

 KeyCite Red Flag - Severe Negative Treatment
Unpublished/noncitable

2011 WL 1521026
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts
citation of unpublished opinions in California courts.

Court of Appeal, Second
District, Division 4, California.

Diane B. WEISSBURG, Plaintiff and Appellant,
v.
LOS ANGELES COUNTY CIVIL SERVICE
COMMISSION, et al., Defendants and Respondents.

No. B225400.
|
(Los Angeles County Super. Ct. No. BS123989).
|
April 22, 2011.

APPEAL from a judgment of the Superior Court of Los
Angeles County, [David P. Yaffe](#), Judge. Affirmed.

Attorneys and Law Firms

Joan T. Daniels and [Diane B. Weissburg](#), in pro. per, for
Plaintiff and Appellant.

Hausman & Sosa, [Jeffrey M. Hausman](#), [Larry D. Stratton](#)
and [Vincent C. McGowan](#) for Defendant and Respondent
(Los Angeles County Department of Children and Family
Services).

[WILLHITE](#), Acting P.J.

INTRODUCTION

*1 Following the decision of her employer, defendant
Los Angeles County Department of Children and Family
Services (DCFS), to suspend her for 30 days, appellant
Diane Weissburg filed an administrative appeal of her
suspension with the Los Angeles County Civil Service
Commission (the Commission). In the meantime, following
a disciplinary hearing, DCFS issued a decision to discharge
Weissburg. Before the discharge was effective, Weissburg

resigned. DCFS then moved to dismiss Weissburg's appeal
to the Commission from the earlier suspension decision.
Agreeing with DCFS that it lacked jurisdiction in light
of Weissburg's termination, the Commission dismissed her
appeal. The trial court later sustained, without leave to amend,
DCFS' demurrer to Weissburg's petition for writ of mandate
challenging the dismissal of her appeal. Weissburg appeals
from the judgment of dismissal. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Weissburg's Suspension and Resignation

Weissburg was employed by the DCFS.¹ Based on an
incident that occurred in October 2007, DCFS instituted
disciplinary proceedings against her, and on January 31, 2008,
she received written notice of a 30-day suspension, effective
February 14, 2008.

She filed an administrative appeal of the suspension on
several grounds, including alleged violations of Civil Service
Rule 25.01,² and of her rights under  [Skelly v. State
Personnel Bd. \(1975\) 15 Cal.3d 194](#). On April 23, 2008,
the Commission granted Weissburg a hearing, but only
certified for hearing the issue regarding the appropriateness
of the 30-day suspension.³ It did not certify for hearing her
discrimination claim under the civil service rules, or her claim
pursuant to  [Skelly, supra, 15 Cal.3d 194](#).

In May 2008, Weissburg filed a petition for writ of mandate
requesting that the superior court stay the suspension. The
superior court denied her petition, ruling that Weissburg had
not exhausted her administrative remedies.

Beginning on August 19, 2008, the hearing officer, Godfrey
Isaac, held evidentiary hearings intermittently for 11 hearing
days, concluding on March 12, 2009. On May 12, 2009,
Isaac filed a report finding discipline appropriate but
recommending that the 30-day suspension be reduced
to 10 days. The hearing officer's findings constituted a
recommendation to the Commission, subject to the statutory
process for filing objections and Commission approval. (See
Civil Service Rule 4.13: [“A. If the hearing, as hereinbefore
described, is not before the full commission, the hearing board
shall, within 30 calendar days from the conclusion of the
hearing, submit a written or oral report to the commission
for its approval”].) However, Weissburg received a notice of
discharge from DCFS, effective July 27, 2009. However, she

was permitted to retire, effective August 1, 2009. At that time, the Commission had not yet issued its final order regarding her 30-day suspension.

On October 19, 2009, DCFS filed with the Commission a motion to dismiss Weissburg's appeal, arguing that the Commission lacked jurisdiction to consider the matter because Weissburg had retired from County employment. The Commission agreed that it lacked jurisdiction to consider Weissburg's appeal, and dismissed it.

The Writ Petition

*2 Weissburg filed a petition for writ of mandate in the superior court on December 7, 2009. The county civil service commission was named as a party to the action and served, but filed a notice stating it would not be an active party in the litigation. DCFS filed a demurrer based on lack of jurisdiction. The court sustained the demurrer with leave to amend, and Weissburg filed a first amended writ petition. DCFS again demurred on the basis of lack of jurisdiction. The trial court sustained the demurrer without leave to amend, stating: "Petitioner was given leave to amend to correct the deficiencies in the original petition and she has not done so. The first amended petition is ordered dismissed because petitioner, while she was prosecuting an administrative appeal to the Los Angeles County Civil Service Commission to challenge discipline that had been imposed on her by her employer, voluntarily retired from active service and thereby deprived the civil service commission of jurisdiction to hear her appeal." The court also found that Weissburg's claim for compensation was not properly brought by way of a petition for writ of mandate because once she retired it became a "matured claim[] for money," for which petitioner had an adequate remedy at law. In addition, the court denied Weissburg's request to have documents removed from her personnel records, finding she had not adequately described the content of the documents at issue or even provided evidence of their existence, and the request was unsupported by any citation to legal authority.

This timely appeal followed.

DISCUSSION

Where, as here, we are called upon to review a trial court's decision, which it has reached based upon undisputed facts, involving whether an administrative body had jurisdiction to

consider a matter, we apply a de novo standard of review. (*Anserv Ins. Services, Inc. v. Kelso* (2000) 83 Cal.App.4th 197, 204.)

DCFS contends, and we agree, that [Zuniga v. Los Angeles County Civil Service Com.](#) (2006) 137 Cal.App.4th 1255 (*Zuniga*) is directly on point regarding the question presented here, and requires that we affirm the trial court's decision. Accordingly, we shall quote from *Zuniga* at some length.

"A trial court reviews a petition for writ of mandate challenging the validity of a final administrative decision made after a hearing by inquiring whether the agency: '(1) proceeded in excess of its jurisdiction; (2) afforded the petitioner a fair trial, or (3) abused its discretion. Abuse of discretion is established if (1) the agency did not proceed in the manner required by law, (2) the order or decision is not supported by the findings, or (3) the findings are not supported by the evidence. ([Code Civ. Proc., § 1094.5, subds. \(a\), \(b\).](#))' ([Davis v. Civil Service Com.](#) (1997) 55 Cal.App.4th 677, 686.)....

" 'A civil service commission created by charter has only the special and limited jurisdiction expressly authorized by the charter. [Citation.]' ([Hunter v. Los Angeles County Civil Service Com.](#) (2002) 102 Cal.App.4th 191, 194.) Section 34 of the Los Angeles County Charter provides that the Commission 'shall serve as an appellate body in accordance with the provisions of Sections 35(4) and 35(6) of this article and as provided in the Civil Service Rules .[¶] The Commission shall propose and, after a public hearing, adopt and amend rules to govern its own proceedings.' Section 35(4) of the Los Angeles County Charter requires the Board of Supervisors to adopt rules to provide for procedures for appeal of allegations of discrimination." ([Zuniga, supra](#), 137 Cal.App.4th at pp. 1258–1259.)

*3 In *Zuniga*, a deputy sheriff employed by Los Angeles County was charged with grand theft and attempted receipt of stolen property, and suspended from his position without pay pursuant to Rule 18.01(A). *Zuniga* requested a hearing before the Commission to challenge the suspension, and a hearing was granted but held in abeyance pending resolution of the criminal proceedings. Before the hearing commenced, *Zuniga* retired, and shortly thereafter the criminal charges were dismissed. (*Id.* at p. 1257.) The hearing regarding his suspension was held five months later before a hearing officer, who concluded the disciplinary action was not warranted. The

Commission, however, sustained the suspension. Zuniga filed a petition for writ of mandate to the superior court, which denied the petition and issued a statement of decision, and Zuniga then filed an appeal.

This court affirmed the trial court's denial of the writ petition, concluding that “the Commission lacked jurisdiction to adjudicate Zuniga's claim after he resigned from the Department.” (*Id.* at p. 1258.) We stated: “There is no provision in the charter granting the Commission authority to hear a wage claim brought by a *former* civil servant. The Civil Service Rules allow the Commission to exercise authority over former employees in only a few limited circumstances. Rule 4.01 grants ‘[a]ny employee or applicant for employment’ the right to ‘petition for a hearing before the commission who is: [¶] A. Adversely affected by any action or decision of the director of personnel concerning which discrimination is alleged as provided in Rule 25; [¶] B. Adversely affected by any action or decision of the commission made without notice to and opportunity for such person to be heard other than a commission decision denying a petition for hearing; [¶] C. Otherwise entitled to a hearing under the Charter or these Rules.’ The term ‘[e]mployee’ is defined in Rule 2.24 as ‘any person holding a position in the classified service of the county. It includes officers.’” (*Id.* at p. 1259, italics added.)

By the time the Commission held its hearing regarding Zuniga's suspension, he was a *former* employee. “Zuniga requested a hearing on the suspension during his employment, but resigned before the hearing was held. *The Commission does not retain jurisdiction over a former employee in these circumstances.*” (*Id.* at p. 1259, italics added.)

As we specifically held in *Zuniga*, the Commission does not retain jurisdiction after an employee retires. “In a petition for rehearing, Zuniga argues that he did not ‘resign,’ but instead ‘retired,’ and that the distinction is significant because the Commission retains jurisdiction in the cases of retirement. We disagree. As we understand the county's system and others like it (e.g., State Personnel Board and the Public Employees' Retirement System), the activating event is separation from service, whether by retirement, resignation, death, or discharge. The point at issue is the jurisdiction of the civil service agency—the Commission. Once a person has separated from service, the Commission has no further jurisdiction except in the limited situations specified in the governing constitutional charter or statutory provisions.... [N]one of these apply in this case. It appears

that Zuniga applied for and received retirement from the Board of Retirement of the Los Angeles County Employees Retirement Association, thereby effecting a separation from service. This voluntary separation from service constituted a resignation from employment. (See [Duncan v. Department of Personnel Administration \(2000\) 77 Cal.App.4th 1166, 1177–1178.](#))” ([Zuniga, supra](#), 137 Cal.App.4th at p. 1260.)

*4 As did Zuniga, Weissburg attempts to cast her situation as being one of the aforementioned limited circumstances in which an employee has been forced to retire by means of duress, fraud, or undue influence, tantamount to a discharge, such that the Commission retained jurisdiction to consider an appeal. We stated in *Zuniga*: “Zuniga incorrectly compares his situation to that of employees who have been wrongfully terminated or suspended, over whom the Commission retains jurisdiction. Rule 18.09 governs resignations. It provides that a resignation may not be withdrawn, and may only be appealed if it was ‘obtained by duress, fraud, or undue influence.’ A discharged employee also has the right to request a hearing before the Commission. (Rule 18.02(B).) Zuniga does not claim that he resigned as the result of duress, fraud, or undue influence. Nor was he discharged. *There is no provision in the charter or Civil Service Rules giving the Commission authority over an employee who voluntarily resigns without claiming duress, fraud, or undue influence. Without an express grant of such jurisdiction, the Commission lacked authority to investigate the charges and award backpay to Zuniga.* [Citations.]” (*Id.* at pp. 1259–1260, italics added.) Weissburg argues that she was essentially forced to retire under fraud, duress, and undue influence as a result of being discharged, and that her separation from service was not a voluntary retirement or resignation. However, she did not request that the Commission investigate the circumstances surrounding her discharge and subsequent retirement; she requested a hearing and appealed only with regard to her suspension, not the discharge. The Commission therefore did not have jurisdiction to review the *suspension* decision once she retired, even assuming for the sake of argument that her *retirement* was motivated by fraud, duress, or undue influence.

Weissburg further argues that *Zuniga* is distinguishable because there the civil service hearing was not held until after Zuniga retired. She asserts that where he requested a hearing but retired before the hearing was held, his retirement constituted a voluntary separation from service tantamount to a resignation. Weissburg, on the other hand, retired after the

hearing commenced, and after being discharged. However, this was the same situation presented in [County of Los Angeles Dept. of Health Services v. Civil Service Com. of County of Los Angeles \(2009\) 180 Cal.App.4th 391 \(Latham\)](#), which was decided shortly after Weissburg filed her petition for writ of mandate in the trial court. There, as here, the civil service employee retired after appeal proceedings before the Commission had begun but before the hearing officer had issued a decision. Under those circumstances, the appellate court held that the employee's retirement during the pendency of civil service proceedings, after being discharged, divested the Commission of jurisdiction over the employee's civil service appeal. Relying on *Zuniga, supra*, the court held that “the Commission has authority to address only matters involving a member of the civil service, and a person who has retired is no longer a member of the [civil service.](#)” (*Latham, supra*, 180 Cal.App.4th at p. 401.) The court rejected the employee's argument that the case was different from *Zuniga* because the hearing officer took significant testimony before she retired, stating “That is a factual difference that does not change the legal analysis. It is true that testimony was taken here and not in *Zuniga*. But in both cases, the civil service appeal had commenced before the employee retired. If there were a ‘once jurisdiction vests it vests forever’ rule, then *Zuniga* would have come out the other way. Pointedly the *Zuniga* court rejected such a claim, concluding “[t]he Commission does not *retain* jurisdiction

over a former employee in these circumstances.” ([Zuniga, supra](#), 137 Cal.App.4th at p. 1259, italics added.) At the time of resignation—whether evidence has been received or not—the underlying claim essentially becomes one for backpay. As *Zuniga* teaches, “Without an express grant of such jurisdiction, the Commission lacked authority to investigate the charges and award backpay to [the employee].” (*Id.* at p. 1260.)”⁴ ([Latham, supra](#), 180 Cal.App.4th at p. 401.)

*5 Finally, regardless of Weissburg's contentions challenging hearing delays and purported misconduct concerning defense witnesses, the Commission lost jurisdiction upon her resignation.

DISPOSITION

The judgment is affirmed. DCFS shall recover its costs on appeal.

We concur: [MANELLA](#) and [SUZUKAWA](#), JJ.

All Citations

Not Reported in Cal.Rptr.3d, 2011 WL 1521026

Footnotes

- [1](#) Weissburg had filed an action against DCFS in superior court on March 13, 2007, for “race and religious discrimination, retaliation, violation of the Labor Code and violation of the Government Code.” (LASC Case No. SC093110.)
- [2](#) Los Angeles County Civil Service Commission Rule 25.01 prohibits discrimination against County employees “because of race, color, religion, sex, physical handicap, medical condition, marital status, age, national origin or citizenship, ancestry, political opinions or affiliations, organizational memberships or affiliation, or other non-merit factors.” (Rule 25.01(A). All further unspecified references to Rules are to the Los Angeles County Civil Service Commission Rules.) The employee must assert specific facts supporting the claim before the Commission may grant a hearing. (Rule 4.01(B).)
- [3](#) Civil Service Rule 4.03 provides in relevant part that: “A. In cases of discharge or reduction of a permanent employee ..., or suspension in excess of five days, a timely petition for hearing shall be granted if it states sufficient specific facts and reasons in support of the employee's appeal as provided in Rule 18.02.” Subdivision C of the same rule provides that “When granting a hearing, the commission shall state the specific issue(s) in the petition to be heard and will notify all the parties in writing of the issue(s). No other issues shall be heard.”
- [4](#) As did the court in *Latham*, we hold only that Weissburg's retirement affected the availability of relief through civil service, and express no view on whether the employee here has a viable civil claim for back pay which may be asserted in another forum.