

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**

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

LAUREN FORREST,  
*Appellant,*

v.

D1-13-2

WEYMOUTH FIRE DEPARTMENT,  
*Respondent*

Appearance for Appellant:

*Pro Se*  
Lauren Forrest

Appearance for Respondent:

George Lane Jr., Esq.  
87 Broad St.  
P.O. Box 29  
Weymouth, MA 02180

Commissioner:

Cynthia Ittleman, Esq.<sup>1</sup>

**DECISION ON APPOINTING AUTHORITY'S MOTIONS TO DISMISS**

On December 26, 2012, the Appellant, Lauren Forrest ("Ms. Forrest" or "Appellant"), pursuant to G.L.c. 31, §2(b), filed this appeal with the Civil Service Commission ("Commission") contesting the decision of the Weymouth Fire Department ("Appointing Authority" or "Town") to terminate her employment as a Lieutenant in the Weymouth Fire Department. A Prehearing conference was held at the Commission on January 22, 2013. Also on January 22, 2013, the Appointing Authority filed two (2) Motions to Dismiss ("Motions"); one (1) motion asserts that the Commission has no jurisdiction to hear this appeal because it was

---

<sup>1</sup> The Commission acknowledges the assistance of Law Clerk Chris Windle in the drafting of this decision.

untimely, the second motion asserts that the Commission has no jurisdiction because the Appellant resigned and, thus, her employment was not terminated. On January 28, 2013, the Appellant filed an Opposition to the Motions. A hearing on the Motions was held at the Commission on March 25, 2013, at which time the Appointing Authority filed a Memorandum in Support of its Motions (“Town’s Memorandum”).<sup>2</sup> The witnesses were sequestered, except for the Appellant. The hearing was digitally recorded and the parties were provided with a CD of the hearing<sup>3</sup>. For reasons set forth herein, the Motions to Dismiss is allowed and the Appellant’s appeal is dismissed.

#### **FINDINGS OF FACT:**

Four (4) exhibits were entered into evidence at the hearing. Based on these exhibits, the Motions and the Appellant’s Opposition thereto, the testimonies of the following witnesses:

*Called by the Appointing Authority:*

- Joseph L Davis, Fire Chief, Weymouth Fire Department
- Michael Coughlin, Director, Weymouth Human Resources Department

*Called by the Appellant:*

- Lauren Forrest, Appellant

and taking administrative notice of all matters filed in the case and pertinent statutes, caselaw, regulations, rules, policies, and reasonable inferences from the credible evidence; a preponderance of credible evidence establishes the following facts:

---

<sup>2</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with G.L.c. 31 or any Commission rules taking precedence.

<sup>3</sup> 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 he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

1. At all pertinent times prior to September 7, 2012, the Appellant was a fulltime, tenured civil service employee of the Appointing Authority. She had no prior discipline there.  
(Stipulated Facts)
2. On August 23, 2012, the Appointing Authority gave Ms. Forrest a Notice of Disciplinary Hearing pursuant to G.L. c. 31, § 41, indicating that the Appointing Authority was considering disciplinary action against Ms. Forrest, up to and including termination for alleged violations of the Weymouth Fire Department's Rules and Regulations. (Exh. 1)
3. The Town disciplinary hearing was scheduled for August 29, 2012. (Exh. 1)
4. The hearing date was postponed until September 7, 2012 by agreement. (Testimonies of Davis, Coughlin, and Forrest)
5. On September 7, 2012 the parties convened at Weymouth Town Hall for the Town disciplinary hearing. Prior to the hearing, the parties entered into settlement negotiations regarding various matters, including resolution of the disciplinary matter which was to be the subject of the Town disciplinary hearing that day.<sup>4</sup> (Testimonies of Davis, Coughlin, and Forrest)
6. The Town was represented by counsel at the settlement negotiations, which lasted at least a couple of hours. Ms. Forrest was represented by an attorney for the Weymouth Firefighters Local 1616, International Association of Fire Fighters (AFL-CIO)("Union") at the negotiations. Ms. Forrest's personal attorney, whom she had hired in connection with a Massachusetts Commission Against Discrimination ("MCAD") case against the Town and Fire Chief Leary, was not involved with the Town's disciplinary hearing or the related negotiations. (Testimony of Forrest). Ms. Forrest had attempted to contact her

---

<sup>4</sup> The settlement also included, *inter alia*, the Appellant's retirement, confidentiality and backpay to be paid to the Appellant pursuant to an arbitration award and subsequent litigation. Ex. 2.

personal attorney to be involved with the negotiations on September 7, 2012 but she was unable to contact him prior to, and during the negotiations. (Testimonies of Davis, Coughlin and Forrest; Appellant's Opposition)

7. The Union attorney and Appointing Authority's attorney discussed the terms of the settlement. During these discussions, the Union attorney would periodically discuss with Ms. Forrest the suggested terms of the settlement and receive her input before returning to negotiation with the Town's attorney. (Testimony of Forrest)
8. The parties agreed to the terms of a settlement on the afternoon of September 7, 2012. Because Ms. Forrest had been unable to contact her personal attorney prior to and during the negotiations, she was given seven (7) days to discuss the agreement with her personal attorney before being required to sign. However, Ms. Forrest spoke to her personal attorney about an hour after they left City Hall on September 7, 2012 and he advised Ms. Forrest to sign the settlement Agreement. Within a week or so thereafter, Ms. Forrest discontinued the legal services of her personal attorney. (Testimony of Forrest)
9. Sometime prior to September 7, 2012, Ms. Forrest applied for Accidental and/or Ordinary Disability Retirement with the Weymouth Retirement Board.<sup>5</sup> (Exh. 2)
10. After the settlement negotiations concluded on September 7, 2012, the Union's attorney reduced the Agreement to writing and the Town computed the amount of backpay to be paid to the Appellant. The Union attorney completed drafting the Agreement on September 11, 2012. (Testimony of Davis; Exh. 2)

---

<sup>5</sup> The Weymouth Retirement Board website states, *inter alia*, "[u]nder M.G.L. Chapter 32, Municipal retirement systems are governed by a five-member board, which is independent of the local government. Each board has two members representing the municipal government, two members elected by the system's membership, and a fifth member, who is appointed by the other four members, and who is not a member of the retirement system." (Administrative Notice)

11. On September 11, 2012, the Appellant received a call from her Union representatives indicating that they would bring the drafted Agreement and resignation letter to her to sign. Shortly thereafter that day, the President and Vice President of Ms. Forrest's Union brought the Agreement and a resignation letter to Ms. Forrest's residence to discuss them with her and to have her sign them. Ms. Forrest discussed other options with the Union President and Vice President. Ultimately, that day, they suggested that she sign the Agreement and resignation letter because, according to them, a Town discipline hearing would be held, she would likely be terminated if she did not resign and her termination would affect her ability to obtain other employment. (Testimony of Forrest).
12. On September 11, 2012, Ms. Forrest signed the Agreement and resignation letter dated September 7, 2012. (Testimony of Forrest; Exh. 3) The Union signed the Agreement on September 11, 2012 and the Town signed the Agreement on September 12, 2012. (Exh.2)
13. The Appellant's resignation letter is attached to the Agreement as Appendix A and it is referenced in the Agreement. The letter states, in full, "I hereby irrevocably resign from my employment as a Lieutenant in the Weymouth Fire Department, effective as of 11:59 p.m. on September 7, 2012." (Exhs. 2, 3 ) The Agreement states that the Town accepted Ms. Forrest's resignation. (Id.)
14. The Agreement acknowledges that Ms. Forrest had filed an application for Accidental and/or Ordinary Disability Retirement with the Weymouth Retirement Board and states that the Appointing Authority would cooperate in processing of her retirement application. (Exh. 2) At some point in December 2012, the Weymouth Retirement

Board denied Ms. Forrest's application for Accidental and/or Disability Retirement<sup>6, 7</sup>.

(Testimony of Forrest)

15. On December 26, 2012, Ms. Forrest filed an appeal with the Civil Service Commission, more than three months after the Agreement and resignation letter were signed by Ms. Forrest, the Union and the Town. (Stipulated Facts)

### *Applicable Law*

The Standard Adjudicatory Rules of Practice and Procedure (the "Rules"; 801 CMR 1.00, *et seq.*) apply to administrative adjudication at the Commission but Commission policy provides that when such rules conflict with G.L. c. 31, the latter shall prevail. There appears to be no conflict in the instant case. The Rules indicate that the Commission may dismiss an appeal in the event that the appeal fails to state a claim upon which relief can be granted. (801 CMR 1.01(7)(g)(3)) In addition, the United States Supreme Court has held that in order to survive a motion to dismiss, the non-moving party must plead only enough facts to state a claim to relief that is plausible on its face. See Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 547 (2007). Thus, the non-moving party must plead enough facts to raise a reasonable expectation that discovery will reveal evidence in support of the allegations. (See id. at 545) Similarly, the Massachusetts Supreme Judicial Court has held that an adjudicator cannot grant a motion to dismiss if the non-moving party's factual allegations are enough to raise a right to relief above the speculative level based on the assumption that all the allegations in the appeal are true, even if doubtful in fact. See Iannacchino v. Ford Motor Co., 451 Mass. 623, 890 (2008).

---

<sup>6</sup> At pertinent times, Acting Chief Davis of the Town Fire Department was a member of the Weymouth Retirement Board. He abstained from the vote on Ms. Forrest's retirement and was present as the Fire Department head. He took no part in the discussion. (Testimony of Davis)

<sup>7</sup> I take Administrative Notice that the Appellant appealed the Weymouth Retirement Board's denial of her application for Accidental and/or Disability Retirement to the state Contributory Retirement Appeal Board ("CRAB") and that a Division of Administrative Law Appeals ("DALA") Magistrate denied her appeal on February 27, 2014 (Docket No. CR-12-690). I have no additional information indicating that Ms. Forrest has taken further legal action regard to her retirement application.

The Commission's jurisdiction to hear disciplinary appeals is limited by statute to cases involving an employee being "discharged, removed, suspended... laid off, transferred from his position without written consent... lowered in rank or compensation without his written consent [or] his position be abolished." G.L. c. 31, § 41. Section 44 of G.L. c. 31 provides that, "... a person aggrieved by a decision of an appointing authority made pursuant to section forty-one shall, within ten days after receiving written notice of such decision, appeal in writing to the commission ...." Id.

The Commission has held that a Civil Service employee who has voluntarily resigned is not entitled thereafter to the benefit of a hearing pursuant to G.L. c. 31, §§ 42-43. See e.g., Travers v. City of Fall River, 21 MCSR 182 (2008); Liswell v Registry of Motor vehicles, 20 MCSR 355 (2007); Maynard v Greenfield, 9 MCSR 165 (1996). Absent fraud, coercion or duress, a public employee may end his or her employment by voluntarily resigning. Jones v. Town of Wayland, 374 Mass. 249, 259 (1978); cf. Champion v. Weymouth Fire Department, 25 MCSR 223 (2012)(Appellant's resignation was invalid because she lacked the capacity to voluntarily resign). That a party chooses between facing disciplinary charges and resignation does not of itself create sufficient facts to establish that the resignation was induced by coercion or duress. Simmons v Department of Conservation and Recreation, 25 MCSR 249, 252 (2012)(citing Stone v. Univ. of MD. Med. Sys. Corp., 855 F.2d 167, 175 (4th Cir. 1988)(establishing the legal standard to determine resignation voluntariness)(cited by the First Circuit of the US Court of Appeals in Monahan v. Romney, 625 F.3d 42, 47 (1st Cir. 2010))

### *Analysis*

The Appellant has failed to raise a right to relief beyond speculation, having not pleaded sufficient facts to raise a reasonable expectation that discovery will lead to evidence in support of

her allegations. Specifically, the Appellant in the instant case believed that she could be terminated following the Town's disciplinary hearing if she did not resign before it. However, the Commission cannot hold the Appointing Authority responsible for actions it did not take. See Travers, Liswell, and Maynard, supra. The existence of a future intent to possibly terminate someone's employment does not yield a right to action; rather, it is the actual termination that triggers such a right. Director of Civil Defense Agency & Office of Emergency Preparedness v. Civil Service Com., 373 Mass. 401, 411 (1977).

The Appellant argues that she signed the resignation letter and Agreement under duress, averring that a choice to resign or be terminated is not a choice. However, she was represented by her Union attorney during negotiations. In addition, when the Appellant was unable to reach her personal attorney, the Appointing Authority allowed the Appellant some time before signing the letter and Agreement in order to discuss them with her personal attorney. She spoke to her personal attorney on the evening of September 7, 2012 and he advised her to sign the agreement. In addition, Ms. Forrest was represented by a Union representative during the settlement negotiations. On September 11, 2012, when her Union President and Vice President visited her with the Agreement in hand, the Appellant discussed with them her other options before they ultimately suggested that she sign the Agreement. This does not constitute duress.

The Appellant also argues that she was induced to resign under false pretenses or fraud. As part of the Agreement, she avers that she was informed that she would be able to process an application for Accidental and/or Disability Retirement. The Town avers that the Agreement acknowledges her retirement application and indicates that it would cooperate with Ms. Forrest's retirement application. This was done, the Town further states, to inform the Appellant that her resignation would not preclude her retirement claim; it did not state that her claim would be



granted because the Weymouth Retirement Board makes such decisions, not the Town. The terms of the Agreement and its enforcement, with the exception of the resignation letter referenced in it and attached to it, is beyond the Commission's authority. Addressing only the resignation, I note that a Union representative at the settlement negotiations assured the Appellant that she would still be able to pursue her retirement claim even though she was resigning. The Appellant was also able to consult her personal attorney on this matter. As such, the Appellant did not sign the resignation letter under circumstances that undermine her resignation.

In addition to finding that the Commission has no jurisdiction over this appeal because the Appellant resigned from her employment, the Commission also has no jurisdiction over the instant appeal because it is untimely. The Appellant's resignation was effective September 7, 2012, although she did not sign the resignation letter until September 11, 2012. Whether the Appellant's resignation was effective on September 7 or September 11, 2012, well more than ten (10) days passed, pursuant to G.L. c. 31, s. 41, before the Appellant filed this appeal at the Commission on December 26, 2012. Also in December, 2012, the Weymouth Retirement Board denied her Accidental and/or Disability retirement application. The Commission has no jurisdiction regarding the Appellant's retirement application or to determine if the Appointing Authority breached its obligations pursuant to the parties' Agreement in that regard. The sole issue before the Commission is whether the Appellant voluntarily resigned and the evidence indicates that she did. It is well established that an employee who voluntarily resigns from employment is not aggrieved by the actions of the employer for purpose of civil service law. In addition, the appeal was untimely. Therefore, the Commission does not have jurisdiction to hear the present appeal.

### Conclusion

Accordingly, for the reasons stated above, the Motions are hereby *allowed* and the appeal of the Appellant, Lauren Forrest, is hereby *dismissed*.

Civil Service Commission

/s/Cynthia Ittleman

Cynthia Ittleman  
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman, Ittleman, McDowell, and Stein, Commissioners) on September 3, 2015.

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:  
Lauren Forrest (Appellant)  
George Lane Jr., Esq. (for Respondent)