

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

EDWARD McCORMACK,
Appellant

v.

Docket No.: D1-12-308

**MASSACHUSETTS DEPARTMENT
OF STATE POLICE,**
Respondent

Appellant's Attorney:

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Acton, MA 01720-5517

Respondent's Attorney:

Sean W. Farrell, Esq.
Associate Chief Legal Counsel
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Framingham, MA 01702

Commissioner:

Cynthia A. Ittleman, Esq.

RULING ON RESPONDENT'S MOTION FOR RECONSIDERATION

A Decision was rendered in this case on December 13, 2013. The Respondent filed a Motion for Reconsideration ("Motion") on December 24, 2013. The Motion, "... requests that the Commission reconsider and/or clarify its order of dismissal dated December 20, 2013 only insofar as it directs the Department to compensate the Appellant for a specified number of days retroactive to [April] 3, 2008¹. The Appellant filed an opposition to the Motion ("Opposition") on January 10, 2014. A hearing on the Motion was held on January 30, 2014.

The Standard Rules of Adjudicatory Practice and Procedure, at 801 CMR 1.01(7)(l), provide, in pertinent part,

¹ As the Appellant pointed out in his Opposition, and as indicated later in the Respondent's Motion, the retroactive date in the conclusion of the Decision was August 3, 2008 but should have been April 3, 2008.

“After a decision has been rendered and before the expiration of the time for filing a request for review or appeal, a Party may move for reconsideration. 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 decided the case. ...”

The Motion was timely filed. In light of the Motion, the Opposition, and arguments made at the hearing on the Motion, the Commission’s Decision remains intact with the following exceptions:

1. the requirement that the Respondent reimburse the Appellant retroactive to August 3, 2008² is stricken³;
2. clarify that the appeal is granted only insofar as consistent with the determinations in the Decision that there was no just cause to discipline the Appellant for the following Charges and Specifications, including instances in which related evidence was excluded according to the ruling on the Appellant’s Motion in Limine⁴:

a. IAS#2011-0016

- i. Charge #3, Specification 1, General Conduct (Rule 5.3), and Charge 4, Specification 1, Conformance to Laws (Rule 5.4), both in connection with allegations that McCormack took Ms. A across state lines to New Hampshire in violation of her probation and that McCormack should be suspended without pay for ten (10) days (two concurrent ten-day periods);

² The Decision conclusion referenced August 3, 2008 which should be corrected to April 3, 2008.

³ The Appellant was suspended without pay as of April 3, 2008 following a “duty status” hearing or meeting, which suspension continued until he was terminated November 6, 2012. Appellant’s counsel represented that duty status hearings or meetings generally perform a very limited function, as it did in this case. Pursuant to G.L. c. 22C, s. 10, the appointment of State Police officers is “exempt” from the provisions of G.L. c. 31; the classification of such positions is subject to G.L. c. 30, s. 45. However, G.L. c. 22C, s. 13 provides that, “Any uniformed member of the state police who has served for 1 year or more and against whom charges have been preferred shall be tried by a board to be appointed by the colonel or, at the request of the officer, may be tried by a board consisting of the colonel. Any person aggrieved by the finding of such a trial board may appeal the decision of the trial board under sections 41 to 45, inclusive of chapter 31” As evidenced by the State Police Trial Board’s decision in this case, the Trial Board can also suspend an officer. Thus, there is an anomaly wherein a State Police officer may be suspended without pay via a Trial Board and seek a remedy at the Commission but if he is suspended without pay via a duty status hearing, he is not authorized to seek a remedy here and his suspension may, as in this case, extend for years. General Laws c. 30, s. 59 permits the suspension of certain employees (including the Appellant) while they are under indictment, during which time they are not to be compensated. However, if the criminal charges are “terminated without a finding or verdict of guilty,” the suspension is removed and the person shall receive pay, *inter alia*, for the period of his suspension. The Appellant filed a claim in Superior Court under G.L. c. 30, s. 59 and lost; he filed an appeal in the Appeals Court and the parties await a ruling in this regard. Since the Appellant was suspended in 2008 but not indicted until 2009, it is unclear to this Commissioner the extent of the remedy that may be available to him if the Appeals Court rules in his favor. As noted in the Decision, note 4, the Appellant also sued the Respondent for injured leave and has sought a disability retirement; the status of such efforts is unknown.

⁴ This does not include the Charges and Specifications for which the Respondent’s Trial Board found the Appellant “not guilty.”

b. IAS#2008-0011

- i. Charge 4, Specification 3, Truthfulness (Rule 5.27.3), alleging that McCormack made false statements regarding his medical condition from March 2002 through August 2002 and that McCormack's employment should be terminated therefor;
- ii. Charge 1, Specification 1, Unbecoming Conduct (Rule 5.2), alleging that McCormack fraudulently obtained thousands of controlled substances and became addicted to them, preventing his return to full duty, and that McCormack should be suspended without pay for thirty (30) days (concurrent with the suspension for Charge 2, Specification 1);
- iii. Charge 2, Specification 1, General Conduct (Rule 5.3), alleging that McCormack fraudulently obtained thousands of controlled substances, which resulted in a criminal complaint against him, and that McCormack should be suspended without pay for thirty (30) days (concurrent with the suspension for Charge 1, Specification 1); and
- iv. Charge 3, Specifications 1 through 17 and 19, Conformance to Laws (Rule 5.4), alleging that McCormack obtained prescription controlled substances in violation of G.L. c. 94C on divers dates and that McCormack's employment should be terminated therefor; and
- v. Charge 4, Specification 3, Truthfulness (Rule 5.27), alleging that McCormack authored false statements relative to his medical condition and that McCormack's employment should be terminated therefor.

3. the Respondent shall reimburse the Appellant for the suspension of two concurrent ten (10) day periods pursuant to 2.a.i., *supra*, and for the suspension of two concurrent thirty (30) day periods pursuant to 2.b.ii. and iii., *supra*, for a total reimbursement of forty (40) days.

Civil Service Commission

Cynthia A. Ittleman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, and Stein, McDowell, Commissioners;) on February 6, 2014.

A true record. Attest:

Commissioner

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:

Joseph P. Kittredge, Esq., Esq. (for Appellant)
Sean W. Farrell, Esq. (for Respondent)