

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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

QUINLAND MURDOCK,
Appellant

v.

TOWN OF BOURNE,
Respondent

Docket Number: D1-24-067¹

Appearance for Appellant: *Pro Se*
Quinland Murdock

Appearance for Respondent: Christopher L. Brown, Esq.
Harrington Heep LLP
40 Grove Street, Suite 190
Wellesley, MA 02482

Commissioner: Christopher C. Bowman

SUMMARY OF DECISION

The Commission dismissed the appeal of the Appellant for lack of jurisdiction as the Appellant was terminated during his probationary period as a police officer.

DECISION ON RESPONDENT’S MOTION TO DISMISS

On February 22, 2024, the Appellant, Quinland Murdock (Appellant), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Town of Bourne

¹ The Appellant filed his appeal as a non-bypass equity appeal and, thus, it was initially docketed under the prefix “E”. As the appeal clearly seeks to contest his termination, the docket number prefix was changed to “D1”.

(Town) to terminate him from the Town's Police Department (BPD). At the time he filed this appeal, the Appellant indicated that he was represented by counsel.

On March 21, 2024, then-counsel for the Appellant filed a notice of withdrawal of appearance as counsel for the Appellant. Prior to the pre-hearing conference, counsel for the Respondent submitted a pre-hearing memo and a motion to dismiss the Appellant's appeal for lack of jurisdiction. On March 26, 2024, I held a remote pre-hearing conference which was attended by the Appellant, counsel for the Town and the Town's Police Chief. As the Appellant indicated that he may seek new counsel, I recorded the pre-hearing conference so that the Appellant could provide such counsel with a recording of the proceeding and provided the Appellant with 60 days to file a reply to the Town's motion to dismiss. The Appellant did not submit a reply.²

UNDISPUTED FACTS

Based on the information submitted and the statements made at the pre-hearing, the following is not disputed, unless otherwise noted:

1. The Appellant took and passed a civil service examination for police officer.
2. The Appellant's name appeared on an eligible list for Bourne Police Officer.

² After the 60-day deadline for filing a reply expired, I sent an email to the Appellant, copied to the Respondent, to confirm that no reply had been received and that, absent a withdrawal of his appeal, the Commission would be issuing a decision on the Town's Motion to Dismiss. The Appellant sent a reply stating: "Sorry sir for not getting back on time. I was unable to find a lawyer for this portion of the appeal. But my discrimination suit has been submitted by my lawyers. As of now there is no update. But I will continue to update you as the case progresses forward. Thank you for your time." I acknowledged the Appellant's reply and reiterated that the Civil Service Commission would be issuing a decision on the Town's motion to dismiss absent a withdrawal of the Appellant's appeal.

3. The Appellant's name appeared on a certification issued to the BPD by the state's Human Resources Division.
4. On December 16, 2022, after the Appellant successfully completed a background investigation, the BPD granted the Appellant a conditional offer of employment as a police officer.
5. The Appellant then successfully completed a medical evaluation, psychological evaluation and physical abilities test (PAT) along with upfront MPTC fitness standards required prior to entry into the Police Academy.
6. On April 29, 2023, the Appellant began the 22-week Police Academy.
7. On September 29, 2023, the Appellant successfully completed the Police Academy.
8. On October 2, 2023, the Appellant was sworn in as a Bourne Police Officer and began his 12-month civil service probationary period.
9. On December 21, 2023, the BPD terminated the Appellant's employment during his probationary period.
10. The termination letter stated in part:

... You graduated from the Police Academy and began your Field Training as a Bourne Police Officer. Chief Esip has informed me that your progress in that field training program has been sub-par and the quality of work performed does not meet the standards required by the department. Among some of the concerns were the following: you have displayed a consistent habit of not hearing or processing information accurately; you appear to have difficulty with multi-tasking; you have repeatedly missed or not heard information relayed to you from officers and/or callers; you have repeatedly forgotten information relayed to you by your field training officer. Additionally, I have been informed that you provided misleading information on your Initial Hire Medical Standards Medical Examination Form. Knowingly providing false or incomplete answers on that form may result in the rescission of a conditional job offer or dismissal if discovered at a later time. Based upon information now available to the department, it appears that

you did not accurately answer several of the questions on that self-assessment, including whether you had a history of hearing loss, exposure to loud noise, disease of the ear or vertigo, any occupational (work) injuries, and if you were ever medically discharged from the military.

11. The BPD Police Chief reported the Appellant to the Cape and Islands District Attorney's Office to determine whether the Appellant should be added to the "Brady List" in that office. According to the Chief, the District Attorney's Office subsequently determined that the Appellant should be added to that office's Brady List, a development the Appellant stated that he was unaware of at the time of the pre-hearing conference. The Chief also notified the state's Peace Officer Standards and Training Commission (POST) of the Appellant's termination and the reason for the termination. Both the Chief and the Appellant are under the understanding that POST will not be taking any action regarding potential de-certification of the Appellant's certification as a police officer at this time.

RULE REGARDING DISMISSAL FOR LACK OF JURISDICTION

The Presiding Officer may at any time, on his or her own motion or that of a Party, dismiss a case for lack of jurisdiction to decide the matter, for failure of the Petitioner to state a claim upon which relief can be granted, or because of the pendency of a prior, related action in any tribunal that should first be decided. 801 CMR 1.01 (7)(g)(3).

RELEVANT CIVIL SERVICE LAW

Section 41 of Chapter 31 states in relevant part:

Except for just cause and except in accordance with the provisions of this paragraph, a tenured employee shall not be discharged, removed, suspended for a period of more than five days, laid off ... Before such action is taken, such employee shall be given a written notice by the appointing authority, which shall include the action contemplated, the specific reason or reasons for such action and a copy of sections forty-one through forty-five, and shall be given a full hearing concerning such reason or reasons before the appointing

authority or a hearing officer designated by the appointing authority
...

Section 43 of Chapter 31 states in relevant part:

If a person aggrieved by a decision of an appointing authority made pursuant to section forty-one shall, within ten days after receiving written notice of such decision, appeal in writing to the commission, he shall be given a hearing before a member of the commission or some disinterested person designated by the chairman of the commission ...

Section 61 of Chapter 31 states:

Following his original appointment as a permanent full-time police officer or fire fighter in a city, or in a town where the civil service law and rules are applicable to such position, a person shall actually perform the duties of such position on a full-time basis for a probationary period of twelve months before he shall be considered a full-time tenured employee in such position, except as otherwise provided by civil service rule. The administrator, with the approval of the commission, may establish procedures to ensure the evaluation by appointing authorities, prior to the end of such probationary period, of the performance of persons appointed as regular police officers or fire fighters.

In Police Commissioner of Boston v. Cecil, 431 Mass. 410 (2000), the SJC reaffirmed that police officers and firefighters who have not actually served their entire 12-month probationary period have no right of appeal to the Commission, stating in part that:

When interpreting an earlier version of § 34 we said that its "manifest purpose is that the fitness of an appointee be actually demonstrated by service within a probationary period." Younie v. Director of Div. of Unemployment Compensation, 306 Mass. 567, 570 (1940). This purpose is "designed to benefit the public." Leominster v. International Bhd. of Police Officers, Local 338, 33 Mass.App.Ct. 121, 127 (1992). "With respect to police officers and fire fighters, in particular, the Legislature recognized the special need of a prolonged probationary period by extending the period from six months to one year. See St. 1977, c. 348, and now G. L. c. 31, § 61. Courage, good judgment, and the ability to work under stress in the public interest and as part of an organization,

are qualities that are not quickly perceived. The policy of the statute is to ensure sufficient time for a careful determination whether they are present in sufficient degree." *Id.* Where § 61 calls for a newly appointed police officer to "actually perform the duties of such position on a fulltime basis for a probationary period of twelve months" (emphasis added), the intent of the Legislature could not be clearer.

ANALYSIS

Since there is no dispute that the Appellant, at the time of his termination, had not completed the statutorily required probationary period, he never became a tenured civil service employee. Thus, the Commission lacks jurisdiction to hear this termination appeal under Section 43 of the civil service law. Should the Appellant wish to be reconsidered for appointment, he should take any forthcoming civil service examinations with the goal of scoring high enough to be among those eligible for consideration.

Nothing in this decision should be construed as a ruling on whether the BPD complied with the provisions Section 26 of the civil service law, which state in relevant part that:

The administrator may require any disabled veteran to present a certificate of a physician, approved by the administrator, that his disability is not such as to incapacitate him from the performance of the duties of the position for which he is eligible. The cost of a physical examination of such veteran for the purpose of obtaining such certificate shall be borne by the commonwealth. Notwithstanding the administrator's right to require a physician's certificate in the case of a disabled veteran, an appointing authority shall not require, request or accept an individual's military medical record or military personnel service record for the purpose of employment; provided, however, that an appointing authority may require, request or accept the individual's DD-214 form. An appointing authority shall not impose a term or condition on an individual as a condition of obtaining or retaining employment if compliance with the term or condition would require the individual to present the individual's military medical record or military personnel service record as set forth in this paragraph; provided, however, that an appointing authority may impose a term or condition requiring the individual to present the individual's DD-

214 form. Nothing in this section shall prohibit an appointing authority to require military service records if the condition stated on the individual's DD-214 form is other than honorable.

Nor should this decision be construed as a ruling regarding the Appellant's allegation, raised at the pre-hearing, that he was treated differently than other recruits and that his termination came only after he asked a dispatcher whether he could be provided with headphones, which could be construed as a request for a reasonable accommodation under the state's disability laws. It was because of the above-referenced issues that I extended the normal period for responding to a motion to dismiss, giving the Appellant ample time to obtain counsel to assist with a response and provide advice on whether he may have recourse in another forum.

CONCLUSION

The Appellant's appeal under Docket No. D1-24-027 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Markey, McConney and Stein [Dooley-Absent]) on June 13, 2024.

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:
Quinland Murdock (Appellant)
Christopher L. Brown, Esq. (for Respondent)