

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

**One Ashburton Place – Room 503
Boston, MA 02108
617-979-1900**

RICK GRIFFIN,
Appellant

CASE NO. D1-20-145

v.

CITY OF REVERE,
Respondent

Appearance for Appellant:

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Appearance for Respondent:

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Commissioner:

Paul M. Stein

DECISION ON RESPONDENT’S MOTION TO DISMISS

The Appellant, Rick Griffin, appealed to the Civil Service Commission (Commission), purporting to act pursuant G.L.c. 31, § 41 - § 43, to contest his termination by the City of Revere (Revere) from his position as a full-time police officer with the Revere Police Department (RPD). On November 17, 2020, Revere filed a Motion to Dismiss the appeal for lack of jurisdiction and submitted a set of proposed Exhibits A through J (which are Bates Stamped R0001 through R0029). The Appellant duly opposed the Motion to Dismiss and submitted a set of proposed Exhibits A through H (which are Bates Stamped A0001 through A0024). On January 21, 2021, I heard oral argument from counsel on the Motion to Dismiss via remote videoconference (Webex). For the reasons stated below, Revere’s Motion to Dismiss, which I have treated as a Motion for Summary Decision, is granted and this appeal is dismissed.

FINDINGS OF FACT

Based on the submission of the parties, I find the following material facts are not disputed:

1. By letter dated January 17, 2019, the Appellant, Rick Griffin, was appointed by Revere Mayor Arrigo to the position of a permanent full-time RPD Police Officer, subject to passing a physical abilities test, psychological screening, drug test, and successful completion of the required Police Academy. (*Appellant's Exh. A [A0002]; Respondent's Exh. A [R0002]*)

2. Officer Griffin passed the required tests and graduated from the Police Academy on October 17, 2019. (*Appellant's Exh. B [A0004]; Respondent's Exh. B [R0004]*)

3. On or about October 19, 2019, Officer Griffin was assigned to RPD Platoon 1 PM shift (4:30 pm to 2:30 am) under command of (then) Lt. Callahan. He began to perform the duties of a full-time RPD police officer. (*Appellant's Exh. B [A0004]; Respondent's Exh. B [R0004]*)

4. Mayor Arrigo was first elected Mayor in 2015 and re-elected in November 2019. He sought the endorsement of the Revere Police Patrol Officers Union, which decided to remain neutral. Officer Griffin's brother was the Union Shop Steward. (*Appellant's Opposition, p. 7*)¹

5. On or about March 7, 2020, shift assignments were changed and Officer Griffin was transferred to Platoon 1 AM shift (9:30 pm to 7:30 am), also under the command of (then) Lt. Callahan. (*Appellant's Exh. C [A0006]*)

6. By Memorandum to All Personnel dated May 13, 2020, then-RPD Chief Guido confirmed his retirement, effective June 30, 2020. (*Appellant's Exh. G [A0015]*)

7. On or about August 11, 2020, RPD Lt. Callahan, who had been appointed by Mayor Arrigo to replace Chief Guido, contacted Officer Griffin by telephone and informed him that another RPD

¹The Appellant asserts that the "Griffin family" supported Mayor Arrigo for election in 2015 but switched to publicly support his opponent, former Mayor Rizzo in 2019, and that Lt. Callahan was known to be a strong public supporter of Mayor Arrigo. The Appellant also asserts that the animus between Officer Griffin's father and Mayor Arrigo persisted at least through July 2020. (*Appellant's Opposition, p.7*)

officer had tested positive for COVID-19. Chief Callahan informed Officer Griffin that he (Officer Griffin) may have been exposed and ordered him to “quarantine for 14 days”, which he understood to mean he was “to lay low and stay away from crowds as well as work and the police station.” (*Appellant’s Exh. H [A0022]; Respondent’s Exhs. C & G [R0011, R0019]*)

8. Over the next three or four days, Officer Griffin remained home, leaving several times to go on bike rides, get coffee at a drive thru, pick up some packages left on the porch of his mother’s house, sat at the beach and did a few errands. (*Respondent’s Exh. G [R0020]*)

9. At some point on or before August 15, 2020, Officer Griffin received notice that he had tested negative for COVID-19. He did not receive notice from Chief Callahan that his quarantine status had changed. (*Respondent’s Exh. G & H [R00019, R00022-0023]*)

10. On August 15, 2020, Officer Griffin left his home, stopped at Blanchard’s in Revere and Stop and Shop on Squire Road, and arrived at a friend’s residence on Festa Road at approximately 6:00 or 6:30 pm. He dropped off the food he had purchased in the house and then spent most of his time in the backyard barbequing and watching a hockey game with a group of approximately five or six other people, including his girlfriend. (*Respondent’s Exhs. C, F & G [R0007-R0009, R0017, R0019]*)

11. At approximately 11:30 p.m. (for reasons that are disputed) Officer Griffin left the Festa Road gathering and proceeded to his vehicle (a pick-up truck), which was parked on the street in front of the residence he had been visiting. As shown on a video recording, the truck lurched across the street, colliding four seconds later (without apparently slowing down) with a utility pole and two other vehicles parked in the driveway of the residence on the opposite side of Festa Road. (*Respondent’s Exhs. E [video] & F [R0017]*)

12. RPD officers responded to the scene after receiving a 911 call from a neighbor on Festa Road. Officer Griffin did not call or speak to anyone at the RPD prior to the responding officers’

arrival on scene. He did not promptly file a Motor Vehicle Crash Report which is required when a person is involved in an accident that caused property damage in excess of \$1,000. (*Appellant's Exh. H [A0017, A0021]; Respondent's Exhs. C & F [R0006, R0010, R0017]*)

13. By letter dated August 17, 2020, Chief Callahan informed Officer Griffin that he had been placed on administrative leave with pay and ordered him to surrender his RPD issued firearm, badge, police identification and access key fob. (*Appellant's Exh. D [A0009]; Respondent's Exh. J [R0029]*)

14. Chief Callahan ordered Officer Griffin to prepare a "To/From" memorandum as well as provide responses to specific questions regarding his conduct before and during the August 15, 2020 incident. He also solicited reports from the officers who responded to the accident and ordered Lt. LaVita to conduct an internal affairs investigation.²

15. On August 18, 2020, Lt. LaVita reported the results of her investigation. Lt. LaVita's report contained, among other things, her record of interviews with eleven witnesses (who were at the barbeque or lived in the neighborhood), as well as a description of the video footage retrieved from a home surveillance camera at the residence where Officer Griffin's truck came to rest, and her findings that Officer Griffin had committed five specific instances of misconduct.³ (*Appellant's Exh.H [R0016-R0022]; Respondent's Exhs. C, F,G, & H [R0006-R0011, R0017, R0019-R0020, R0022-R0023], Respondent's Exh. E [Video]*)

16. By letter dated September 21, 2020, without prior notice or hearing, Mayor Arrigo terminated Officer Griffin from his position as an RPD Police Officer on the grounds that "your

² The Appellant asserts that Lt. LaVita had a past history of altercations with the Griffin family, including his father, brother and sister, as far back as 2004. (*Appellant's Opposition, pp. 5-6*)

³ In deciding this Motion to Dismiss, I do not need to find, and do not find, whether or not to credit the truth of disputed hearsay statements in Lt. LaVita's report, or the conclusions she or any of the other RPD officers made, but take notice only that those statements and conclusions were reported to Chief Callahan and Mayor Arrigo.

conduct during your probationary period has been unsatisfactory and renders you unfit to be a police officer with the Revere Police Department.” Mayor Arrigo cited the August 15, 2020 accident that occurred on August 15, 2020, the quarantine order which Officer Griffin was under at the time of the accident, and alleged discrepancies between the reported version of events attributed to Officer Griffin and the video footage of the accident. (*Appellant’s Exh. E [A0011]*; *Respondent’s Exh. D [R0014]*)

17. By Personnel Order dated 9/28/2020, Chief Callahan informed all RPD personnel that Officer Griffin had been terminated. The Personnel Order noted that Officer Griffin had not completed his probationary period. It also cited the five findings of misconduct contained in Lt. LaVita’s investigative report: Operating to endanger; Failure to file an accident report; Failure to take Police Action; Insubordination (violating quarantine); and Untruthfulness. (*Appellant’s Exh.F [A0013]*)

APPLICABLE LEGAL STANDARD

A motion to dismiss an appeal before the Commission, in whole or in part, may be filed pursuant to 801 C.M.R. 1.01(7)(h). 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 non-moving party”, the undisputed material facts affirmatively demonstrate that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case”. See, e.g., Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550 n.6 (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005)

ANALYSIS

G.L.c. 31, §§ 41-45 provide that a “tenured employee” may be “discharged, removed, suspended . . . laid off [or] transferred from his position without his written consent” only for “just

cause” after due notice, hearing (which must occur prior to discipline other than a suspension from the payroll for five days or less) and a written notice of decision that states “fully and specifically the reasons therefore.” G.L.c.31, §41. An employee aggrieved by such disciplinary action may appeal, within ten (10) days, to the Commission, pursuant to G.L.c.31, §42 and/or §43, for de novo hearing by the Commission “for the purpose of finding the facts anew.” Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited; Volpicelli v. City of Woburn, 22 MCSR 448 (2009); Williamson v. Department of Transitional Assistance, 22 MCSR 436 (2009)

G.L.c.31, §61 provides:

“Following his [sic] original appointment as a permanent full-time police officer. . . in a city or town where the civil service law and rules are applicable to such position, a person shall actually perform the duties of such position on a full-time basis for a probationary period of twelve months before he [sic] shall be considered a full-time tenured employee in such position, except as otherwise provided by civil service law rules. . . .” (*emphasis added*)

See also, G.L.c.31, §1. Definitions. (“Tenured employee” is “a civil service employee who is employed following (1) 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”)

Under well-established precedent, the Commission has consistently applied these statutes according to their plain meaning to hold that a probationary employee has no right to a Section 41 hearing or to bring a Section 42 or Section 43 appeal to the Commission from an appointing authority’s decision to suspend, terminate or otherwise discipline him or her. See, e.g., Police Comm’r of Boston v. Cecil, 431 Mass. 410, 414 (2000); Broullard v. City of Holyoke, 74 Mass.App.Ct. 1128 (2009) (Rule 1:28); Selectmen of Brookline v. Smith, 58 Mass.App.Ct.813, 815 (2003); New Bedford v. Civil Service Comm’n, 6 Mass.App.Ct. 549, 551 (1978); Brandao v. Boston Police Dep’t, 32 MCSR 255 (2019), *aff’d*, Brandao v. Boston Police Dep’t, Suffolk C.A. No. 1984CV2606 (Sup.Ct. 2020) (Gordon, J.); Lydon v. Town of Stoughton, 32 MCSR 194

(2019); Cardarelli v. Medfield, 28 MCSR 22 (2015); Carriveau v. City of Chicopee, 27 MCSR 191 (2014); Peterson v Town of North Attleborough, 16 MCSR 44 (2003).

It is not disputed that the Appellant was terminated within his probationary period. The Appellant mounts two arguments in a well-intentioned but fatal effort to stave off the dismissal of his appeal based on this undisputed fact and the considerable weight of authority against him.

First, he claims that the Commission should follow New York civil service law which, as a general rule, also “is well-settled that a probationary employee may be discharged without a hearing and without a statement of reasons”, but makes an exception and allows a judicial inquiry into whether “dismissal was for a constitutionally impermissible purpose”, “in violation of statutory or decisional law” or “in bad faith”, citing Beacham v. Brown, 215 A.D.2d 358, 627 N.Y.S.2d 358 (1st Dept. 1995); Garcia v. Bratton, 225 A.D.2d 123, 649 N.Y.S.2d 703 (.1st Dept. 1996); Vaillancourt v. New York State Liquor Auth, 2153 A.D.2d 531, 544 N.Y.S.2d 609 (. 1st Dept.1989). I do not find these New York intermediate appellate court decisions persuasive.

“Our courts have repeatedly recognized the critical role played by the probationary period . . . Nothing in [Massachusetts civil service law] or judicial interpretations thereof suggest a legislative intent to accord different tenure-crediting treatment to probationary employees based on the . . . underlying circumstancesTo the contrary, the unmistakable purpose of §61 of the statute is to ensure that all employees receive a full 12 months of oversight in their ‘actual’ performance on the job before being invested with tenure.”Brandao v. Boston Police Dep’t, Suffolk C.A. No. 1984CV2606 (Sup.Ct. 2020) (Gordon, J.), aff’g, Brandao v. Boston Police Dep’t, 32 MCSR 255 (2019)⁴.

⁴ Under G.L.c.31, §2(a), the Commission is also vested with discretion to open an investigation when persuaded that the rights of civil service employee(s) have been violated. After a careful review of the Appellant’s allegations that politics and personal animus contributed to the decision to terminate him, however, I find these allegations are too speculative and do not rise to the level that warrant a discretionary investigation. On the one hand, the Appellant relies largely on circumstantial evidence, much of which he would attempt to proffer through disputed testimony and impeachment of adverse witnesses with remote and tenuous nexus to the Appellant’s situation. On the other hand, the preponderance of undisputed evidence strongly detracts from any conclusion of bias and tends to support the conclusion that good reason existed to terminate the Appellant based on his admission that he violated his quarantine order and documented proof that he was responsible for a serious motor vehicle accident that caused substantial damage. It is also irrational to infer that the Mayor, who appointed the Appellant to his position, would have fired him just months later out of spite and for no good reason. The Commission exercises its power of investigation sparingly and this is not a case in which to do so.

Second, the Appellant asks the Commission to apply the “reasonable inference” test recently adopted by the Supreme Judicial Court as the threshold quantum of evidence necessary to suppress evidence of a motor vehicle stop on the grounds it was racially motivated. Commonwealth v. Long, 485 Mass. 711 (2020). The distinctions between the issues presented in that criminal matter and in this civil service administrative proceeding are obvious on their face and need no further analysis. Absent clear judicial direction to the contrary, the Commission will continue to conform to the standards prescribed by the applicable civil service statutes and rules of adjudicatory procedure.

Finally, contrary to the Appellant’s assumption, I note that some courts have suggested that, although he has no right of appeal to the Commission, he or she is not left entirely without recourse. A termination that concerns allegations about an employee’s reputation, as it appears the Appellant asserts, 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 fnt.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.”)

CONCLUSION

In sum, for the reasons stated herein, Revere’s “Motion to Dismiss” is hereby ***granted*** and the appeal of the Appellant, Rick Griffin, CSC Docket No. D1-20-145, is ***dismissed***.

Civil Service Commission
/s/Paul M. Stein
Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on March 11, 2021.

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:

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