

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

PATRICIA MCGOLDRICK,

Appellant

v.

D1-16-165

BOSTON POLICE DEPARTMENT,

Respondent

Appearance for Appellant:

William Broderick, Esq.
1194 High Street
Westwood, MA 02090

Appearance for Respondent :

Nicole Taub, Esq.
Office of the Legal Advisor.
Boston Police Department
One Schroeder Plaza
Boston, MA 02120

Commissioner:

Paul M. Stein

DECISION ON RESPONDENT’S REVISED MOTION FOR SUMMARY DECISION

The Appellant, Patricia McGoldrick, acting pursuant to G.L.c.31, §41-§43, appealed to the Civil Service Commission (Commission), asserting that she was unlawfully terminated from her position of Police Officer with the Boston Police Department (BPD).¹ At the pre-hearing conference held on November 1, 2016, the BPD filed a Motion to Dismiss the appeal on the grounds that the Commission lacked jurisdiction because the Appellant was not terminated but had voluntarily resigned and because the appeal was untimely. (*Exh.1*) The Commission took no action on the motion and ordered an evidentiary hearing on the factual issue of whether the Appellant resigned or was terminated. (*Procedural Order 11/3/2016*) On December 28, 2016,

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

BPD subsequently filed a Motion for Summary Decision that reiterated its position and further alleged that any dispute over whether the Appellant resigned or not was a matter of contract law over which a judicial forum, but not the Commission, had jurisdiction. (*Exh.2*) On January 19, 2017, the BPD filed a Revised Motion for Summary Decision, restating its position and introducing further documents on the issue of the resignation and untimeliness. (*Exh.3*)

On January 23, 2017, after hearing argument from counsel on the pending motions, I took further documentary and testimonial evidence proffered by the parties in support of, and in opposition to, the BPD's motions. Nineteen additional exhibits (*Exh.4 through Exh.22*) were received in evidence. The Appellant called one witness and testified on her own behalf.

FINDINGS OF FACT

Based on the submissions of the parties, including all documents, affidavits, memoranda, exhibits and testimony, I find the following material facts are not in dispute:

1. The Appellant, Patricia McGoldrick, who began as a BPD Police Cadet in 1987, was appointed as a BPD Police Officer in 1991. Since December 2008, Officer McGoldrick was assigned to the BAT/Firearms Licensing Unit at BPD Headquarters where she was tasked with conducting background investigations of applicants seeking Firearms Licenses from the BPD. She is a member of the Boston Police Patrolman's Association. (BPPA). (*Exh. 3 [BPD's Revised Motion, Exh.12]; Testimony of Appellant*)²

2. Until the incident which led to this appeal, Officer McGoldrick had never been the subject of formal disciplinary action by the BPD. (*Exh.3 [BPD's Revised Motion, Exh.12]; Testimony of Appellant*)

² Officer McGoldrick was not required to carry a firearm, and typically did not carry a firearm, incident to her duties with the Firearms Licensing Unit. She did carry a firearm while performing details and, on occasion, including on the day of the incident involved in this appeal, brought her firearm to work after finishing the detail. (*Exh. 6*)

3. On November 12, 2015, the BPD Internal Affairs Division (IAD) opened an administrative investigation of an on-duty confrontation between Officer McGoldrick and another Police Officer. Pending completion of the investigation, Officer McGoldrick was placed on administrative leave and required to surrender her firearm. (*Exh.3 [BPD's Revised Motion, Exh.12], Exhs.12 & 13; Testimony of Appellant*)

4. On November 20, 2015, Appellant was interviewed by IAD. (*Exh.3 [BPD's Revised Motion, Exhs. 2 & 12]*)

5. Effective December 14, 2015, Officer McGoldrick was released from Administrative Leave and returned to full duty with the Licensing Unit. (*Exh.3[BPD's Revised Motion, Exh.12], Exh.15; Testimony of Appellant*)

6. On or about March 2, 2016, BPPA President Patrick Rose learned that the investigation into the November 12, 2015 incident was being reopened. He understood the reason for this action was taken because the Police Commissioner had concluded that Officer McGoldrick's behavior could be considered "felonious misconduct" that would warrant termination. Upon learning of this development, BPPA President Rose became upset and attempted to argue that the "Department has it wrong" because there was no factual or legal basis to find Officer McGoldrick had any "criminal intent" that would be required to establish a charge of criminal assault. His argument did not succeed. (*Exh. 5; Testimony of Rose*)

7. On March 3, 2016, pursuant to Commissioner Evans' orders, Officer McGoldrick was again relieved from duty and returned to paid administrative leave status, pending further investigation of the November 12, 2015 incident. (*Exh.3 [BPD's Revised Motion, Exh.12], Exhs 5 & 16; Testimony of Appellant*)

8. By e-mail letter dated March 9, 2016, the attorney who then represented Officer McGoldrick (legal counsel retained by the BPPA to represent its members), wrote to Police Commissioner Evans. The letter requested a meeting to plead Officer McGoldrick's case directly to the Police Commissioner and stated, in part:

“. . . Officer McGoldrick had a brief but very serious lapse of judgment on November 12, 2015 when she removed her firearm from her holster and, according to two witnesses raised this firearm in the direction of [another BPD officer] after [that officer] made a snide comment regarding Ms. McGoldrick's ex-husband. Officer McGoldrick was wrong and is well-aware of the severity of her actions. . . .”

(Exh.6)

9. The attorney's letter went on to take issue with what he characterized as the BPD's expected application of a “litmus test” that requires termination of any officer who engaged in “felonious conduct”, whether or not ever convicted, as both legally improper and factually flawed as applied to Officer McGoldrick, who had consistently explained that she intended her actions solely as a “joke”. The letter also pointed to extenuating circumstances in Officer McGoldrick's case, including her long BPD career and her recent divorce which left her as a single mother to care for three children, two of whom have disabilities. (*Exhs.6 & 16*)

10. Through several email exchanges, Amy Condon, BPD's Legal Advisor, informed Officer McGoldrick's attorney that communications from him must be directed to her or to another member of the Legal Advisor's staff. She offered to meet with the attorney, stating that while “termination is certainly on the table”, the Police Commissioner “is not trying to pre-determine an outcome, but to be up front about where he is on any given matter, and set exceptions [sic].” She also noted that other officers who faced termination had “chosen to resign/retire” and “[o]bviously that is the best case scenario to avoid unnecessary litigation.” (*Exh.7*)

11. On May 9, 2016, the IAD sustained the complaint and promulgated Specifications against Officer McGoldrick charging her with violation of BPD Rules 102,§4(Unreasonable

Judgment),102,§23 (Untruthfulness), 102,§35 (Conformance to Laws) and 303,§5 (Pointing Firearms). *Exh.3 [BPD's Revised Motion, Exhs. 1 & 2]*)

12. By letter dated June 28, 2016, Police Commissioner Evans informed Officer McGoldrick that a disciplinary hearing on the charges against her would be held before Deputy Superintendent Lydon on July 20, 2016. (*Exh.3[BPD's Revised Motion, Exh.3]*)

13. Some time prior to the disciplinary hearing, counsel for the BPD and Officer McGoldrick negotiated an agreement that would allow Ms. McGoldrick to resign and retire from the BPD in lieu of proceeding with the disciplinary process. Officer McGoldrick wanted a future effective date in January 2017 to give her additional retirement credit, but the Department insisted on an effective date no later than October 1, 2016. After thinking it over, Ms. McGoldrick acquiesced. (*Exh.3 [BPD's Revised Motion, Exh.4]; Testimony of Appellant & Rose*)

14. On July 18, 2018, Officer McGoldrick hand-delivered a letter to BPD, which stated:

“This correspondence is to notify you that effective October 1, 2016, I am resigning from my position as a Police Officer with the Boston Police Department”

(*Exh.3 [BPD's Revised Motion, Exh.6], Exh. 8; Testimony of Appellant*)

15. By notice dated July 19, 2016, the disciplinary hearing on the charges pending against Officer McGoldrick was cancelled. (*Exh.3[BPD's Revised Motion, Exh.5]*)

16. Police Commissioner's Personnel Order PO 16-232, dated September 12, 2016 and published on or about October 12, 2016, states:

“The resignation of Police Officer Patricia McGoldrick, ID# ----- assigned to BAT/Administrative Leave Section Org. #36134 after being presented is hereby accepted with charges pending effective, Saturday, October 1, 2016.”

(*Exhs.4 & 18*)³

³ At the Commission hearing, the Appellant contended that the numerical sequencing of PO 16-232 and other Personnel Orders, suggested that PO 16-232 was actually back-dated on or about October 12, 2016, after the dispute over the resignation which is the subject of this appeal had arisen. Although there are some inconsistencies in the numerical sequencing of POs, issue dates, and effective dates of the actions described in the respective POs, nothing in the evidence presented implies that PO 16-232 or any other PO was not issued by the BPD in the ordinary course of business. (*Exhs. 4, 18 & 19*)

17. On September 23, 2016, after communicating a “heads up” with BPD’s Legal Advisor, Officer McGoldrick’s attorney sent a letter to her, copied to BPPA President Rose and Officer McGoldrick, which states:

“I am writing to you asking that the July 18, 2016 resignation of Officer McGoldrick which becomes effective on October 1, 2016 be rescinded at Officer McGoldrick’s request. She is aware that rescinding this resignation will result in the rescheduling of her Departmental trial board, and has requested that we withdraw and rescind her resignation that is slated to become effective on October 1, 2016.”

(Exh.3 [BPD’s Revised Motion, Exh.9], Exh. 10)

18. On September 27, 2016, BPD Superintendent Kevin Buckley informed BPPA President Rose that Police Commissioner Evans was not inclined to accept Officer McGoldrick’s request to revoke her resignation. BBPA President Rose, in turn, informed Officer McGoldricks’s attorney to that effect. *(Exh.3[BPD’s Revised Motion, Exh.9]; Testimony of Rose)*

19. On September 28, 2016, after communicating by email with the BPD Legal Advisor, Officer McGoldrick’s attorney informed her by e-mail:

“Both Pat and I have spoken to the Department, with Pat speaking to Superintendent Buckley and myself speaking to Attorney Amy Ambarik [Condon]. They have both advised that Commissioner Evans is not going to let you rescind your resignation.”

(Exh.3 [BPD’s Revised Motion, Exh.9], Exh.20)

20. Also, on or about September 28, 2016, the BPD sent an “Absence and Termination Notice/Form 56” to the Massachusetts Human Resources Division (HRD), which HRD received on October 3, 2016, which informed HRD that Officer McGoldrick had resigned, with charges pending, effective October 1, 2016. *(Exhs.11 & 17)*

21. By email on September 30, 2016, in response to Officer McGoldrick’s correspondence the day before, the attorney who had represented her informed her that the BPPA could no longer represent her interests but, should she wish to challenge the BPD’s refusal to accept the withdrawal of her resignation, that she was free to do so individually. *(Exh. 21)*

22. By email and letter dated October 2, 2016, Ms. McGoldrick wrote to BPPA President Rose and, among other things, requested that the BPPA “commence the necessary actions to appeal the City’s unlawful termination of my employment as a Boston Police Officer. As this case involves matters outside Attorney Anderson’s expertise, please arrange for representation by a firm specializing in administrative and employment law.” (*Exh. 22*)

23. By letter dated October 7, 2016 to Police Commissioner Evans, Ms. McGoldrick demanded a written reply to her attorney’s September 23, 2016 letter that asked that her resignation be rescinded. (*Exh.3 [BPD’s Revised Motion, Exh.10]*)

24. On October 12, 2016, BPD’s Director of Human Resources, replied as follows:

“Your letter dated October 7, 2016 requesting the Police Commissioner to rescind his acceptance of your resignation has been received. As your attorney . . . relayed to you, the Police Commissioner accepted your resignation upon receipt, and you are therefore considered resigned from your position as of October 1, 2016.”

(*Exh.3 [BPD’s Revised Motion, Exh.10]*)

25. On October 17, 2016, Ms. McGoldrick filed this appeal. She stated as grounds for her appeal that she had agreed to resign after being “subjected to numerous threats from [Police Commissioner] Evans of being stripped of my retirement rights” and, upon learning on or about September 22, 2016 that “my retirement was not in jeopardy, I rescinded my resignation in writing.” At the Pre-Hearing Conference in this appeal, Ms. McGoldrick, through new counsel, contended that she resigned believing she was in “criminal jeopardy with the consequence of losing her retirement rights.” (*Claim of Appeal; Exh.3 [BPD’s Revised Motion, Exhs.11 & 12]*)

26. BPD supported its Revised Motion to Dismiss with numerous affidavits from every BPD officer or attorney with any involvement in Ms. McGoldrick’s case, all of whom expressly denied making any threats to seek to charge Ms. McGoldrick criminally or to coerce her resignation. (See *Exh.3[BPD Revise Motion,Exhs.13 through 25], Exh. 21*). At the Commission

hearing, the Appellant did not proffer any direct evidence of any specific threat or identify any particular BPD officer or attorney who allegedly made such threats or attempted to coerce her into resigning, save for vague, mostly totem pole hearsay about what she and BPPA President heard that unknown persons were saying on the “Fourth Floor” [where BPD Command Staff is located]. (*Testimony of Appellant & Rose*)

STANDARD OF REVIEW

An appeal before the Commission may be disposed of summarily, in whole or in part, pursuant to 801 C.M.R. 1.01(7)(g) and 801 C.M.R.1.01(7) (h) when, as a matter of law, the undisputed material facts affirmatively demonstrate that there is “no reasonable expectation” that a party can prevail on at least one “essential element of the case”. *See, e.g., Milliken & Co., v. Duro Textiles LLC*, 451 Mass. 547, 550, fn.6, (2008); *Maimonides School v. Coles*, 71 Mass.App.Ct. 240, 249 (2008); *Lydon v. Massachusetts Parole Board*, 18 MCSR 216 (2005)

APPLICABLE CIVIL SERVICE LAW

The Commission’s jurisdiction over appeals by employees “discharged, removed . . . [or] laid off” in violation of civil service law comes within G.L.c.31,§42, which provides, in relevant part:

“Any person who alleges that an appointing authority has failed to follow the requirements of section forty-one [requiring prior notice and hearing] 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 said 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.”

“A person who files a complaint under this section may at the same time request a hearing as to whether there was just cause for the action of the appointing authority in the same manner as if he were a person aggrieved by a decision of an appointing authority made pursuant to all the requirements of section forty-one. . . .”

The ten-day filing deadline is jurisdictional and must be strictly enforced. See, e.g., Town of Falmouth v. Civil Service Comm'n, 64 Mass.App.Ct. 606, 608-609 (2005), rev'd other grounds, 447 Mass.814 (2006); Poore v. City of Haverhill, 29 MCSR 260 (2016); Stacy v. Department of Developmental Services, 29 MCSR 164 (2016); Volpicelli v. City of Woburn, 22 MCSR 448 (2009); Williamson v. Department of Transitional Assistance, 22 MCSR 436 (2009).

The Commission also consistently holds that a civil service employee who voluntarily chooses to resign employment is not entitled to the benefits of notice and hearing under G.L.c.31, Sections 41, and has no right to appeal to the Commission under Sections 42 or 43, even though the resignation was prompted by impending discipline or discharge of the employee, unless the employee establishes that the resignation was induced by fraud, coercion or duress. See, e.g., Spencer v. Massachusetts Dep't of Correction, 28 MCSR 592 (2015) and cases cited, aff'd sub nom Spencer v. Civil Service Comm'n, Suffolk CV2015-03723 (Sup.Ct. 2016), appeal pending, 2016-P-1455; cf. Walsh v. City of Worcester, 24 MCSR 234 (2011), aff'd, Worcester CV2011-00978 (2012) (Commission found that appellant, in fact, did not resign)

ANALYSIS

The applicable law and the undisputed facts establish two grounds upon which the BPD's Revised Motion for Summary Decision must be granted and this appeal dismissed: (1) the Commission lacks jurisdiction to accept the appeal as it was untimely; and (2) Ms. McGoldrick has failed to establish any "reasonable expectation" that the BPD violated any of her civil service rights by accepting her voluntary resignation.

The Appeal is Untimely.

Whether Ms. McGoldrick's October 17, 2016 appeal to the Commission is timely or not turns on the date on which she first "knew or should have known" of the BPD's illegal act(s)

which she now alleges have infringed her civil service rights. If the applicable date that triggered the ten-day period to appeal is October 1, 2016 or later, her appeal is timely; if the applicable trigger date is prior to October 1, 2016, the appeal is untimely.⁴

The undisputed facts establish the following timeline of events:

- July 18, 2016 – Officer McGoldrick submits a letter of resignation, effective October 1, 2016
- July 19, 2016 – Disciplinary hearing on charges against Officer McGoldrick is cancelled
- Sept. 23, 2016 – Officer McGoldrick’s attorney asks that her resignation be rescinded
- Sept 27, 2016 – Officer McGoldrick’s attorney learns from BPPA President Rose that BPD Superintendent Buckley informed Rose that the BPD was not inclined to rescind her resignation
- Sept. 28, 2016 – Officer McGoldrick’s attorney confirms with the BPD Legal Advisor that the information he received from BPPA President Rose was correct and the attorney informs Officer McGoldrick by email that “Commissioner Evans is not going to let you rescind your resignation.”
- Sept. 30, 2016 – Officer McGoldrick’s attorney informs her that neither he nor the BPPA will continue to represent her
- Oct. 1, 2016 – Effective date of Ms. McGoldrick’s July 1, 2018 resignation
- Oct. 2, 2016 – Ms. McGoldrick demands that BPPA retain new counsel to represent her
- Oct. 3, 2016 – HRD received a Form 56 from BPD, dated September 28, 2016, reciting that Officer McGoldrick had resigned, effective October 1, 2016, with “charges pending”.
- Oct. 7, 2016 – Ms. McGoldrick writes to BPD requesting a response to her attorney’s September 23, 2016 letter
- Oct. 12, 2016 – BPD responds to Ms. McGoldrick’s Oct. 7, 2016 letter reciting that BPD had accepted her resignation “upon receipt” and considered her resigned as of October 1, 2016. BPD publishes PO 16-232, dated Sept. 12, 2016, reciting that Police Commissioner Evans has “hereby accepted” Officer McGoldrick’s resignation with “charges pending.”

BPD contends that the ten-day window to appeal to the Commission began on July 18, 2016, when Officer McGoldrick submitted the letter of resignation that she now contends was unlawfully procured. Ms. McGoldrick contends that the ten-day window began on October 7,

⁴ October 1, 2016, being a Saturday, and October 10, 2016 being a legal holiday (Columbus Day), the tenth business day after October 1, 2016 was October 17, 2016.

2016, when BPD confirmed in writing that her resignation would not be rescinded. Alternatively, Ms. McGoldrick suggests that the trigger date cannot be earlier than the effective date of her resignation, i.e. October 1, 2016. For the reasons explained below, I conclude that none of these dates are the applicable trigger. Rather, the undisputed evidence establishes that Ms. McGoldrick “knew or should have known” of the BPD’s alleged illegal acts of which she now complains by September 23, 2016 (as to the BPD’s alleged illegal coercion of her resignation) and by September 28, 2016 (as to the BPD’s alleged illegal refusal to rescind the resignation). As Ms. McGoldrick’s appeal was filed more than ten days after she was placed on notice of her claim, the appeal is untimely and must be dismissed for lack of jurisdiction.

First, as to Ms. McGoldrick’s claim that her July 18, 2016 resignation was unlawfully procured by fraud, coercion or duress, the BPD argues that she knew of that claim when she resigned and her right to claim that the resignation was “involuntary” expired ten business days thereafter. That argument does have some force, but it also seems logically untenable to presume that an employee who, by definition, was allegedly unlawfully coerced into resigning must simultaneously be deemed to know that she has the legal right to challenge the resignation and be able to act within ten days in order to preserve her rights to a hearing before the Commission. In this case, however, I do not need to decide whether the trigger began on July 18, 2016, as the undisputed facts indicate that Ms. McGoldrick did act to assert her claim that her resignation was unlawfully procured when she realized (on September 22, 2016, she said) that an unfavorable outcome of the pending disciplinary charges would not, in fact, put her retirement “in jeopardy” as she claimed BPD had told her. Armed with this information, on September 23, 2016, she sought to exercise her right to rescind the resignation and agreed to proceed with the disciplinary process on the charges that had been asserted against her. Thus, it is not disputed

that the force of the prior coercion, fraud or duress under which she alleges that she suffered, if any, and which led to her resignation, had dissipated by September 23, 2016. I conclude that date is the point at which it cannot be disputed that she was on notice of the claim she has now asserted and had the capacity and, therefore, the statutory duty, to act accordingly to preserve her right to appeal to the Commission within ten business days thereafter.

Second, to the extent that Ms. McGoldrick alleges that the BPD acted unlawfully under civil service law by refusing to accept the rescission of her resignation, I conclude that she knew or should have known of that allegedly unlawful act no later than September 28, 2016, when she was unequivocally informed that BPD would not rescind the resignation. I am not unsympathetic to the plight in which she then found herself, with her union and attorney advising her that it was futile to pursue her claims, leaving her to find new counsel on short notice, but those circumstances cannot override the jurisdictional requirement to take immediate action to preserve her rights, if any, to an administrative appeal to the Commission. That is a statutory mandate that the Commission cannot override.⁵

The Appellant Showed No “Reasonable Expectation” of Proving a Coerced Resignation.

Although this appeal must be dismissed as untimely, it bears notice that, as to the underlying merits of Ms. McGoldrick’s contention that her resignation was “involuntary”, she proffered no credible evidence that presented any material disputed issue of fact on that issue. In support of its Revised Motion for Summary Decision, the BPD proffered substantial evidence, including ten

⁵ It should be noted that, in contrast to the short limitations period established for appeal to the Commission, which, standing alone, may seem draconian as applied to a case such as the present one, the legislature also provided a longer, and less stringent rule for bringing a civil action for these same violations, as an alternative to administrative appeal to the Commission, which statute prescribes a six-month limitations on such judicial proceedings and (unlike the administrative appeal statutes) expressly authorizes the supreme judicial court and the superior court to extend even further the time to bring such a civil action “for good cause shown.” G.L.c.31, §42, ¶3. See generally, Jamieson v. Department of Correction, 91 Mass.App.Ct. 1108 (Rule 1:28) (2017), citing Mello v. Mayor of Fall River, 22 Mass.App.Ct. 974, rev.den. 398 Mass. 1104 (1986)

sworn affidavits from the Police Commissioner and nine other BPD personnel known to have had contact with Officer McGoldrick during the investigation of the November 12, 2015 incident and the circumstances leading up to her resignation on July 18, 2016. Each of these affidavits expressly assert that, at no time did the affiant ever threaten Officer McGoldrick with criminal charges or make threats or any statements of a coercive nature to induce her to resign. Neither Ms. McGoldrick nor BPPA President Rose could offer any percipient source of evidence that any of these affiants, or any other BPD personnel, made such threats or coercive statements.

Viewing the record most favorably to Ms. McGoldrick, she was aware only of unattributed impressions and advice received through her BPPA representative, her counsel, or other unidentified third party sources, to the effect that someone heard someone on the “Fourth Floor” (Command Staff Offices) say something that Ms. McGoldrick construed “in her mind” to mean that, if she fought her termination and went through with her “trial board” (disciplinary hearing), BPD would then also pursue “criminal charges” against her. Nowhere from the documentation or testimony proffered by Ms. McGoldrick or President Rose does any remote indicia emerge of admissible evidence, or any basis upon which any inference could be drawn, that anyone at BPD actually threatened to prosecute Ms. McGoldrick for any crime or attempted to tie her resignation to the possibility of prosecution. The latter, of course, could, itself constitute a criminal offense.

Rather, the evidence, construed favorably to Ms. McGoldrick, points solely to the BPD’s intent to reopen the disciplinary investigation based on the view of the Police Commissioner that her inappropriate use of her firearm (“felonious misconduct”) and the apparent discrepancies in her statements to investigators (untruthfulness) were both infractions of BPD rules for which the BPD followed a zero tolerance that requires termination. The BPPA tried, unsuccessfully to

argue that the BPD “got it wrong”, but, eventually concluded it was futile to expect that the BPD would be persuaded otherwise, so advised Officer McGoldrick and, after thinking it over, she accepted the BPD’s offer to let her resign. Neither Ms. McGoldrick nor BPPA President Rose proffered any facts to controvert sworn statements of BPD officials with percipient knowledge of the colloquy between or among the BPPA, the BPD and Officer McGoldrick regarding her pending disciplinary “charges” which they asserted never strayed into the illegitimate realm of threatening use of the criminal justice system in any way to induce her resignation.

Similarly, viewing the evidence in the light most favorable to Ms. McGoldrick, she has no reasonable expectation to prove that her resignation was the result of the BPD’s leading her to believe that, whether or not she was actually charged criminally, if she went through with the disciplinary proceedings and that resulted in a termination, her retirement would be “in jeopardy” solely for that reason. She named no BPD official as the source of that conclusion, and proffered no evidence of any specific statement that “they” made to that effect. As Ms. McGoldrick now agrees, such conclusion was legally untenable. See, e.g., G.L.c.31,§50; G.L.c.32,§15. Her alleged initial mistaken legal conclusion, if any, does not rise to the level of creating a bona fide issue of disputed fact necessary to establish an involuntary resignation due to fraud, coercion or duress, as required under applicable civil service law.⁶

BPD’s Other Grounds for Dismissal

BPD also asserted that Ms. McGoldrick’s appeal should be dismissed because the questions of whether or not she had voluntarily resigned and/or whether or not BPD was required to accept the rescission of her resignation raised issues of contract law that were beyond the scope of the Commission’s jurisdiction and are solely for resolution in a judicial forum. I note that the

⁶ Indeed, at all times relevant, Ms. McGoldrick was represented by competent legal counsel, which makes further dubious that she was actually induced to resign due to an erroneous legal conclusion.

Commission has consistently accepted jurisdiction to adjudicate whether a resignation was “voluntary” or “involuntary” as an essential corollary to its authority under civil service law to protect public employees from unlawful terminations. See, e.g., Spencer v. Massachusetts Dep’t of Correction, 28 MCSR 592 (2015) and cases cited, aff’d sub nom Spencer v. Civil Service Comm’n, Suffolk CV2015-03723 (Sup.Ct. 2016), appeal pending, 2016-P-1455; cf. Walsh v. City of Worcester, 24 MCSR 234 (2011), aff’d, Worcester CV2011-00978 (2012) (Commission found that appellant, in fact, did not voluntarily resign). See also Mello v. Mayor of Fall River, 22 Mass.App.Ct. 974, rev.den., 398 Mass. 1104 (1986) (court gives City’s description of employee’s “voluntary termination” no “talismanic effect . . . and treat the termination of the plaintiff’s employment as a “discharge” within the meaning of G.L.c.31,§41”); Small v. Town of Wakefield, 1995 WL 429952 (Middlesex Sup. 1995) (Section 42 claim for refusal to return employee to duty)

I am not aware, however, of any prior Commission decision or judicial precedent on the question of a rescission of an otherwise voluntary, prospective resignation, which may raise separate issues of fact in this particular case, or any precedent addressing the Commission’s concurrent jurisdiction (as opposed to exclusive judicial jurisdiction) of that issue. See generally, Sinkevich v. School Comm. of Raynham, 403 Mass. 420 (1988) (rejecting rescission of teacher’s resignation); Warner v. Selectmen of Amherst, 326 Mass. 435 (1950) (fire chief’s “withdrawal of offer to resign” ineffective); Galluccio v. Commissioner of Labor & Indus., 4 Mass.App.Ct. 864 (1976) (rescission ineffective); Jones v. Town of Wayland, 4 Mass.App.Ct. 725 (1976) (termination effective upon acceptance) In view of the conclusion to dismiss the appeal for the two reasons explained above, it is not necessary to address the BPD’s additional contentions in this Decision.

Finally, the Decision in this appeal is limited to the two jurisdictional issues addressed above. The Decision does not reach the merits of Ms. McGoldrick's (strenuously disputed) contention that she was targeted for termination without "just cause" because of alleged personal animus against her (that she attributes to her "whistle-blowing" activities over the years), which is beyond the scope of the present motion. The Decision concludes only that the Commission lacks jurisdiction over this appeal due to untimeliness and lack of a sufficient factual basis to find that Ms. McGoldrick's July 18, 2016 resignation was a result of coercion, fraud, duress, which are statutory prerequisites to allow her appeal for alleged unlawful discharge of employment.

CONCLUSION

Accordingly, for the reasons stated, the BPD's Motion for Summary Disposition is GRANTED on the issue of untimeliness. The appeal of the Appellant, Patricia McGoldrick, under Docket No. G1-16-165 is *dismissed*.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein & Tivnan, Commissioners) on March 30, 2017.

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 a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 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. 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:

William Broderick, Esq. (Appellant)
Nicole Taub, Esq. (for Respondent)