

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

SUMER GENIS,
Appellant
v.

D-20-083

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Pro Se
Sumer Genis

Appearance for Respondent:

Joseph Santoro
Department of Correction
P.O. Box 946: Industries Drive
Norfolk, MA 02056

Commissioner:

Christopher Bowman

ORDER OF DISMISSAL

On May 20, 2020, the Appellant, Summer Genis (Ms. Genis), a Correction Officer II (CO II) at the Department of Correction (DOC), filed an appeal with the Civil Service Commission (Commission), contesting the decision of DOC to “transfer” her from MCI Framingham to MCI Shirley. On June 9, 2020, I held a pre-hearing conference via videoconference which was attended by Ms. Genis and a DOC representative.

Viewing the facts most favorably to Ms. Genis, I find the following:

1. On October 9, 2011, Ms. Genis was appointed by DOC as a CO I. (Undisputed)
2. On August 12, 2018, Ms. Genis was promoted to CO II. (Undisputed)
3. Prior to May 9, 2020, Ms. Genis was assigned to MCI Framingham. (Undisputed)

4. On May 9, 2020, Ms. Genis, while on duty, was speaking to a colleague about health and safety conditions at MCI Framingham. (Statement of Ms. Genis)
5. Sometime shortly after May 9, 2020, DOC initiated an investigation into allegations that, while walking away from the colleague referenced above, Ms. Genis made disparaging remarks about a senior DOC manager at MCI Framingham. (Undisputed)
6. By letter dated May 11, 2020, DOC notified Ms. Genis that she was being “administratively transferred” from MCI Framingham to MCI Shirley. (Undisputed)
7. Ms. Genis’s commuting time from her home to MCI Framingham is approximately fifteen minutes. (Statement of Ms. Genis)
8. Ms. Genis’s commuting time from her home to MCI Shirley is approximately forty minutes. (Statement of Ms. Genis)
9. Ms. Genis will remain assigned to MCI Shirley at least until such time as the above-referenced investigation has been concluded, DOC has determined if the allegations are supported and, if so, whether discipline is warranted. (Undisputed)
10. Ms. Genis has filed a grievance regarding the “administrative transfer”. (Undisputed)
11. A Step 2 hearing, scheduled to occur on May 26, 2020, was continued. (Undisputed)

Legal Standard / Analysis

Ms. Genis argues that the Commission has jurisdiction to hear her appeal because, according to her, she has been involuntarily transferred from MCI Framingham to MCI Shirley without just cause.

G.L. c. 31, § 41, provides in relevant part:

“Except for just cause and except in accordance with the provisions of this paragraph, a tenured employee shall not be discharged, removed, suspended for a period of more than five days, laid off, **transferred from his position without his written consent if he has served as a tenured employee since prior to October fourteen, nineteen hundred and**

sixty-eight, lowered in rank or compensation without his written consent, nor his position be abolished.” (emphasis added)

G.L. c. 31, § 35 provides in relevant part:

“A person who is aggrieved by a transfer, other than an emergency transfer or assignment, made pursuant to this section but who is not subject to the provisions of section forty-one with respect to such transfer, may appeal to the commission pursuant to the provisions of section forty-three and shall be entitled to a hearing and a decision by the commission in the same manner as if such appeal were taken from a decision of the appointing authority made, after hearing, under the provisions of section forty-one.” (emphasis added)

First, Ms. Genis has not served as a tenured employees since prior to October 14, 1968. G.L. c. 31, § 41 only grants procedural protections to employees have been transferred without their written consent if they were a tenured employee on or before October 13, 1968, which the Ms. Genis was not.

Second, in order to invoke the protection of another section of the civil service law, G.L. c. 31, § 35, Ms. Genis is required to establish that she was “transferred” within the meaning of the civil service law.

The Civil Service Commission has defined the term "Transfer" as a "change of employment under the same appointing authority from a position in one class to a similar position in the same or another class or a change of employ in the same position, under the same appointing authority, from one geographical location to a different geographical location, provided that a different geographical location shall be one which is both more than a commuting distance from the employee's residence than its prior location and more distant from the employee's residence than his prior location..." Sullivan v. Dep't of Transitional Assistance, 11 MCSR 80 (1998), citing Appellant v. Department of Revenue, 1 MCSR 28, 29 (1985).

Here, while Ms. Genis is currently required to drive forty minutes from her home to MCI Shirley, as opposed to fifteen minutes to MCI Framingham, forty minutes cannot reasonably be deemed to be “more than a commuting distance”.

Thus, even when viewing the facts most favorable to Ms. Genis, it appears, at this time, that Ms. Genis has been temporarily “reassigned” as opposed to “transferred” from MCI Framingham to MCI Shirley. Further, DOC, as part of the pre-hearing conference, indicated that the investigation into the alleged misconduct has already been completed and is now pending final review, reinforcing the temporary nature of this reassignment at this time.

For all of above reasons, the Appellant’s appeal under Docket No. D-20-083 is *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on June 18, 2020.

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 the 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:
Sumer Genis (Appellant)
Joseph Santoro (for Respondent)