

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
Boston, MA 02108
(617) 979-1900

MATTHEW COPPINGER,
Appellant

v.

D1-20-111
E-20-112

CITY OF LYNN,
Respondent

Appearance for Appellant:

James B. Krasnoo, Esq.
Krasnoo, Klehm & Falkner LLP
28 Andover Street
Suite 240
Andover, MA 01810

Appearance for Respondent:

John P. Slattery, Esq.
Ronald A. Wysocki Attorney at Law, Inc.
One Essex Green Drive, Suite No. 2
P.O. Box 3075
Peabody, MA 01961-3075

Commissioner:

Christopher C. Bowman

SUMMARY OF DECISION

Even when viewing the evidence in the light most favorable to the Appellant, his resignation as a police officer from the Lynn Police Department was done voluntarily. The Appellant's resignation was not, as he alleges, a result of coercion, fraud or duress. Since the Civil Service Commission has no jurisdiction over matters in which an employee voluntarily resigns from his or her position, the Appellant's appeal is dismissed.

DECISION

On July 9, 2020, the Appellant, Matthew Coppinger (Appellant), a former police officer with the City of Lynn (City)'s Police Department (LPD), filed the following appeals with the Civil Service Commission (Commission):

1. A disciplinary appeal under G.L. c. 31, § 42 (Procedural Appeal);
2. A disciplinary appeal under G.L. c. 31, § 43 (Just Cause Appeal);
3. A non-bypass equity appeal under G.L. c. 31, § 2(b).

The disciplinary appeals were docketed under Docket No. D1-20-111 and the non-bypass equity appeal was docketed under Docket No. E-20-112. On July 28, 2020, I held a remote pre-hearing conference via Webex video conference. The City filed a Motion to Dismiss and, later, a Motion for Summary Decision, arguing that the Commission lacked jurisdiction to hear these appeals as, according to the City, the Appellant voluntarily resigned from his position and, thus, was not an aggrieved person and is not afforded any appeal rights under G.L. c. 31, §§ 41-43; and, even if he was, his appeal to the Commission was not timely.

The Appellant filed an opposition, alleging that the Appellant's resignation was coerced, cannot be considered a voluntary resignation, and thus, the City failed to provide the Appellant with the due process rights afforded to him under the civil service law prior to his separation from employment, which the Appellant is effectively characterizing as a constructive discharge to which he has filed a timely appeal with the Commission.

Based on the above, I informed the parties that I would take witness testimony and review documentary evidence in the event that I conclude that there are factual disputes that must be resolved in order to determine if the Appellant's resignation was coerced or not. The hearing

was held remotely via Webex videoconference over two (2) days on August 18th and 27th, 2020.¹

Both parties were provided with a copy of the Webex audio/video recordings.² After the hearing, both parties submitted proposed findings of fact.

FINDINGS OF FACT:

Based upon the parties' submissions, including the attachments to those submissions, the testimony of the following witnesses³:

Called by the City:

- Thomas Reddy, Lynn Police Lieutenant and Superior Officers' Union Steward;
- Timothy Donovan, Lynn Police Sergeant and Superior Officers' Union President;
- Edward Blake; Former Lynn Deputy Police Chief;
- Michael Mageary, Former Lynn Police Chief;

Called by the Appellant:

- Matthew Coppinger, Appellant

and taking administrative notice of all matters filed in the case and pertinent statutes, case law, regulations, policies, and reasonable inferences from the evidence, I find the following:

1. Located approximately nine miles north of Boston, the City of Lynn is the ninth largest municipality in Massachusetts with a population of approximately 89,000.

<http://www.lynnma.gov/about/factandfigures.shtml>)

2. As of 2014, the Lynn Police Department employed 183 sworn officers, 15 support staff personnel, and 4 full time and 1 part time detention assistants. Uniformed personnel

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

² If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, the recordings should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

³ All witnesses, with the exception of the Appellant, were sequestered.

include: the Police Chief; two Deputy Police Chiefs; five Captains; fifteen Lieutenants; nineteen Sergeants; and one hundred forty-two patrol officers.

(<http://lynnpolice.org/about/department-profile/>) The City's Mayor is the Appointing Authority for the Police Department. (Stipulated Fact)

3. On May 4, 2015, the Appellant was appointed as a Lynn Police Officer. (Stipulated Fact)
4. The Appellant is a veteran who has served two overseas deployments, including one in Afghanistan. He reports that he has combat-related PTSD, for which he is seeking ongoing treatment through the VA. (Attachment to Appellant's appeal to the Commission)
5. The Appellant is the recipient of the Commonwealth of Massachusetts Medal of Valor (Trooper George Hannah award) for bravery. He has also received other awards and citations. (Attachment to Appellant's appeal to the Commission)
6. The Appellant's father is a former member of the Lynn City Council. (Testimony of Appellant)
7. On Monday, June 15, 2020 into Tuesday, June 16th, the Appellant was working the 5:00 P.M. to 1:00 A.M. shift as a police officer in the LPD. (Testimony of Appellant)
8. During the evening of Monday, June 15th, there was an incident involving force in the cell block between the Appellant and a private citizen (citizen) who had been arrested by other police officers earlier that night. (Testimony of Appellant) The use of force was recorded on an in-cell video. (Testimony of Appellant, Reddy, Donovan, Blake and Mageary)
9. Immediately after the incident, the Appellant completed and submitted a use of force report. It took him approximately 30 to 60 minutes to write the report. (Testimony of Appellant)
10. The Appellant left the police station at 2:00 A.M. on Tuesday, June 16th, approximately one hour after the end of his scheduled shift. (Testimony of Appellant)

11. Later on Tuesday, June 16th, the citizen was arraigned in Lynn District Court on a charge of assault and battery on a police officer. (Affidavit of Assistant District Attorney (ADA))
12. At the arraignment, counsel for the citizen filed a motion to preserve the in-cell video which depicted the alleged assault and battery on a police officer. (Affidavit of ADA)
13. On Wednesday, June 17, 2020, Lynn Police Captain Michael Vail, Head of Professional Standards, received the above-referenced motion and brought it to the attention of then-Police Chief Michael Mageary. (Testimony of Mageary)
14. After reviewing the video with Captain Vail and Lieutenant Michael Kmiec, Department Head of Internal Affairs, on Wednesday, June 17th, Chief Mageary instructed Vail and Kmiec to begin an investigation into the Appellant's use of force against the citizen. (Testimony of Mageary)
15. On Friday, June 19, 2020, an ADA from the Essex County District Attorney's Office came to the Lynn Police Station and viewed the video of the use of force incident. (ADA Affidavit)
16. Also on Friday, June 19, 2020, Chief Mageary called the Appellant and told him that he (the Appellant) was being placed on paid administrative leave pending an investigation regarding an incident that happened in the cell block. Chief Mageary told him that Captain Vail or Lieutenant Michael Kmiec would be contacting him regarding the investigation. At no point did Vail or Kmiec contact the Appellant prior to the Appellant signing a letter of resignation. (Testimony of Appellant)
17. After receiving this phone call from Chief Mageary on Friday, June 19th, the Appellant and the president of the local Superior Officers union, Sergeant Timothy Donovan, had the following exchange via text:
"Appellant: Yo, Cheif (sic) just called and put me on admin leave pending an investigation.

That's all he said, do you have any other info or know what the allegation is at least?

Donovan: He called me right before he called you so I couldn't give you a heads up. It was an arrest of 3 guys for drinking and then supposedly a complaint over what happened after in the cell block. [] ... I can give you a call in about a half hour if that's ok

Appellant: Cool thanks man

Donovan: Sorry. I know it's a priority but I can't give u my full attention at the moment.

Appellant: No worries man talk to you when you can."
(Attachment to Appellant's Opposition to City's Motion)

18. After reviewing the video on Friday, June 19th, Union President Donovan had the following text exchange with the Appellant on Saturday, June 20th:

"Donovan: Been a crazy 24 hours. Sorry. Saw the video. Doesn't look good to watch but Freddy [one of the arresting police officers who witnessed the incident in the cell block] explained what was happening. Also they had a protest last night and that guy spoke about the incident. So not sure what will happen with that. There's nothing criminal on the video but obviously if the defense attorney gets it and leaks it then that won't be good.
[]

Appellant: Roger that.

Donovan: I'll know more Monday I'm sure. Everyone is off the weekend. "
(Attachment to Appellant's Opposition to City's Motion)

19. Also on Saturday, June 20th, Chief Mageary and Deputy Chief Edward Blake had the following text message exchange:

"Blake: My other text from Chris I can't open but I spoke with him. [A Reverend] call (sic) him today. She knows it is Coppi ger (sic) and said it can't be a fair investigation. Claims of illegal arrest and abuse. We will have to discuss this on Monday. I know it was suggested to not prosecute the case but that may be problematic now. The huts (sic) just keep on coming.

Mageary: Yeah. I got all that. Here we go."
(Attachment to email submitted to Commission by City dated 8/22/20)

20. On Monday, June 22nd, Lt. Thomas Reddy, a steward for the local police superior officers' union, went into Chief Mageary's office and had a one-on-one conversation with Chief Mageary regarding the use of force incident between the Appellant and the citizen. During that conversation, Chief Mageary told Lt. Reddy that he was looking at termination; that he would withhold judgment until an investigation is completed; that, if the Appellant submitted his resignation, that would be "the end of it" with Chief Mageary stating that, if the Appellant resigned, he could not be terminated. (Testimony of Reddy)
21. Later on Monday, June 22nd, Lt. Reddy reviewed the video of the use of force incident between the Appellant and the citizen. (Testimony of Reddy)
22. Later on Monday, June 22nd, Chief Mageary met with then-Deputy Chief Edward Blake, Sgt. Donovan and Lt. Reddy in the Chief's conference room. (Testimony of Mageary, Blake, Donovan and Reddy). As referenced above, Sgt. Donovan is President of the local superior officers' union (Testimony of Donovan) and Lt. Reddy is a union steward. (Testimony of Reddy)
23. In regard to the 4-person June 22nd meeting, Lt. Reddy recalls that Chief Mageary: went over the allegations against the Appellant with everyone present; said that an internal investigation had been initiated; that a request had been received for the video; said that he was leaning toward terminating the Appellant; said that, if the Appellant decided to resign, he must do so before the investigation is completed; said that the investigation would be completed regardless; and said that the matter would referred to the District Attorney's Office even if the Appellant resigned. (emphasis added) (Testimony of Reddy)
24. In regard to the 4-person June 22nd meeting, Sgt. Donovan recalls that Chief Mageary: discussed the arrest of the citizen and the video of the use of force in the cell block; said that

he was leaning toward terminating the Appellant; said that the Department was doing an internal investigation; said that if the Appellant resigned, he could not be terminated; and said that, “either way”, the internal investigation would be completed and the matter would be referred to the District Attorney’s office. Sgt. Donovan is certain that Chief Mageary never said that if the Appellant resigned, the internal investigation would cease and/or that the matter would not be referred to the District Attorney’s Office. (emphasis added)
(Testimony of Donovan)

25. In regard to the 4-person June 22nd meeting, Deputy Chief Blake recalls that Chief Mageary: said that there was an internal investigation underway regarding the Appellant; said that the Appellant had been placed on paid administrative leave; said that, even if the Appellant resigned, the investigation would be completed and the matter would be referred to the District Attorney’s office. (emphasis added) (Testimony of Blake)

26. In regard to the 4-person June 22nd meeting, Chief Mageary recalls telling those present at the meeting that there was an investigation ongoing regarding the Appellant and that termination was “on the table”. Chief Mageary recalls that someone at the meeting inquired about the possibility of the Appellant resigning, to which he (the Chief) replied that the investigation would continue and that the matter would still be referred to the District Attorney’s Office even if the Appellant resigned. (emphasis added) (Testimony of Mageary)

27. After this Monday, June 22nd meeting, Chief Mageary never had any direct communication with the Appellant. The last time the Police Chief spoke to the Appellant was when he placed the Appellant on paid administrative leave on Friday, June 19th. (Testimony of Mageary)

28. On Monday, June 22nd and/or Tuesday, June 23rd, the Appellant had one-on-one phone conversations with Lt. Reddy and Sgt. Donovan. (Testimony of Appellant, Reddy and Donovan)
29. The Appellant recalls having two (2) phone conversations with Lt. Reddy, in his capacity as union steward, on Monday, June 22nd – one conversation before the Appellant talked to a union attorney and one conversation after the Appellant talked to a union attorney. In Lt. Reddy’s testimony, he did not make a distinction between the two conversations. (Testimony of Appellant and Reddy)⁴
30. During his conversation(s) with the Appellant on Monday, June 22nd, Lt. Reddy recalls telling the Appellant that: the Chief was inclined to terminate the Appellant; if the Appellant resigned, the resignation had to occur prior to the completion of the internal investigation; that he (Lt. Reddy) had seen the video regarding the use of force; that the video was “not good” in regard to the Appellant’s actions, and that, if the Appellant is interviewed as part of the investigation, he (the Appellant) would then have an opportunity to review the video. (Testimony of Reddy)
31. Lt. Reddy recalls the Appellant then asking him what would happen if he did not resign. Lt. Reddy recalls telling the Appellant that: there would be a hearing at City Hall; those hearings typically are decided in the City’s favor; and, if that occurred, the Appellant could pursue an appeal, either through the Civil Service Commission or via arbitration. (Testimony of Lt. Reddy)
32. Lt. Reddy is certain that he never told the Appellant during their Monday, June 22nd conversation(s) that the investigation would not go forward and/or that there would be no

⁴ I note this solely for the purpose of clarity. As the Appellant testified last, it was not clear to me that there were two separate phone conversations at the time of Lt. Reddy’s testimony.

criminal charges filed against the Appellant if the Appellant chose to resign. (Testimony of Reddy)

33. In regard to their phone conversation(s) on Monday, June 22nd, the Appellant recalls that Lt. Reddy told him: that he (Lt. Reddy) had seen the video; that it was “not that bad from a police perspective”, but could be “bad through a civilian lens”; that the video of the incident had been sent to the District Attorney’s Office and the Mayor’s Office; and that the Police Chief may be leaning toward termination now that the Mayor was involved. (Testimony of Appellant)

34. Also during this initial conversation, the Appellant recalls asking Lt. Reddy if he (the Appellant) could face criminal charges. The Appellant’s testimony before the Commission regarding this exchange was as follows:

“Counsel: Did you ask if you could face criminal charges?”

Appellant: Yes

Counsel: And what did Reddy say in response to that?

Appellant: He said the video had gone over to the DA’s office; he knew that; and, that, I think, I’m trying to remember exactly what was said here; So, the video had gone over to the DA’s office. My initial thought on that was, because Sgt. Donovan said he hadn’t seen anything criminal on there. At first, I thought the video must be over there, because it’s the piece of evidence against my complaint for ABPO (Assault and Battery Against a Police Officer) [against the citizen].”
(Testimony of Appellant)

35. Also during this initial conversation, the Appellant recalls speaking with Lt. Reddy about the internal investigation. The Appellant’s testimony before the Commission regarding this exchange was as follows:

Counsel: Did he tell you anything at all about the effect of the internal investigation ... if you resign?

Appellant: Yes, he brought up the fact that they had been in a meeting with the Chief and some other people. I didn't know who those other people at the time were, and that they had sent the video over to not only the DA's office, but also the Mayor's office. So, his thoughts on that were that it didn't look good, that the Chief might be leaning towards termination. And because the Mayor also had possession of the video that he thought it was gonna possibly result in termination also.

Counsel: Did you discuss in this conversation with him resignation?

Appellant: I don't think we had gotten to that point yet."

(Testimony of Appellant)

36. The Appellant recalls having a phone conversation with a union attorney on Monday, June 22nd shortly after speaking with Lt. Reddy. The Appellant recalls the union attorney telling him: that she had not been permitted to see the video yet; that, in "the current political climate", she did not know how he would fare; and that it was her "stern recommendation" that he resign. (Testimony of Appellant)

37. The Appellant recalls having a second conversation on Monday, June 22nd with Lt. Reddy one hour after speaking to the union attorney. During this conversation, the Appellant recalls telling Lt. Reddy about his conversation with the union attorney after which Lt. Reddy told him to "just think about it and let him know." (Testimony of Appellant)

38. Upon questioning by his counsel, the Appellant also recalled that Lt. Reddy brought up the issue of resignation. The Appellant's testimony before the Commission in this regard was as follows:

"Counsel: Did he say anything at all to you about resignation?

Appellant: He did. He brought up resignation. He told me a few things. He said, you know, you should think about resignation, think about what's best for you and then he qualified that with, I remember this part very distinctly, because he said, It's not like you're another officer here, there are other things that you could do; you have a paramedic's license, you fly

helicopters in the military, you know, you probably have other things you can do. So you should think about resignation.”
(Testimony of Appellant)

39. Upon further questioning from his counsel, the Appellant also recalled Lt. Reddy, during this second phone conversation on Monday, June 22nd, talking about the internal investigation.

The Appellant’s testimony before the Commission in this regard was as follows:

Counsel: Did he say anything at all about the internal investigation and its effect on resignation?

Appellant: He did.

Counsel: What did he say to you about that subject matter?

Appellant: He told me that if I was no longer a police officer with Lynn Police, that they wouldn’t have any reason to keep investigating me.

Counsel: Did he say anything further with regard to the effect of resignation and criminal charges?

Appellant: He did, about the same subject, um, they wouldn’t continue to investigate me if I wasn’t a police officer there, he said, if you don’t work there, there’s no reason for them to pursue criminal charges against you.”

Counsel: Did he tell you who he was referring to when he said *they* wouldn’t have to pursue criminal charges against you?

Appellant: No, but we had discussed Chief Mageary by name numerous times so that’s what I assumed it meant.” (Testimony of Appellant)

40. The Appellant did not ask Lt. Reddy if Chief Mageary or any other person had ever told Lt. Reddy that the Appellant would not face criminal charges if he resigned. (Testimony of Appellant)

41. The Appellant recalls that the above-referenced conversation, as he recalls it, was the “sole deciding factor” in his decision to resign. The Appellant’s testimony before the Commission was as follows:

“Counsel: Did that, sir, impact in anyway upon your decision to resign?

Appellant: Yes.

Counsel: How did it impact upon your decision to resign?

Appellant: It was the sole deciding factor for me, um, up until this point, what happened with [the citizen] in the cell I never thought would rise to the level of any disciplinary action rather than (sic) termination. So I didn't think that if I faced termination, I didn't think that was something that was even in the realm of possibility. But once they started floating the idea that I could be criminally charged in this, how that could affect my military career, my family, that was the ultimate deciding factor for me.”
(Testimony of Appellant)

42. On the morning of Tuesday, June 23rd, Sgt. Donovan and the Appellant had a telephone conversation. (Testimony of Appellant and Donovan)

43. In regard to this Tuesday, June 23rd phone conversation, the Appellant recalls that Sgt. Donovan told him that the matter was “fluid” and that there were inconsistencies between the video and the Appellant’s use of force report. The Appellant recalls asking Sgt. Donovan if he (the Appellant) would have an opportunity to see the video and to write a “supplemental” regarding any inconsistencies. The Appellant recalls Sgt. Donovan responding by saying that he (Donovan) would check with Chief Mageary and Internal Affairs. (Testimony of Appellant)

44. In regard to this Tuesday, June 23rd conversation, Sgt. Donovan recalls telling the Appellant: that Chief Mageary was leaning toward termination; that it may “look better” if the Appellant resigned as opposed to being terminated; that the Appellant needed to make the decision on his own after talking to his family; that, as of that moment, it was still a “fluid” situation; that there were inconsistencies between the report and the video; but that he had seen some police officers get a six month or one year suspension for misconduct. Sgt. Donovan recalls the Appellant responding by saying that, if he were to receive a six-month suspension, he would resign anyway. Sgt. Donovan recalls telling the Appellant that, if he didn't resign and the

City moved forward to terminate him, he (the Appellant) would have a union attorney. Sgt. Donovan recalls that the Appellant, during this conversation asked to see the video, but that the Appellant never referenced writing a supplemental report. Sgt. Donovan also does not recall telling the Appellant that he would ask the Chief or anyone else whether the Appellant could see the video. Rather, Sgt. Donovan recalls telling the Appellant that the subject of an internal investigation always gets interviewed last, at which time he would be able to see the video. (Testimony of Donovan)

45. The Appellant had been the subject of a prior internal affairs investigation during which the union provided him with a union attorney. (Testimony of Donovan)
46. On either Tuesday, June 23rd or Wednesday, June 24th, Chief Mageary spoke with the Essex County District Attorney at which time Chief Mageary spoke about the internal investigation regarding the Appellant. Chief Mageary recalls the District Attorney telling him to ensure that a thorough internal investigation was completed and to then forward it to the District Attorney's Office for review. (Testimony of Mageary)
47. Prior to June 24th, the Appellant sought the advice of his father. According to the Appellant, his father initially told him not to resign and, if terminated, to contest the termination. Also according to the Appellant, his father changed his opinion when the Appellant told his father that criminal charges may be filed against him if he did not resign. (Testimony of Appellant)
48. On the morning of Wednesday, June 24th, the Appellant and Lt. Reddy had a phone conversation. (Testimony of Appellant and Reddy)
49. In regard to this phone conversation on the morning of Wednesday, June 24th, Lt. Reddy's recollection is that:

“Mr. Coppinger informed me that he was going to resign ... he ... said it would be better if he resigned in case there was going to be a criminal prosecution or maybe it would help there not *be* a criminal prosecution.”

(Testimony of Reddy)

50. Lt. Reddy also specifically recalls that the Appellant, during their Wednesday, June 24th conversation, asked him (Reddy) if the union attorney would still represent him after he resigned if criminal charges were filed against the Appellant. Lt. Reddy told the Appellant that he would indeed have union representation; urged the Appellant to continue paying union dues; and then told the Appellant he would request that the Appellant’s union dues be waived. Lt. Reddy also recalls the Appellant telling him during this conversation that his “heart was not in the job” for the past year and a half. (Testimony of Reddy)

51. At 1:17 P.M. on Wednesday, June 24th, Lt. Reddy submitted an online request via MassCops regarding the Appellant. Under “requested legal action” Lt. Reddy wrote: “Atty consultation on appropriate alternatives in the face of discipline. [Attorney] familiar with case.” (Testimony of Reddy; Attachment to City’s email to Commission dated 8/22/20)

52. The Appellant, after reviewing a hard copy of the above-referenced request during this proceeding before the Commission, recalled having a conversation with Lt. Reddy in which he (the Appellant) asked Lt. Reddy if the union would still represent him if the citizen sued him civilly and/or if a *civil rights* case was brought against him even if he resigned.

(Testimony of Appellant)

53. In regard to the phone conversation on the morning of Wednesday, June 24th, the Appellant’s recollection is that:

“I told him [Reddy] that it was my decision that I was going to resign so that I wouldn’t face criminal charges.”

The Appellant recalls Lt. Reddy responding by saying “I’ll get the process started.”
(Testimony of Appellant)

54. On Thursday, June 25th, the Appellant and Lt. Reddy had “five or six” phone conversations which the Appellant described as “back and forth about the document that was being produced; the wording that they needed in that document.”. (Testimony of Reddy and Appellant)
55. The Appellant’s recollection of those June 25th phone conversations with Lt. Reddy is: that Lt. Reddy told him that documents were being prepared; that the union had proposed an effective date for the resignation of [Saturday] June 27th; that Chief Mageary had rejected this date and insisted on an effective date of June 25th; that the City was requiring language stating that the resignation was irrevocable as well as language stating that the City could share the contents of the Appellant’s personnel file with any law enforcement agency to which the Appellant potentially applied for employment. The Appellant recalls asking Lt. Reddy if he (the Appellant) had any choice regarding the City’s demands, and that Lt. Reddy told him that this is what the City was requiring. (Testimony of Appellant)
56. The Appellant also recalls asking Lt. Reddy if it was possible to include language stating that he was resigning for personal reasons and that Lt. Reddy indicated that he would inquire with the City about that request. (Testimony of Appellant)
57. On the afternoon of Thursday, June 25th, the Appellant and Lt. Reddy met in a convenience store parking lot located near the Appellant’s home. (Testimony of Appellant and Reddy)
58. While at the parking lot, Lt. Reddy placed two documents titled “Agreement Between City of Lynn and Matthew R. Coppinger” on the hood of the Appellant’s car. The Appellant read the documents. The Appellant had a discussion with Lt. Reddy about the documents. The Appellant noticed that the documents had a resignation effective date of June 27th, despite the fact that Lt. Reddy had previously told the Appellant that Chief Mageary had insisted on a

June 25th effective date. One of these documents, according to the Appellant, stated that the Appellant was resigning for personal reasons and one did not. The Appellant signed both documents.⁵ (Testimony of Appellant; Attachment to Mageary Affidavit from City’s Motion for Summary Decision (signed); Attachment to 8/22/20 email communication with the Commission (unsigned).

59. Lt. Reddy also presented the Appellant with two letters of resignation. One copy had an effective date of June 27th and no reference to “for personal reasons” in it; the other copy had an effective date of June 25th with a reference to “for personal reasons” in it. The Appellant signed both documents. (Testimony of Appellant; Attachment to Mageary Affidavit from City’s Motion for Summary Decision; Attachment to 8/22/20 email communication with the Commission.)

60. The Appellant acknowledges that, when he signed the resignation letter with the June 25th date, he understood that his resignation would be effective June 25th. (Testimony of Appellant)

61. The Appellant acknowledges that, prior to the agreement being drafted, he had already made his decision to resign. (Testimony of Appellant)

62. Later on Thursday, June 25th, the Appellant and Lt. Reddy had a phone conversation. The Appellant recalls asking Lt. Reddy if the agreement had been finalized, to which Lt Reddy responded: that he (Reddy) had brought the agreement to the Chief’s office; that Chief Mageary questioned whether he needed to sign it or whether just the Mayor needed to sign it. (Testimony of Appellant)

⁵ The two agreements submitted to the Commission each reference that the Appellant is resigning for personal reasons. The distinctions between the two documents submitted to the Commission are that: 1) one document contains no signatures while the other document does contain signatures; and 2) the effective date of June 27th was crossed out and replaced, in handwriting with 25th with what appears to be the initials “TR” for Tom Reddy.

63. The agreement, signed by the Appellant, Lt. Reddy, Chief Mageary and the City's Mayor, as well as the Appellant's letter of resignation, are incorporated into this decision as Attachment A. The agreement references that the Appellant is resigning "for personal reasons" and the effective date of June 27th has been crossed out and replaced with the 25th, with what appears to be the initials "TR" for Tom Reddy.⁶ The resignation letter attached to that agreement is dated June 25th and also contains the language "for personal reasons".
64. On July 9, 2020, the Appellant filed the instant appeal with the Commission.
65. On July 18, 2020, Chief Mageary retired. (Testimony of Mageary)
66. On July 31, 2020 Deputy Chief Blake retired. (Testimony of Blake)
67. Shortly after the retirement of Chief Mageary, the Appellant was contacted by the Department's Internal Affairs Division and asked if he would like to come in for an interview regarding the use of force incident in the cell block. After consulting with counsel, the Appellant declined. (Testimony of Appellant)
68. The matter of whether any criminal charges should be pursued against the Appellant has been referred by the District Attorney to a Special Assistant District Attorney, Daniel Bennett, former Secretary of the Executive Office of Public Safety and Security. (Affidavit of ADA)

Summary Disposition Standard

An appeal before the Commission may be disposed of summarily, in whole or in part, pursuant to 801 C.M.R. 1.01(7)(g) and 801 C.M.R.1.01(7) (h) when, as a matter of law, the undisputed material facts affirmatively demonstrate that there is "no reasonable expectation" that a party can prevail on at least one "essential element of the case". See, e.g., Milliken & Co., v.

⁶ No testimony was provided regarding whether Lt. Reddy actually made this change to the document, but the Appellant does not dispute that he was, at the time, agreeing to resign, effective June 25th.

Duro Textiles LLC, 451 Mass. 547, 550, fn.6, (2008); Maimonides School v. Coles, 71

Mass.App.Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005)

Applicable Civil Service Law

The Commission’s jurisdiction over appeals by employees “discharged, removed . . . [or] laid off” in violation of civil service law comes within G.L.c.31,§42, which provides, in relevant part:

“Any person who alleges that an appointing authority has failed to follow the requirements of section forty-one [requiring prior notice and hearing] in taking action which has affected his employment or compensation may file a complaint with the commission. Such complaint must be filed within ten days, exclusive of Saturdays, Sundays and legal holidays, after said action has been taken, or after such person first knew or had reason to know of said action, and shall set forth specifically in what manner the appointing authority has failed to follow said requirements. If the commission finds that the appointing authority has failed to follow said requirements and that the rights of said person have been prejudiced thereby, the commission shall order the appointing authority to restore said person to his employment immediately without loss of compensation or other rights.”

“A person who files a complaint under this section may at the same time request a hearing as to whether there was just cause for the action of the appointing authority in the same manner as if he were a person aggrieved by a decision of an appointing authority made pursuant to all the requirements of section forty-one. . . .”

The ten-day filing deadline is jurisdictional and must be strictly enforced. See, e.g., Town of Falmouth v. Civil Service Comm’n, 64 Mass.App.Ct. 606, 608-609 (2005), rev’d other grounds, 447 Mass.814 (2006).

Analysis

The Appellant argues that a genuine issue of material fact forecloses disposing of this appeal through summary decision. Specifically, the Appellant, in his opposition to the City’s Motion for Summary Decision argues that:

“The genuine issue of material fact is Reddy’s telling to Coppinger the misrepresentation upon which Coppinger relies which is not the threat of criminal prosecution but, which, instead, is that *Reddy falsely told Coppinger* on June 22, 2020 in a telephone conversation *that the Chief told Reddy* that, if Coppinger was to resign, no investigation would continue. Either that is Chief Mageary’s falsehood or Reddy’s falsehood. Reddy specifically told Coppinger in that June 22, 2020 telephone conversation that if Coppinger was no longer a member of the Lynn

Police Department, ‘they’ would have no reason to continue an investigation against Coppinger. Coppinger and Reddy collide head-on in their assertions in this regard. As these deceitful misrepresentations are the false facts upon which Coppinger relied to his detriment in submitting the induced resignation, they are material to this case. Reddy’s deceit coercively caused Coppinger to file his resignation under duress. Where genuine material facts are in dispute, a summary disposition is unwarranted, and this matter must proceed to a full hearing.” (emphasis added)

I have, *solely for the purposes of deciding whether this matter can be decided on the City’s Motion*, viewed all of the evidence in the light most favorable to the Appellant. To do so, I have first assumed that all of the Appellant’s sworn testimony before the Commission is an accurate representation of what occurred between Monday, June 15th and Thursday, June 25th. According to the Appellant’s sworn testimony, the “sole deciding factor” in his decision to resign was a telephone conversation that he had with Lt. Reddy on Monday, June 22nd. Specifically, the Appellant testified that, “once they started floating the idea that I could be criminally charged in this, how that could affect my military career, my family, that was the ultimate deciding factor for me.”

First, based on the Appellant’s own sworn testimony, Lt. Reddy did not, as argued in the Appellant’s brief, tell the Appellant *that the Chief told him (Reddy)* that, if Coppinger was to resign, no investigation would continue. Rather, as noted in the findings, the Appellant’s testimony regarding his June 22nd phone conversation with Lt. Reddy was as follows:

- Counsel: Did he say anything at all about the internal investigation and its effect on resignation?
- Appellant: He did.
- Counsel: What did he say to you about that subject matter?
- Appellant: He told me that if I was no longer a police officer with Lynn Police, that they wouldn’t have any reason to keep investigating me.
- Counsel: Did he say anything further with regard to the effect of resignation and criminal charges?

Appellant: He did, about the same subject, um, they wouldn't continue to investigate me if I wasn't a police officer there, he said, if you don't work there, there's no reason for them to pursue criminal charges against you."

Counsel: Did he tell you who he was referring to when he said *they* wouldn't have to pursue criminal charges against you?

Appellant: No, but we had discussed Chief Mageary by name numerous times so that's what I assumed it meant." (Testimony of Appellant)

Accepting the Appellant's testimony as true, Lt. Reddy, during what the Appellant considered a pivotal exchange, never mentioned Chief Mageary, any other member of the Police Department's command staff, or the Mayor, who is the Appointing Authority. Rather, the Appellant "assumed" that Lt. Reddy was referring to Chief Mageary when he (Reddy) reportedly said " ...*they* wouldn't have any reason to keep investigating me" and " ... there's no reason for *them* to pursue criminal charges against you." The Appellant also acknowledges that he never asked Lt. Reddy who, if anyone, made the alleged comment and/or whether this was simply the opinion of Lt. Reddy. Further, the Appellant acknowledges that he never inquired with anyone else (i.e. – the union president; the union attorney or Chief Mageary himself) if there were any such assurances in exchange for his resignation. Finally, the Appellant acknowledges that he never asked that such assurances (either in regard to the investigation or being referred for criminal prosecution) be included in the settlement agreement, nor did he ask that such language be added to his letter of resignation. Rather, the only language that he asked to be added to the settlement agreement and the letter of resignation was that he was resigning "for personal reasons."

Notwithstanding that the Appellant testified that his conversation with Lt. Reddy was the "sole deciding factor" regarding his decision to resign, the Appellant's brief, citing various judicial decisions, argues that the Commission should consider multiple other factors to

determine, under the “totality of the circumstances” whether the Appellant was coerced to resign or placed under duress. I address each of the factors cited by the Appellant below.

1. Was the employee given some alternative to resignation?

The Appellant argues that “the only alternative ultimately offered [to him] was that he could resign or be terminated.” First, termination is indeed an alternative. Second, the Appellant, in his own testimony, acknowledges that he spoke to multiple people regarding his options, including his father, a former City Councilor, who initially urged him to “fight” even if the City chose to terminate the Appellant. Thus, it is clear that the Appellant was aware that he did indeed have alternatives to resignation including, but not limited to, the possibility of termination, which the Appellant could contest. Importantly, the Appellant acknowledges that he was the subject of a prior internal affairs investigation at which time he was provided with a union attorney during that investigation. Put another way, the Appellant understood that there was the option of not resigning, participating in an internal affairs investigation and, if disciplined, appealing any such disciplinary decision with the assistance of counsel.

2. Did the employee understand the nature of the choice he was given?

The Appellant argues that “although one can argue that Coppinger knew the nature of the choice he was given, the misrepresentation under which he acted means that he did not actually know the nature of the choice he was given.” The Appellant’s testimony shows that he indeed understood that his resignation would foreclose any opportunity for him to “fight” any disciplinary action, either through a pre-disciplinary hearing process and/or a post disciplinary review.

3. Was the employee given reasonable time in which to choose?

The Appellant argues that he was rushed into resigning effective Thursday, June 25th, per demand of the Police Chief, as opposed to Saturday, June 27th, which would presumably provide him with a full (as opposed to partial) final week of pay. Here, the Appellant ignores the fact that, after a period of three days since he was placed on administrative leave, and after consulting with various individuals, including the union president, the union steward, a union attorney and his father, the Appellant notified his union steward that he would be resigning. The Appellant also acknowledges that he had multiple phone conversations with Lt. Reddy over the following 48 hours discussing the contents of the settlement agreement and resignation letter. He had reasonable time in which to choose if he wanted to resign or not.

4. Was the employee permitted to select the effective date of his resignation?

The City acknowledges that the Appellant's requested effective date of June 27th, as opposed to June 25th, was not allowed.

5. Did the employee have access to counsel?

The Appellant acknowledges that, in addition to speaking to the union president and union steward, he spoke directly with the union attorney prior to making his decision. While he now states that he was dissatisfied with the brevity of his phone call, and the advice he received from counsel, he did indeed consult with counsel, and, as referenced above, understood that he would have counsel available to him if he chose to fight any potential disciplinary action, as opposed to resigning.

As stated in Forrest v. Weymouth Fire Department, 28 MCSR 480 (2015), the Commission has held that a Civil Service employee who has voluntarily resigned is not entitled thereafter to the benefit of a hearing pursuant to G.L. c. 31, §§ 42-43. See e.g., Travers v. City of Fall River, 21 MCSR 182 (2008); Liswell v Registry of Motor vehicles, 20 MCSR 355 (2007); Maynard v

Greenfield, 9 MCSR 165 (1996). Absent fraud, coercion or duress, a public employee may end his or her employment by voluntarily resigning. Jones v. Town of Wayland, 374 Mass. 249, 259 (1978); cf. Champion v. Weymouth Fire Department, 25 MCSR 223 (2012) (Appellant's resignation was invalid because she lacked the capacity to voluntarily resign). That a party chooses between facing disciplinary charges and resignation does not of itself create sufficient facts to establish that the resignation was induced by coercion or duress. Simmons v Department of Conservation and Recreation, 25 MCSR 249, 252 (2012) (citing Stone v. Univ. of MD. Med. Sys. Corp., 855 F.2d 167, 175 (4th Cir.1988)(establishing the legal standard to determine resignation voluntariness)(cited by the First Circuit of the US Court of Appeals in Monahan v. Romney, 625 F.3d 42, 47 (1st Cir. 2010)).

Viewing the evidence in the light most favorable to the Appellant, and accepting all of his sworn testimony before the Commission as true, the Appellant has not shown that his resignation was the result of coercion, fraud or duress. At best, he received advice from a union steward that the City would have no reason to investigate further and/or pursue criminal charges if the Appellant resigned. The Appellant, without asking any further questions, assumed that Chief Mageary made such a comment and, based on this assumption, chose to resign. For all of the reasons stated above, this does not constitute coercion, fraud or duress on the part of the City and, thus, the Appellant has no reasonable expectation of showing that his resignation was not voluntary. Since the Appellant's resignation was voluntary, the Commission has no jurisdiction to hear his appeal, as he is not an aggrieved person and he has not been terminated, laid off, demoted or suspended. Thus, this matter can be disposed of by allowing the City's Motion for Summary Decision.

In the event that it should be determined that disposing of this appeal through summary decision is not appropriate, I have, after weighing all of the evidence, made credibility assessments and conclusions related to the sworn testimony of the Appellant and other witnesses.⁷

For the reasons discussed below, I do not credit the Appellant's testimony that Lt. Reddy, in a phone conversation on June 22nd, told the Appellant that "they" would have no reason to complete the investigation or pursue criminal charges, against him if the Appellant resigned.

First, the Appellant's testimony is inconsistent with the written statement that he included with his appeal to the Commission. In his written statement, the Appellant wrote: "Lt. Reddy conveyed to me that the Chief told him if I resigned, they wouldn't proceed with seeking criminal charges against me or proceed to termination." (emphasis added) In his sworn testimony, the Appellant stated that Lt. Reddy told him that if he resigned, "there's no reason for them to pursue criminal charges against you" and that he "*assumed*" that Lt. Reddy was referring to Chief Mageary. To me, that inconsistency, standing alone, called into question whether Lt. Reddy made *either* of these statements.

Second, it is not believable to me that, if either of these statements were made, the Appellant would not have followed up with any questions – to Lt. Reddy or anyone else. One would reasonably expect that the Appellant would have asked, "Has Chief Mageary told you that?"; "Has anyone talked to the District Attorney's Office about that agreement?"; "Can that be included in the written agreement or my letter of resignation?". In fact, after that phone call, the Appellant had multiple conversations with Lt. Reddy about his resignation and never once raised any of these issues. Rather, the Appellant, during these subsequent conversations, only asked

⁷ Further, failing to make such credibility assessments would leave unanswered the question of whether the sworn testimony before the Commission of others, including Lt. Reddy, was truthful or not.

such questions as whether he could add the words “for personal reasons” to his letter of resignation.

Third, the Appellant’s testimony before the Commission regarding the alleged statements made to him by Lt. Reddy came only after prompting by his counsel during direct testimony.

Fourth, Lt. Reddy was a good witness. He credibly testified that, prior to the above-referenced phone conversation with the Appellant, he and two other persons met with Chief Mageary regarding this matter. All four participants in that meeting credibly testified before the Commission that Chief Mageary explicitly stated that, regardless of whether the Appellant resigned, the investigation would be completed and the matter would be referred to the District Attorney’s office.⁸ I credit Lt. Reddy’s testimony that, during a conversation with the Appellant shortly after that four-way meeting, he did not tell the Appellant something completely contrary to what he had just heard from Chief Mageary. Rather, Lt. Reddy, in that conversation, spoke about matters that would typically be expected from a union steward, including that the Appellant had a right to contest any potential discipline through arbitration or the Civil Service Commission.

In short, I do not believe that Lt. Reddy made the statements attributed to him by the Appellant which form the basis of the Appellant’s argument that his resignation was a result of coercion, fraud or duress.

⁸ I have not overlooked that, prior to this 4-way meeting, Chief Mageary, during a one-on-one meeting with Lt. Reddy, stated that, if the Appellant resigned, that would be “the end of it.” Nor have I overlooked the earlier text message communication between Deputy Chief Blake and Chief Mageary stating “I know it was suggested not to prosecute this case.” To me, it is clear that what occurred here was a fairly routine case of crisis management. As the City began to understand the gravity of the situation, including through feedback from community leaders regarding concerns about whether this matter would be handled properly, their thought process quickly evolved, causing Chief Mageary to make it explicitly clear, during that 4-person meeting, that the investigation would continue and the matter would be referred to the District Attorney’s office regardless of whether the Appellant resigned or not.

Conclusion

The City's Motion for Summary Decision is allowed and the Appellant's appeals under Docket Nos. D1-20-111 and E-20-112 are *dismissed*⁹.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman

Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Stein and Tivnan, Commissioners [Camuso – Absent]) on December 17, 2020.

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) (1), 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. After initiating proceedings for judicial review in the Superior Court, the plaintiff, or his/her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass.R.Civ.P. 4 (d).

Notice to:

James B Krasnoo, Esq. (for Appellant)

John P. Slattery, Esq. (for Respondent)

⁹ Since I have concluded that the Appellant voluntarily resigned, the City's Motion to Dismiss based on the Appellant purportedly filing an untimely appeal with the Commission is moot.

**AGREEMENT
Between
CITY OF LYNN
And
MATTHEW R. COPPINGER**

This AGREEMENT is made by and between the City of Lynn (hereinafter "City") and Matthew R. Coppinger (hereinafter " Coppinger ") hereinafter collectively referred to as "the Parties."

WHEREAS Coppinger is employed as a police officer in the City of Lynn Police Department; and

WHEREAS certain allegations have been raised against Coppinger that are currently under investigation;

WHEREAS Coppinger has elected to voluntarily resign from his position as a police officer for the City for personal reasons; and

WHEREAS the parties wish to resolve the issues in dispute between and among them.

NOW, THEREFORE, the parties agree as follows:

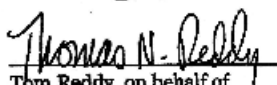
1. Coppinger agrees to submit his resignation from his position as a Police Officer for the City of Lynn effective June 2nd 2020 by the letter attached hereto.
2. The City will pay Coppinger a career awards payment pursuant to Article 37 of the Collective Bargaining Agreement between the City of Lynn and the Lynn Police Association.
3. The City will pay Coppinger for his unused 5 vacation days.
4. Payments in accordance with paragraphs 1 and 2 above will be subject to appropriate tax deductions.
5. Notwithstanding any other provisions of law or provision herein, Coppinger acknowledges, understands and agrees that he will be ineligible for any employment with the City of Lynn Police Department. Coppinger agrees that he will not seek nor accept any employment with the City of Lynn Police Department at any time in the future.
6. Coppinger will direct all employment inquiries to the Lynn Police Department. It is expressly understood and agreed that the Police Department shall make full, unrestricted disclosure of Coppinger's service and employment record to all law

enforcement employment inquiries. The Police Department shall refer all non-law enforcement employment inquiries to the Lynn Personnel Department. For such non-law enforcement employment inquiries, the Personnel Department will confirm dates of employment, position and salary history.

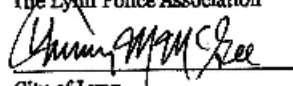
7. The Lynn Police Association waives any and all rights to challenge this matter.
8. Coppinger hereby waives any and all claims, defenses, or rights of appeal to any forum in connection with this matter other than to the enforcement of the terms of this agreement.
9. This agreement is without precedent as to the City of Lynn and the Lynn Police Association.


Matthew Coppinger

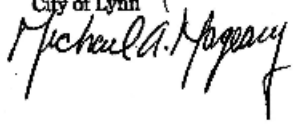
6/25/20
Date


Tom Reddy, on behalf of
The Lynn Police Association

6/25/20
Date


City of Lynn

6/26/20
Date



6/25/20

OFFICER MATTHEW COPPINGER

June 25, 2020

Dear Chief,

I am submitting my resignation from my position as an officer in the Lynn Police Department, for personal reasons, effective on June 25, 2020. This resignation is irrevocable.

A handwritten signature in black ink, appearing to read 'M. Coppinger', written over a horizontal line.

Matthew Coppinger