

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK,ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503

Boston, MA 02108

(617) 727-2293

AMY CLARK

Appellant

v.

D1-11-306

BROOKLINE PUBLIC SCHOOLS,

Respondent

Appellant's Attorney:

Pro Se

Amy Clark

Respondent's Attorney:

Jan M. Gould, Esq.

Deutsch / Williams

One Design Center Place

Suite 600

Boston, MA 02210

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT'S MOTION TO DISMISS

The Appellant, Amy Clark, filed an appeal with the Civil Service Commission on October 14, 2011, pursuant to G.L. c. 31, §§ 42 and 43, stating that she was forced to resign and that the Respondent did not comply with the procedural requirements of the civil service law. On or about November 9, 2011, the Respondent, the Brookline Public Schools, filed a Motion to Dismiss the Appellant's appeal arguing that: 1) the Appellant voluntarily resigned her position as a Senior Clerk and Typist; and 2) the Appellant was at all times a provisional civil service employee and she never had civil service permanency. A pre-hearing was held on November 29, 2011 at which time the Appellant did not dispute that she was a provisional employee at all times relevant to this appeal.

It is well established that the Commission does not have jurisdiction to hear an appeal filed by an employee pursuant to G.L. c. 31, §§ 42 or 43 when the employee was never a permanent or tenured employee pursuant to G.L. c. 31. See Rose v. Executive Office of Health and Human Services, 20 MCSR 266, 267 (2007). (The Commission granted the Appointing Authority's Motion to Dismiss based on lack of jurisdiction because the Appellant's status in her position was provisional, despite her 28 years of service.)

Since it is undisputed that the Appellant was never a permanent or tenured employee, she has no right of appeal to the Commission. Even if she did, it is undisputed that she and her counsel at the time signed an agreement on October 6, 2011 in which the Appellant agreed to voluntarily resign from her position.

For these reasons, the Appellant's appeal under Docket No. D1-11-306 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, McDowell and Stein, Commissioners [Marquis – Absent]) on December 15, 2011.

A True Record. Attest:

Commissioner

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.

Notice to:

Amy Clark (Appellant)

Jan M. Gould, Esq. (for Respondent)