COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

FIREFIGHTER J,[1]
Appellant

v.

CITY OF QUINCY,
Respondent

DOCKET NUMBER:	**D1-XX-XXX**
Appearance for Appellant:	David Flanagan., Esq. Flanagan and Associates 440 Washington Street Weymouth, MA 02188
Appearance for Respondent:	Janet S. Petkun, Esq. Office of the Solicitor Quincy City Hall 1305 Hancock Street Quincy, MA 02169
Commissioner:	Paul M. Stein

SUMMARY OF DECISION

The Commission denied a Section 42 Procedural Appeal brought by a Firefighter terminated from his position with the Quincy Fire Department (QFD), concluding that the Appellant had not been prejudiced by the failure of the Appointing Authority to reopen the appointing authority hearing prior to his termination to further consider a claim that he should be reinstated to a position that did not require him to respond to emergencies. He did not testify at the initial appointing authority hearing and the QFD had no such position available to accommodate his request. The Appellant's Section 43 Just Cause Appeal was dismissed with a future effective date, pending the outcome of his complaint filed with the Massachusetts Commission Against Discrimination (MCAD) and the appeal of his disability retirement appeal now pending with the Contributory Retirement Appeals Board (CRAB).

[1] The Commission opted to use an anonymous identifier for the Appellant in this particular appeal in conformance with the Commission's privacy protocols.

DECISION

On December 28, 2023, the Appellant appealed to the Civil Service Commission (Commission), pursuant to G.L.c.31,§42 (Section 42 Procedural Appeal) and G.L c.31,§43 (Section 43 Just Cause Appeal), contesting the decision of the City of Quincy (Quincy) to terminate his employment as a firefighter with the Quincy Fire Department (QFD).[2] The Commission held a remote pre-hearing on February 27, 2024. On March 29, 2024, the Commission bifurcated the Section 42 Procedural Appeal for a full hearing which was held remotely on May 21, 2024, and audio and video recorded via Webex.[3] A hearing on the Section 43 Just Cause Appeal was deferred pending further information concerning related matters filed by the Appellant with the Massachusetts Commission Against Discrimination (MCAD) and the Contributory Retirement Appeal Board (CRAB). As neither party requested a public hearing, the Section 42 Procedural Appeal hearing was declared private. Each party submitted a proposed decision on June 20, 2024. For the reason stated below, the Appellant's Section 42 Procedural Appeal is denied. The Appellant's Section 43 Just Cause Appeal is dismissed with a future effective date, pending the outcome of the Appellant's above related claims.

FINDINGS OF FACT

The Commission received into evidence 23 exhibits (*App.Exhs.1 through 13; Resp.Exhs.1 through 10).* Based on the documents submitted and the testimony of the following witnesses:

Called by the Appointing Authority:

- Patrick Dee, QFD Deputy Fire Chief
- Patricia McGowan, Quincy Director of Human Resources

[2] The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 (formal rules), apply to adjudications before the Commission with G.L.c.31, or any Commission rules, taking precedence.

[3] A link to the recording was provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, the recording link provided to the parties should be used to transcribe the audio/video recording of the hearing.

- Janet S. Petkun, Esquire, Quincy Assistant City Solicitor[4]

Called by the Appellant:

- David P. Flanagan, Esquire, Appellant's Attorney[4]

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, and reasonable inferences therefrom, a preponderance of the evidence establishes the following findings of fact:

1. The Appellant was employed as a QFD Firefighter from November 2015 until his termination on December 20, 2023. (*App.Exhs.12 & 13; Resp.Exhs.1 & 7*)

2. The Appellant had prior service with Quincy as a police officer with the Quincy Police Department. He is a military veteran who served in Iraq prior to his employment with the QFD. (*Resp.Exhs.1 & 5*)

3. At some point after completing his military service, the Veteran's Administration diagnosed the Appellant with the medical condition of Post-Traumatic Stress Disorder (PTSD), for which he has been in individual therapy since November 2014. (*Resp.Exhs.5*)

4. Prior to his employment as a QFD Firefighter, the Appellant went through a background check, an interview, a physical examination and a psychological evaluation, all of which he passed successfully. The Appellant's PTSD was not mentioned in any of his pre-employment examinations. (*Resp.Exh.1 & 5; App.Exh.12*)

5. One important way that the Appellant managed to cope with his PTSD and to present as a relatively high functioning individual involved a regimen of regular physical exercise and, in particular, long-distance running. (*Resp.Exh.5; App.Exh.6)*

6. On February 11, 2017, the Appellant responded to a structure fire during which the Appellant

[4] Counsel testified following a colloquy and confirmation that both parties assented to the limited testimony provided by each attorney.

reported that one occupant was injured after jumping from a window and he saw the remains of two other occupants inside the building who had died in the fire. (*Resp.Exhs.4 & 5*)

7. On June 3, 2018, the Appellant injured his ankle while on duty as he jumped off a fire apparatus. (*Resp.Exhs.1 & 5; App.Exhs.5, 6 & 12*)

8. The Appellant has not returned to active duty with the QFD since his injury on June 3, 2018. (*Resp.Exhs.1 & 5; App.Exh.12; Testimony of McGowan*)

9. Initially, the Appellant was placed on injured medical leave and began receiving injured on duty (111F) benefits until October 2018, when Quincy received information that the foot injury had resolved.. (*Resp.Exhs.1 & 5; App.Exhs.9 & 12*)

10. On January 17, 2019, the Appellant filed an Application for Disability Retirement in which his treating physician stated, in relevant part:

(1.) Is the applicant mentally or physically incapable of performing the essential duties of his or her particular job? YES
Applicant's Date(s) of injury(s) or exposure(s) FEB 2017
Applicant's Job Title: FIREFIGHTER
Applicant able to perform essential duties: NO
If no, when was the applicant last able to perform essential duties: AUG 2018
Which essential duties cannot be performed by the applicant (restrictions): ABILITY TO SAFELY NAVIGATE HIGH STRESS SITUATIONS D/T PTSD

(2.) Is the condition for which the applicant seeks disability retirement likely to be permanent? YES
What are the applicant's medical diagnoses: POSTTRAUMATIC STRESS DISORDER
Your assessment of anticipated natural course of the diagnosis: STABLE OR PLATEAU
Has Maximum Medical Improvement (MMI) been reached? YES
If you think the applicant's disability will continue indefinitely, please state why: PTSD SYMPTOMS PRESENT AS STABLE [DURING] TREATMENT, LIKELY TO EXACERBATE IN HIGHER LEVEL OF STRESS

(3A.) Is said incapacity such as might be the natural and proximate result of the claimed personal injury sustained or hazard undergone in the performance of the applicant's duties and on account of which this disability retirement is based? YES
Describe the event(s) or onset of condition(s) that in your opinion led to applicant's disability: FEB 12, 2017 – HOUSE FIRE, DUAL FATALITY. . .
What other life event/circumstance/condition in the applicant's medical history may have contributed to or resulted in the disability claimed? MULTIPLE PREVIOUS EXPOSURES DURING TIME IN QUINCY FIRE DEPT.

> Upon weighing the medical influence described, is it more likely that the disability was caused by the job-related personal injury or hazard undergone, or the non-work related event or circumstance or condition? JOB RELATED

(*Resp.Exhs.1, 4 & 5; App.Exhs.2 & 12*)

11. On June 20, 2019, the Quincy Retirement Board (QRB) denied the Appellant's application for disability retirement. (*Resp.Exh.5*)[5]

12. Meanwhile, after an arbitration over the discontinuance of 111F benefits, in May 2019, the Appellant was placed on unpaid (administrative) leave. (*Resp.Exhs.1 & 5; App.Exh.12*)

13. For approximately the next three years, Quincy made an effort to determine whether the Appellant was fit to return to duty but the medical reports it received were unresponsive, conflicting and inconclusive. During this period, although some of the records did refer to the Appellant's PTSD, the Appellant never specifically asked Quincy for any accommodation for his physical condition or his PTSD. (*Resp.Exhs.1 & 5; App.Exhs.5 through 12;Testimony of McGowan*)

14. By letter dated December 21, 2021 and a follow-up letter dated February 22, 2022, Quincy informed the Appellant that he had exhausted his accrued sick, vacation and personal time and notified the Appellant that Quincy's intention was to terminate his employment due to his "ongoing inability to work." The second letter was accompanied by copies of the relevant sections of the civil service law (G.L.c.31,§41-§45). (*Resp.Exh.1; App.Exh.12*)

15. Pursuant to notice duly given, an appointing authority hearing was held on May 11, 2023 and June 6, 2023 before a hearing officer designated by the Appointing Authority. The parties were represented by counsel and introduced 20 joint exhibits. The Appointing Authority called two

[5] The Appellant appealed the denial of his request for disability retirement. The Division of Administrative Law Appeals (DALA), by decision dated January 13, 2023, upheld the QRB's decision. The Appellant's further appeal of the denial of his disability retirement application to the Contributory Retirement Appeals Board (CRAB) is pending. (*Resp.Exh.5; Administrative Notice [Email dated 9/16/2024 to Commission from Appellant's counsel]*)

witnesses. The Appellant did not testify but introduced 11 exhibits. (*Resp.Exh.1; App.Exh.12*)

16. At the suggestion of the hearing officer after the first day of hearing, counsel for Quincy reached out to counsel for the Appellant to discuss the options for making a reasonable accommodation for the Appellant to enable him to perform all of the "essential functions of the job" and return to duty. (*Resp.Exh.8; Testimony of Atty Petkun & Atty Flanagan*)

17. Eventually, on May 23, 2023, counsel (but not the Appellant) participated in a conference call. When asked by Quincy counsel what accommodation the Appellant was requesting, the Appellant's counsel stated that "stress is a trigger for [the Appellant]. Fire Prevention is a reasonable accommodation that [the Appellant] would likely accept." Quincy counsel informed the Appellant's counsel that Fire Prevention did not have any open positions. (*Resp.Exh.8; Testimony of Atty Petkun & Atty Flanagan*)

18. In her Report dated August 14, 2023, the hearing officer found, in part:

> "There was no witness testimony at the hearing from any physician as to a diagnosis or treatment of PTSD for [Appellant]. . . .as to a connection between a diagnosis or treatment of PTSD and an injury to [Appellant's] left foot. There was no witness testimony at the hearing that [Appellant] or his agents communicated to the City that [Appellant] has been diagnosed with PTSD. There was no witness testimony submitted at the hearing that [Appellant] requested a reasonable accommodation for his PTSD in order to be able to return to work as a firefighter for the Department. There was no reliable evidence submitted at the hearing that [Appellant] requested a reasonable accommodation for his PTSD in order to be able to return to work as a firefighter for the Department."

After reviewing the law and administrative guidelines promulgated by the Equal Employment Opportunity Commission (EEOC) and the Massachusetts Commission Against Discrimination (MCAD), the hearing officer concluded:

> "Despite the lack of communication on the part of [Appellant] to the City about his diagnosis and ability to return to work, with or without accommodations, . . . at the very least, the Director of Human Resources for the City was aware that . . . [Appellant] claims to suffer from PTSD and . . . was asserting, albeit to the Quincy Retirement Board, that his PTSD prevents him from being able to perform the job. Applying the standards of the MCAD guidelines on the subject, this, alone, gives

> rise to an obligation on the part of the City to make some inquiry to [Appellant] as to whether he needed some assistance or reasonable accommodation to return to work. Without a showing that the City fulfilled all of its obligations under the law with respect to reasonable accommodation requirements, the basic merit principles of the civil service are not met and, therefore, the City lacks just cause, by a preponderance of the evidence, to terminate at this time."
>
> "By the findings and conclusions of this report, I do not represent or conclude that the City has engaged in disability discrimination in its dealings with [Appellant]. I also do not represent that the City will be able to find a reasonable accommodation for [Appellant] to return to work as a firefighter with the Department, or that he is even entitled to one. . . ."
>
> . . .
>
> "The facts established above show that, as early as 2019, the City was aware that [Appellant] claims to suffer from PTSD. [Appellant] did not make a formal request for a reasonable accommodation for his disability in order to return to work, but knowing that [Appellant] was resisting a return to work, and knowing that he claims to have PTSD, it was incumbent upon the City to make some inquiry to [Appellant] as to whether he needed assistance or a reasonable accommodation related to his PTSD in order to return to work. Failure to do so undermines the basis for just cause to terminate under the basic merit principles of civil service, protections to which [Appellant] is entitled."

(*Resp.Exh.1; App.Exh.12*)

19. Upon receipt of the hearing officer's report, Quincy counsel met with the Quincy HR Director McGowen and the Quincy Mayor's Chief of Staff to discuss what next steps should be taken. (*Testimony of McGowan &Petkun*)

20. By letter dated August 29, 2023, Quincy counsel wrote to the Appellant's counsel. The letter restated the substance of the email dialogue exchanged by the parties in May 2023, enclosed a copy of the Commonwealth of Massachusetts Fire Fighter Essential Task List, and requested that the Appellant's counsel review the list with the Appellant to determine what tasks needed a reasonable accommodation for him to perform. (*Resp.Exh.2; Testimony of McGowan, Petkun & Flanagan*)

21. On September 20, 2023, having received no response to her August 29, 2023 letter, Quincy counsel emailed the Appellant's counsel and attached a copy of her letter. (*Resp.Exh.3; App.Exh.11; Testimony of Petkun & Flanagan*)

22. On September 26, 2023, the Appellant's counsel responded to Quincy counsel by email that stated:

> Pursuant to our conversation on May 25, 2023, I expressed that [Appellant] is **able** to perform the essential functions of firefighter with a reasonable accommodation. Presently, he is still able to perform the essential functions of a firefighter with a reasonable accommodation.

(*Resp.Exh.3; App.Exh.11*)

23. Quincy counsel responded to the Appellant counsel's email on September 27, 2023, stating:

> You indicated that the reasonable accommodation **[Appellant]** sought was assignment in the fire prevention unit. I explained in my follow-up dated August 29 that there was no position available, and therefore my inquiry on August 29 was to solicit alternative options. Your response below provides no such options. I need something specific as to how [**Appellant**] can work as a firefighter while dealing with his stress-trigger issue. Please respond with specifics to this question.

(*Resp.Exh.3; Testimony of Petkun*)

24. The Appellant's counsel never responded to Quincy counsel's September 27, 2023 email. (*Testimony of Petkun*) [6]

25. By letter dated December 20, 2023, Quincy Mayor Koch, the QFD Appointing Authority, informed the Appellant of his decision to terminate him as a QFD Firefighter, effective immediately. The Mayor's letter stated:

> I regret to inform you of my decision to terminate you as a Quincy fire fighter, effective immediately. As you know, Maura E. O'Keefe, Esquire acted as a hearing officer to determine if just cause existed to terminate you on the basis that you have

[6] The Appellant's counsel claimed he never saw the September 27, 2023 email. The evidence is not conclusive whether he did not receive it or that he overlooked it in the "hundreds of emails" he received daily. (*Testimony of Flanagan & Petkun*)

> not worked as a fire fighter since June 3, 2018. During that hearing, you raised the issue of an accommodation under the Americans with Disabilities Act - based on stress. In her decision dated August 14, 2023, Hearing Officer O'Keefe opined that the City could/should not take adverse employment action against you "pending inquiry as to whether any reasonable accommodation can be made."
>
> The City immediately initiated that inquiry, sending a letter to your attorney dated August 29, 2023 from Assistant City Solicitor Janet S. Petkun, who inquired what reasonable accommodation you believed could be achieved. She included a copy of the Commonwealth of Massachusetts Fire Fighter Essential Task List, to assist you in your consideration of the matter. Your attorney responded to Attorney Petkun on September 26, 2023, but rather than propose any measures, simply stated that you could perform the essential functions of a firefighter with a reasonable accommodation. Attorney Petkun responded the next day, seeking specific options that would allow you to work as a fire fighter while dealing with your stress-trigger issue, and has not received any reply.
>
> Your absence from work for over five years, and your failure to engage in a meaningful discussion on the accommodation issue leaves the department and the City in an untenable position. You are therefore hereby terminated as a fire fighter. I have enclosed a copy of Massachusetts General Laws, Chapter 31, §§ 41 through 45, setting forth your rights under the civil service law. Thank you for your attention to this matter.

(*Resp.Exh.7; App.Exh.13*)

26. This Section 42 Appeal and Section 43 Appeal duly ensued. *(Claim of Appeal*)

27. In the past, Quincy has received and granted requests for reasonable accommodation, including a legally blind (non-public safety) employee who requested use of an adapted computer and received time-off to train a service dog that accompanied the employee to work. Quincy has never been asked to grant a reasonable accommodation to a firefighter who suffered from PTSD. (*Testimony of McGowan & Dep. Chief Dee*)

28. The QFD is comprised of four divisions – Operations; Training; Fire Prevention; and Fire Alarm/Dispatch. Fire Prevention is made up of a fire captain, two lieutenants, and four fire fighters. Fire Prevention enforces various codes by conducting inspections and making sure that citizens are

safe and in compliance with the codes. This duty requires dealing with hazardous material, food trucks, welding, code enforcement, smoke detectors, schools and community outreach, among other things. Administrative tasks are divided and members of Fire Prevention are in and out of the office all day. (*Testimony of Dep. Chief Dee*).

29. The basic task of a QFD firefighter is to protect the lives and property of the citizens of Quincy. All firefighters, wherever assigned, are required to be capable of performing all the essential tasks of a firefighter. Stress is "inherent" to every job in the QFD. According to Dep. Chief Patrick Dee, the "first and foremost function is a firefighter, and that function does not go away" whether you are assigned to the Operations or Fire Prevention, Fire Alarm or Training. Anyone can be ordered on an apparatus at any time, and every firefighter is expected to able to respond to a fire scene, even someone assigned primary duty in fire prevention or fire alarm. While an injured fire fighter could be accommodated in fire alarm for a short period of time", the "essential functions do not change." (*Resp.Exh.2; Testimony of Dep. Chief Dee*)

30. Between August 14, 2023 and December 20, 2023 (the effective date of the Appellant's termination), the QFD Fire Prevention Division had no openings for a firefighter. The first opening for a firefighter in the QFD Fire Prevention Division after August 14, 2023 was posted by General Order dated April 18, 2024 and stated that the job requirements "will be dictated by the Captain in charge of Fire Prevention, and will certainly include involvement in Community Outreach programs." (*Resp.Exh.9; Testimony of Petkun & Dep. Chief Dee*)

31. On or about April 4, 2024, the Appellant filed a complaint of discrimination against the Town with MCAD that alleged, in part, that the Town "discriminated against me based on my veteran status and disability by failing to engage in an interactive dialogue, offering me a reasonable accommodation and ultimately terminating my employment." The Appellant's MCAD complaint is

pending with an MCAD Investigative Conference scheduled for December 26, 2024. (*Administrative Notice [Email dated 5/3/24 from Quincy counsel to the Commission with MCAD Complaint attached; Email dated from Appellant's counsel to the Commission]*)

APPLICABLE CIVIL SERVICE LAW

A tenured civil service employee may be disciplined for "just cause" after due notice and hearing upon written decision "which shall state fully and specifically the reasons therefore." G.L.c.31,§ 41. An employee aggrieved by the decision may appeal to the Commission. G.L.c. 31,§43. Under section 43, the appointing authority carries the burden to prove "just cause" for the action taken by a "preponderance of the evidence." Id. See, e.g., Falmouth v. Civ. Serv. Comm'n, 447 Mass. 814, 823 (2006); Police Dep't of Boston v. Collins, 48 Mass. App. Ct. 411, *rev. den.*, 726 N.E.2d 417 (2000).

Under basic merit principles of civil service law, disciplinary action of a tenured employee must be remedial and not punitive. Basic merit principles requires, in part, "retaining of employees on the basis of adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected" and "assuring fair treatment of all . . . employees in all aspects of personnel administration without regard to political affiliation . . . handicap . . .and with proper regard for privacy, basic rights outlined in [civil service law] and constitutional rights as citizens." G.L.c.31,§1.

Any tenured employee who alleges that an appointing authority has failed to follow the requirements of Section 41 prior to taking adverse employment action against that employee may file a complaint with the Commission that specifies the manner in which the appointing authority has failed to follow such requirements. If the Commission finds that the appointing authority has failed to follow said requirements *and that the rights of the employee have been prejudiced thereby*, the Commission must order the appointing authority to restore the employee to his employment

immediately without loss of compensation or other rights. G.L c.31,§42.

The Commission must take account of all credible evidence in the entire administrative record, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law, including whatever would fairly detract from the weight of any particular supporting evidence. See Comm'rs of Civ. Serv. v. Municipal Ct. of Boston, 359 Mass. 211, 214 (1971), citing Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928); Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 264-65 (2001). It is the purview of the hearing officer to determine credibility of testimony presented to the Commission. "[T]he assessing of the credibility of witnesses is a preserve of the [commission] upon which a court conducting judicial review treads with great reluctance." Leominster v. Stratton, 58 Mass. App. Ct. at 729. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n, 401 Mass. 526, 529 (1988); Doherty v. Retirement Bd. of Medford, 425 Mass. 130, 141 (1997).

The Commission's jurisdiction under Chapter 31 over alleged violation of civil service law based on employment discrimination often overlap with the authority of the MCAD to adjudicate disputes involving claims arising the Massachusetts Employment Discrimination Law, G.L. c. 151B. G. L. c. 151B provides specific guidance on how it interrelates with other statutes:

> "This chapter shall be construed liberally for the accomplishment of its purposes, and any law inconsistent with any provision of this chapter shall not apply, but *nothing contained in this chapter shall be deemed to repeal any provision of any other law of this commonwealth relating to discrimination*; but, as *to acts declared unlawful by [G. L. c. 151B, § 4]*, the administrative procedure provided in this chapter under [G.L.c.151B,§ 5] shall, *while pending*, be exclusive; and the final determination on the merits shall exclude any other civil action, *based on the same grievance* of the individual concerned."

G.L. c. 151B, § 9 (*emphasis added*)

The Supreme Judicial Court has construed Chapter 151B as "designed specifically to address discrimination and provides a comprehensive remedial structure to rectify discrimination" but that

"neither [G.L.c.151B] § 9 nor G.L.c.151B more broadly bar the [civil service] commission from considering conduct related to discrimination when reviewing whether [an appointing authority] had just cause to terminate [a tenured civil service employee}." Town of Brookline v. Alston, 487 Mass. 278, 294-97 (2021). However, when disputes that raise closely related issues of discrimination are pending before both the MCAD and the Commission, the Commission has regularly determined that, that deference to the MCAD on the issues is appropriate and, accordingly as a matter of administrative efficiency, the Commission abstains from adjudicating the issue so that MCAD may apply its specialized expertise and decide the issue first. See, e.g., Maldonado v. Lowell Police Dep't, 36 MCSR 355 (2023); Parker v. Department of State Police, D1-21-251 (2023).

ANALYSIS

After careful review of the facts and the applicable law, I conclude that the Appellant's Section 42 Appeal must be dismissed because the Appellant has failed to establish that any violation of civil service procedure has prejudiced his civil service rights. I also conclude that the Section 43 Appeal should be dismissed nisi, pending a final adjudication by MCAD of the identical discrimination issue raised by the Appellant before the MCAD, whether the Town has complied with the applicable discrimination laws or has failed to provide the Appellant with a reasonable accommodation for his alleged disability.

As to the Section 42 Procedural Appeal, I agree with the Appellant that Quincy may not have strictly followed the requirements of civil service law. Specifically, the Appointing Authority's decision was not issued within seven days following the issuance of the hearing officer's report, as required by G.L.c.31,§ 41, 3. A question could also be raised whether the email exchanges between Quincy counsel and Appellant's counsel between the August 14, 2023 hearing officer's report and the Appointing Authority's December 20, 2023 termination notice sufficed to comply with the

hearing officer's recommendation that further follow-up on what reasonable accommodation, if any, could be offered to enable the Appellant to return to duty.

I conclude, however, that the Appellant has not established that his civil service rights have been prejudiced by either of these procedural flaws. Neither misstep warrants the Commission vacating the termination decision in order to restore the Appellant to any lost compensation or other civil service rights. The Appellant has not worked for over five years and had been on unpaid leave status at the time of his disciplinary hearing and his subsequent termination. Under those circumstances, it would be of no consequence to the Appellant's civil service status simply to return this appeal for further hearing before the Appointing Authority. As the Appellant was on unpaid status at the time of his termination, the most that the Commission could order would be to return him to such unpaid status pending such a further hearing..

Moreover, the only issue for which any further hearing would possibly be needed relates to the dispute over whether Quincy complied with the obligation to make a reasonable accommodation to the Appellant so that he was able to return to duty, which I conclude is better addressed in the first instance by the MCAD rather than in this appeal. Thus, when the merits of the appeal are dismissed with a future effective date for the reasons stated below, the Section 42 Procedural Appeal becomes moot.

Finally, I also take note that the Appellant did not testify at the initial appointing authority hearing, nor before the Commission in this appeal, and did not dispute the evidence that there was no opening in the Fire Prevention Division at the time of his termination, which was the only form of accommodation that the Appellant has ever requested.

As to the Section 43 Just Cause Appeal, the sole issue on which the Appellant's appeal turns is whether Quincy has complied with its obligation to make a reasonable accommodation to the

Appellant under the applicable employment discrimination laws. To be sure, merit principles of civil service law also incorporate the prohibitions against employment discrimination, including the duty to make reasonable accommodation to an employee's disability. I conclude, however, as this sole issue turns on the adjudication of a dispute over whether Quincy complied with the obligations of employment discrimination law, in accordance with the Commission's prior practice, the Commission is warranted to abstain and defer to the MCAD, whose expertise on that issue is better applied to decide the question on the merits in the first instance. Accordingly, the Section 43 Just Cause Appeal should be dismissed nisi, with a future effective date following a final disposition of the proceeding brought by the Appellant and now pending before MCAD.

CONCLUSION

For the above reasons, the Section 42 *Procedural* Appeal of the Appellant is hereby ***dismissed.*** The Section 43 *Just Cause* Appeal is ***dismissed nisi*** effective 30 days from the date that the Appellant receives a determination regarding his discrimination claim by the MCAD.

Upon the Appellant receiving a determination from MCAD, the Commission will accept a Motion to Revoke this Order of Dismissal Nisi, to be filed no later than 10 days from the date that of receipt of MCAD's determination. No additional filing fee will be required. Absent a motion to reopen the appeal from the Appellant within 30 days of receiving an adverse determination from MCADthis appeal will become effective, for the purpose of G.L. c. 31, § 44, 100 days from the date of receipt by the Appellant of the MCAD determination.

Civil Service Commission

/s/ Paul M. Stein
Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney and Stein, Commissioners) on October 3, 2024.

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 the 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:
David Flanagan, Esq. (for Appellant)
Janet S. Petkun, Esq. (for Respondent)