

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

JOSHUA ALMESTICA,
Appellant

v.

CITY OF BROCKTON,
Respondent

Docket Number: D1-24-187

Appearance for Appellant: *Pro Se*
Joshua Almestica

Appearance for Respondent: Karen A. Fisher, Esq.
Senior Assistant City Solicitor
City of Brockton
City Hall, 45 School Street
Brockton, MA 02301

Commissioner: Christopher C. Bowman

SUMMARY OF DECISION

The Commission dismissed for lack of jurisdiction the appeal of a Brockton student police officer as he was not a permanent, tenured civil service employee and the rescission of his conditional offer of employment did not constitute a bypass as no candidate ranked below him was selected for appointment.

DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION

On December 5, 2024, the Appellant, Joshua Almestica (Appellant), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Brockton (City) to terminate him while he was employed by the City as a student police officer. On January 21, 2025, I held a remote pre-hearing conference which was attended by the Appellant, counsel for

the City, and a sergeant in the City's Police Department. At my request, the parties submitted additional information after the pre-hearing conference. The City filed a motion for summary decision and the Appellant failed to submit an opposition.¹

UNDISPUTED FACTS

The following facts are undisputed, unless otherwise noted:

1. On March 22, 2023, the Appellant took the civil service examination for police officer.
2. In or around June 2023, an eligible list was established for Brockton police officer.
3. On August 29, 2023, the state's Human Resources Division (HRD) sent Certification Number 09467 to the City.
4. On May 2, 2024, the City issued conditional offers of employment to 31 police officer candidates, including the Appellant.
5. No candidate ranked below the Appellant was issued a conditional offer of employment.
6. One of the conditions for employment for all candidates is successful graduation from a Municipal Police Training Committee (MPTC)-approved training academy.
7. On August 26, 2024, the Appellant began the 6-month long police academy.
8. On September 27, 2024, the Appellant was separated from the police academy.
9. On September 30, 2024, the City notified the Appellant that, based on his dismissal from the police academy, his conditional offer of employment for police officer was rescinded and that his employment with the City was terminated.
10. On December 5, 2024, the Appellant filed the instant appeal with the Commission.

¹ The Appellant was reminded, via email, of the deadline to file an opposition to the City's motion and that, absent a withdrawal of his appeal, a formal decision would be sent to the parties and posted to the Commission's website. The Appellant did not reply to that email.

11. On February 11, 2025, the MPTC “Standards Subcommittee” issued a decision on the Appellant’s dismissal appeal, upholding the Appellant’s dismissal from the Academy.
12. No candidate ranked below the Appellant on the above-referenced certification was given a conditional offer of employment.

APPLICABLE CIVIL SERVICE LAW

Section 41 of Chapter 31 states that a tenured civil service employee may not be terminated, demoted, or suspended without just cause. Section 43 of the civil service law provides for certain appeal rights for tenured civil service employees who have been terminated from employment. To obtain tenure, a police officer candidate must have served a one-year probationary period. *See* G.L. c. 31, §§ 1 and 61.

STANDARD FOR SUMMARY DISPOSITION

The Commission may, on motion or upon its own initiative, dismiss an appeal at any time for lack of jurisdiction or for failure to state a claim upon which relief can be granted. 801 CMR 1.01(7)(g)(3). A motion before the Commission, in whole or in part, via summary decision may be filed pursuant to 801 C.M.R. 1.01(7)(h). An appeal may be decided on summary disposition only when, “viewing the evidence in the light most favorable to the non-moving party”, the undisputed material facts affirmatively demonstrate that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case”. *See, e.g., Milliken & Co. v. Duro Textiles LLC*, 451 Mass. 547, 550 n.6 (2008); *Maimonides School v. Coles*, 71 Mass. App. Ct. 240, 249 (2008); *Lydon v. Massachusetts Parole Bd.*, 18 MCSR 216 (2005). *See also Mangino v. HRD*, 27 MCSR 34 (2014) and cases cited (“The notion underlying the summary decision process in administrative proceedings parallels the civil practice under Mass. R. Civ. P. 56, namely, when no genuine issues of material fact exist, the agency is not

required to conduct a meaningless hearing.”); Morehouse v. Weymouth Fire Dep’t, 26 MCSR 176 (2013) (“a party may move for summary decision when . . . there is no genuine issue of fact relating to his or her claim or defense and the party is entitled to prevail as a matter of law.”)

ANALYSIS

The Commission lacks jurisdiction to hear this appeal for at least two reasons. First, the Appellant, at the time the City rescinded his conditional offer of employment, was not a tenured civil service employee as he had not completed a one-year probationary period. In fact, the Appellant had not even begun his probationary period as he was still an unsworn student police officer who was not able to perform the duties and responsibilities of a regular police officer. Section 96B of G.L. c. 41 specifically exempts "student officers" enrolled in the Police Academy from the civil service law. Thus, the Appellant was never a tenured civil service employee and the Commission lacks jurisdiction to hear his appeal under Sections 41 through 43 of the civil service law.

Second, I also considered whether the City’s rescission of the Appellant’s conditional offer of employment constituted an appealable “bypass” under Section 2(b) of the civil service law. Based on the specific facts of this appeal, it does not. No candidate ranked below the Appellant on the civil service certification was given a conditional offer of employment. Thus, no bypass occurred here.

Finally, even if the Commission had jurisdiction to hear this appeal, it is undisputed that [1] the Appellant was dismissed from the Police Academy; [2] he exercised his right of appeal; and [3] after a hearing, his appeal was denied. Given these undisputed facts, the Appellant would have no reasonable expectation that he could successfully challenge the validity of the City’s decision to rescind his conditional offer of employment.

CONCLUSION

The City's Motion for Summary Decision is allowed and the Appellant's appeal under Docket Number D1-24-187 is hereby *dismissed*.

CIVIL SERVICE COMMISSION

/s/ Christopher Bowman

Christopher C. Bowman

Chair

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney and Stein, Commissioners [Markey – Absent]) on April 3, 2025.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Joshua Almestica (Appellant)

Karen Fisher, Esq. (for Respondent)