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COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

GEORGE SIDERIS *vs.* CIVIL SERVICE COMMISSION & another.[1]

1 City of Peabody.

14-P-1271

APPEALS COURT OF MASSACHUSETTS

87 Mass. App. Ct. 1127; 2015 Mass. App. Unpub. LEXIS 577

June 5, 2015, Entered

NOTICE: SUMMARY DECISIONS ISSUED BY THE APPEALS COURT PURSUANT TO ITS *RULE 1:28*, AS AMENDED BY 73 MASS. APP. CT. 1001 (2009), ARE PRIMARILY DIRECTED TO THE PARTIES AND, THEREFORE, MAY NOT FULLY ADDRESS THE FACTS OF THE CASE OR THE PANEL'S DECISIONAL RATIONALE. MOREOVER, SUCH DECISIONS ARE NOT CIRCULATED TO THE ENTIRE COURT AND, THEREFORE, REPRESENT ONLY THE VIEWS OF THE PANEL THAT DECIDED THE CASE. A SUMMARY DECISION PURSUANT TO *RULE 1:28* ISSUED AFTER FEBRUARY 25, 2008, MAY BE CITED FOR ITS PERSUASIVE VALUE BUT, BECAUSE OF THE LIMITATIONS NOTED ABOVE, NOT AS BINDING PRECEDENT. SEE *CHACE V. CURRAN, 71 MASS. APP. CT. 258, 260 N.4, 881 N.E.2d 792 (2008).*

PUBLISHED IN TABLE FORMAT IN THE MASSACHUSETTS APPEALS COURT REPORTS.

JUDGES: Berry, Vuono & Rubin, JJ.

OPINION

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The plaintiff, George Sideris, appeals from a judgment dismissing his complaint seeking judicial review of the decision of the Civil Service Commission (the commission) on his motion for reconsideration of his petition challenging his discharge from employment as a full-time police officer for the city of Peabody (the city).

Background. The plaintiff began working for the city in 1996 as a reserve police officer and became a full-time police officer in 2000. In 2004, he was arrested and charged with assault and battery on a person over the age of sixty. The victim was the plaintiff's mother, with whom he was living. In 2007, the city terminated Sideris's employment on the ground that he had engaged in conduct unbecoming a police officer. Prior to trial on the criminal charges, the plaintiff appealed his discharge to the commission, which dismissed the case without prejudice pending the conclusion of the criminal matter. In the order of dismissal the commission provided as follows:

> "The time period pursuant to *G. L. c. 30A, § 14(1)* for a party to file a Motion for Reconsideration and the time period pursuant to *G. L. c. 30A, § 14* generally for a party to seek judicial review of this Decision are hereby tolled until the [plaintiff] has received notice that the pending criminal matters arising out of the same matter currently before the Commission have been concluded. In the event that the [plaintiff] is successful in those criminal matters, the commission will accept and allow a Motion for Reconsideration seeking to reinstate the [plaintiff's] appeal . . . ."[2]

2 *General Laws c. 30A, § 14(1)*, establishes a window of thirty days within which a party may file a civil action seeking judicial review of a final agency decision. The Code of Massachusetts Regulations provides that a party may file a motion for reconsideration "[a]fter a decision has been rendered and before the expiration of the time for filing a request for review or appeal." *801 Code Mass. Regs. § 1.01(7)(l)* (1998).

While awaiting trial in the criminal case, the plaintiff's mental health deteriorated. He attempted suicide and was hospitalized. Eventually, he was involuntarily committed to various institutions including Bridgewater State Hospital where it was determined that he was not competent to stand trial. In 2012, a Superior Court judge dismissed the criminal charges pursuant to *G. L. c. 123, § 16(f)*, effective August 21, 2012, on the ground that the plaintiff had been involuntarily committed for a period of time equal to the term of imprisonment he would have faced had he been convicted.

Approximately seven months later, on March 27, 2013, the plaintiff filed a motion for reconsideration with the commission and requested that his case be reopened. The city opposed the motion asserting, among other grounds, that the motion was untimely because it had not been filed within thirty days of the dismissal of the criminal charges. See *G. L. c. 30A, § 14(1)*; *801 Code Mass. Regs. § 1.01(7)(l)* (1998). The commission issued a decision denying the plaintiff's motion for reconsideration and dismissing his appeal. The plaintiff filed a complaint in Superior Court seeking judicial review of the commission's decision and subsequently filed a motion for judgment on the pleadings, which the city opposed. Following a hearing, a Superior Court judge denied the plaintiff's motion for judgment on the pleadings and subsequently entered final judgment dismissing the plaintiff's complaint and affirming the decision of the commission on the plaintiff's motion for reconsideration.

Discussion. "We review de novo a judge's order allowing a motion for judgment on the pleadings under *Mass.R.Civ.P. 12(c)*, 356 Mass. 754 (1974)." *Merriam v. Demoulas Super Mkts., Inc., 464 Mass. 721, 726, 985 N.E.2d 388 (2013).* When reviewing a decision made by an administrative agency, such as the commission, "[w]e accord substantial discretion to an agency to interpret the statute it is charged with enforcing." *Brockton Power Co. v. Energy Facilities Siting Bd., 469 Mass. 215, 219, 13 N.E.3d 955 (2014)* (citation omitted). Furthermore, "administrative agencies have discretion over procedural matters before them." *Ibid.*, quoting from *Zachs v. Department of Pub. Util., 406 Mass. 217, 227, 547 N.E.2d 28 (1989).* "We defer to an agency's procedural rulings and review them for 'error of law or abuse of discretion,' . . . particular[ly] when the ruling concerns whether to reopen a proceeding or an administrative record." *Ibid.*, quoting from *Zachs, supra.*

The plaintiff argues that the commission deprived him of due process of law when it determined that his motion for reconsideration was not timely because it was not filed within thirty days after the dismissal of the criminal charges. We discern no error of law or abuse of discretion. The thirty-day window for filing an administrative appeal is provided for by *G. L. c. 30A, § 14(1)*, to which statute reference was made by the commission in its initial order of dismissal without prejudice. The plaintiff did not challenge that order when it was first issued and has offered nothing in subsequent proceedings to show that the commission's order was unreasonable or to explain why he delayed filing his motion for more than six months following the dismissal of his criminal charges.[3] A request for an extension beyond the statutory deadline requires a showing of good cause. *Hutner v. Cape Codder Condominium Bd. of Trustees, 52 Mass. App. Ct. 429, 434, 754 N.E.2d 138 (2001).* In sum, the plaintiff's assertion that his motion should have been allowed simply because the commission has the authority and discretion to do so does not support the conclusion that the commission erred or abused its discretion.

3 In the hearing on his motion for reconsideration, the plaintiff did not attempt to establish that he continued to be incompetent or otherwise had good reason for the delay. At best, he suggested that it was an open question, referring to the dates he left the group home. There is no indication in the record that the plaintiff did not understand the procedural requirements imposed upon him by the initial order.

Given our conclusion that the commission correctly dismissed the plaintiff's motion for reconsideration on procedural grounds, we need not reach the plaintiff's remaining arguments. *Judgment affirmed.*

By the Court (Berry, Vuono & Rubin, JJ.[4]),

4 The panelists are listed in order of seniority.

Entered: June 5, 2015.