending that the discipline be reduced to a 30-day suspension. On April 26, 2017, the Department filed a motion to dismiss the appeal on the ground Deiro had retired, and therefore the Commission lacked jurisdiction over any appeal related to his employment. On August 16, 2017, the Commission agreed and granted the Department's motion to dismiss Deiro's appeal.

Deiro filed a petition for writ of mandate in Superior Court seeking to compel the Commission to complete his administrative appeal. The court denied Deiro's petition and entered judgment in favor of the Department. Deiro appealed to the Court of Appeal.

Discussion

The only issue, in this case, is whether the Commission could decide Deiro's administrative appeal after he retired. The Court held the Commission's dismissal of Diero's appeal was proper because the CSC had no jurisdiction to order reinstatement, or backpay, to a retired person whose "future status as an employee by definition is no longer at issue." The Court noted it did not matter whether the retirement results from the retiree's own decision to retire, or as a result of a disability. In either case, the effect is the same: a retiree is no longer an employee, therefore, the Commission does not have authority to order reinstatement of a non-employee.

Legal Principles

The Commission's jurisdiction comes from the Los Angeles County Charter. Here, the Commission has authority to act as an appellate body in very narrow circumstances, which includes appeals by employees regarding "discharges and reductions." The Court noted that several cases have held an employee who properly appealed his discharge or other discipline, but then resigned, retired, or died, was no longer an employee, and the Commission no longer had jurisdiction to continue to adjudicate his appeal.

In short, the Court held that the Commission has authority to address only matters involving a member of the civil service. A person who has retired is no longer a member of the civil service. The Court went on to state that this is just as true for disability retirees as it is for retirees who choose to retire after years of service.

Disposition

Since the Civil Service Commission's jurisdiction is controlled by the Los Angeles County Charter, this case is specific to Los Angeles County employees. State employees and most other County and City employees, whose retirement is controlled by the California Government Code, are able to retire after receiving a notice of termination and still appeal their discharge. This case makes clear the need for a Charter amendment so Los Angeles County law enforcement can be treated the same as most other government employees in California.

Stay Safe and Healthy!

Robert Rabe is Stone Busailah, LLP's writs and appeals specialist. His 41 years practicing law include 16 years as a Barrister, Supreme Court of England and Wales, practicing in London, England.