

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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

KEVIN LARKIN,
Appellant

v.

TOWN OF MILTON,
Respondent

Docket Number: D-24-159

Appearance for Appellant: *Pro Se*
Kevin Larkin

Appearance for Respondent: Andrew J. Waugh, Esq.
Murphy, Hesse, Toomey & Lehane
50 Braintree Hill Office Park
Suite 410
Braintree, MA 02184

Commissioner: Christopher C. Bowman

SUMMARY OF DECISION

The Commission dismissed the appeal of a Signal Maintainer for the Town of Milton as he had no reasonable expectation of showing that the Town engaged in any civil service procedural violations and the undisputed facts show that he engaged in insubordination, justifying the Town's imposition of a one-day suspension against him.

DECISION ON RESPONDENT'S MOTION FOR SUMMARY DECISION

On October 10, 2024, the Appellant, Kevin Larkin (Appellant), a Signal Maintainer in the Town of Milton (Town), filed an appeal with the Civil Service Commission (Commission), contesting whether: a) the Town had just cause to suspend him from his employment (Section

43 just cause appeal), and b) whether the Town violated any civil service law or rules in carrying out that suspension (Section 42 procedural appeal).

On October 29, 2024, I held a remote pre-hearing conference which was attended by the Appellant, counsel for the Town, the Town Administrator; and the Town's Human Resources Director. The Town subsequently filed a motion to dismiss which I have treated as a Motion for Summary Decision and the Appellant did not file a reply.

UNDISPUTED FACTS

The following facts are undisputed, unless otherwise noted:

1. In 1996, the Appellant was appointed as a Signal Maintainer by the Town.
2. Signal Maintainer is a labor service position in the civil service system which does not require taking an examination to attain a permanent appointment. (See p. 15 of the state's Munciclass Manual)
3. After serving six months in this labor service position, the Appellant became a permanent, tenured civil service employee.
4. In 2012, via a Special Act, certain positions within the Town's DPW, including that of Signal Maintainer, were removed from the civil service system. Incumbent employees in those positions (including the Appellant) maintained certain civil service protections, including the right to file discipline-related appeals under Sections 41-45 of the civil service law.
5. On July 17, 2024, the Town issued the Appellant a written warning for failing to comply with an order to attend a conflict resolution training course. The training course lasted less than a day, could be attended remotely, occurred during normal business hours, and attendees received regular pay. The Appellant was again directed to take the course, with a deadline of July 22, 2024.

6. On September 9, 2024, the Town notified the Appellant that he would be suspended for two days after he failed to comply with the order to attend the training course by July 22nd.
7. On September 11, 2024, the Appellant served the first day of the two-day suspension.
8. On September 17, 2024, the Town held a local appointing authority hearing at the Appellant's request.
9. The Appellant attended with his union representative. The union representative negotiated a settlement agreement with the Town, where the Appellant would attend the training course, and the written warning and one-day suspension would be removed from the Appellant's personnel file on March 16, 2025 in the absence of further disciplinary matters.
10. The Appellant failed to sign the settlement agreement. Instead, he filed an appeal with the Commission under both Section 42 (procedural) and Section 43 (just cause) grounds.
11. On the afternoon of the local appointing hearing, the Appellant attended the training course remotely.
12. The Town, as of the date of the October 29, 2024 pre-hearing conference, had not ordered the Appellant to serve the second day of his suspension.
13. On November 6, 2024, the Town's issued a decision reducing the two-day suspension to a one-day suspension.

APPLICABLE CIVIL SERVICE LAW

Section 41 of the civil service law states in relevant part that:

“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 ... Within twenty-four hours after imposing a suspension under this paragraph, the person authorized to impose the suspension shall provide the person suspended with a copy of sections forty-one through forty-five and with a written notice stating the specific reason or 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 was just cause for the suspension. If such request is filed, he shall be given a hearing before the appointing authority or a hearing officer designated by the appointing authority within five days after receipt by the appointing authority of such request. Whenever such hearing is given, the appointing authority shall give the person suspended a written notice of his decision within seven days after the hearing ...

Section 42 of the civil service law states in relevant part that:

Any person who alleges that an appointing authority has failed to follow the requirements of section forty-one in taking action which has affected his employment or compensation may file a complaint with the commission. Such complaint 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, and shall set forth specifically in what manner the appointing authority has failed to follow such requirements. If the commission finds that the appointing authority has failed to follow said requirements ***and that the rights of said person have been prejudiced thereby***, the commission shall order the appointing authority to restore said person to his employment immediately without loss of compensation or other rights.

Section 43 of the civil service law states in relevant part that:

If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee, by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority's procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority.

STANDARD FOR SUMMARY DISPOSITION

The Commission may, on motion or upon its own initiative, dismiss an appeal at any time for lack of jurisdiction or for failure to state a claim upon which relief can be granted. 801 CMR 1.01(7)(g)(3). A motion before the Commission, in whole or in part, via summary decision may be filed pursuant to 801 C.M.R. 1.01(7)(h). An appeal may be decided on summary disposition only when, “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 Bd.*, 18 MCSR 216 (2005). *See also Mangino v. HRD*, 27 MCSR 34 (2014) and cases cited (“The notion underlying the summary decision process in administrative proceedings parallels the civil practice under Mass. R. Civ. P. 56, namely, when no genuine issues of material fact exist, the agency is not required to conduct a meaningless hearing.”); *Morehouse v. Weymouth Fire Dep’t*, 26 MCSR 176 (2013) (“a party may move for summary decision when . . . there is no genuine issue of fact relating to his or her claim or defense and the party is entitled to prevail as a matter of law.”)

ANALYSIS

Asked to explain what procedural violation the Town engaged in, and how that violation prejudiced him, the Appellant spoke about the alleged inaccuracy of the written warning that had been placed in his personnel file. The Commission lacks jurisdiction to hear appeals related to written warnings and the Appellant did not file a grievance under the CBA related to the warning. Further, even accepting the Appellant’s allegation as true (i.e. – that the written warning contained inaccuracies), that does not constitute a violation of the procedural

requirements of the civil service law. Thus, the Appellant has no reasonable expectation of prevailing regarding this Section 42 procedural appeal as he has failed to identify how the Town violated the civil service law, let alone how such a violation prejudiced his rights.

I now turn to the issue of the Appellant's Section 43 appeal and whether there was just cause for the one-day suspension. The facts in this regard are also undisputed. Beginning in March 2024, the Town repeatedly directed the Appellant to attend conflict resolution training for less than 3 hours during normal business hours. The Appellant has not presented any evidence, nor would he be able to do so at an evidentiary hearing, to show that the directive was somehow illegal and that complying with the order would somehow jeopardize his health or safety. Rather, at the pre-hearing, the Appellant reverted to his argument that inaccurate information had been placed into his personnel file related to the above-referenced warning. Even when viewing the facts in the light most favorable to the Appellant, he was at least required to obey the directive and then grieve it through provisions provided for in the collective bargaining agreement, but he did not have the option of flagrantly disobeying the directive to attend training.

Since the undisputed facts establish that the Appellant engaged in insubordination and he has no reasonable expectation of prevailing on his just cause appeal, it is appropriate to rule in the Town's favor and allow the Motion for Summary Decision in regard to the Section 43 appeal as well.

CONCLUSION

The Town's Motion for Summary Decision is allowed and the Appellant's Section 42 and Section 43 appeals under Docket Number D-24-159 are *dismissed*.

CIVIL SERVICE COMMISSION

/s/ Christopher Bowman

Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney and Stein on January 9, 2025.

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 to:

Kevin Larkin (Appellant)

Andrew Waugh, Esq. (for Respondent)