

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

SUFFOLK, ss.

SUSAN CONNELLY,
Appellant

v.

Docket No. D-07-055

DEPARTMENT OF SOCIAL SERVICES
Respondent

Appellant's Representative:

Burton A. Nadler, Esq.
Petrucelly & Nadler, P.C.
One State Street, Suite 900
Boston, MA 02109

Respondent's Representative:

Pamela Fitzpatrick,
Labor Relations Specialist
Executive Office of Health and
Human Services—Children, Youth
& Families
24 Farnsworth Street
Boston, MA 02210

Commissioner:

Donald R. Marquis

DECISION ON RESPONDENT'S MOTION TO DISMISS

Procedural Background

The Appellant, Susan Connelly (hereafter "Appellant"), appealed her one-day suspension to the Civil Service Commission pursuant to G.L. c. 31, § 43 on January 23, 2007. On or about April 5, 2007, the Department of Social Services (hereafter "Respondent") submitted a Motion to Dismiss, contending that the Appellant did not

have Civil Service standing to challenge the Respondent's decision to suspend her without pay from her provisional position as a Program Manager V. On May 1, 2007, the Appellant submitted an Opposition to the Motion to Dismiss.

Factual Background

The Appellant has worked for the Respondent for over twenty (20) years and during the past fourteen (14) years she has been employed as a Program Manager. On or about December 13, 2006, the Appellant was disciplined by her Regional Manager and given a one-day suspension without pay. She disputed the allegations leading to her suspension and, on January 19, 2007, the Respondent found there was just cause for her suspension. Subsequently, the Appellant filed an appeal with the Commission.

Respondent's Grounds for Dismissal

G.L. c. 31 creates a comprehensive plan for the appointment of individuals to permanent and temporary civil service positions. City of Somerville v Somerville Municipal Employees Assoc. 20 Mass App. Ct. 594, 597 (1985). Temporary and provisional employees "are entitled to none of the advantages secured by period of tenure under the civil service rules." McLaughlin v. Callahan, 304 Mass. 27, 30 (1939). The Commission has adopted the opinion that the protections of Section 43 are not available to non-tenured employees. The Commission may dismiss a matter on the motion of a party for, among other circumstances the "lack of jurisdiction to decide the matter." 801 CMR 1.01 (7)(g)(3).

The Respondent asks the Commission to dismiss the Appellant's appeal, asserting that, at the time of the Appellant's suspension, she did not have permanent Civil Service rights. The Respondent states that the Appellant is currently employed as a Program Manager V, a provisional position. To support its argument, the Respondent submits an affidavit from the Director of Employment Services in the Executive Office of Health and Human Services. She attests that the Appellant has a permanent appointment with the Respondent as a Social Worker III, that on or about April 17, 1987, the Appellant was promoted to the temporary position of Social Worker IV, that on or about February 28, 1993, the Appellant was provisionally appointed to the position of Program Manager IV and that on or about June 27, 1993, the Appellant was reclassified to the provisional position of Program Manager V. The Respondent maintains that the Appellant lost her Civil Service protection when she accepted a non-civil service position. It contends that, as the Appellant is not presently a permanent civil service employee, she is therefore not entitled to a hearing on her appeal pursuant to G.L. c. 31, § 43, as this section provides hearing rights only to those employees whose permanent employment rights have been adversely affected.

Despite the Appellant's assertion that, during her participation in the disciplinary process, the Respondent assured her on two occasions that she could appeal its decision to the Commission under G.L. c. 31, §§ 42 and 43 and that she reasonably relied on this belief in hiring counsel and filing her appeal, the Appellant did not submit evidence to dispute her provisional status.

Based on the above, the evidence indicates that the Appellant's status is provisional and she is therefore not entitled to a hearing before the Commission under G.L. c. 31, §42.

The above being said, the Commission reiterates its longstanding admonishment to Appointing Authorities and the Human Resources Division to end the unhealthy and improper reliance on provisional appointments and promotions. See Sullivan v City of Boston, G2-06-48 (2007).

Conclusion

For the above reasons, the Appellant is not a permanent Civil Service employee and is therefore not entitled to hearing rights under Section 43. Accordingly, the Respondents' Motion to Dismiss is allowed and the Appellant's appeal filed under Docket D-07-055 is hereby *dismissed*.

Civil Service Commission

Donald R. Marquis,
Commissioner

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

A True copy. Attest:

Commissioner

A motion for reconsideration may be filed by either party 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 MGL c. 30A s. 14(1) for the purpose of tolling the time of appeal.

Pursuant to MGL c. 31 s. 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under MGL c. 30A s. 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:

Pamela Fitzpatrick

Burton A. Nadler, Esq.