

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

PAUL DOONER,  
Appellant

v.

D1-18-129

BOSTON HOUSING AUTHORITY,  
Respondent

Appearance for Appellant:

*Pro Se*  
Paul Dooner

Appearance for Respondent:

Jay S. Koplove, Esq.  
Boston Housing Authority  
52 Chauncy Street  
Boston, MA 02111

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION

1. On July 17, 2018, the Appellant, Paul Dooner (Mr. Dooner), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Boston Housing Authority (BHA) to terminate his employment based on his inability to return to work and perform his essential job functions as a Carpenter.
2. On August 14, 2018, I held a pre-hearing conference at the offices of the Commission which was attended by Mr. Dooner and counsel for the BHA.
3. As part of the pre-hearing conference, the parties agreed that: a) Mr. Dooner sustained a work-related injury in October 2017 related to his hand; b) Mr. Dooner underwent hand surgery and has been receiving rehabilitation services; c) his surgeon, in consultation with the rehabilitation therapist, had not yet cleared Mr. Dooner for work, but, rather, had been issuing orders for Mr. Dooner to continue rehab for 4 weeks and then re-evaluate his hand; and d) Mr. Dooner continues to collect workers compensation.
4. Mr. Dooner stated emphatically at the pre-hearing that he wants to return to work.
5. In their filings, and at the pre-hearing conference, the BHA indicated that should Mr. Dooner receive clearance from his surgeon to return to work at a scheduled visit that week (8/16/18),

the BHA would be willing to return him to his position as carpenter, making this appeal moot.

6. Mr. Dooner did not anticipate that his surgeon would clear him to return to work that week.
7. As part of the pre-hearing, I discussed with the parties the recent [Appeals Court decision](#) related to: McEachen v. Boston Housing Authority.
8. With the hope of allowing the parties to resolve this matter without intervention from the Commission, I advised the parties that the BHA, absent a resolution of this matter, should submit a Motion for Summary Decision in 60 days (as opposed to the customary 30 days) and the Appellant would have 30 days thereafter to file a reply.
9. On August 16, 2018, Mr. Dooner's surgeon wrote that Mr. Dooner would remain on "restrictions" and that Mr. Dooner told the surgeon that he "... does not feel he can return to regular duty at this time ... [Maximum medical improvement] would be expected at 6 to 12 months post surgery."
10. On October 12, 2018, the BHA filed a Motion for Summary Decision. Mr. Dooner did not file a reply.

#### *Standard for Summary Decision*

The legal standard for deciding whether to grant a motion for summary decision is very similar to the standard that applied in courts on a motion for summary judgment. Under 801 CMR § 1.01 (7) (h), a party may seek a summary disposition when, " a Party is of the opinion there is no genuine issue of fact relating to all or part of a claim or defense and he is entitled to prevail as a matter of law ... " Summary decision is appropriate when a party show, via affidavits, documents and/or other written information that there is no genuine issue of fact and that the moving party is entitled to judgment as a matter of law. BHA believes that it will demonstrate the absence of a material issue of fact and that it is entitled to relief in the form of summary decision as a matter of law.

#### *Analysis*

As recently stated in McEachen v. Boston Housing Authority, 93 Mass.App.Ct. 1122 (2018) (Rule 1:28 Opinion), federal and state laws are clear that if an employee is unable to perform the essential duties of his job, the employer may terminate him.<sup>1</sup>

Here, the record shows that Mr. Dooner has not recovered from his work-related accident on October 23, 2018 and that his medical provider cannot say when or whether he will return.

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<sup>1</sup> When and if Mr. Dooner ever does reach a level of maximum medical improvement to a level that enables him to perform the duties of a carpenter, his rights to reinstatement and protection from discrimination are covered under workers' compensation and anti-discrimination law. See G.L.c. 152, §75A & §75B.

*Conclusion*

For these reasons, and for all the reasons cited in the BHA's Motion for Summary Decision, the motion is allowed and Mr. Dooner's appeal under Docket No. D1-18-129 is *dismissed*.  
Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on December 6, 2018.

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:

Paul Dooner (Appellant)

Jay Koplove, Esq. (for Respondent)