COMMONWEALTH OF MASSACHUSETTS

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

AARON CRUTCHFIELD,
Appellant

v. D-18-019

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant: *Pro Se*
Aaron Crutchfield

Appearance for Respondent: Joseph Santoro
Labor Relations Advisor
Department of Correction
P.O. Box 946
Norfolk, MA 02056

Commissioner: Cynthia A. Ittleman

DECISION ON APPOINTING
AUTHORITY'S MOTION TO DISMISS

On February 6, 2018, Aaron Crutchfield ("Appellant") filed an appeal with the Civil Service Commission ("Commission") alleging that the Department of Correction ("Department") suspended his employment for a period of five (5) days without just cause in violation of G.L. c. 31, § 41. On March 23, 2018, the Department filed an "Amended Motion to Dismiss Due to a Lack of Procedural Jurisdiction as Well as [Appellant's] Failure to Prosecute or Defend" ("Amended Motion"). The Appellant never filed any written opposition to the Department's

Motion to Dismiss, but he did testify in opposition thereto at a hearing on the Amended Motion that I held on April 17, 2018. [1]

FINDINGS OF FACT

Based on all papers filed in this case, the parties' testimony and arguments, and reasonable inferences therefrom, taking administrative notice of pertinent statutes, caselaw, and rules, and viewing the evidence in the light most favorable to the non-moving party, the following material facts are undisputed unless otherwise indicated:

1. The Appellant began employment with the Department as a Correction Officer I (CO I) on October 5, 2008. (Pre-Hearing Memorandum)
2. On November 8 and 28, 2017, the Department's Internal Affairs Unit interviewed the Appellant in connection with allegations of off-duty misconduct. The Appellant was accompanied by a union representative. The Department's investigator concluded that some weeks earlier the Appellant had engaged in off-duty misconduct and had been less than truthful during the investigation regarding the alleged off-duty misconduct. (Pre-Hearing Memorandum; Amended Motion (Ex. 3))
3. Via letter dated February 2, 2018, the Department notified the Appellant that it was suspending him without pay for five days as the conduct alleged in Finding No. 2 of the Department investigation violates the Rules and Regulations Governing All Employees of the Massachusetts Department of Correction. The letter directed that the suspension was to be served from February 5 through 9, 2018, inclusive. The last two sentences of this letter, signed by James Ferreira, Director of the Department's Central Transportation Unit, stated as

[1] The Standard Rules of Adjudicatory Practice and Procedure, located at 801 CMR §§ 1.01, *et seq*, guide these proceedings except wherein they conflict with the provisions of G.L. c. 31, in which case any pertinent statute prevails.

follows: "You may appeal this finding within forty-eight (48) hours of receipt to the Appointing Authority, the [Department's] Commissioner of Correction [copied on this letter]. I have attached a copy of M.G.L. c. 31, §§ 41 – 45 for your information."[2] (Amended Motion (Ex. 3))

4. This letter was served in hand upon the Appellant on February 5, 2018 by a Captain employed by the Department. (Amended Motion (Ex. 3))
5. The Appellant delivered in hand a discipline appeal form to the Commission the next day. (Amended Motion (Ex. 1))
6. Also on February 6, 2018, the Massachusetts Correction Officers Federated Union ("MCOFU") submitted to the Department on behalf of the Appellant a written request to appeal the five-day suspension. (Amended Motion (Ex. 4))
7. A Department labor relations advisor wrote separate letters to the Appellant and MCOFU's vice president on February 8, 2018, notifying the Appellant, the union, and relevant Department personnel that a hearing to consider the Appellant's appeal was being scheduled for March 2, 2018, in the facility in which the Appellant worked. (Amended Motion (Ex. 4)) There is no indication in the record before this Commission that anyone objected to the time, date, or place set for this appeal hearing.
8. By letter dated February 23, 2018, MCOFU's vice president wrote to the Department's Director of Employee Relations to notify the Department that the union was withdrawing the grievance it had filed on behalf of the Appellant at Step II. MCOFU's letter stated: "This grievance is being withdrawn without prejudice." (Amended Motion (Ex. 5))

[2] Upon notification of any disciplinary action covered by Section 41 of G.L. c. 31, the appointing authority is required by this statute to provide any affected employee with a copy of sections 41-45 of Chapter 31.

9. The Department responded by not proceeding with the Appellant's appeal hearing scheduled for March 2, 2018. (Amended Motion (Ex. 2); Testimony of Joseph Santoro) According to the Department's labor relations advisor assigned to this case, the Department intended for its March 2 appeal hearing to serve as both a Step II grievance hearing and an appointing authority civil service hearing under G.L. c. 31, § 41. (Id.)

10. The Chair of the Commission conducted a pre-hearing conference on March 6, 2018. At that conference, the Department submitted a Motion to Dismiss that asserted that, given the union's withdrawal of its request for a hearing in Appellant's case, the Department as appointing authority was not afforded a fair opportunity to conduct the Section 41 hearing that serves as a condition precedent to any appeal that might thereafter be lodged with the Commission. Accordingly, the Department argued, the Commission lacked jurisdiction to proceed any further with Appellant's appeal. (Motion to Dismiss; Administrative Notice)

11. At the Commission's March 6, 2018 pre-hearing conference, the Appellant stated that he had been encouraged by MCOFU's vice president to file an appeal with the Commission the preceding month and that he had never been advised that such an appeal could not be heard prior to a Section 41 hearing conducted by the Department. At the conclusion of this conference, this Commission's chair ordered:

    I. Mr. Crutchfield has ten (10) days to file a response to DOC's Motion to Dismiss.
    II. A motion hearing will be held at the offices of the Commission on April 17, 2018 at 9:30 AM.
    III. Witness testimony will be allowed, including on the issue of what conversation(s) Mr. Crutchfield had with MCOFU in regard[s] to the filing of an appeal with the Commission.
    IV. Should Mr. Crutchfield wish to call witnesses, he may ask such witnesses to appear voluntarily or, if necessary, ask the Commission for authorization to issue a subpoena.

    (Procedural Order dated March 9, 2018; copy attached to Amended Motion as Ex. 2)

12. The Appellant never filed a written response to the Department's motion to dismiss. He testified on April 17, 2018 that he did not know how to do so and, despite inquiries, he received no assistance from MCOFU. He further reported that in the weeks preceding April 17, Edward Slattery, the union vice president who had first filed, and then withdrew, a Step II grievance on the Appellant's behalf, stopped serving as union vice president. (Testimony of Aaron Crutchfield)

13. On March 23, 2018, the Department's labor relations advisor served on the Appellant via email, and filed with the Commission, Respondent's Amended Motion to Dismiss, which contended, in addition to the lack of jurisdiction argument summarized in Finding No. 10, *supra*, that the Appellant's failure to comply with the Commission Chair's March 9 Procedural Order by not responding to the Department's original motion to dismiss signified that he had "failed to prosecute or defend his own case" and, for this independent reason as well, the Appellant's appeal should be dismissed. (Amended Motion, pg. 2)

14. On Friday afternoon, April 13, 2018, the Appellant copied the Commission's office manager on an email he addressed to MCOFU's former vice president and which stated in key part: "I have a CSC hearing on April 17th at 1 pm that I would appreciate you attend to inform the commission that you advised me that I didn't have to go to the Step 2 hearing, and to confirm that I asked you, if I had to go to the step 2 hearing or if I could go straight to the CSC." On Monday afternoon, April 16, 2018, the Appellant forwarded to the Commission's chairperson via email (copying the Department's labor relations advisor) a letter from a state legislator asking that the Appellant, an individual he had known for many years and witnessed providing volunteer community service, be afforded a hearing by the Commission. The legislator wrote: "[Appellant] informs me he was given the wrong information by his union

regarding a Step 2 hearing vs. going to Civil Service. I don't know all the details, however, I do understand he was suspended from his job, transferred from his unit, and has lost his shift and days off." On April 18, 2018, the Department's representative stated in an email to me that he had "no objections" to the legislator's letter "being added to the file." (Administrative Notice of Commission records)

15. At the April 17, 2018 motion hearing I conducted, the Appellant testified that MCOFU's former vice president had told him, on a date that he could not recall, that he did not need to go through with an appointing authority Section 41 hearing before pursuing an appeal with the Commission. The Appellant testified that he would have undertaken every required step had he known it was necessary, even though he believed that any Department hearing would have been futile. Because Mr. Slattery no longer served as a union officer, the Appellant asserted that he (Slattery) would have had to take personal time off from work in order to come testify at the Commission's April 17 hearing. The Appellant acknowledged erring in not arranging for Mr. Slattery to receive a subpoena commanding his attendance. The Appellant further testified that, although he had spoken with a union steward with the last name of Higginbotham the day before, there was not enough time before the motion hearing to enlist the union's further assistance as the matter would have had to be brought first to the attention of the union's executive board. The Appellant stated in the motion hearing that he took full responsibility for the correct steps not having been followed in this case and that he would understand if his Commission appeal had to be dismissed. (Testimony of Aaron Crutchfield)

16. Since the conclusion of the April 17, 2018 motion hearing, the Appellant has not taken any steps in an effort to reassert the viability of his appeal.

The Legal Standard for Consideration of a Motion to Dismiss

The Standard Adjudicatory Rules of Practice and Procedure (the "Rules"; 801 Code Mass. Regulations §§ 1.01, *et seq*.) guide administrative adjudication at the Commission, although Commission policy provides that when such rules conflict with G.L. c. 31, the latter shall prevail. There appears to be no conflict here. The Rules indicate that the Commission may, "at any time," dismiss an appeal "for lack of jurisdiction to decide the matter," among other grounds. 801 CMR 1.01(7)(g)(3).

An appeal may be disposed of on summary disposition when, "viewing the evidence in the light most favorable to the non-moving party", the undisputed material facts affirmatively demonstrate that the non-moving party has "no reasonable expectation" of prevailing on at least one "essential element of the case". See, e.g., Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550 n.6, (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005).

Section 41 of chapter 31 is clear and unambiguous in stating that if a tenured civil service employee is first suspended and then timely (within 48 hours) files a written request for a hearing before the appointing authority (here the designee of the Department's Commissioner) "on the question of whether there was just cause for the suspension," he shall be given a prompt hearing and a written decision. Id. "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 [including, among other covered actions, a five-day suspension], such person may appeal to the commission as provided in section forty-three." Id. (emphasis added).

Analysis

Citing G.L. c. 31, § 41, the crux of the Department's motions to dismiss (both as originally filed on March 6 and as amended on March 23, 2018) is that the Commission lacks jurisdiction over the Appellant's appeal because, by acceding to MCOFU's cancellation of the appeal hearing the Department had scheduled for March 2, 2018, the Appellant never afforded the Department a fair opportunity to hear the Appellant's reasons for contesting the five-day suspension that followed a thorough investigation and confirmation of allegations of substantial misconduct allegedly engaged in by the Appellant in 2017.

The Commission has construed the above-quoted statutory texts to mean that the civil service law mandates that an appellant, *prior* to filing an appeal with the Commission, *must* exhaust his or her statutory right to request a hearing before the appointing authority *and* allow the appointing authority a fair opportunity to conduct such a hearing and render a decision, within the statutorily prescribed time frames, in all disciplinary matters, including suspensions of five days or less. Hurley v. Lynn, 23 MCSR 251, 252 (2010). Here it is undisputed that Mr. Crutchfield hand-delivered an appeal form to the Commission within a mere 36 hours of receiving in hand, from a Department captain, notice of his appointing authority's decision to suspend him for five days. Moreover, the Appellant only requested (not directly, but through a union representative) a Department hearing that very day. Later in February 2018, that same union representative caused the Department to cancel the hearing it had scheduled to hear Appellant's side of the matter leading to the discipline in question. Accordingly, it cannot be disputed that Appellant's appeal with the Commission was premature and not in concert with civil service law requirements. No matter how much it might sympathize with a civil service employee's plight, the Commission is duty-bound to give full effect to the Legislature's intent

that an appointing authority have the opportunity, in the first instance, to hear evidence in support of, and in opposition to, discipline (including the testimony of the employee him or herself).

At the same time, the Commission will also give full effect to the Legislature's concomitant intent to protect a disciplined employee from any undue delay in receiving due process. Section 42 of chapter 31 provides a remedy when the appointing authority does not afford an appellant the protections laid out in section 41 of the statute in the course of discipline and s/he was prejudiced thereby. Thus, had Mr. Crutchfield been aggrieved *and* prejudiced somehow by any failure of his appointing authority to follow the dictates of G.L. c. 31, § 41, in conjunction with its meting out of discipline against him, he would have been entitled to file an appeal upon a satisfactory showing of those conditions with the Commission under c. 31, § 42. For example, had the appointing authority failed to schedule and conduct a timely disciplinary appeal hearing, or had it neglected to issue promptly thereafter a written decision on the Appellant's § 41 appeal, then the Appellant could have been justified in coming straight to the Commission. *But* (and this is important) Section 42 mandates that an appellant in such circumstance "shall set forth specifically in what manner the appointing authority has failed to follow such requirements [of § 41]." Here, the appeal form filed with the Commission by Mr. Crutchfield plainly did not specify any such failure by the Department to follow § 41's directives. Thus, under the circumstances here, the Appellant had "no reasonable expectation" of prevailing on at least one "essential element of the case".

Other Issues

I have found (and, indeed, Mr. Crutchfield has admitted) that the Appellant did not oppose in writing either of the Department's two dispositive motions. Nor did the Appellant

make arrangements, in the approximately 40-day interval between receipt of the Commission's March 9, 2018 Procedural Order and its April 17, 2018 motion hearing, for union representation or witness testimony to bolster his assertion that he had been misled regarding civil service appeal requirements. He had been apprised on March 9 of the means by which to compel, if necessary, witness appearances. No doubt this inaction operated to the Appellant's disadvantage. To his considerable credit, however, Mr. Crutchfield candidly acknowledged at the April 17 hearing that he took "full responsibility for correct steps not having been followed here." And he added that he would "understand if his [Commission] appeal is going to be dismissed." The Appellant's understanding in this regard comports with the Commission caselaw holding that reliance on poor union advice regarding civil service issues is no excuse. *See* Allen v Taunton Public School, 26 MCSR 376 (2013), *aff'd* Allen v. Civil Service Commission and another, Suffolk Sup.Ct. 1384CV03239 (July 17, 2014).

Any concerns Mr. Crutchfield may still have with regard to any misinformation, poor advice, or even possible misrepresentation by an MCOFU official of the civil service law's requirements, or any adverse consequences of a misunderstanding between the Appellant and his union's vice president, are all, unfortunately for the Appellant, beyond the ability of the Commission to rectify at this time. *See* Boston v. Tolland, 87 Mass.App.Ct. 1107 (2006). Moreover, it is well established that the Commission's jurisdiction depends on an appointing authority decision. *See* Heggie v New Bedford, 32 MCSR 127 (2019) and long line of cases recognizing such.

In order to avert regrettable situations such as this arising again, the Department is strongly advised to notify employees that canceling a Commissioner's hearing may have consequences regarding future appeal rights under the civil service law.

Conclusion

For all of the above reasons, the Department's Motion to Dismiss this appeal is allowed and the Appellant's appeal under Docket No. D-18-019 is ***dismissed***.

Civil Service Commission

/s/ Cynthia Ittleman
Cynthia A. Ittleman
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Camuso, Ittleman, Stein and Tivnan, Commissioners) on June 17, 2021.

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. After initiating proceedings for judicial review in 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:
Aaron Crutchfield (Appellant)
Joseph Santoro (for Respondent)