

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John D. Leaman, :
 : No. 1367 C.D. 2012
 Petitioner : Submitted: February 8, 2013
 :
 v. :
 :
 State Civil Service Commission :
 (Department of General Services), :
 :
 Respondent :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: March 14, 2013

John D. Leaman petitions for review of the June 20, 2012, order of the State Civil Service Commission (Commission) denying his request for a hearing because he failed to allege specific acts of discrimination as required by 4 Pa. Code §105.12(c). We affirm.

Leaman has worked for the Pennsylvania Capitol Police since 2002. On March 12, 2012, Leaman applied for a promotion to Sergeant. In a letter dated May 9, 2012, the Department of General Services (Department) informed Leaman that another candidate had been selected for the position.

On May 16, 2012, Leaman completed an appeal request form alleging discrimination under the Civil Service Act (Act).¹ Leaman maintained that the Department purposefully allowed a promotion list, on which he was ranked highest, to expire so that a favored candidate could be hired. On June 20, 2012, the Commission dismissed the appeal because Leaman had not “indicated acts, which, if proven, would constitute discrimination.” (Commission’s Order at 1.) Leaman filed a petition for reconsideration with the Commission. On July 11, 2012, the Commission affirmed its previous order. Leaman petitioned this court for review.²

Leaman argues that his appeal request form sufficiently specified acts constituting discrimination. We disagree.

The Commission’s regulation at 4 Pa. Code §105.12(c) provides:

(c) Appeals alleging discrimination which do not include specific facts relating to discrimination may be dismissed. Specific facts which should appear on the appeal form include:

(1) The acts complained of.

(2) How the treatment differs from treatment of others similarly situated.

(3) When the acts occurred.

¹ Act of August 5, 1941, P.L. 752, *as amended*, 71 P.S. §§741.1 – 741.1005.

² Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law, and whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa.C.S. §704.

(4) When and how the appellant first became aware of the alleged discrimination.

4 Pa. Code §105.12(c). “When an aggrieved party alleges discrimination, the party bears the burden of proof . . . and is required to allege with specificity the basis underlying the claim of discrimination.” *Craig v. State Civil Service Commission*, 800 A.2d 364, 365 (Pa. Cmwlth. 2002). “[M]ere general and conclusory allegations of discrimination are not adequate. There must be specific factual allegations of discrimination” *Allen v. State Civil Service Commission*, 992 A.2d 924, 929 (Pa. Cmwlth. 2010).

The decision in *Craig* contrasts conclusory and sufficiently specific allegations. *Craig*, 800 A.2d at 365-66. In *Craig*, the employee in his appeal “marked boxes stating ‘race’, ‘sex’, and ‘disability’ as the types of alleged discrimination.” *Id.* at 365. Regarding sexual discrimination, the employee stated in the appeal form, “Robert Robinson is believed to be Homosexual (sic) who sought discrete bribery tactics against male workers!” *Id.* We found this exclamation to be legally insufficient to state a claim of sexual discrimination. *Id.* at 366. However, regarding racial discrimination, the employee noted a high rate of minority discharges, an unequal distribution of work among employees, and named three people that discriminated against him. *Id.* This court found the racial discrimination claim to be sufficiently specific and remanded for a hearing on the matter. *Id.*

Here, Leaman’s claims fall short of the specificity requirements of 4 Pa. Code §105.12(c). Unlike the employee in *Craig*, Leaman offers no particular facts indicating discriminatory acts. Instead, Leaman asserts that because an eligibility list

lapsed on March 19, 2012, and the Sergeant position was filled after that lapse, discrimination must have occurred.³ However, the Department had no duty to fill the vacancy by March 19, 2012, the date that the eligibility list lapsed. The Department contacted Leaman to schedule an interview on March 27, 2012, presumably interviewed him, and informed him on May 9, 2012, that another candidate had been selected. Additionally, the Notice of Examination Results presented by Leaman lists

³ Leaman stated in Attachment B of the Appeal Request Form:

A. What actions(s) occurred which led you to believe that you were discriminated against?

I was the highest civil servant of 12 civil servants on a Promotion List (See attachment C hereto) that was due to expire March 19, 2012. In order to avoid my selection for promotion to a Sergeant's position (Attachment D), the list was permitted to lapse so that I would not be selected for promotion. I applied for the position prior to the lapse of the list (See Attachment E hereto), but notices were purposely sent out and interviews scheduled after the list I was at the top of lapsed (See Attachments F and G hereto). Presumably, the successful applicant was selected from a different list – probably an interview list or the like.

* * *

E. Provide any other information which you believe is relevant

The Petitioner – the objectively best-qualified candidate for the Sergeant's position – submits that a civil service list on which he was the top candidate for promotion (Attachment C) was purposely expired and retired by the Appointing Authority, in order to hire a favorite applicant, either from another list, or by some other subterfuge. This violates the spirit, if not the letter of the Civil Service Act; and is conduct which the Civil Service Commission must be willing and able to curtail, in order to uphold its status as the guardian of merit selection.

(Appeal Request Form, Attachment B at 1-2.)

two candidates ranking higher than Leaman. We conclude that Leaman failed to allege any discernible, discriminatory act in his appeal request form.

Leaman failed to meet the requirements of 4 Pa. Code §105.12(c) because he did not include specific acts indicating discrimination. Therefore, the Commission did not err by refusing to grant Leaman a hearing.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

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(Department of General Services),	:
	:
Respondent	:

ORDER

AND NOW, this 14th day of March, 2013, we affirm the June 20, 2012, order of the State Civil Service Commission.

ROCHELLE S. FRIEDMAN, Senior Judge