

This decision was upheld by the Superior Court in 2014 (C.A. No. 13-3718). *See also* 87 Mass. App. Ct. 1127 (2015). After careful review, and in accordance with our Standard Governing Disclosures of Sensitive Personal Data, the Commission has opted to use a pseudonym for the Appellant to appropriately balance their privacy interests with the Commission’s statutory obligation to provide the public with a transparent record of its deliberative process and interpretation of civil service law.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION
One Ashburton Place – Room 503
Boston, MA 02108
(617) 727-2293**

**G [REDACTED] S [REDACTED],
Appellant**

v.

Case No. D1-07-[REDACTED]

**CITY OF PEABODY,
Respondent**

Appearance for Appellant:

Joseph P. Dever, Esq.
Riley & Dever, PC
Lynnfield Woods Office Park
210 Broadway, Suite 101
Lynnfield, MA 01940

Appearances for Respondent:

Michael T. Smerczynski, Esq.
City Solicitor
City of Peabody
34 Main Street
Peabody, MA 01960

Commissioner:

Paul M. Stein¹

DECISION ON MOTION FOR RECONSIDERATION

Procedural History

The Appellant, Mr. G [REDACTED] S [REDACTED] (“Appellant” or “Mr. S [REDACTED]”), filed a timely appeal with the Civil Service Commission (“Commission”) against the city of Peabody (“City” or “Respondent”) on May 7, 2007, contesting the City’s decision to terminate him from his employment as a police officer with the Peabody Police Department (“Department”).

¹ The Commission acknowledges the assistance of Law Clerk Beverly J. Baker, Esq., in the drafting of this decision.

On February 14, 2008, the Commission issued an Order of Dismissal Without Prejudice². On or about March 28, 2013, Mr. S█████ filed a Motion for Reconsideration (“Motion”) with the Commission, seeking to reopen and reinstate his appeal. The City filed an Opposition to Mr. S█████ Motion on or about May 9, 2013. On May 13, 2013, the Commission heard oral argument on Mr. S█████ motion at the offices of the Commission. The hearing was digitally recorded.

FINDINGS OF FACT

Giving appropriate weight to the documents submitted by the parties, and the argument presented by Mr. S█████ and the City, and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, and policies, and reasonable inferences therefrom, a preponderance of the evidence establishes the following findings of fact:

1. Mr. S█████ began working for the City as a reserve police officer in or about March 1996.
(Motion)
2. In or about October 2000, Mr. S█████ became a full-time police officer for the City.
(Motion)
3. While employed as a police officer with the City, Mr. S█████ was harassed and bullied by other police officers because he still lived with his mother. (Motion)
4. On or about November 25, 2004, Mr. S█████ hit his mother three times on the back and right shoulder. She then lost consciousness and was unresponsive, so Mr. S█████ called 911 for medical help. (Opposition Attach. B)
5. On or about November 26, 2004, Mr. S█████ went to the Department and spoke with a police captain who was assigned as the Officer in Charge. Mr. S█████ spontaneously

² The Commission no longer dismisses cases without prejudice for an indefinite period of time. Under current practice, a case of this nature would be dismissed with a future effective date.

exclaimed that he had hurt his mother and that she was in a coma. Following Mr. S [REDACTED] statements to the police captain, Mr. S [REDACTED] provided a written statement regarding the incident. (Opposition Attach. B)

6. Also on or about November 26, 2004, Mr. S [REDACTED] was placed under arrest and charged with assault and battery on the elderly causing serious bodily injury. Mr. S [REDACTED] also admitted to previous acts of violence towards his mother earlier that month. (Opposition Attach. B)
7. On or about December 23, 2004, Mr. S [REDACTED] was arraigned on three assault and battery charges with serious bodily injury on a person over sixty (60) years of age as a result of his alleged conduct on or about November 19, 22, and 25, 2004. (Opposition Attach. A)
8. In or about April 2007, the City terminated Mr. S [REDACTED] employment as a police officer due to the criminal matter. (Motion)
9. On or about May 7, 2007, Mr. S [REDACTED] filed a timely appeal of his termination with the Commission. (Administrative Notice)
10. On or about February 14, 2008, the Commission dismissed Mr. S [REDACTED] appeal without prejudice pending the conclusion of the criminal matter. The Commission's Order of Dismissal Without Prejudice ("Order") states, in pertinent part:

The time period pursuant to G.L. c. 30A § 14(1) for a party to file a Motion for Reconsideration and the time period pursuant to G.L. c. 30A § 14 generally for a party to seek judicial review of this Decision are hereby tolled until the Appellant has received notice that the pending criminal matters arising out of the same matter currently before the Commission have been concluded. In the event that the Appellant is successful in those criminal matters, the Commission will accept and allow a Motion for Reconsideration seeking to reinstate the Appellant's appeal under docket number D1-07-[REDACTED] for further consideration of that appeal and no additional filing fee will be required.

(Administrative Notice)

11. While awaiting trial, Mr. S [REDACTED] mental health deteriorated. He suffered from depression and anxiety. In or about April 8, 2008, Mr. S [REDACTED] attempted suicide. Following his suicide

attempt, Mr. S [REDACTED] was taken to North Shore Medical Center and then into protective care at Bridgewater State Hospital. Following his involuntary commitment at Bridgewater State Hospital, Mr. S [REDACTED] involuntary commitment continued at Taunton State Hospital. In or about the summer of 2012, Mr. S [REDACTED] was transferred to a group home in Tewksbury, MA. (Motion)

12. On or about August 6, 2012, the Commonwealth of Massachusetts Superior Criminal Court dismissed Mr. S [REDACTED] case under G.L. c. 123, § 16(f)³, effective on or about August 21, 2012. (Opposition, Attach. A)

13. On or about March 28, 2013, Mr. S [REDACTED] filed the instant Motion with the Commission. (Administrative Notice)

CONCLUSION

The Commission's Authority to Reopen Proceedings

Pursuant to 801 CMR 1.01(7)(l), after Decision has been rendered and before the time for filing a complaint for judicial review (i.e. thirty days), a party may move for reconsideration, which may be granted for “clerical or mechanical error in the decision or a significant factor that the [Commission] or the Presiding Officer has overlooked in deciding the case.” 801 CMR 1.01(7)(l). In addition, “a motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A, § 14(1) for the purposes of tolling the time for appeal.” Id.

Timeliness

The Commission's Order, issued on February 14, 2008, tolled the time period established in G.L. c. 30A, § 14(1) for a party to file the subject motion “until the Appellant has received notice that the pending criminal matters arising out of the same matter currently before

³ G.L. c. 123, § 16(f) states, in sum and substances, that if a person is found incompetent to stand trial for a period of time equal to the time of imprisonment which the person would have had to server prior to becoming eligible for parole, then the criminal charges against him shall be dismissed.

the Commission have been concluded.” The time period referenced above is thirty (30) days. On August 6, 2012, the charges against Mr. S████ were dismissed by the Commonwealth of Massachusetts Superior Criminal Court, effective August 21, 2012. In addition, orders of bail and commitment under G.L. c. 123, § 16(c) were revoked and notice sent to the parties and to Taunton State Hospital. Mr. S████ had a period of thirty (30) days from the August 21, 2012 effective date in which to advance his motion. That thirty (30) day period expired on September 20, 2012. Mr. S████ Motion was filed on March 28, 2013, approximately six (6) months past the expiration of the thirty (30) day time period. Accordingly, Mr. S████ Motion is untimely and must be dismissed.⁴

Meaning of “Successful”

In addition to timeliness, the Commission conditioned Mr. S████ right to reinstate his appeal “in the event that the Appellant is successful in these criminal matters.” While it is true that the criminal charges against Mr. S████ were dismissed by the court, this was due to Mr. S████ lengthy involuntary commitment due to Delusional Disorder and the court’s obligation to apply G.L. c. 123, § 16(f). This is not the type of “success” that the Commission envisioned in its February 14, 2008 Order. The fact that the charges against Mr. S████ were dismissed were due to his involuntarily commitment as incompetent and not in any way attributed to the “successful” defense or the failure of the prosecution or the Commonwealth’s proof.

Furthermore, under G.L. c. 140, § 129B(1)(iii), a person who has been confined to a hospital or institution for mental illness may not be issued a firearm identification card, unless he “submits with his application an affidavit of a registered physician attesting that such

⁴ The Commission recognizes that, notwithstanding the untimeliness, it has broad discretion to open a closed case for good cause shown. Ung v. Lowell Police Dep’t, 22 MCSR 471, 473 (2009). However, this power to reopen should be exercised sparingly and I do not believe that it is appropriate in this instance. Mr. S████ claim that his written confession was fabricated does not alter my conclusion. A review of the documents involved demonstrates that such a contention has very little likelihood of success.

physician is familiar with the applicant's mental illness and that in such physician's opinion the applicant is not disabled by such an illness in a manner that should prevent the applicant from possessing a firearm" Carrying a firearm is an integral part of a police officer's job and Mr. S [REDACTED] has not shown how he would be able to perform this essential duty.

For the foregoing reasons, Mr. S [REDACTED] appeal under Docket Number D1-07-[REDACTED] is hereby *dismissed*.

Civil Service Commission

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell, and Stein, Commissioners) on August 8, 2013.

A True Record. Attest:

Commissioner

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.

Notice:

Joseph P. Dever, Esq. (for the Appellant)

Michael T. Smerczynski, Esq. (for the Respondent)