

COMMONWEALTH OF MASSACHUSETTS

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

JAVIER FELICIANO,  
*Appellant*

v.

D1-22-136

SPRINGFIELD FIRE DEPARTMENT,  
*Respondent*

Appearance for Appellant:

*Pro Se*  
Javier Feliciano

Appearance for Respondent:

David J. Wenc, Esq.  
City of Springfield  
36 Court Street  
Springfield, MA 01103

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT'S MOTION TO DISMISS

On October 11, 2022, the Appellant, Javier A. Feliciano (Appellant), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Springfield Fire Department (SFD) to terminate his employment as an SFD firefighter. On November 1, 2022, I held a remote pre-hearing conference which was attended by the Appellant, counsel for the SFD, the Fire Commissioner and the City's collective bargaining agent.

At the pre-hearing conference, the parties agreed that the Appellant's date of hire was August 12, 2022, at which time he entered the state's Fire Academy. Thus, the Appellant was not a permanent, tenured civil service employee at the time of his termination. As part of the pre-hearing conference, I asked the parties to review the reason for terminating Mr. Feliciano's employment. Even when hearing the version of events *as presented by the SFD*, which is

contested by the Appellant, the underlying incident appeared to involve nothing more than a brief incident of verbal sparring at the Fire Academy, which, to me, called into question what appeared to be a dramatically disproportionate response by the SFD to terminate the Appellant's employment. That notwithstanding, the issue of the Commission's jurisdiction over this matter remains. For that reason, I provided the SFD with 30 days to file a motion to dismiss and the Appellant with 30 days thereafter to file a reply. I informed the SFD that it could choose to elaborate on the alleged details surrounding the underlying incident that resulted in termination as part of the City's motion to dismiss. The City subsequently filed a motion to dismiss and the Appellant did not file a reply.

*Motion for Summary Disposition Standard*

A motion to dismiss an appeal before the Commission may be filed pursuant to 801 CMR 1.01(7)(h), which provides:

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 or she is entitled to prevail as a matter of law, the party may move, with or without supporting affidavits, for summary decision on the claim or defense.

These motions are decided under the well-recognized standards for summary disposition as a matter of law, i.e., "viewing the evidence in the light most favorable to the nonmoving party," the substantial and credible evidence established that the non-moving party has "no reasonable expectation" of prevailing on at least one "essential element of the case," and has not rebutted this evidence by "plausibly suggesting" the existence of "specific facts" to raise "above the speculative level" the existence of a material factual dispute requiring an evidentiary hearing. See e.g., Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005). Accord Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550 n.6 (2008); Maimonides School v. Coles, 71 Mass. App. Ct. 240, 249 (2008); Iannacchino v. Ford Motor Company, 451 Mass. 623, 635-36 (2008)

(discussing standard for deciding motions to dismiss); cf. R.J.A. v. K.A.V., 406 Mass. 698 (1990) (denying motion to dismiss due to factual issues bearing on plaintiff's standing).

### *Applicable Civil Service Law*

Pursuant to G.L. c. 31, § 41, a civil service appointing authority may not impose certain types of discipline, including discharge, upon a tenured employee without just cause. A tenured employee is defined, in relevant part, as one “who is employed following . . . an original appointment to a position on a permanent basis and the actual performance of the duties of such position for the probationary period required by law.” G.L. c. 31, § 1. After receiving an original appointment to a permanent, full-time fire fighter, a person must “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.” G.L. c. 31, §§ 34 and 61. The Commission only has jurisdiction to hear disciplinary appeals of tenured employees. See Selectmen of Brookline v. Smith, 58 Mass.App.Ct. 813, 815 (2003). This is clear from the structure and content of the civil service law, which “provide[s] an administrative hearing for tenured employees, G.L. c. 31, s. 43, but not for probationary employees.” New Bedford v. Civ. Serv. Comm’n., 6 Mass.App.Ct. 549, 551 (1978).

A termination that concerns allegations about an employee's reputation, may entitle the employee to a judicial “name-clearing” hearing or civil action for declaratory relief in court. See, e.g., Brouillard v. City of Holyoke, 74 Mass.App.Ct. 1128 n.2 (2009) (Rule 1:28); see also G.L. c. 31, § 42, ¶ 3 (“The supreme judicial court or the superior court shall have jurisdiction over any civil action for the reinstatement of any person alleged to have been illegally discharged . . . Such civil action shall be filed within six months next following such alleged illegal act, unless the court upon a showing of cause extends such filing date.”)

### *Analysis*

Even after reviewing the SFD's more detailed account of the alleged underlying incident here, there still appears to be a gaping disconnect between the severity of the discipline (termination) and the alleged offense. Accepting the SFD's version of events as true, the Appellant was defiant toward a superior officer who yelled at him to "keep it moving" when it was time to leave the drill yard at the end of the day. Terminating his employment, and potentially impairing the Appellant's ability for a future career in public safety, is a harsh and eyebrow-raising reaction by the SFD.

However, as referenced above, the Commission lacks jurisdiction to hear a disciplinary appeal from a firefighter who has not completed their probationary period, as is the case here. Put another way, although the SFD would face a high hurdle to show just cause for terminating the Appellant's employment, the Commission can only make such a determination in regard to a permanent, tenured civil service employee, which the Appellant is not.

### *Conclusion*

For all of the above reasons, the SFD's motion to dismiss is allowed and the Appellant's appeal under Docket No. D1-22-136 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on February 23, 2023.

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:

Javier Feliciano (Appellant)

David Wenc, Esq. (for Respondent)