

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**  
100 Cambridge Street, Suite 200  
Boston, MA 02114  
(617) 979-1900

**MATTHEW McDEVITT,**  
*Appellant*

v.

D-21-227

**DEPARTMENT OF STATE POLICE,**  
*Respondent*

**ORDER OF DISMISSAL**

The Appellant, Matthew McDevitt, pursuant to G.L. c. 31, §§ 41-43 and G.L. c. 22, § 13 as amended by Chapter 43 of the Acts of 2002 (the Special Act providing limited civil service protections to uniformed members of the Department), timely filed an appeal with the Civil Service Commission (Commission) on November 22, 2021, contesting the decision of the Department of State Police (Department) to terminate him from his position as a Trooper regarding non-compliance with [Executive Order 595](#), which required all executive branch employees to demonstrate that they had “received COVID-19 vaccination and [to] maintain full COVID-19 vaccination as a condition of continuing employment.”

Mr. McDevitt filed appeals relating to this matter with the Massachusetts Commission Against Discrimination (MCAD) and before the Superior Court. On October 24, 2022, MCAD issued a Dismissal and Notice of Right to Appeal.

Civil service law allows for a hearing before the Commission “[i]f a person aggrieved by a decision of an appointing authority made pursuant to [Section 41] shall, within ten days after receiving written notice of such decision, appeal in writing to the commission . . . .” G.L. c. 31, § 43. *See also Falmouth v. Civil Serv. Commission*, 447 Mass. 814, 817 (2006).

Section 43 further provides that “[i]f the commission determines that such appeal has been previously resolved or litigated with respect to such person, in accordance with the provisions of section eight of chapter one hundred and fifty E, *or is presently being resolved in accordance with such section, the commission shall forthwith dismiss such appeal.*” Chapter 150E, § 8 provides that parties may agree that final and binding arbitration may be invoked in the event of any dispute concerning the interpretation or application of a collective bargaining agreement.

It is undisputed that Mr. McDevitt is concurrently pursuing arbitral relief for the same matter before the Commission—his termination, with the issue being whether it was for just cause. In accordance with Section 43, the Commission dismisses Mr. McDevitt’s appeal presently scheduled for an October 25, 2023 evidentiary hearing date.

Notwithstanding the within dismissal, the courts have recognized that agencies “have inherent power to reopen their concluded proceedings in compelling situations as justice may require.” *Covell v. Department of Social Services*, 42 Mass. App. Ct. 427, 434 (1997).

The Commission was presented with a similar matter in *Ung v. Massachusetts Civil Serv. Comm’n et al.* (Suff. Sup. Ct., Jul. 19, 2012). The Superior Court upheld the Commission’s decision to reopen the Appellant’s complaint, after he had withdrawn a timely-filed appeal due to the erroneous belief that the collective bargaining agreement permitted him to arbitrate his termination for just cause.

Thus, in the event that the arbitrator lacks jurisdiction to hear Mr. McDevitt on the matter of just cause for his termination, the Commission *may* exercise its discretion in reopening the matter in the compelling circumstances of a renewed claim for Section 43 review when other avenues of recourse have been foreclosed.

For all of the above reasons, the Appellant's appeal is hereby *dismissed*.

Civil Service Commission

/s/ Angela C. McConney  
Angela C. McConney  
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on October 19, 2023.

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 C.M.R. § 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 as stated below.

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 from the effective date specified in 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 sent to: Joseph Spinale, Esq.  
Siobhan Kelly, Esq.