

COMMONWEALTH OF MASSACHUSETTS

Decision mailed: 7/29/11
Civil Service Commission *JB*

Suffolk, ss.

Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108
(617) 727-2293

STEVE MANOLAKIS,
Appellant,

v.

Docket No. D-11-207

CITY OF QUINCY,
Respondent

DECISION ON MOTION TO DISMISS

Pursuant to G.L.c. 31, s.43, the Appellant, Steve Manolakis (hereinafter the "Appellant") filed an appeal with the Civil Service Commission (hereinafter "the Commission") on June 16, 2009, claiming that the City of Quincy (hereinafter "the City" or "Quincy"), did not have just cause to suspend him from his employment for one (1) day as a "Working Foreman/Laborer" with the City's Department of Public Works (hereinafter "DPW"). The Appellant was suspended without pay for one day, for a recent incident, on February 25, 2011, of poor work performance in which he as foreman and his work crew only moved four file cabinets in a three hour period. The City also relied on the facts of Appellant: having a history of prior discipline of a verbal warning, written warning and a one day suspension.

A scheduled hearing was held on July 12, 2011 at the offices of the Commission. The parties filed a stipulation of facts and other related documents at that hearing. The City by way of a Motion to Dismiss raised the matter of the Appellant filing a late appeal at

the Commission and its intention to file a Motion to Dismiss on that ground. The facts of the mailing and receipt of the notice of the termination letter were explored. The parties were ordered to file further documentation including affidavits on the issue of the mailing of the notice of the discipline and the receipt of same by the Appellant, on or before July 20, 2011.

On or about July 12, 2011 the City filed a Motion to Dismiss for the Appellant's failure to file a timely appeal under M.G.L. c. 31 § 43. On July 15, 2011, the City filed several affidavits verifying the dates and the mailing process followed in the normal course and specifically in this matter, by the City. The Appellant filed an Opposition to the Motion and the Appellant's affidavit on July 18, 2011.

Based on the case file, pleadings, parties' argument and other documents provided and the reasonable inferences therefrom; that the following facts are established and proven,

FINDINGS OF FACT:

1. The Appellant, ("Manolakis") has been employed by the City since July 6, 1993. At the time of this discipline, he was employed as a Working Foreman/Laborer by the City's DPW. (Stipulated Facts)
2. He is a tenured civil service employee. The Appellant has been disciplined several times during his employment with the City (Stipulated Facts).
3. The specific facts which occurred on February 25, 2011 and resulting in said one (1) day suspension discipline are not relevant to this motion, however. After this most recent suspension imposed on March 9, 2011,

Mayor Koch convened a disciplinary hearing informing the Appellant of such hearing. The hearing was scheduled, and notified the Appellant of his right to obtain representation at the hearing. A copy of G.L. c. 31 §§ 41-45 was enclosed with the letter to the Appellant.

4. After the hearing the Appellant was notified of the one (1) day suspension discipline, by mail dated May 25, 2011.
5. The Appellant filed his appeal of this discipline at the Commission. The Commission acknowledged the filing date of said appeal being June 23, 2011. The Appellant stated in said appeal that he received notice of said discipline on May 25, 2011. He did not claim any procedural flaws in the issuing of said discipline pursuant to G.L. c. 31 §§ 41-42.
6. On July 15, 2011, the City filed several affidavits verifying the dates and the mailing process followed in the normal course and specifically in this matter, by the City. The City's Director of Human Resources and a Human Resources Assistant swore that they placed the Appellant's letter of notification of discipline in the City's interoffice mail box on May 25, 2011. The usual practice is that the interoffice mail is collected that day and delivered to the US Post Office that same. It is assumed that the letter was thereafter received by the Appellant within three (3) days of that mailing date.
7. The Appellant's Opposition addressed procedural issues under c. 30 § 41 and § 42 which are not germane to this Motion to Dismiss for untimely filing.

8. The Appellant's affidavit also substantially addressed procedural issues under G.L. c. 30 § 41 and § 42 which were not claimed in his appeal.
9. The Appellant's affidavit is entirely unpersuasive as it raises numerous extraneous matters outside of the sole issue in question; the date of mailing by the City and the date of receipt of the notice of discipline by the Appellant.
10. The Appellant's affidavit did not clearly address the date of mailing or date of receipt of the notice letter. He states "I did receive something in mid June 2011, a letter dated May 25, 2011, in which Director McGrath informed me my grievance had been denied;"
11. The Appellant's affidavit goes on to claim that he used the May 25th date as the date he received notice of the discipline in his appeal to the Commission, merely "as a reference and did not on or about when I received it...". This statement is simply not believed, especially in the context of all of the older dated events of alleged procedural deficiencies he specifically claims, which are irrelevant to this issue. His numerous allegations are sprinkled in his affidavit in an attempt to shift the focus away from the issue of dates of mailing and receipt or his own dereliction.
12. The Appellant's affidavit is incongruous for a person who claims specific memory of dates of older irrelevant events, yet with only a general memory of the date of the event in question. A reasonable person receiving such a letter in the mail three weeks after its stated date would preserve the post marked envelope or establish some other

contemporaneous corroboration of receipt. The Appellant's affidavit is not found to be accurate or credible.

13. The Appellant filed his appeal with the Civil Service Commission on June 23, 2011, nineteen business days (excluding weekends and holidays) after notice of his discipline was presumed received by him after mailing.

14. On July 12, 2011 a pre-hearing was held between the parties where each party stipulated to the fact that the Appellant received notice of his discharge on May 25, 2011 and that the appeal was filed June 23, 2011.

(Stipulated facts)

CONCLUSION

Pursuant to M.G.L. c. 31 § 43 a person aggrieved by the decision of the appointing authority pursuant to s. 41 of the same chapter must file an appeal with the Commission within ten (10) days of receipt of notice of the appointing authority's decision.

The Commission's jurisdiction to hear disciplinary appeals is limited by statute. G.L.c.31, §43 requires that a person aggrieved by a decision of an appointing authority disciplining him or discharging him from employment pursuant to G.L.c.31, §41, "shall, within ten days after receiving written notice of such decision, appeal in writing to the commission" The failure to file an appeal with the Commission within the statutory time is jurisdictional, or akin to a statute of limitations, and cannot be improperly expanded by the Commission. See Town of Falmouth v. Civil Service Comm'n, 441 Mass. 814, 822-23 (2006); Donnelly v. Cambridge Public Schools, 21 MCSR 665 (2008); Volpicelli v. Woburn, 22 MCSR 448 (2009); Novia v. City of Boston, 20 MCSR 639

(2007); Maurice v. Massachusetts Dep't of Mental Health, 19 MCSR 328 (2006); Konikowski v. Department of Corrections, 10 MCSR 79 (1997); Springer v. Town of Saugus, 8 MCSR 154 (1995).

The Commission accepts a Claim of Appeal as timely filed, so long as the appeal is actually received or is postmarked within the prescribed deadline for filing. See 801 CMR 1.00 (4)(b); Town of Falmouth v. Civil Service Comm'n, 441 Mass. 814, 822-23 (2006). Here, however, there is no convincing evidence that the Appellant's claim of appeal was actually filed nor postmarked within the requisite 10 day period applicable to disciplinary appeals under G.L.c.31, §43.

Here, the parties have stipulated that the Appellant received notice of his termination on May 25, 2011, and that his appeal was filed on June 23, 2011—a period of nineteen business days after he received notice of his termination. Even if the appeal was post-marked prior to June 23, 2011, the appeal form submitted by the appellant is dated June 22, 2011—18 business days after he presumably received notice of his termination (See Town of Falmouth v. Civil Service Commission, 447 Mass. 814, 822 (2006)). The appeal, although filed was not done so in a timely manner and must be dismissed, as the Commission lacks jurisdiction to hear an untimely filed appeal.

For the above stated reasons the City's Motion to Dismiss is allowed and the Appellant's appeal, Docket No. D1-11-198 is hereby *dismissed*.

Civil Service Commission,

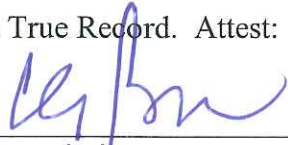


Daniel M. Henderson

Commissioner

By vote of the Civil Service Commission (Bowman, Chairman, Henderson, Stein and McDowell, Commissioners) [Marquis absent] on July 28, 2011.

A True Record. Attest:



Commissioner

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)(1), 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 does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of a Civil Service Commission's final decision.

Under the provisions of MGL c. 31 S. 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A 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

S.L. Romano- Appellant
Deirdre Jacobs Hall, Atty. - City of Quincy