COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

100 Cambridge St., Suite 200
Boston, MA 02114
(617) 979-1900

RANDOLPH BLAKE,
Appellant

v.

SPRINGFIELD FIRE DEPARTMENT,
Respondent

Case No.: E-21-120

DECISION

Pursuant to G.L. c. 31, §§ 2(b) and/or § 43, I assigned the above-captioned non-bypass equity appeal to the Civil Service Commission's General Counsel, attorney Robert L. Quinan, Jr., to serve as the Presiding Officer for initial adjudication on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), General Counsel Quinan filed the attached Tentative Decision with the Commission and the parties had thirty days to provide written objections to the Commission. Referring also to a second equity appeal the Appellant filed in 2022 (case no. E-22-093), and which is the subject of a separate Tentative Decision, the Appellant submitted objections on August 24, 2023, in the form of an "Opposition to Attorney Quinan's Proposed Decisions" (hereinafter, "Opposition"). The Respondent has not filed any reply.

After careful review and consideration, the Commission voted to affirm and adopt the attached Tentative Decision of the Presiding Officer, making this and the attached the Final Decision of the Commission.

I first address a procedural objection raised by the Appellant. His objection to the Commission General Counsel's role as Presiding Officer is without merit. In my capacity as Chair of the Commission, I designated him to preside over proceedings involving this Appellant. *See* 801 CMR 1.01 (2)(c). General Counsel Quinan is a qualified, disinterested, and impartial adjudicator. The Commission rejects as unfounded any suggestion of impropriety on the Presiding Officer's part.[1]

[1] Additionally, for reasons stated in the record, I have declined the Appellant's invitation to recuse myself from this matter.

I turn now to the merits of the Appellant's central objection. Given that no adverse personnel action, especially one cognizable under G.L. c. 31, § 41, had been taken against the Appellant by the Respondent within the appropriate time period preceding the filing of this equity appeal, any complaint by the Appellant that he is being subjected to a racially hostile or "unfit" work environment must be pursued by the Appellant before the Massachusetts Commission Against Discrimination (MCAD) or a state or federal court of competent jurisdiction.[2] *See* G.L. c. 151B, §§ 4 and 9; *Town of Brookline v. Alston*, 487 Mass. 278, 292-297 (2021). The enforcement of the Commonwealth's antidiscrimination statutes is committed to the MCAD. *Charland v. Muzi Motors, Inc.*, 417 Mass. 580, 582 (1994). As recently stated by Commonwealth's highest court in the *Alston* case: "employees can bring a claim against their employer under c. 151B for a hostile work environment." 487 Mass. at 293, quoting *College-Town, Div. of Interco, Inc. v. MCAD*, 400 Mass. 156, 162 (1987) ("The discrimination prohibited by G.L. c. 151B, § 4 [1], encompasses a work environment pervaded by abuse and harassment"). A tenured civil service employee such as the Appellant "may also bring a claim of retaliation" to the MCAD under this same statute. *Alston*, 487 Mass. at 293. As emphasized by the Supreme Judicial Court: "Chapter 151B provides a comprehensive set of remedies that address discrimination, harassment, and retaliation, including those based on race." *Id.* at 294.[3]

The Appellant claims he is in the same position as Gerald Alston, Tracy Blanchette (the subject of this Commission's decision published at 34 MCSR 431 (2021)), or the Westfield firefighters who obtained relief from the Commission in *Miltimore et al. v. Westfield Fire Commission*, 34 MCSR 190 (2021). He is mistaken. All of those appellants, unlike Lt. Blake at the time he filed this equity appeal, had suffered an adverse personnel action cognizable under G.L. c. 31, § 41, which afforded this Commission authority to consider the type of work-conditions claim that Lt. Blake seeks to litigate here *within* the context of adjudicating a civil service appeal. As stated by the Supreme Judicial Court at the very outset of its *Alston* decision: "The issue presented is whether the Civil Service Commission (commission) may consider evidence related to a racially hostile or retaliatory work environment ***when assessing whether a municipality had just cause to terminate a tenured civil service employee***." 487 Mass. at 279 (emphasis added). In this case, particularly in view of the pending federal court lawsuit between the same parties, the Commission declines to conduct an evidentiary hearing into the (arguably stale) matters raised by this Appellant in conjunction with the above-captioned equity appeal,

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[2] As detailed in the attached Tentative Decision (at 4-5 & n.4), the Appellant's claims against Respondent for alleged discrimination, retaliation, and hostile work environment are currently being litigated in the U.S. District Court for the District of Massachusetts (albeit, in a recent development, the court's docket shows that the jury trial originally set for September 2023 has been continued to March 4, 2024).

[3] Indeed, the precedents relied upon by the Appellant in his Opposition in claiming that he has a right to an evidentiary hearing before this Commission due to the allegedly hostile work environment he has experienced are all cases adjudicated under G.L. c. 151B, not c. 31, the civil service statutes. *See* Opposition at 7 n.23 (citing *Aug Corp. v. MCAD*, 75 Mass. App. Ct. 398 (2009); *Thos. O'Connor Constr., Inc. v. MCAD*, 72 Mass. App. Ct. 459 (2008); and *Green v. Harv. Vanguard Med. Assoc., Inc.*, 79 Mass. App. Ct. 1 (2011)).

given that the filing of this appeal was untethered to any timely discipline or the issue of just cause for suspension or termination.

For the above-stated reasons, and those laid out in the attached Tentative Decision, the above-captioned non-bypass equity appeal filed the Appellant is denied and hereby ***dismissed***.

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein, and Tivnan, Commissioners) on October 5, 2023.

Civil Service Commission

/s/ Christopher C. Bowman
Christopher C. Bowman
Chair

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:
Randolph S. Blake (Appellant)
Maurice Cahillane, Esq. (for Respondent)

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Appellant

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SPRINGFIELD FIRE DEPARTMENT,
Respondent

Appearance for Appellant:	*Pro Se* Randolph S. Blake
Appearance for Respondent:	Maurice M. Cahillane, Esq. Egan, Flanagan & Cohen, LLP 67 Market Street; P.O. Box 9035 Springfield, MA 01103
Adjudicator:	Robert L. Quinan, Jr.

SUMMARY OF TENTATIVE DECISION

The assigned adjudicator recommends that the full Commission allow *without prejudice* the Respondent's Motion to Dismiss the Appellant's appeal after determining that the Appellant raises no issue—nor does he seek relief—that is not, or could not have been, asserted within the scope of his pending disciplinary appeal (filed with the Commission in August 2022) or his federal court lawsuit currently scheduled for trial.

TENTATIVE DECISION ON RESPONDENT'S MOTION TO DISMISS

On July 6, 2021, the Appellant, Randolph S. Blake, an African-American Lieutenant in the Springfield Fire Department (SFD), filed with the Civil Service Commission (Commission) a non-bypass-related request for equitable relief alleging that his employer had subjected him to certain "retaliatory actions" that have placed him in an "untenable, unfit, hostile, and toxic

environment" in violation of the basic merit principles defined in section one of G.L. c. 31. Lt. Blake also alleged "harassment" and a deprivation of due process and sought the Commission's "intervention". On August 17, 2021, I conducted a WebEx-recorded pre-hearing conference, which was attended by the Appellant, counsel for the SFD, the SFD's Fire Commissioner, and personnel from the City of Springfield's Human Resources & Labor Relations Office. Subsequently, the Respondent filed a motion to dismiss this appeal. For reasons explained below, and in light of prior and subsequent related claims by the same Appellant, I have concluded that this matter should not proceed any further and the Appellant's 2021 application for equitable relief should be dismissed without prejudice.

The Appellant's contentions and objectives

In a memorandum accompanying his July 2021 filing, the Appellant asserted that investigations into charges that he engaged in misconduct "have been weaponized against [him]," rendering his work environment "unfit, hostile, and toxic." Although in April of 2021 the Appellant had pressed charges against a fellow SFD lieutenant of color arising out of allegedly "improper, uncooperative actions" by that other officer in connection with an "illegal burn" call he made to 911, as reported to Lt. Blake by a dispatcher, the Appellant reported later being subjected to "retaliat[ory] charges" filed by this same officer and then "extensive questioning about [his] motivations" in pressing the original charges.[4]

On July 6, 2021, the same day the Appellant filed a Request for Equitable Relief with the Commission, he also submitted directly to the SFD Fire Commissioner, Bernard J. Calvi, an

[4] In Appellant's pre-hearing memorandum, Lt. Blake contends that "unfair, biased, and unobjective investigations" constitute the sort of "arbitrary and capricious actions" forbidden by G.L. c. 31's basic merit principles provision.

interoffice memorandum entitled "Unfit Environment / Improper Investigation," accusing the Commissioner of "complicitly encourag[ing] the retaliation . . . that has made my work environment unbearable." The Appellant alleged that "[e]very time a negative job action" had been taken against him, he had been denied due process. This memorandum referred to the Commissioner's alleged "blatant refusal" to utilize "a fair, objective, unbiased, and neutral investigator" in conjunction with review of the April 2021 "illegal burn" incident. The SFD had referred the matter to the City's Human Resources department and the City's Chief Diversity Officer, attorney Talia Gee, had been assigned to conduct this investigation. The Appellant accused attorney Gee of "misrepresentations," conflict of interest, questioning his professionalism, and refusing to allow him to record meetings he had participated in with her. Subsequently (on or about July 28, 2021), SFD Commissioner Calvi sent the Appellant a written warning for the "disrespectful, patently false" content of his July 6, 2021 memorandum.

During the August 17, 2021 pre-hearing conference, the Appellant also referenced not having been seasonably provided with a copy of the (retaliation-specific) charges preferred against him by his fellow SFD lieutenant and the fact that, allegedly, complaints he has lodged have never been fully investigated. He contends that all investigators employed or retained by the City are biased against him. By way of relief, the Appellant seeks Commission intervention with unspecified orders to follow designed to protect him from unfair treatment,[5] or a directive that he be placed on paid leave status.

[5] During a November 2021 motion hearing, the Appellant suggested that the Commission order the SFD to utilize provisions within the state Personnel Administrator Rules (specifically, PAR .10) to create a minority-only promotional certification—or, alternatively, the Commission should order the SFD to limit promotional opportunities only to those who have resided exclusively in the city of Springfield while employed by the SFD.

The SFD's response

Through counsel, the SFD responded that it had indeed fully and appropriately investigated the Appellant's past complaints and had deemed them to be without merit. Counsel also pointed to past requests for investigation declined by this Commission.[6] Seeing as how the Appellant had not been disciplined, as of the November 2021 hearing date, for his role in the "illegal burn" call incident, the SFD urged that his application for equitable relief be dismissed. There was nothing improper, the SFD argued, about reprimanding Lt. Blake for having made "false allegations" and engaging in "slander" (*i.e.*, accusing two SFD officials of lying) in his July 6 memorandum. In any event, contended the Respondent, written reprimands are not appealable to the Commission under G.L. c. 31, § 41 (even if they might eventually have some bearing on prospects for promotion).

Related litigation and subsequent developments

In October 2018, the Appellant and another African-American officer within the SFD (now retired District Chief Marc Savage) filed suit in the United States District Court (Massachusetts) against, *inter alia*, the SFD, the City of Springfield (City), and Commissioner Calvi. Based on an amended complaint sustained in part against the defendants' motion to dismiss, the Federal court has scheduled a jury trial, to commence on September 11, 2023, on the Appellant and Savage's surviving claims.[7] Those claims include discrimination in violation of Title VII of the federal Civil Rights Act of 1964 against the City for discrete acts of discrimination against the Appellant allegedly occurring on or after May 4, 2017, and for a

[6] *See, e.g.,* the Commission's Response to Request for Investigation against the Springfield Fire Department by Petitioner Randolph Blake (Tracking no. I-17-208) (Dec. 7, 2017).

[7] *See Savage, et al. v. City of Springfield, et al.,* Docket no. 3:18-cv-30164-KAR (U.S.D.C. Mass.).

hostile work environment (Count One); discrimination in violation of G.L. c. 151B against the City, Commissioner Calvi, and former SFD Commissioner Joseph Conant for discrete acts of discrimination occurring on or after October 9, 2015, and for a hostile work environment (Count Two); unlawful retaliation in violation of Title VII against the City and unlawful retaliation in violation of G.L. c. 151B against the City, Calvi, and Conant (Count Four); and violation of the constitutional guarantee to equal protection against the City, Calvi, and Conant (Count Seven). *Savage v. Springfield, supra*, Paper no. 91.

In mid-June of 2022, the SFD notified the Appellant that it would seek to discipline him for his role in the April 2021 "illegal burn" incident. After a hearing conducted in accordance with G.L. c. 31, § 41, in late June 2022, in which the hearing officer found facts sufficient to sustain charges of conduct unbecoming a firefighter, failure to conduct Department business through proper channels, conducting an unauthorized investigation, and sharing confidential information outside the chain of command, Commissioner Calvi suspended the Appellant for four tours of duty. The Appellant timely filed a suspension appeal with this Commission in August of 2022. The Commission conducted two days of evidentiary hearings on January 20 and June 23, 2023 (with Commissioner Angela C. McConney and myself co-presiding). The Appellant was afforded a full opportunity to air his complaints about the investigatory process that preceded the suspension, the retaliation and harassment he claims to have suffered in recent years, and other issues congruent with the contentions he has advanced in the instant case.

Applicable Civil Service Law

Section 2(b) of G.L. c. 31 authorizes appeals to the Commission by persons aggrieved by certain actions or inactions by the state's Human Resources Division (HRD) or, in certain cases,

by appointing authorities to whom HRD has delegated its authority,[8] and which actions have abridged their rights under civil service laws. This statute, however, expressly conditions the right to pursue such an appeal here as follows:

> *No person shall be deemed to be aggrieved . . . unless such person has made specific allegations* in writing that a decision, action, or failure to act on the part of the administrator [HRD] was in violation of this chapter, the rules or basic merit principles promulgated thereunder *and said allegations shall show that such person's rights were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person's employment status*.

Id. (*emphases* added). The phrase "basic merit principles" refers to a fundamental tenet of civil service law. Section 1 of G.L. c. 31 defines basic merit principles as

> ... (a) recruiting, selecting and *advancing of employees on the basis of their relative ability, knowledge and skills* including open consideration of qualified applicants for initial appointment; (b) providing of equitable and adequate compensation for all employees; (c) providing of training and development for employees, as needed, to assure the advancement and high quality performance of such employees; (d) retaining of employees on the basis of adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected; (e) *assuring fair treatment of all applicants and employees* in all aspects of personnel administration without regard to political affiliation, race, color, age, national origin, sex, marital status, handicap, or religion and with proper regard for privacy, basic rights outlined in this chapter and constitutional rights as citizens, and; (f) assuring that all employees are protected against coercion for political purposes, and are *protected from arbitrary and capricious actions*.

Id. (emphases added).

Chapter 310 of the Acts of 1993 prescribes the discretionary authority granted to the Commission to remediate a violation of civil service law:

> *If the rights of any person* acquired under the provisions of chapter thirty-one of the General Laws or under any rule made thereunder *have been prejudiced through no fault of his own, the civil service commission may take such action as will restore*

[8] Section 2(c) of G.L. c. 31 states that "all references [in Section 2(b)] to the administrator shall be taken to mean the local appointing authority or its designated representative" and, thus, this Appellant must show here, *inter alia*, that Springfield's Fire Commissioner violated some provision of Chapter 31 or the state Personnel Administration Rules.

> *or protect such rights* notwithstanding the failure of any person to comply with any requirement of said chapter thirty-one or any such rule as a condition precedent to the restoration or protection of such rights.

Id. (emphases added). See *Thomas v. Civil Serv. Comm'n*, 48 Mass. App. Ct. 446 (2000).

The fundamental mission of Massachusetts civil service law is to enforce "basic merit principles" described in Chapter 31, which command, among other things, "recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment" and "assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions." G.L. c. 31, § 1. *See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259 (2001); *MacHenry v. Civil Serv. Comm'n*, 40 Mass. App. Ct. 632, 635 (1995), *rev. den.*, 423 Mass.1106 (1996). "A decision is arbitrary and capricious when it lacks any rational explanation that reasonable persons might support." *City of Cambridge v. Civil Serv. Comm'n*, 43 Mass. App. Ct. 300, 303 (1997) (internal citations omitted).

Analysis

I have carefully scrutinized the contentions the Appellant presented at the pre-hearing conference, the motion hearing, and the arguments he outlined in his written submissions filed under this docket number. I discern no claims or contentions that have not actually been, or could not have been, advanced in Docket No. D-22-117 or in the federal court lawsuit scheduled for a multi-day jury trial starting on September 11, 2023. Moreover, between the date of filing of the within application for equitable relief in July of 2021 and the imposition of discipline in the form of a four-tour suspension one year later, the Appellant could not then have shown that he was an aggrieved person under Section 2(b); nor would it have been appropriate, prior to the filing of the Appellant's disciplinary appeal, for the Commission to have exercised whatever

discretionary authority it may possess to intervene in municipal personnel matters. *See, e.g.*, *Busch v. Town of Whitman*, 34 MCSR 267 (2021), WL 8894171, at *6 (June 17, 2021).

The circumstances presented in this appeal are quite different from those that the Commission found in *Alston v. Town of Brookline*, 32 MCSR 37 (2019), aff'd sub nom. *Town of Brookline v. Alston*, 487 Mass. 278 (2021). The *Alston* appeal, cited by the Appellant as a precedent for early intervention, involved the discharge of a tenured firefighter after he failed to return to work following years of suffering from multiple incidents of harassment and retaliation at the hands of his fellow firefighters and superior officers that made it impossible for him to return to duty. Prior to August of 2022, the Appellant had only been the recipient of a written warning insofar as discipline associated with the "illegal burn call" incident is concerned. It is well established that the Commission lacks jurisdiction to review warnings issued to civil service employees. *See Burgo v. City of Taunton*, 22 MCSR 618 (2009); *see also Cross v. Department of Workforce Development* (Order of Dismissal), 24 MCSR 11 (2011).

At the time of the motion to dismiss hearing, the Appellant had been unable to specify any adverse employment action that had not already been the subject of prior Commission review or that met the criteria for review specified in G.L. c. 31, §§ 2 or 41-42. Mr. Blake's opposition memorandum makes "clear" that he has "not requested this Commission to address any actionable discipline, nor [has he] asked this Commission to initiate their own investigation under M.G.L. c. 31 sec. 2(a)." Rather, he asked the Commission "to determine . . . [following] an evidentiary hearing if [he had been] exposed to and immersed in an unfit, retaliatory/hostile work environment that substantially harms [his] psychological health[.]" Opp. at 1.

The Appellant alleges that certain SFD superiors, including Commissioner Calvi, have made his working life difficult because of his role in litigation challenging the SFD's alleged

failure to abide by a municipal ordinance that generally requires SFD employees to live within city limits plus his claim that the failure to disqualify SFD officers who reside elsewhere from promotional examinations has deprived the Appellant of promotional opportunities. As noted above, these issues are central to the federal court case that will be submitted to a jury toward the end of summer 2023. Contrary to the Appellant's belief, this Commission does *not* have the authority to enforce a municipality's residency ordinance (as opposed to the provisions of G.L. c. 31, § 58, which Lt. Blake does not allege have been violated); nor does it suffice for the Appellant to allege in general terms that a municipal public safety department's failure to abide by its own internal rules constitutes an actionable violation of Chapter 31's basic merit principles. Likewise, the Commission has no authority to order the SFD, or any other public safety department, to utilize any particular investigators (or even what an employee might perceive to be "neutral" ones) to process internal complaints. No provision of state law expressly permits an individual civil service employee to appeal to the Commission the scope, the conduct, or the results of (or even the manner in which information is conveyed about) an internal investigation that does not lead to the type of adverse personnel action specified in G.L. c. 31, § 41.

Dismissal of this matter *without prejudice* (the italicized term meaning that the Appellant may raise anew, in conjunction with a timely and properly litigated statutory claim, his request for equitable relief) does not in any way portend a negative outcome in the Appellant's pending disciplinary appeal. In other words, as part of the Appellant's proposed decision, which he will be filing later this summer under docket no. D-22-117, he is free to reiterate whatever plea for equitable relief he deems appropriate in the context of that suspension appeal.

Conclusion

For all of the above reasons, I recommend that the Appellant's non-bypass equity appeal filed pursuant to G.L. c. 31, § 2(b) should be ***dismissed*** without prejudice.

For the Civil Service Commission:

/s/ Robert Quinan, Jr.
Robert L. Quinan, Jr.
General Counsel

Notice to:
Randolph S. Blake (Appellant)
Maurice M. Cahillane, Esq. (for Respondent)