

COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION

Decision mailed: 8/15/08  
Civil Service Commission

CB

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

NANCY L. DALRYMPLE,  
*Appellant*

v.

TOWN OF WINTHROP,  
*Respondent*

Case Numbers: D-08-13

**DECISION**

The Civil Service Commission is in receipt of the report of the Administrative Law Magistrate dated June 6, 2008 and the comments of the Appellant received by the Commission on August 4, 2008. The Magistrate recommended that the Commission allow the Appointing Authority's Motion for Summary Decision.

After careful review and consideration, it appears that there are factual issues in dispute in regard to the instant appeal. As such, the Commission voted by a 3-1 vote to deny the Motion for Summary Decision at this time and schedule a full evidentiary hearing that will be preceded by a status conference at the Commission. Prior to the status conference, the parties should provide the Commission with a summary of any matters currently pending or recently decided by an arbitrator regarding the Appellant and the Appointing Authority. A copy of the Magistrate's report is enclosed herewith.

By vote of the Civil Service Commission (Bowman, Chairman, yes; Marquis, Commissioner, no; Stein, Commissioner, yes and Taylor, Commissioner, yes [Henderson, Commissioner, absent]) on August 14, 2008.

A true record. Attest.



Christopher C. Bowman  
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a 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 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 to:  
Michael F. Manning, Esq. (for Appellant)  
Howard Greenspan, Esq. (for Appointing Authority)  
Shelly Taylor, Esq. (DALA)

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

98 North Washington Street, 4th Floor

Boston, MA 02114

www.mass.gov/dala

COMMONWEALTH OF MASS  
CIVIL SERVICE COMMISSION

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Tel: 617-727-7060  
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June 6, 2008

Christopher Bowman, Chairman  
Civil Service Commission  
One Ashburton Place  
Boston, MA 02108

Michael F. Manning, Esq.  
IBPO  
159 Burgin Parkway  
Quincy, MA 02169

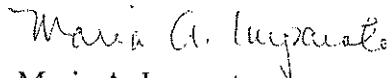
Howard Greenspan, Esq.  
200 Broadway, Suite 304  
Lynnfield, MA 01940

Re: *Nancy Dalrymple v. Town of Winthrop*, D-08-13, CS-08-203

Dear Chairman Bowman, Attorney Manning and Attorney Greenspan:

Enclosed please find my Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01 (11) (c), they have 30 days to file written objections to the decision with the Civil Service Commission, which may be accompanied by supporting briefs.

Very truly yours,



Maria A. Imparato  
Administrative Magistrate

Enc.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Nancy J. Dalrymple,  
Appellant

v.

Docket No. D-08-13  
DALA No. CS-08-203

Town of Winthrop,  
Appointing Authority

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OF THE COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION

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Appearance for Appellant:

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IBPO  
159 Burgin Parkway  
Quincy, MA 02169

Appearance for Appointing  
Authority:

Howard Greenspan, Esq.  
200 Broadway, Suite 304  
Lynnfield, MA 01940

Administrative Magistrate:

Maria A. Imparato, Esq.

**RECOMMENDED DECISION**

Under the provisions of G. L. c. 31, s. 43, the Appellant, Nancy Dalrymple, filed an appeal of the decision of the Appointing Authority, Town of Winthrop ("Town"), to suspend her from her position of police officer for five days for insubordination for refusing a direct order, and to place her on administrative leave without pay until she signs a release for her fitness for duty evaluation.

On or about March 12, 2008, the Town filed a Motion for Summary Decision. On or about March 20, 2008, the Appellant filed her Opposition to the Motion. On or about March 21, 2008, the Civil Service Commission, through its Chairman, Christopher C.

Bowman, ordered a hearing on the Town's Motion to be held on April 3, 2008, in lieu of a hearing on the merits.

I held a hearing on the Town's Motion for Summary Decision and the Appellant's Opposition thereto on April 3, 2008 at the office of the Division of Administrative Law Appeals, 98 North Washington Street, Boston, MA.

I marked documents into evidence. (Exs. 1 – 15) I denied the Appellant's Motion to Testify at Hearing, and allowed the Appellant to file an affidavit after the hearing. The affidavit was received on April 14, 2008. I marked the affidavit and appended documents together as Exhibit 16.

I allowed the Town until April 18, 2008 to respond the Appellant's affidavit. The Town did not file a response to the Appellant's submission.

I conclude that there is no genuine issue of material fact in this case, and that the Appointing Authority is entitled to prevail as a matter of law, within the meaning of 801 CMR 1.01 (7) (h).

#### UNDISPUTED FACTS

1. Nancy Dalrymple is a police officer in the Town of Winthrop with an original appointment date of July 22, 1980. (Ex. 16)
2. Officer Dalrymple was injured in the line of duty on or about September 25, 2006 when she tripped and hit her chest, suffering a chest contusion. (Exs. 7, 16)
3. Officer Dalrymple received injured on duty benefits under G. L. c. 41, s. 111F. (Exs. 7, 16)

4. Under the provisions of the Collective Bargaining Agreement between IBPO Local 397A and the Town, Article XXVIX (sic)(B) 4, Officer Dalrymple was evaluated by a physician selected by the Town on December 27, 2006. The physician, Paul Smiley, M.D., an orthopedic surgeon, cleared Officer Dalrymple to return to full duty work. Dr. Smiley suggested, however, that Officer Dalrymple be evaluated by a cardiothoracic surgeon to better evaluate her chest contusion. (Exs. 7, 8, 16)
5. Officer Dalrymple returned to light duty work in January 2007. (Exs. 9, 16)
6. On March 25, 2007, Eric J. Ewald, M.D., who is board-certified in internal medicine with a subspecialty in cardiovascular disease, evaluated Officer Dalrymple at the request of the Town. Dr. Ewald opined that Officer Dalrymple had reached a medical end result, and that she would be able to return to work “in her former capacity by the end of the calendar month or at the latest the first week of April.” (Exs. 7, 9, 16)
7. On or about April 19, 2007, Police Chief David Goldstein ordered Officer Dalrymple back to full duty work based on the opinions of Drs. Smiley and Ewald. Officer Dalrymple returned to full duty work on or about April 27, 2007. (Exs. 7, 16)
8. Officer Dalrymple grieved the Chief’s decision to order her back to full duty work. (Exs. 7, 16)
9. On May 21, 2007, Chief Goldstein ordered Officer Dalrymple to qualify with a new firearm issued to all members of the department. Officer Dalrymple

- was unable to qualify with the new firearm, stating that she could not do so because of her September 2006 chest contusion. (Exs. 7, 16)
10. Officer Dalrymple stopped working on May 21, 2007 and was placed on sick leave status. (Exs. 2, 7, 16)
  11. By letter of October 22, 2007, Chief Goldstein ordered Officer Dalrymple to undergo a physical examination with Stefanos Kale, M.D. on November 1, 2007. (Exs. 7, 10)
  12. On October 28, 2007, Officer Dalrymple appeared at the station and advised the lieutenant in charge of the shift that she was reporting to work. Officer Dalrymple did not present any medical documentation certifying her fitness to return to work. (Exs. 2, 7)
  13. On November 1, 2007, Officer Dalrymple appeared at Dr. Kales's office, but refused to undergo a medical examination. (Exs. 7, 11)
  14. By letter of November 26, 2007, Town Manager Richard White ordered Officer Dalrymple to appear for a fitness for duty evaluation with Dr. Kales on December 6, 2007. (Exs. 2, 3, 7)
  15. On December 6, 2007, Officer Dalrymple submitted to an interview and examination by Dr. Kales, but withdrew consent for Dr. Kales to release any personal health information to the Town. (Exs. 2, 4, 7)
  16. By letter of December 11, 2007, Town Manager White issued a notice of contemplated action to Officer Dalrymple, indicating his intention to discharge her from her position for her insubordination in failing to cooperate

- with a fitness for duty evaluation conducted by Dr. Kales on December 6, 2007. (Exs. 2, 5, 7)
17. The hearing was held on or about December 28, 2007. Officer Dalrymple did not testify at the hearing. (Exs. 2, 7, 16)
18. By letter of January 7, 2008 from Town Manager White, Officer Dalrymple was informed that she was being suspended for five days, and that if she did not allow Dr. Kales to issue his report to the Town, she would be placed on administrative leave without pay when her suspension had been served, which would continue until a release was provided to the Town. (Exs. 2, 6, 7)
19. Officer Dalrymple has not signed a release for Dr. Kales to issue the results of his evaluation to the Town. (Ex. 2)

### CONCLUSION AND RECOMMENDATION

There is no genuine dispute of fact in this case, and the Town is entitled to prevail as a matter of law. I recommend that the Civil Service Commission allow the Town's Motion for Summary Decision and affirm the discipline of Nancy Dalrymple.

The Appellant argues that the Town had no right under the Collective Bargaining Agreement to require her to submit to a fitness for duty evaluation before allowing her to return to work. I find the Appellant's argument to be without merit.

Under the Collective Bargaining Agreement, an employee's entitlement to compensation for injured on duty leave "shall cease ... after a physician designated



by the appointing authority of the Town of Winthrop has determined that the employee's former incapacity for duty no longer exists." (Article XXVIX (B) (4); Ex. 13, pp. 22-23)

The Appellant's injured on duty leave ended in April 2007 when she was ordered to return to work after Drs. Smiley and Ewald determined that her former incapacity (chest contusion) no longer existed, and she could return to duty.

On May 21, 2007, after she was unable to qualify with a new firearm, and after she had grieved the Chief's order to return to full duty work, the Appellant went out of work on sick leave status.

Under the Collective Bargaining Agreement, absences that exceed three days will be paid for "only on submission of a doctor's certificate" satisfactory to the Chief. "If the Chief or his/her designee determines it to be in the best interests of the Town, it shall have an independent doctor make an examination and report." (Article XIV, Section 4; Ex. 13, p. 13-14)

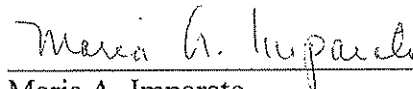
The Town was therefore acting in accordance with its authority when it ordered the Appellant to submit to an examination by an independent doctor, and to require a report from that doctor. In view of the fact that the Appellant had been out of work since May 2007 after being unable to qualify with a new firearm, and after grieving the Chief's order to return to full duty work, it was not unreasonable for the Town to conclude that it was in the Town's best interest to have an independent doctor make an examination and report of the Appellant's fitness for duty.

In view of the Appellant's refusal to allow the independent examining doctor to make his report to the Town, a five day suspension followed by unpaid administrative

leave is not an unreasonable discipline for her insubordination. The fact that the Town may have allowed other police officers to return to work after sick leave without an independent medical examination and report does not provide justification for the Appellant's insubordination, in view of the fact that the Town was empowered by the Collective Bargaining Agreement to require the examination and report.

I conclude that there is no genuine dispute of fact in this case, and the Town is entitled to prevail as a matter of law. I recommend that the Civil Service Commission allow the Town's Motion for Summary Decision.

DIVISION OF ADMINISTRATIVE LAW APPEALS



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Maria A. Imperato  
Administrative Magistrate

DATED: 6/6/08