

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

FRANCES HEGGIE,

Appellant

D-19-018

v.

CITY OF NEW BEDFORD,

Respondent

Appearance for Appellant:

Meghan Ventrella, Esq.
AFSCME Council 93
8 Beacon Street
Boston, MA 02108

Appearance for Respondent:

Elizabeth Treadup Pio, Esq.
Associate City Solicitor
New Bedford City Hall
133 William Street
New Bedford, MA 02745

Commissioner:

Paul M. Stein

DECISION ON RESPONDENT'S MOTION TO DISMISS

The Appellant, Frances Heggie, acting in reliance on G.L.c.31,§41-§43, brought this appeal to the Civil Service Commission (Commission), contesting her five-day suspension from her position as Clerk Typist in the Cemetery Division of the Department of Public Infrastructure of the Respondent, City of New Bedford (New Bedford).¹ A pre-hearing conference was held on February 8, 2019 at the UMass School of Law in Dartmouth. On February 21, 2019, New Bedford filed a Motion to Dismiss the appeal for lack of jurisdiction on the grounds that the Appellant failed to seek an appointing authority hearing prior to taking this appeal. The Appellant filed an Opposition to the Respondent's Motion To Dismiss on March 8, 2019. For the reasons explained below, I conclude that Motion to Dismiss should be granted and the appeal be dismissed.

¹ 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.

FINDINGS OF FACT

Based on the submissions of the parties and viewing the evidence most favorably to the Appellant, I find the following material facts are not in dispute:

1. The Appellant, Frances Heggie, is a permanent, tenured employee of the New Bedford Department of Public Infrastructure (DPI) in the title of Clerk Typist with the DPI's Cemetery Division.

2. DPI Commissioner Jamie Ponte is the Appointing Authority for the departmental employees of the DPI, including Ms. Heggie.

3. By letter dated January 3, 2019, which Ms. Heggie received on or about that same day, Commissioner Ponte notified Ms. Heggie that she was suspended for five days (from Friday January 4, 2019 through Thursday January 10, 2019) due to her "continuous inadequate work performance" which "continues to decline" despite coaching, and which included, in particular:

- Multiple incorrect entries
- Lack of Communication
- Failure to follow through with daily tasks
- Unable to follow office procedures thoroughly
- Not double checking work before being sent out
- Constant reminding of how to do routine procedures

The January 3, 2019 letter stated that Ms. Heggie "may, within (48) hours after the receipt of this notice file a written request for hearing before me on the question of whether there is just cause for the suspension" and enclosed copies of G.L.c. Chapter 31, Sections 41 through 45.

4. Ms. Heggie never filed a written request for hearing before DPI Commissioner Ponte.

5. On January 11, 2019, Ms. Heggie filed this appeal with the Commission.

STANDARD OF REVIEW

The Commission may dispose of an appeal summarily, as a matter of law, pursuant to 801 C.M.R. 1.01(7) when undisputed facts affirmatively demonstrate "no reasonable expectation"

that a party can prevail on at least one “essential element of the case”. See, e.g., Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550 fn.6, (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005)

APPLICABLE CIVIL SERVICE LAW

G.L.c.31,§41,¶2 provides, in relevant part:

*A civil service employee may be suspended for just cause for a period of five days or less without a hearing prior to such suspension. Such suspension may be imposed only by the appointing authority or by a subordinate to whom the appointing authority has delegated authority to impose such suspensions . . . [T]he person authorized to impose the suspension shall provide the person suspended with a copy of sections forty-one through forty-five [of Chapter 31] and with a written notice stating the specific reasons for the suspension and informing him that he may, within forty-eight hours after the receipt of such notice, file a written request for a hearing before the appointing authority on the question of whether there is just cause for the suspension. . . . A person whose suspension under this paragraph is decided, after hearing, to have been without just cause shall be deemed not to have been suspended, and he shall be entitled to compensation for the period for which he was suspended.. . . (*emphasis added*)*

G.L.c.31,§41,¶5 provides, in relevant part:

If it is the decision of the appointing authority, after hearing, that there was just cause for an action taken against a person pursuant to the first or second paragraphs of this section, such person may appeal to the commission as provided in section forty-three.

As New Bedford accurately points out, the Commission’s recent decisions have uniformly construed these provisions of the civil service law to mean that an appointing authority *decision, after hearing*, is a prerequisite to the filing of an appeal to the Commission. See Murray v. Department of Corrections, 30 MCSR 258 (2017); Stiles v. Department of Correction, 29 MCSR 126 (2016); Jewett v. City of Waltham, 28 MCSR 52 (2015); Tibbetts v. Town of Danvers, 28 MCSR 513 (2015); Hurley v. City of Lynn, 23 MCSR 252 (2010), *distinguishing* Foley v. Boston Police Dep’t, 22 MCSR 54 (2009) and other cases cited. This appeal presents no special circumstances that would warrant revisiting that line of decisions.

The Appellant contends that the Commission’s interpretation of Section 41 to require that a civil service employee must exhaust his or her remedy to an appointing authority hearing before appealing a suspension of five days or less under the second paragraph of Section 41 is “inequitable and not in line with the purpose” of the civil service law. In particular, the Appellant points out that it is likely to be futile for her to request a hearing before the same “appointing authority” who issued the five-day suspension letter. This argument cannot override the plain meaning of the statute, which expressly requires that authority for both the initial pre-hearing suspension and the subsequent hearing are vested in the same “appointing authority”, and that, pursuant to G.L.c.31,§41,¶5, only “after hearing” before the “appointing authority” may an employee appeal to the Commission from discipline imposed under either “the first paragraph” of Section 41 (discipline greater than five days) OR under the “second paragraph” of Section 41 (discipline of five days or less). The Commission’s decisions have articulated sound reasons for having such a statutory scheme. If the Appellant believes it should be changed, that is a matter for the legislature, not for this Commission.

CONCLUSION

Accordingly, for the reasons stated, New Bedford’s Motions to Dismiss is ALLOWED and the appeal of the Appellant, Frances Heggie, under Docket No. D-19-019 is *dismissed*. The full hearing scheduled for April 26, 2019 is cancelled.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein

Commissioner

By vote of the Civil Service Commission (Bowman, Chairman, Camuso, Ittleman, Stein & Tivnan, Commissioners) on March 28, 2019.

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 a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's 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 to:

Meghan Ventrella, Esq.. (Appellant)

Elizabeth Treadup Pio, Esq. (for Respondent)