

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

JAMES M. FOLEY,
Appellant

v.

CITY OF NORTH ADAMS,
Respondent

Case No.: D1-14-30

DECISION ON MOTION TO RE-OPEN APPEAL

The Appellant filed an appeal with the Commission on February 3, 2014, contesting his termination by the City of North Adams. A pre-hearing conference was held on March 12, 2014 and a full hearing was scheduled for June 17th and 18th, 2014. Prior to the full hearing, counsel for both parties represented that they had reached a settlement agreement in principle.

In order to provide the parties with appropriate time to execute the settlement agreement, the Civil Service Commission, on June 12, 2014, with the assent of counsel for both parties, entered an order stating that:

“The appeal of the Appellant James M. Foley in Case No. D1-14-30 is dismissed nisi, to become effective July 11, 2014. In the event that the parties are unable to execute the settlement agreement, the Commission will consider a Motion to Revoke this Order of Dismissal Nisi seeking to reinstate the Appellant’s appeal under docket number D1-14-30 for further consideration of that appeal. In the absence of a Motion to Revoke, the dismissal of this appeal shall become final for purposes of G.L.c.31, §44, on July 11, 2014.”

On July 17, 2014, I received an email from counsel for the Appellant stating in relevant part:

“I am writing to inform you that I no longer represent James Foley. Mr. Foley has informed me that he cannot accept the settlement terms that have been proposed by the City of North Adams and that he therefore wishes to proceed to hearing.”

Also on July 17, 2014, the Appellant, now pro se, filed a motion to re-open his appeal, stating, in part, that his former counsel never provided him with a copy of the Commission’s June 12, 2014 order and never informed him of his obligation to file a Motion to Revoke on or before July 11, 2014 if the parties were unable to execute a settlement agreement. The City filed an opposition stating in part that the Appellant’s argument that he was not aware of the Motion to Revoke filing deadline was not a defense because he was represented by counsel and his counsel was indeed aware of this filing deadline.

On September 10, 2014, I held a digitally-recorded motion hearing at the Springfield State Building, which was attended by the Appellant, counsel for the City and the City's Police Director, at which time I heard oral argument from both parties.

After careful review and consideration, I have decided to allow the Appellant's motion to re-open his appeal under Docket No. D1-14-30 for the reasons cited below.

First, there is no evidence that the Appellant's then-counsel informed the Appellant of the Commission's June 12, 2014 decision or the July 11, 2014 deadline for filing a Motion to Revoke referenced in the decision.

Second, according to the Appellant, immediately upon learning of the decision and the filing deadline, he immediately forwarded a Motion to Re-Open the appeal to the Commission.

Third, the Appellant's motion was received within ten (10) days of the effective date of the Commission's decision.

Fourth, and finally, based on a review of all of the documents and statements of the parties, including the fact that the discipline imposed here was termination, I have concluded that this constitutes the rare occasion where the Commission should exercise its inherent power to re-open concluded proceedings as it is a compelling situation where justice requires such action. See Aronson v. Brookline Rent Control Bd., 19 Mass. App. Ct. 700, 703—706 (1985).

The Appellant's motion is hereby allowed, his appeal is re-opened and both parties must comply with the following orders agreed to at the motion hearing:

- Within two (2) weeks, the parties shall submit an updated list of proposed exhibits;
- Within two (2) weeks, the parties shall submit an updated list of witnesses, accompanied by a request for subpoenas, if required.
- A full hearing shall be held at North Adams City Hall, 10 Main Street, North Adams, MA on Monday, November 17th; Tuesday, November 18th; and Wednesday, November 19th, 2014.
- Absent grave circumstances, there shall be no continuances.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman and McDowell, Commissioners [Stein – Absent]) on September 18, 2014.

Notice to:
James Foley (Appellant)
Fred Dupere, Esq. (for Respondent)