

NOTIFY

COMMONWEALTH OF MASSACHUSETTS

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SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION NO. 13CV01239-B

COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

HELGA ALLEN

VS.

CIVIL SERVICE COMMISSION & another¹

NOTICE SENT
07.17.14
S.R.
J.A.W.S.
M.M.M.
WASS.A.G.
R.L.Q.JR.

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S
MOTION FOR JUDGMENT ON THE PLEADINGS

INTRODUCTION

This case arose when the plaintiff, Helga Allen ("Allen" or "plaintiff"), was fired from her job at defendant Taunton Public Schools ("Taunton"). Allen filed an appeal with defendant Civil Service Commission ("Commission"). The Commission allowed Taunton's motion to dismiss, and Allen filed the present action pursuant to G. L. c. 30A to set aside the Commission's decision.

The matter is now before the court on the plaintiff's motion for judgment on the pleadings, which motion Taunton opposes.² After hearing, and for the reasons set forth below, the motion is DENIED.

BACKGROUND

Allen was a permanent, tenured civil service employee of Taunton in the position of cafeteria helper. On June 12, 2012, she used a racial slur while on duty. Subsequently, Allen's union representative called her to tell her there would be a meeting with the Director of Food

¹Taunton Public Schools.

²As a nominal party, the Commission did not participate in the oral argument on the motion.

Services on June 18th. The plaintiff never received a written notice of the meeting or of the fact that Taunton was considering terminating her employment and was never given a copy of G. L. c. 31, §§ 41-45. Union representatives accompanied Allen to the meeting, where the Director of Food Services informed her that she was going to be terminated. Within a week after July 25, 2012, the plaintiff received a letter from the Director of Personnel-Student Services, dated July 25, 2012, stating that she was terminated, effective June 19, 2012.

Allen filed her appeal with the Commission on March 26, 2013. Taunton filed a motion to dismiss her appeal, and the Commission held a hearing. After the hearing, the Commission issued a written decision dismissing Allen's appeal for failure to file within the prescribed time period. The instant action ensued.

DISCUSSION

G. L. c. 30A authorizes the court to reverse, remand, or modify a decision of the Civil Service Commission if that decision is based on an error of law. G. L. c. 30A, § 14(7)(c); G. L. c. 31, § 44 (judicial review of Commission decisions governed by G. L. c. 30A). After hearing and a consideration of the materials in the record, this court concludes that the Commission's decision that Allen's appeal was time-barred was not an error of law.

G. L. c. 31, § 42 requires "[a]ny person who alleges that an appointing authority has failed to follow the requirements of section forty-one in taking action which has affected his employment or compensation may file a complaint with the commission. Such complaint must be filed within ten days, exclusive of Saturdays, Sundays, and legal holidays, after said action has been taken, or after such person first knew or had reason to know of said action." It is undisputed that, within one week of July 25, 2012, Allen knew that she had been terminated.

The plaintiff contends that, even though she knew of the termination, she excusably was unaware of the filing deadline and that the deadline was tolled. See *Andrews v. Arkwright Mut. Ins. Co.*, 423 Mass. 1021, 1022 (1996) (equitable tolling available where plaintiff excusably ignorant of MCAD filing deadline). Allen asserts that Taunton was obligated to provide her with a copy of the General Laws which include the filing deadline but failed to do so and, that, accordingly, she had no way of knowing the filing deadline. G. L. c. 31, § 41.

However, at all relevant times, the plaintiff was represented by union officials who had an obligation to know, and inform her of, the Commission filing deadlines. *United Steelworkers v. Commonwealth Empl. Rels. Bd.*, 74 Mass. App. Ct. 656, 663-64 (2009) (union officials have duty to know and advise regarding Commission filing deadlines). Although Taunton did not advise Allen of her rights, the union representatives knew of her termination, should have known the filing deadlines, and should have advised her of those deadlines. See *id.* The Commission properly took all of these facts into account when deciding that Allen's eight-month delay exceeded the ten-day statutory requirement. See *Marqus v. City of Waltham*, 23 MCSR 285 (May 21, 2010) (Commission dismissed appeal for one-month delay in filing where petitioner represented by union officials and not given copies of General Laws). There was no legal error here.

ORDER

For all the foregoing reasons, it is hereby **ORDERED AND ADJUDGED** that

1. the plaintiff's motion for judgment on the pleadings be **DENIED**;
2. the Commission's decision be **AFFIRMED**; and
3. the plaintiff's complaint be **DISMISSED**.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Linda E. Giles,
Justice of the Superior Court

Dated: July 17, 2014