

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

GILBERTO ESCOBAR,
Appellant

v.

D1-16-189

SPRINGFIELD POLICE DEPARTMENT,
Respondent

Appearance for Appellant:

Pro Se
Gilberto Escobar

Appearance for Respondent:

Maite Parsi, Esq.
Third Associate Labor Counsel
City of Springfield
36 Court Street
Springfield, MA 01103

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

1. On November 10, 2016, the Appellant, Gilberto Escobar (Mr. Escobar), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Springfield Police Department (SPD) to terminate his employment as a police officer.
2. On December 14, 2016, I held a pre-hearing conference at the Springfield State Building in Springfield which was attended by Mr. Escobar, counsel for the SPD and two (2) representatives from the City.
3. As part of the pre-hearing conference, there was a discussion as to whether Mr. Escobar was a permanent, tenured police officer at the time of his termination. The SPD had operated on the assumption that Mr. Escobar was within his probationary period at the time of his termination and that he has no right to contest the termination with the Commission.
4. The parties agreed that the termination occurred on October 7, 2016.
5. At the pre-hearing conference, Mr. Escobar stated that he began serving as a police officer on October 7, 2015. The SPD stated that Mr. Escobar began his duties as a police officer sometime in October 2015, but was unsure if the start date with October 7th, as asserted by

Mr. Escobar.

6. G.L. c. 31, s. 61 states: “Following his original appointment as a permanent full-time police officer or fire fighter in a city, or in a town where the civil service law and rules are applicable to such position, a person shall actually perform the duties of such position on a full-time basis for a probationary period of twelve months before he shall be considered a full-time tenured employee in such position, except as otherwise provided by civil service rule. The administrator, with the approval of the commission, may establish procedures to ensure the evaluation by appointing authorities, prior to the end of such probationary period, of the performance of persons appointed as regular police officers or fire fighters.”
7. The parties also agreed that Mr. Escobar was out on “injured on duty” leave for two (2) weeks sometime after beginning his duties as a police officer, but did not agree on whether this automatically extended his probationary period.
8. G.L. c. 31, s. 34 states in relevant part: “If a full-time civil service employee is unable to work because of illness during the serving of his probationary period, the appointing authority may postpone the serving of such period, provided that such employee has served an amount of time adequate to satisfy the appointing authority that his services should be retained and provided, further, that such employee shall, upon resuming employment, be required to perform service equal to a full probationary period.”
9. Per agreement of the parties, the SPD filed a Motion to Dismiss the Appellant’s appeal. The City’s Motion to Dismiss stated that Mr. Escobar began performing the duties and responsibilities of police officer on October 11, 2015.
10. Although given the opportunity to do so, Mr. Escobar did not file a reply to the City’s Motion to Dismiss.
11. On January 11, 2017 at 8:30 A.M., I held a motion hearing at the Springfield State Building in Springfield, MA. As part of that hearing, Mr. Escobar did not dispute that he began performing the duties and responsibilities on October 11, 2015.
12. Subsequent to the motion hearing, the City produced the document verifying his October 11th start date.

Analysis / Conclusion

Since Mr. Escobar was within his probationary period when he was terminated as a police officer, he was not a permanent, tenured civil service employee. Thus, he has no right to file an appeal with the Commission contesting his termination under G.L. c. 31, s. 41. See Brouillard v. City of Holyoke, 74 Mass.App.Ct. 1128 (2009).

For this reason, Mr. Escobar’s appeal under Docket No. D1-16-189 is hereby *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 February 2, 2017.

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 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:

Gilberto G. Escobar (Appellant)

Maite Parsi, Esq. (for Respondent)