

COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION

Decision mailed: 10/3/08  
Civil Service Commission  
CB

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

**RALPH JERAULD,**  
*Appellant*

v.

**WALTHAM HOUSING  
AUTHORITY,**  
*Respondent*

**Case No.: D-05-220**

**DECISION**

After careful review and consideration, the Civil Service Commission voted at an executive session on October 2, 2008 to acknowledge receipt of the report of the Administrative Law Magistrate dated July 17, 2008. No comments were received from either party. On October 2, 2008, the Commission voted not to adopt the findings of fact and the recommended decision of the Magistrate for the following reason:

The Appellant's appeal to the Commission fails due to lack of jurisdiction.

Housing Authority employees derive rights under c. 121 §29; these rights are limited when compared to those of other civil service employees. *See Courchesne v. Dennis Housing Authority*, 40 MCSR 11 (1998); *Jones v. Boston Housing Authority*, 6 MCSR 83. Chapter 31 applies to Housing Authority employees only in the area of termination: "No employee of any housing authority, except an employee occupying the position of executive director, who has held his office or position, including any promotion or reallocation therefrom within the authority for a total period of five years of uninterrupted service, shall be involuntarily separated therefrom except subject to and in accordance with the provisions of sections forty-one to forty-five, inclusive, of said chapter thirty-one to the same extent as if said office or position were classified under said chapter." c. 121B § 29. *See McGilvray v. Boston Housing Authority*, 6 MCSR 117 (1993); *Randazza v. Gloucester Housing Authority*, 13 MCSR 3 (2000); *Mahoney v. Boston Housing Authority*, 6 MCSR 249 (1999).

"The protection of [c. 31 §§ 41-45] is not extended, as evidenced by its limiting language, to confer any additional rights on housing authority employees. Typical civil service employees whose positions are abolished have rights separate from those found in secs. 41-45. Those employees enjoy the entire statutory protections afforded by civil service law ... Sec. 41's referral to other sections and rights of civil service employees does not confer those rights to housing authority employees." *Courchesne* at 41-42.

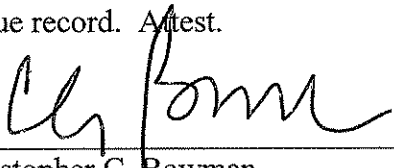
The facts of this case do not establish that there was an involuntary separation within the meaning of c. 121B §29. The instant matter concerns a five (5) day suspension, and does not give rise to a cause of action under section 29.

The appeal is dismissed for lack of jurisdiction.

A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on October 2, 2008.

A true record. Attest.

  
\_\_\_\_\_  
Christopher C. Bowman  
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(I), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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.

Notice to:

Paul Nevins, Esq. (for Appellant)

Mark Rooney, Esq. (for Appointing Authority)

Shelly Taylor, Esq. (DALA)



COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

98 North Washington Street, 4th Floor

Boston, MA 02114

[www.mass.gov/dala](http://www.mass.gov/dala)

Tel: 617-727-7060  
Fax: 617-727-7248

July 17, 2008

Christopher Bowman, Chairman  
Civil Service Commission  
One Ashburton Place  
Boston, Ma. 02108

Paul Nevins, Esq.  
92 State Street  
Boston, MA 02109

Mark Rooney, Esq.  
Curley & Curley, PC  
27 School Street, 6<sup>th</sup> Fl.  
Boston, MA 02108

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CIVIL SERVICE COMMISSION

RE: *Ralph Jerauld v. Waltham Housing Authority, D-05-220, CS-08-378*

Dear Chairman Bowman, Attorneys Nevins & Rooney:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that pursuant to 801 CMR 1.01(11)(c), they have thirty (30) days to file written objections to the decision to the Civil Service Commission which may be accompanied by supporting briefs.

Very truly yours,

*Joan Freiman Fink*  
Joan Freiman Fink, Esq.  
Administrative Magistrate

Encl.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Ralph Jerauld,  
Appellant

Docket No. D-05-220  
DALA No. CS-08-378

v.

Waltham Housing Authority,  
Appointing Authority

Appearance for Appellant:

Paul Nevins, Esq.  
92 State Street, 8<sup>th</sup> Fl.  
Boston, MA 02109

Appearance for Appointing  
Authority:

Mark Rooney, Esq.  
Curley & Curley, PC  
27 School Street, 6<sup>th</sup> Fl.  
Boston, MA 02108

Administrative Magistrate:

Joan Freiman Fink, Esq.

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CIVIL SERVICE COMMISSION

**RECOMMENDED DECISION**

Pursuant to G.L. c. 31 §43, the Appellant, Ralph Jerauld, is appealing the June 1, 2005 decision of the Appointing Authority, the Waltham Housing Authority (WHA), suspending him for the period of five days from his position as Director of Maintenance (Exhibit 13). The Appellant filed a timely appeal of this decision with the Civil Service Commission (Exhibit 14).

A hearing in this matter was held on March 21, 2008 at the offices of the Division of Administrative Law Appeals, 98 N. Washington Street, Boston, MA. As no written

request was received from either party, the hearing was declared to be private. Various documents were entered into evidence at the hearing (Exhibits 1 – 18). Two cassette tape recordings were made of the hearing.

The following employees of the Waltham Housing Authority testified on behalf of the Appointing Authority: John Gollinger, Assistant Executive Director, and Walter McGuire, Executive Director. The Appellant testified in his own behalf.

The record in this case was left open until May 22, 2008 for the filing of written closing memoranda.

The Appointing Authority maintains that just cause exists to suspend the Appellant for a period of five days in that on April 8, 2005, he was absent from work without proper authorization or approval in violation of the Personnel Policy of the Waltham Housing Authority<sup>1</sup> and further that he failed to make proper arrangements for the supervision of the Maintenance Department in his absence.

### **FINDINGS OF FACT**

Based on the documents entered into evidence (Exhibits 1 - 13) and the testimony of Walter McGuire, John Gollinger, and Ralph Jerauld, I make the following findings of fact:

1. The Appellant, Ralph Jerauld, commenced employment as a foreman with the Waltham Housing Authority in 1985. He was promoted to the position of Director of Maintenance in 1995 (testimony of the Appellant).

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<sup>1</sup> Section 6(e) Miscellaneous Leave of the Personnel Policy provides that "absence without proper authorization or approval shall be considered leave without pay and may be considered sufficient cause for suspension or dismissal."

2. His duties involved supervising and directing the maintenance personnel of the Housing Authority including making job assignments for the entire maintenance staff (testimony of the Appellant).
3. During the course of his employment, the Appellant experienced several serious illnesses, including small cell lung cancer in 1992 as well as a recurrence of the cancer in 2001. In addition, he suffered from myasthenia gravis (testimony of the Appellant).
4. In 1997, the Appellant received a one day suspension for failure to seek prior approval for time off of work (Exhibits 1 & 2, testimony of John Gollinger).
5. On October 8, 2004, the Appellant received a written warning for failing to appear as directed at John Gollinger's office for his (Jerauld's) annual job review as well as failing to comply with a directive prohibiting direct contact with another employee (Exhibit 3).
6. On March 17, 2005, the Appellant received a written warning and a one day suspension to be held in abeyance for failure to follow proper procedures with regard to securing permission prior to leaving early (Exhibit 4, testimony of John Gollinger).
7. In accordance with the Sick Leave Provision of the Personnel Policy of the Waltham Housing Authority, if an employee needs time off for sick time, the request for such leave should be made, if at all possible, in advance of such absence. As of April 7, 2005, the Appellant was fully aware of the Personnel Policy of the WHA with respect to sick leave as John Gollinger had personally met with him (Jerauld) on several occasions prior to that date and fully explained the Sick Leave Provisions (testimony of John Gollinger).

8. Prior to April 8, 2005, the Appellant performed his job duties without incident and did not request sick leave. In addition, the Appellant did not inform his superiors that he would be absent from work for an extended period of time (testimony of John Gollinger).
9. The Appellant knew as of Monday, April 4, 2005, that he was going to be absent from work for an extended period of time commencing on April 8, 2005 (testimony of the Appellant).
10. On Thursday, April 7, 2005, Executive Director McGuire was with the Appellant all afternoon and Mr. Jerauld never mentioned that he was experiencing any problems with stress or ill health (testimony of Walter McGuire).
11. During the week commencing April 4, 2005, the maintenance foreman was out on vacation and the Appellant himself was responsible for supervising the maintenance staff (testimony of John Gollinger).
12. On April 8, 2005, the Appellant arrived at the WHA prior to the commencement of the work day and placed a letter from Dr. Muni Kim dated April 4, 2005 on the desk of Pam Jones, the office manager. He then drove to the maintenance shop where he waited for the maintenance workers to arrive. When the maintenance workers arrived, the Appellant issued them their job assignments for the day. He then cleared out his office, left the WHA premises, and went home (testimony of John Gollinger, testimony of the Appellant, testimony of Walter McGuire).
13. Dr. Kim's letter of April 4, 2005 stated that "Mr. Jerauld will remain out of work until his symptoms have abated and he receives medical authorization to return to work" (Exhibit 4).

14. Dr. Kim also noted in his letter that he is “once again treating Mr. Jerauld for acute work-related stress. His symptoms have included anxiety, insomnia, and heart palpitations” (Exhibit 4).
15. Upon arriving at work on April 8, 2005, John Gollinger went to the maintenance shop. Although the maintenance men were apparently working at various job sites, Mr. Gollinger did not know the location of any of the maintenance men (testimony of John Gollinger).
16. Mr. Gollinger called the Appellant at home but there was no answer. He then called the Appellant’s WHA cell phone number, but also received no response (testimony of John Gollinger).
17. Upon arriving at work at approximately 8:30 a.m. on April 8, 2005, Executive Director McGuire was informed by Pam Jones that the Appellant had cleared out his office and had left a letter from Dr. Kim on her desk (testimony of Walter McGuire).
18. Mr. McGuire and Mr. Gollinger then drove to the Appellant’s home to discuss Mr. Jerauld’s work status. Although they knocked several times at the front door, they received no response (testimony of John Gollinger and Walter McGuire).
19. The two men returned to the WHA and after conducting a search of various job sites, Mr. McGuire located the maintenance men. Mr. McGuire placed one of the men in charge of the crew for the day (testimony of Walter McGuire).
20. Later that day, John Gollinger sent the Appellant a certified letter requesting that he return all his work keys (Exhibit 8).



21. On April 10, 2005, the Appellant gave one of the members of the WHA maintenance staff his work keys accompanied by a letter dated April 8, 2005 specifically referencing all the returned keys (Exhibit 9).
22. On May 13, 2005, Mr. Gollinger sent the Appellant written notification that he was being suspended for a period of five days for his failure to properly inform the maintenance department that he would be absent for an extended period of time as well as his failure to make proper arrangements for the operation of the maintenance department in his absence (Exhibit 7).
23. On June 1, 2005, the Appointing Authority sent the Appellant written notice that it had affirmed Mr. Gollinger's decision to suspend him without pay for the period of five days from his position as Director of Maintenance with the WHA (Exhibit 13).
24. On June 16, 2005, the Appellant filed a timely appeal of this decision with the Civil Service Commission (Exhibit 14).
25. Although the Appellant was suspended for a period of five days without pay, he did not actually incur a loss of salary as his one week suspension was served after his sick leave was exhausted in October of 2005 (testimony of John Gollinger).

### **CONCLUSION AND RECOMMENDATION**

After reviewing all the testimony and evidence in this case, I conclude that the Appointing Authority has demonstrated by a preponderance of the evidence that just cause exists to suspend the Appellant from his position as Director of Maintenance with the Waltham Housing Authority. The Civil Service Commission determines justification

for discipline by inquiring "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." *Murray v. Second Dist. Ct. of E. Middlesex*, 389 Mass. 508, 514 (1983); *School Committee of Brockton v. Civil Service Commission*, 43 Mass. App. Ct. 486, 488 (1997). In reviewing an appeal brought pursuant to G.L. c. 31 §43, if the Civil Service Commission finds by a preponderance of the evidence that there was just cause for an action taken against an Appellant, the Commission shall affirm the action of the Appointing Authority. *Town of Falmouth v. Civil Service Commission*, 61 Mass. App. Ct. 796, 800 (2004).

The basis of my conclusion rests with my finding that the testimony of John Gollinger and Walter McGuire, the Assistant Executive Director and Executive Director of the WHA respectively, was extremely credible. See *Connor v. Connor*, 77 A.2d 697 (Pa. 1951) where the court held that the "opportunity to observe demeanor and appearance of witnesses in many instances becomes the very touchstone of credibility." See also *School Committee of Wellesley v. Labor Relations Commission*, 376 Mass. 112, 120 (1978); *New England Canteen Service, Inc. v. Ashley*, 372 Mass. 671 (1977).

Mr. Gollinger gave compelling testimony to the effect that on three separate occasions prior to the incident in question, the Appellant had absented himself from the workplace without proper authorization. On all of those occasions, the Appellant had received disciplinary action including suspensions from his employment as a result of his conduct.

Mr. Gollinger personally explained to the Appellant many times prior to April 8, 2005, the policy and procedures of the WHA with respect to absences, stressing the fact

that if an employee is aware of an intended absence, especially if it is likely to be an extended absence, that employee is responsible for notifying the WHA in advance. In addition, during these conversations, Mr. Gollinger emphasized the need for the Appellant to make arrangements to have provisional arrangements in place such that the maintenance workers would be aware of not only their job assignment but their supervisor as well.

Notwithstanding his three prior suspensions for similar infractions as well as multiple admonitions from Mr. Gollinger, the Appellant left work on April 8, 2005 without prior notification to the WHA and without making arrangements for a replacement supervisor and working foreman, as the working foreman was out on vacation that week.

During his testimony, the Appellant admitted that he knew at least by Monday, April 4<sup>th</sup>, that he was going to be out on sick leave for an extended period of time. He further admitted that he did not inform his supervisors of his intended absence and made no arrangements for coverage during his absence. As a rationale for his failure to follow established policies and procedures with respect to absences, the Appellant offered that he was afraid to discuss his forthcoming absence with either Mr. Gollinger or Mr. McGuire. I do not find the Appellant's explanation to be persuasive or convincing, especially in light of the fact that he was aware of the fact that his absence on April 8, 2005 would leave the Maintenance Department without either a Director of Maintenance or a working foreman.

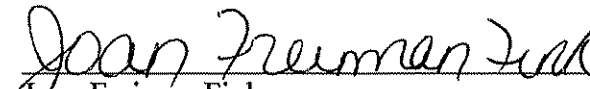
In conclusion, the Appointing Authority has demonstrated by a preponderance of the evidence that the Appellant, by absenting himself from the workplace on April 8, 2005 without proper notification of his supervisors and without making appropriate

arrangements for the maintenance personnel, engaged in conduct in violation of the rules and regulations of the Waltham Housing Authority.

In determining the appropriateness of the discipline to be imposed, I reviewed the Appellant's disciplinary record which included a written warning and two prior suspensions, each for one day. In addition, I carefully considered the Appellant's actions especially in light of the fact that he had been previously warned on multiple occasions that if at all possible, he should notify his supervisors in advance of intended absences, especially extended absences, and make appropriate arrangements for a transition. I also considered the fact that the Appellant, by his own admission, was aware of his obligations and responsibilities pursuant to the WHA policies and procedures. After due deliberation, I conclude that a suspension for a period of five days was fully warranted by the facts and circumstances of this case. Moreover, I note that although the Appellant was suspended for a period of five days, he did not suffer any actual loss of pay since his suspension was served at the conclusion of his sick leave.

Accordingly, I recommend that the Civil Service Commission affirm the action of the Appointing Authority suspending the Appellant for a period of five days from his position as Director of Maintenance with the Waltham Housing Authority.

DIVISION OF ADMINISTRATIVE LAW APPEALS

  
Joan Freiman Fink  
Administrative Magistrate

Dated: 7/17/08