

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

JOSEPH McNULTY,
Appellant
v.

Case No.: D-14-286

CITY OF LYNN,
Respondent

ORDER OF DISMISSAL

On December 10, 2014, the Appellant, Joseph McNulty (Mr. Nulty), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Lynn (City) to suspend him for three (3) days from the position of Senior Building Custodian.

On January 13, 2015, I held a pre-hearing conference that was attended by counsel for the City, counsel for Mr. McNulty, and Mr. McNulty's union representatives.

As part of the pre-hearing, I asked the parties to provide with me information regarding whether Mr. McNulty had ever obtained permanency in his position as Senior Building Custodian.

On January 22, 2015, the City provided information to the Commission showing that Mr. McNulty is a permanent Building Custodian who was provisionally promoted to the position of Senior Building Custodian. Since the disciplinary action imposed here did not impact Mr. McNulty's permanency as a building custodian (i.e. – he was not discharged), the Commission has no jurisdiction to hear this appeal. (See Le Francois v. Department of Revenue, 23 MCSR 639 (2010) (a permanent Corporate Analyst who was serving as a provisional Tax Auditor I could not contest her one-day suspension imposed while she was serving in her provisional position); contrast with McDowell v. City of Springfield, 23 MCSR 124 (2010), upheld in relevant part and reversed in part, City of Springfield v. Civil Serv. Comm'n, 469 Mass. 370 (2014) (a permanent Carpenter provisionally promoted to an official service position could contest his termination).

For this reason, Mr. McNulty's appeal under Docket No. D-14-286 is hereby *dismissed*. The full hearing previously scheduled for February 27, 2015 at the Division of Administrative Law Appeals (DALA) is canceled.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman

Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on February 5, 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)(1), 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:

Philip Brown, Esq. (for Appellant)

David Grunebaum, Esq. (for Respondent)

Richard Heidlage, Esq. (Chief Administrative Magistrate, DALA)