

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 0826

MARY B. GARRETT

VERSUS

**LOUISIANA OFFICE OF STUDENT FINANCE AND
ELIZABETH NAVAILHON**

Judgment rendered: February 9, 2007

**On Appeal from a Decision of the State Civil Service Commission
Docket Number 15598**

The Honorable James A. Smith, Chairman;

Burl Cain, Vice-Chairman;

Chatham H. Reed, David Duplantier,

G. Lee Griffin, Rosa B. Jackson

And John McLure

**Anne Soileau, Director
Department of State Civil Service**

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BEFORE: PETTIGREW, DOWNING AND HUGHES, JJ.

DOWNING, J.

This matter arises from a claim of racial discrimination filed by a state employee. The Referee dismissed the employee's claim and the Civil Service Commission upheld the dismissal; from that decision this appeal arises. For the following reasons we affirm.

Mary Brown Garrett (Garrett), a black female, works for the Louisiana Office of Student Financial Assistance (OSFA). Garrett filed an appeal complaining that she was not appointed to a supervisory position because of her race. She specifically alleged that the position went to a white person with no supervisory experience even though Garrett was the most senior and qualified candidate. At the hearing the Referee ruled in favor of OSFA rendering concise findings of fact and conclusions of law as summarized below.

OSFA administers Louisiana's student financial aid programs. Jack L. Guinn is OSFA's Executive Director, Melanie Amrhein, Assistant Executive Director, and Lynda Downing, Director of the Loan Operations Division. These employees are all white. The Loan Operations Division has four sections: Loan Administration, Default Prevention, Claims, and Collections.

OSFA hired Garrett in 1996 as an Accounting Specialist 2 (GS-11). In 1997 she was promoted to Accounting Specialist Supervisor (GS 14) in the Loan Operations Division's Collection section. Garrett's immediate supervisor, Ida Minor, is also black. Although Garrett's title indicated she was a supervisor, she supervised no one, and was thus, a supervisor in title only. Her duties included balancing student loan recoveries and processing judgment releases. There were two other female employees with Garrett in

the Collection division, Barbara Carter, a black, and Elizabeth Navailhon, who is white.

In 1999, OSFA promoted Ida Minor and elevated a white female, Tammy Loupe, to fill her position. This made Ms. Loupe Garrett's immediate supervisor. In 2000 the positions entitled Student Loan Analyst 1 and 2 were established. These positions did not carry a supervisory title. On June 28, 2000 Garrett's position was upgraded to Student Loan Analyst 2 (GS-15). Carter and Navailhon were converted to Analyst 1 (GS-14). The Analyst 1 position was designated as a training series job. This means that after one year of competent performance, an Analyst 1 is reallocated to Analyst 2.

In 2001, Carter and Navailhon were reallocated to Analyst 2, putting them into the same position as Garrett; Garrett filed a grievance because she was no longer at a higher level than the other Analysts. Garrett asked to be designated Student Loan Analyst 3, a position that did not exist. OSFA denied her grievance; no appeal was taken from the denial.

In 2004 Student Loan Collector and Student Loan Analyst positions were combined. The new position was entitled Student Loan Specialists 1, 2, and 3, and designated as a training series. In Aug. 2004, when Ms. Amrhein explained the new positions to the staff, she said that if these employees stayed with OSFA long enough they would reach the third level in the training series. Garrett mistook this to mean that seniority played a role in promotions, and that eventually she would be promoted to a supervisory position. Garrett, having the second most seniority in Collections, believed herself to be in line for promotion. At some point OSFA changed the name of the Collections section to Default Recoveries section.

In September 2004 the position of Student Financial Aid Assistant Administrator in the Default Recoveries section was announced. Ms. Loupe applied for and received the promotion. Garrett did not apply.

On September 28, 2004 Mr. Guinn sent an e-mail advising Ms. Downing that in the supervisor's absence, the most senior subordinate was to be designated acting supervisor. He further stated that it was inappropriate to designate an acting supervisor that was junior to the other employees in the unit. Within the Default Recoveries section, Garrett was the most senior. Therefore, after September 28, 2004, Garrett served as acting supervisor when Ms. Loupe was out. Prior to this proclamation all the Default Recoveries employees rotated the acting supervisor duties. Garrett interpreted this to mean that seniority would be a major factor when a supervisor position became available.

In Nov. 2004 OSFA announced two vacant supervisor positions in Default Recoveries. Fifteen candidates were presented; seven were interviewed. These included Garrett, Navailhon and another black female from the department, Janice Watson. Linda Brittingham, a white female and Byron Henderson, a white male, and Ms. Loupe conducted the interviews.

Garrett had eight years of service with OSFA, Navailhon had six years and Watson had four years. Navailhon's Civil Service test scores were in the second grade group, Watson's the fourth, and Garrett's the seventh. Navailhon had the highest average performance rating, followed by Watson, who was followed by Garrett. Navailhon had over three years supervisory experience, Garrett had some experience, and Watson had none.

Ms. Loupe had supervised Garrett since 1996, Navailhon since 1998 and Watson since 2002. Based on independence in performing duties, willingness to help others, volunteering for new duties, completing cross-

training and implementing new ideas, Ms. Loupe considered Navailhon and Watson stronger candidates than Garrett; the panel chose them as the top two candidates. Garrett was eliminated.

Ms. Downing interviewed the finalists, both of whom she knew, and recommended Navailhon primarily because of her leadership skills. Navailhon was selected to fill the second vacancy. Another white male, whose test score was in the first grade group, was selected to fill the first vacancy.

OSFA had five unclassified positions. The Commission urged Mr. Guinn to find highly qualified minority candidates for these positions. OSFA hired a minority as its Chief Planning Officer, but was unable to keep him. As of October 2005, two of these positions remained unfilled and, for budgetary reasons, will remain vacant.

The Loan Operations Division has four Section Administrators: one white female, one black female, and two white males. It also has three Assistant Administrators: all are white females. The default Recoveries Section has five supervisors: three white females, one black female, and one white male.

Garrett bears the burden of proving that she was not promoted because of race. *See Johnson v. DHH*, 00-0071, p. 3 (La.App. 1 Cir. 2/16/01), 808 So.2d 436, 438. In support of her claim, she proved that OSFA has few black administrators and supervisors in the Loan Operations Division. However, statistical evidence is not sufficient to carry the burden of proof in civil service cases. *Bernard v. L.H.H.R.A., Southwest Charity Hospital of Lafayette*, 358 So.2d 653, 654 (La.App. 1 Cir. 1978). Garrett also proved that through a series of events, she went from a job with “supervisor” in the title to one without. The evidence reveals, and Garrett

admitted, that despite the job title, an Accounting Specialist Supervisor is not a supervisory position. Under these circumstances, Garrett should not have been promoted to that job title and that improperly used job title has now been appropriately eliminated. Nonetheless, Garrett benefited from the transaction in that she received a three-level promotion. This does not support her claim of race discrimination.

Garrett did prove that she was more senior than Navailhon, but length of service is not a primary factor in the promotional decision. Article X, Section 7 of the Louisiana Constitution. *See also Lawson v. DHH*, 618 So. 2d 1002 (La.App. 1 Cir. 1993). The evidence reveals, and the record supports, that based on all factors other than length of service, Navailhon and Watson were better candidates than Garrett. For this reason, this Referee concluded that Garrett failed to prove that it was because of her race that she did not receive the promotion she sought.

We conclude and the record demonstrates that the candidate selected for the position was based upon qualifications and not racial bias. The Civil Service Commission decision is affirmed in accordance with Uniform Rules-Courts of Appeal, Rule 2-16.1B. The cost of this appeal is assessed against Mary Brown Garrett.

AFFIRMED