

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

PAUL COKELY,
Appellant

v.

D-06-35

CAMBRIDGE PUBLIC SCHOOLS,
Respondent

Appellant's Attorney:

Pro Se
Paul Cokely

Respondent's Attorney:

Maureen A. MacFarlane, Esq.
Legal Counsel
Cambridge Public Schools
159 Thorndike Street
Cambridge, MA 02141

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT'S MOTION TO DISMISS

Pursuant to the provisions of G.L. c. 31, § 43, the Appellant, Paul Cokely (hereafter "Cokely" or "Appellant"), is appealing the decision of the Cambridge Public Schools (hereafter "Cambridge" or "Appointing Authority") to suspend him for one (1) day as a permanent senior building custodian. A pre-hearing conference was conducted at the offices of the Civil Service Commission on June 8, 2006. Prior to the pre-hearing conference, the Appointing Authority filed a Motion to Dismiss the Appellant's appeal, arguing, in part, that the Appellant failed to exhaust his administrative remedies by first requesting a hearing before the Appointing Authority prior to filing an appeal with the

Commission. At the pre-hearing conference on June 8, 2006, the pro se Appellant was instructed that he had twenty (20) days to submit a response to the Appointing Authority's Motion to Dismiss. On September 12, 2007, the Commission, after receiving an inquiry from the Appointing Authority regarding its Motion to Dismiss, sent a written order to the Appellant, providing him until September 28, 2007 to file a response. The Appellant did not respond to the Commission's order.¹

In its Motion to Dismiss, the Appointing Authority argues that, after receiving notice of his one (1) day suspension, Mr. Cokely filed an appeal directly with the Civil Service Commission. He did not, according to the Appointing Authority, first file a written request for a hearing before the Appointing Authority. Mr. Cokely did not refute this at the pre-hearing conference nor did he file a response with the Commission stating otherwise.

G.L. c. 31, § 41 states in relevant part, that a tenured civil service employee who is suspended for five (5) or less days "may, within forty-eight hours after the receipt of such notice, file a written request for a hearing *before the appointing authority* on the question of whether there was just cause for the suspension." (emphasis added) Further, G.L. c. 31, § 41, states, "If it is the decision of the appointing authority, *after hearing*, that there was just cause for an action taken against a person pursuant to the first or second paragraphs of this section, such person may appeal to the commission as provided in section forty-three." (emphasis added)

¹ The Appellant was subsequently terminated by the Appointing Authority for a separate incident. He has filed an appeal with the Commission regarding the termination and a full hearing is scheduled for November 15, 2007 at 10:30 A.M. for which he is represented by counsel. (See CSC Case No. D1-07-204)

The Appellant in this case never filed a request for a hearing before the Appointing Authority to appeal his one-day suspension. Rather, he filed an appeal directly with the Civil Service Commission. Based on the plain reading of G.L. c. 31, § 41, the Appellant may only file an appeal with the Commission regarding his one-day suspension, *after* a hearing before the Appointing Authority.²

For this reason, the Appellant's appeal under Docket No. D-06-35 is hereby *dismissed*. The full hearing regarding this appeal, previously scheduled for December 17, 2007, is canceled.

Civil Service Commission

Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Guerin, Henderson, Marquis and Taylor, Commissioners) on October 11, 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. 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:

Paul Cokely (Appellant)

Maureen A. MacFarlane, Esq. (for Appointing Authority)

Shelly Taylor, Esq. (DALA)

Jaime DiPaola-Kenny, Esq. (AFSCME) (Courtesy Copy; represents Appellant in D1-07-204)

² Under G.L. c. 31, § 41A, the Commission may conduct a hearing without a prior Appointing Authority hearing, upon the request of both the employee and the Appointing Authority. No such request was made regarding the instant appeal.