

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

Decision mailed: 6/27/08
Civil Service Commission

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

BRIAN CANNELLA,
Appellant

v.

**NORTH ANDOVER FIRE
DEPARTMENT,**
Respondent

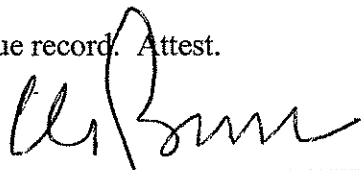
Case No.: D1-07-147

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on June 26, 2008 to acknowledge receipt of the recommend decision of the Administrative Law Magistrate dated March 25, 2008. No comments were received by the Commission from either party. The Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed* by 3-2 vote of the Commission.

By vote of the Civil Service Commission (Bowman, Chairman, yes; Henderson, Commissioner, no; Marquis, Commissioner, yes; Stein, Commissioner, yes; and Taylor, Commissioner, no; on June 26, 2008.

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 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:
Brian Simoneau, Esq. (for Appellant)
Tim D. Norris, Esq. (for Appointing Authority)
Maria A. Imparato, Esq. (DALA)

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

98 North Washington Street, 4th Floor

Boston, MA 02114

www.mass.gov/dala

Tel: 617-727-7060
Fax: 617-727-7248

March 25, 2008

Christopher Bowman, Chairman
Civil Service Commission
One Ashburton Place
Boston, MA 02108

Brian E. Simoneau, Esq.
161 Worcester Road, Suite 200
Framingham, MA 01701

Tim D. Norris, Esq.
Collins, Loughran & Peloquin
320 Norwood Park South
Norwood, MA 02062

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2008 MAR 26 A 11:00
COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

Re: *Brian Cannella v. North Andover Fire Department*, D1-07-147; CS-08-84

Dear Chairman Bowman, Attorney Simoneau and Attorney Norris:

Enclosed please find my Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01 (11) (c), they have 30 days to file written objections to the decision with the Civil Service Commission, which may be accompanied by supporting briefs.

Very truly yours,



Maria A. Imparato
Administrative Magistrate

Enc.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Brian Cannella,
Appellant

v.

Docket No. D1-07-147
DALA No. CS-08-84

North Andover
Fire Department,
Appointing Authority

Appearance for Appellant:

Brian E. Simoneau, Esq.
161 Worcester Road, Suite 200
Framingham, MA 01701

Appearance for Appointing
Authority:

Tim D. Norris, Esq.
Collins, Loughran & Peloquin
320 Norwood Park South
Norwood, MA 02062

Administrative Magistrate:

Maria A. Imparato, Esq.

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RECOMMENDED DECISION

Brian Cannella, the Appellant, is appealing under G. L. c. 31, s. 43 the April 6, 2007 decision of the Appointing Authority, North Andover Fire Department, to discharge him from his job as a firefighter based on his failure to obtain certification as a Massachusetts Emergency Medical Technician. (Ex. 2)

I held a hearing on February 7, 2008 at the office of the Division of Administrative Law Appeals, 98 North Washington Street, Boston.

I admitted documents into evidence. (Exs. 1 – 10) Fire Chief William Martineau testified on behalf of the Appointing Authority. Brian Cannella testified in his own behalf. The record closed on March 7, 2008 with the filing of closing briefs.

FINDINGS OF FACT

1. On July 1, 2005 Brian Cannella was granted a conditional offer of appointment as a probationary firefighter in the North Andover Fire Department. He was informed that actual appointment to the position was contingent, in part, upon his successful completion of the required Emergency Medical Technician ("EMT") Training and attaining Massachusetts certification as an EMT. (Ex. 5)
2. Under the Collective Bargaining Agreement between the Town of North Andover and the International Association of Fire Fighters, Local 2035, Article XVII, section 3 provides that employees hired on or after July 1984 are required to obtain EMT certification during their probationary period, and to maintain that certification until promoted to the rank of fire lieutenant or higher, as a condition of employment. (Ex. 4) A firefighter's probationary period is one year. (Testimony, Martineau)
3. Mr. Cannella was appointed from Certification No. 250472 as a full time permanent firefighter and began working on August 15, 2005. (Stipulated fact, Ex. 1)
4. On September 4, 2005 Mr. Cannella was activated by his National Guard unit to aid in disaster relief and security operations after Hurricane Katrina. He returned to full time duty with the North Andover Fire Department on September 28, 2005. (Ex. 7)
5. Mr. Cannella missed the September 2005 EMT training class because of his activation by the National Guard. He began EMT training classes at Northern

Essex Community College in the next available class in January 2006.

(Testimony, Ex. 7)

6. Mr. Cannella completed the EMT class on May 13, 2006 and took his practical skills exam in June 2006. In or about August 2006 Mr. Cannella was notified that he had not passed his practical skills exam. He took and failed the practical skills exam two more times, and was notified by letter of March 13, 2007 that he had failed for the third time. (Testimony; Ex. 6; Stipulated fact, Ex. 1)
7. Because Mr. Cannella failed the practical skills exam three times, he was required to repeat the EMT course. (Testimony, Stipulated fact, Ex. 1)
8. By letter of March 26, 2007 Mr. Cannella was given a notice of contemplated action, notifying him that a hearing would be held on March 30, 2007 to determine whether he should be discharged from his position based on his “[f]ailure to possess a license necessary to meet the minimum qualifications for employment as a North Andover firefighter.” (Ex. 2)
9. By letter of April 6, 2007 Mr. Cannella was notified of his discharge because “your failure to possess the EMT [certification] makes it impossible for you to perform a primary function of your job.” (Ex. 3)
10. Mr. Cannella took the EMT training course again, and passed his practical skills exam in June 2007. He became a licensed EMT on August 3, 2007.
(Exs. 7, 10)

11. EMT work is the most important part of the North Andover Fire Department. More than half of the calls received by the department are emergency medical calls rather than fire calls. (Testimony, Ex. 8)
12. Chief Dolan, who was Fire Chief at the time of these events, allowed Mr. Cannella an additional six months to get his EMT certification because of his National Guard deployment. That is why Mr. Cannella was retained after August 2006 even though he did not have his EMT certification. It was assumed that he would pass the practical skills course and become certified. (Testimony, Martineau)
13. The 24 junior firefighters in the department are assigned to work as EMTs. Mr. Cannella could not work as an EMT so he worked either as a third man, or as a driver of the ladder or the engine. Mr. Cannella was building his seniority without putting in his time on the ambulance. (Testimony, Martineau, Cannella)
14. After Mr. Cannella failed the practical skills course for the third time, Chief Dolan told Mr. Cannella that if he took another EMT class at his own expense and found other firefighters to swap shifts with him, he could keep his job if he passed the next practical skills test, contingent upon the union agreeing to this. The union did not agree. Mr. Cannella had not yet started his new EMT course when he was terminated. (Testimony, Martineau, Cannella)
15. Mr. Cannella had trouble concentrating as a result of his work after Hurricane Katrina. He saw dead bodies, one of which had been eaten by a dog. He lost sleep, felt withdrawn, had problems with concentration and experienced cold

sweats and screaming at night. Mr. Cannella never told Chief Dolan how his experience after Hurricane Katrina affected him. (Testimony, Cannella)

16. Mr. Cannella entered the Massachusetts Fire Academy on July 10, 2006, and graduated on September 29, 2006 with Firefighter I & II certifications.

(Testimony, Stipulated fact, Ex. 1)

CONCLUSION AND RECOMMENDATION

The North Andover Fire Department has demonstrated just cause for the termination of Brian Cannella from his position of firefighter because he failed to meet an essential condition of his employment, that is, that he obtain EMT certification during his first probationary year. I recommend that the Civil Service Commission affirm the action of the Appointing Authority.

The Appointing Authority gave the Appellant six extra months to achieve this certification, in view of his National Guard service after Hurricane Katrina that caused him to miss the first EMT training course. The Appellant took the next training course and then failed the practical skills course three times. After failing the practical skills course three times, he had to repeat the EMT training course.

By that time, March 2007, the Appellant had been working as a firefighter for 1 ½ years, without obtaining his EMT certification, as required under the Collective Bargaining Agreement, and discharge was warranted.

I recommend that the Civil Service Commission uphold the discharge of the Appellant.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Maria A. Imperato

Maria A. Imperato

Administrative Magistrate

DATED: