

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

HECTOR MUNOZ,
Appellant

v. D1-22-047

EXECUTIVE OFFICE OF PUBLIC
SAFETY AND SECURITY,
Respondent

Appearance for Appellant: *Pro Se*
Hector Munoz

Appearance for Respondent: Jean Auguste
Human Resources Officer
EOPSS
One Ashburton Place: Room 2133
Boston, MA 02108

Commissioner: Christopher C. Bowman

ORDER OF DISMISSAL

On March 21, 2022, the Appellant, Hector Munoz (Appellant), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Executive Office of Public Safety and Security (EOPSS) to terminate him from the title of “Senior Project Manager”. On April 19, 2022, I held a remote pre-hearing conference which was attended by the Appellant, a representative of the Appellant and the Human Resources Director for EOPSS.

At my request, subsequent to the pre-hearing, EOPSS provided the job posting related to this position, which shows that the title for which the Appellant was appointed was “Technical Project Manager” noting that the position is a *non-civil service* position. The conditional offer references the same title.

Pursuant to Section 1 of Chapter 31 (the civil service law) a “civil service employee” is “a person holding a civil service appointment.” A “Civil service appointment” is “an original appointment or a promotional appointment made pursuant to the provisions of the civil service law and rules.”

Based on the information provided, the Appellant never served as a civil service employee for EOPSS. Even assuming, for the sake of argument, that he occupied a civil service title, he would never have been deemed a permanent, tenured civil service as no examination has been given for the vast majority of non-public safety civil service positions in decades. Thus, appointments to non-public safety official service positions in Massachusetts are limited to provisional appointments, to which appointed candidates are not afforded the right to contest disciplinary actions to the Civil Service Commission.

For the above reasons, I provided the Appellant with 10 days to notify the Commission if he wished to withdraw his appeal from the Commission. No withdrawal was received.

Legal Standard for Summary Disposition

An appeal may be disposed of on summary disposition when, “viewing the evidence in the light most favorable to the non-moving party”, the undisputed material facts affirmatively demonstrate that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case”. See, e.g., Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550 n.6, (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005).

Analysis / Conclusion

The Appellant was terminated from a non-civil service position. Even if the position was or should have been deemed a civil service position, which the evidence does not show, the Commission would still lack jurisdiction to hear this appeal as it is undisputed that the Appellant never served as a permanent, tenured civil service employee, which triggers the appellate rights to the Commission under G.L. c. 31, §§ 39-45.

For this reason, the Appellant's appeal under Docket No. D1-22-047 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Camuso, Stein and Tivnan, Commissioners) on May 20, 2022.

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:

Hector Munoz (Appellant)

Jean Auguste (for Respondent)