

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

STEVEN HANAFIN,
Appellant

v.

D-22-036

DEPARTMENT OF STATE POLICE,
Respondent

Appearance for Appellant:

Pro Se
Steven Hanafin

Appearance for Respondent:

Siobhan E. Kelly, Esq.
Department of State Police
470 Worcester Road
Framingham, MA 01702

Commissioner:

Christopher C. Bowman¹

DECISION ON RESPONDENT’S MOTION TO DISMISS

Background

On March 10, 2022, Steven Hanafin (Appellant) filed an appeal with the Civil Service Commission (Commission), contesting the action of the Department of State Police (Department) in placing him on unpaid suspension from the position of Trooper beginning December 1, 2021 through February 27, 2022. The suspension was for failure to comply with [Executive Order 595](#) (EO 595), which required all executive branch employees to become

¹ The Commission acknowledges the assistance of Law Fellow Courtney Timmins in drafting this decision.

vaccinated against COVID-19 (and maintain “full” COVID-19 vaccination) as a condition of continuing employment.

On May 17, 2022, I held a remote pre-hearing conference which was attended by the Appellant and Counsel for the Department. As part of the pre-hearing conference, the parties stipulated to certain facts and provided an overview of their arguments. The Department argued that the appeal should be dismissed for lack of jurisdiction based on untimely filing. On July 11, 2023, Commission General Counsel Rob Quinan and I held a remote status conference attended by the Appellant and counsel for the Department. The Department subsequently submitted a Motion to Dismiss for lack of jurisdiction based on untimely filing. The Appellant did not file a response to the Department’s Motion.

Facts Underlying the Instant Appeal

1. The Appellant was appointed as a State Police Trooper on December 2, 2013.
2. On September 27, 2021, the Appellant requested a religious exemption from EO 595.
3. The Department notified the Appellant on November 25, 2021 that his request for a religious exemption was denied.
4. The Department informed the Appellant that he had three business days (*i.e.*, until November 30, 2021) to comply with EO 595, resign, or be relieved from duty and subject to progressive discipline.
5. The Appellant did not comply with EO 595. On December 1, 2021, following a duty status hearing, the Department suspended the Appellant without pay pursuant to Article 6.25 of its Rules and Regulations. The Appellant was subsequently charged with unsatisfactory performance and insubordination for his noncompliance with EO 595 and 21-SM-14.

6. On January 10, 2022, the Department held the Appellant's first Trial Board. The Appellant was convicted and suspended without pay for five days.
7. The Department issued a personnel order for the Appellant's five-day suspension on January 18, 2022. The Department emailed a copy of the signed personnel order to the Appellant's union attorney that day. The personnel order was also published through the job-wide email, meaning every sworn and civilian member received a copy of it.
8. The Appellant was candid that he was aware of the Trial Board findings and suspension because of his presence at the Trial Board, but he stated that he never received a signed personnel order from the Colonel. The Appellant later saw the unsigned personnel order through the job-wide email. As noted above, his union attorney received a signed personnel order on January 18, 2022.
9. According to the Appellant, which I accept as true for the purposes of deciding this motion, he did not understand at the time that appeals to the Civil Service Commission needed to be filed in a timely manner after each suspension. The Appellant incorrectly believed that he should wait until the third and final Trial Board and then appeal all of the suspensions.
10. On February 4, 2022, the Department held the Appellant's second Trial Board. The Appellant was convicted and suspended without pay for ten days.
11. The Department issued a personnel order for the Appellant's ten-day suspension on February 7, 2022. The Department emailed a copy of the signed personnel order to the Appellant's union attorney that day. The personnel order was also published through the job-wide email.

12. The Appellant's third and final Trial Board was scheduled for February 28, 2022. On February 28, prior to the start of the Trial Board, the Appellant received the COVID-19 vaccination. As a result, the Department returned the Appellant to full duty that day and discontinued his disciplinary proceedings.
13. On March 10, 2022, the Appellant filed an appeal with the Commission to challenge the period of unpaid suspension he served from December 1, 2021 to February 27, 2022. This included the administrative suspension following the Appellant's initial duty status hearing, the five-day suspension following the first Trial Board, and the ten-day suspension following the second Trial Board.

Respondent's Motion to Dismiss

The Department presented two arguments in its Motion to Dismiss:

- A. The Commission does not have jurisdiction to review any period of suspension imposed pursuant to a duty status hearing.
- B. The challenge to the five- and ten-day suspensions imposed pursuant to two Trial Boards is not timely and, therefore, the Commission lacks jurisdiction.

Analysis

First, the Commission does not have jurisdiction to review any period of suspension imposed pursuant to a duty status hearing.

Under Massachusetts civil service law, State Troopers are not included in the definition of a "civil service employee," "permanent employee," or "tenured employee." *See* G.L. c. 31, § 1. Likewise, the position of a Massachusetts State Trooper is not a "civil service position" within "official service" or a position made by "civil service appointment" as defined by G.L. chapter 31. Instead, the Commission's purview over the discipline of State Troopers is defined

by the State Police statute. *See* G.L. c. 22C, § 13. That statute provides Chapter 31 appeal rights only to those State Troopers who have been aggrieved by the finding of a Trial Board. *Id.* The statute further establishes that the State Police Colonel may impose administrative suspensions following duty status hearings, and such suspensions are not appealable to the Civil Service Commission.² *See id.*; *Massachusetts Department of State Police v. Civil Serv. Comm’n*, 2020 WL 3106264, at *4 (Mass. Super. Ct. 2020) (“The Legislature has specifically authorized Commission review of decisions of Trial Boards, but not decisions of Duty Status Boards.”). As such, the Commission does not have jurisdiction to review the administrative suspension imposed following the Appellant’s duty status hearing.

Second, the challenge to the five- and ten-day suspensions imposed pursuant to two Trial Boards is not timely and, therefore, the Commission lacks jurisdiction. Appeals to the Civil Service Commission “must be filed within ten days, exclusive of Saturdays, Sundays, and legal holidays, after said action has been taken, or after such person first knew or had reason to know of said action” G.L. c. 31, § 42; *see also Marqus v. Waltham*, 23 MCSR 285, 286 (May 21, 2010) (“The Commission’s jurisdiction to hear disciplinary appeals is limited by statute.”).

In this case, the Department notified the Appellant and his attorney of the suspensions through personnel orders on January 18, 2022 and February 7, 2022. Each personnel order explains the suspension as well as the Appellant’s right to appeal to the Commission within ten business days. The Appellant did not file his appeal with the Commission until March 10, 2022, which is more than ten business days after each suspension was imposed. It is also more than ten

² Rather, “[a]ny person aggrieved by an order approved by the colonel may appeal to the superior court; provided, that such appeal is taken within fifteen days from the date when such order is approved or made.” G.L. c. 22C, § 43.

business days after he had reason to know of each suspension. The Appellant has acknowledged that he was aware of each Trial Board outcome due to his presence at the Trial Boards, plus each personnel order was emailed to his union attorney and published job-wide. As a result, the appeal is untimely and the Commission lacks jurisdiction.

This conclusion is supported by superior court precedent. In *Allen v. Civil Service Commission*, the appellant-plaintiff “contend[ed] that, even though she knew of the termination, she excusably was unaware of the filing deadline and that the deadline was tolled.” 2014 WL 11497898, at *2. The superior court rejected this argument, stating that “at all relevant times, the plaintiff was represented by union officials who had an obligation to know, and inform her of the Commission filing deadlines.” *Id.*, citing *United Steelworkers of Am. v. Commonwealth Employment Relations Bd.*, 74 Mass. App. Ct. 656, 663 (2009) (holding that union officials have duty to know and advise members of Commission filing deadlines). The court concluded that the Commission properly took that into account when dismissing the appeal for untimeliness. *Allen*, 2014 WL 11497898, at *2, citing *Marqus*, 23 MCSR at 286 (dismissing appeal for untimeliness where appellant was represented by union counsel and failed to meet statutory deadline). Here, as in the cases cited above, the Appellant was represented by union counsel who had a duty to advise him of proper filing deadlines. Where the Appellant was aware of the suspensions by the date of each personnel order, and had union representation, there is nothing to toll the ten-day statutory requirement. Accordingly, this appeal must be dismissed for untimeliness.

Conclusion

For the reasons explained above, the Department’s Motion to Dismiss is allowed and the appeal of Steven Hanafin, Docket No. D-22-036, is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman

Chair

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Tivnan, Commissioners [Stein – Absent]) on September 7, 2023.

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 their 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:

Steven Hanafin (Appellant)

Siobhan E. Kelly, Esq. (for Respondent)