

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

RAYMOND MASON,

Appellant

v.

DEPARTMENT OF CORRECTION,

Respondent

Docket Nos: D-15-53

Appearance for Appellant:

Raymond Mason, Pro Se

Appearance for Respondent:

Heidi D. Handler, Esq.
Department of Correction
1 Industries Drive, P.O.Box 946
Norfolk, MA 02056

Commissioner:

Paul M. Stein

DECISION ON MOTION TO DISMISS

The Appellant, Raymond Mason, brought this appeal to the Civil Service Commission (Commission), pursuant to G.L.c.31, §§41-43, challenging decisions of the Department of Correction (DOC) claiming procedural error in the DOC's notice of charges of possible discipline against him. The DOC moved to dismiss the appeal on the grounds that the DOC had not yet conducted an appointing authority hearing on the charges and no discipline has been imposed. The Appellant opposed the motion, primarily complaining about a lack of adequate notice of the nature of the charges against him. On April 14, 2015, the Commission held a pre-hearing conference and hearing on the Motion to Dismiss.

A motion to dismiss an appeal before the Commission, in whole or in part, may be filed pursuant to 801 C.M.R. 1.01(7)(h). These motions are decided under the well-recognized standards for summary disposition as a matter of law, i.e., "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 Board, 18 MCSR 216 (2005)

The undisputed facts in this matter establish that, on or about February 4, 2015, DOC notified Correction Officer Mason that DOC would convene a “Commissioner’s” (appointing authority) hearing pursuant to G.L.c.31,§41, on February 26, 2014, relative to certain charges that he had violated DOC rules and regulations on May 9, 2014 and August 8, 2014. In accordance with its usual practice, DOC simultaneously provided a copy of the Notice of Charges to Correction Officer Mason’s union representative, along with a complete copy of the Administrative Package and a CD of all investigative interviews. At the time, DOC did not provide those additional documents to Correction Officer Mason directly, believing he would be represented by the union, but has represented that it intends to provide them forthwith. The original hearing date has been postponed twice and has not yet been rescheduled.

In view of the foregoing, it is apparent that no form of disciplinary action has yet been taken against Correction Officer Mason as described within G.L.c.31,§41. As to the adequacy of the February 4, 2014 notice of charges, the letter expressly identified the dates of the alleged offenses, described the nature of the specific misconduct that Correction Officer Mason was alleged to have committed (leaving post without authority, leaving institution without authority, insubordination to a captain, and bringing an

unauthorized recording device into the institution.) The February 4, 2014 letter clearly suffices as the notice required by G.L.c.31,§41. Moreover, DOC represents that, although not required by law, it also will forthwith provide Correction Officer Mason copies of the materials given to his union representatives. Nothing, of course, prevents Correction Officer Mason from obtaining those documents from the union representative himself, even if he does not intend to seek union representation at the hearing but will represent himself. Accordingly, even if the notice of charges was insufficient (which it is not), Correction Officer Mason has suffered no prejudice from any such procedural error which would entitle him to any relief from the Commission at this time.

Accordingly, for the reasons stated above, DOC's Motion To Dismiss is *allowed*, and the appeal of the Appellant, Raymond Mason, under Docket No. D-15-53, is *dismissed*.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein

Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell & Stein, Commissioners) on April 30, 2015.

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.

Notice to:

Raymond Mason (Appellant, Pro Se)

Heidi D. Handler, Esq. (for Respondent)