

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

STEVEN MULLEN,
Appellant

v.

D-23-151

CITY OF REVERE,
Respondent

Appearance for Appellant:

Matthew J. Buckley, Esq.
238 Powderhouse Blvd.
Somerville, MA 02144

Appearance for Respondent:

Neil Rossman, Esq.
Rossman & Rossman
8 Essex Center Drive
Peabody, MA 01960

Commissioner:

Christopher C. Bowman

SUMMARY OF ORDER OF DISMISSAL

The Appellant's Section 42 procedural appeal is dismissed as he was unable to show that he was prejudiced by the City's short delay in conducting a local hearing to contest his five-day suspension. His separate appeal, in which he is contesting whether there was just cause for the suspension, is going forward.

ORDER OF DISMISSAL

The Appellant, a Fire Lieutenant in the City of Revere (City)'s Fire Department, has the following two appeals pending before the Civil Service Commission (Commission): a) Section 42 procedural appeal under docket no. D-23-151; and b) a Section 43 just cause appeal under docket no. D-23-178.

As part of a pre-hearing held on September 19, 2023, the parties stipulated to the following regarding this appeal:

- A. On July 25, 2023, the Appellant was instructed to write a report by the City's Fire Chief.

- B. Prior to submitting the report, the Appellant notified the Fire Chief that he did not want to submit the report until it was reviewed by his (Appellant)'s counsel.
- C. The Appellant's failure to submit the report prior to the end of his shift was deemed insubordination by the Fire Chief.
- D. On July 27, 2023, the Fire Chief issued the Appellant a five-day suspension.
- E. The Appellant filed a timely request for a local hearing to contest the five-day suspension.
- F. Since the City had not held a hearing within the five days required under Section 41 of the civil service law, the Appellant filed a Section 42 procedural appeal with the Commission.
- G. Subsequent to the Section 42 appeal being filed, a local hearing was conducted on August 29, 2023.
- H. Prior to the local hearing, the Fire Chief "amended" the charges to include incompetence and filing a false report, and notified the Appellant that the hearing to be held would also consider whether additional discipline was warranted beyond a five-day suspension.
- I. After conducting the hearing on August 29th, the hearing officer issued a report, sustaining the charge of insubordination, but not sustaining the additional charges. As a result, the five-day suspension was upheld for the initial charge of insubordination.
- J. On September 13, 2023, the Mayor, who is the Appointing Authority, adopted the hearing officer's recommendation and upheld the five-day suspension.
- K. The Appellant's Section 43 just cause appeal was filed with the Commission the next day.

Applicable Civil Service Law

Section 41 of G.L. c. 31 states in relevant part:

A civil service employee may be suspended for just cause for a period of five days or less without a hearing prior to such suspension. Such suspension may be imposed only by the appointing authority or by a subordinate to whom the appointing authority has delegated authority to impose such suspensions, or by a chief of police or officer performing similar duties regardless of title, or by a subordinate to whom such chief or officer has

delegated such authority. Within twenty-four hours after imposing a suspension under this paragraph, the person authorized to impose the suspension shall provide the person suspended with a copy of sections forty-one through forty-five and with a written notice stating the specific reason or reasons for the suspension and informing him that he may, within forty-eight hours after the receipt of such notice, file a written request for a hearing before the appointing authority on the question of whether there was just cause for the suspension. **If such request is filed, he shall be given a hearing before the appointing authority or a hearing officer designated by the appointing authority within five days after receipt by the appointing authority of such request.** Whenever such hearing is given, the appointing authority shall give the person suspended a written notice of his decision within seven days after the hearing. A person whose suspension under this paragraph is decided, after hearing, to have been without just cause shall be deemed not to have been suspended, and he shall be entitled to compensation for the period for which he was suspended. A person suspended under this paragraph shall automatically be reinstated at the end of such suspension. An appointing authority shall not be barred from taking action pursuant to the first paragraph of this section for the same specific reason or reasons for which a suspension was made under this paragraph.

Section 42 of G.L. c. 31 states in relevant part:

Any person who alleges that an appointing authority has failed to follow the requirements of section forty-one 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 such 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 ...”.

Section 43 of G.L. c. 31 states in relevant part:

If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it

shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee, by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority's procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority.

Analysis

Even when viewing the facts in the light most favorable to the Appellant, he has not shown that he was prejudiced by the City's short delay in scheduling a local hearing in which he sought to contest his five-day suspension. He was provided proper notice of his suspension with appeal rights attached; a hearing was conducted; and he was timely notified that the initial charge of insubordination was upheld, prompting him to file a timely appeal with the Commission, for which a full hearing has been scheduled to determine if there was just cause for the five-day suspension. Given the Appellant was not prejudiced by the short delay in scheduling the local hearing, his Section 42 procedural appeal is *dismissed* and his Section 43 just cause appeal will go forward as scheduled.

Civil Service Commission

/s/ Christopher Bowman
Christopher Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on October 5, 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 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. 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:
Neil Rossman, Esq. (for Appellant)
Matthew Buckley, Esq. (for Respondent)