

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

JOHN BROPHY, Appellant)	
)	
)	
v.)	Docket No. D-04-309
)	
CITY OF PEABODY, Respondent)	ON THE RESPONDENT’S MOTION TO DISMISS
)	

DECISION

Pursuant to G.L. c. 31, § 43, the Appellant, John Brophy, (“Appellant”) filed this appeal with the Civil Service Commission (“Commission”) on June 28, 2004 claiming that actions by the Respondent, City of Peabody (“City”) as Appointing Authority, suspended him for thirty-five (35) days from his position as a Firefighter on June 11, 2004. Pursuant to the Standard Adjudicatory Rules of Practice and Procedure 801 CMR 1.01 7(g)(3), the City filed a Motion to Dismiss the appeal, on May 4, 2007, claiming that the Commission must dismiss the appeal, in accordance with G.L. c. 31, § 42, because the Appellant exercised his rights to appeal this disciplinary action to Arbitration, pursuant to G.L. c. 150E, § 8.

Section 42 states, in relevant part:

“In the event the Commission determines that the subject matter of such complaint has been previously resolved or litigated with respect to such employee, in accordance with the provisions of section eight of chapter one hundred and fifty E, or is presently being resolved in accordance with said section eight, the Commission shall forthwith dismiss such complaint.”

The Commission is in receipt of an American Arbitration Association award, dated July 1, 2005, in favor of the Appellant for a grievance with identical subject matter filed as Case No. 11 390 02006 04 in accordance with c. 150E, § 8.

Therefore, the Motion to Dismiss is allowed and the appeal on Docket No. D-06-180 is hereby *dismissed*.

Civil Service Commission

John J. Guerin, Jr.
Commissioner

By a vote of the Civil Service Commission (Bowman, Guerin, Marquis and Taylor, Commissioners) on June 14, 2007.

A True Record. Attest:

Commissioner

Either Party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with GL c. 30A, s. 14(1) for the purpose of tolling the time for appeal.

Under the provisions of GL c. 31, s. 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the commission's order or decision.

Notice to:

Patrick N. Bryant, Esq.
Daniel B. Kulak, Esq.