

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

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

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PATRICIA MURPHY,  
*Appellant*

v.

\_\_\_\_\_  
SALEM POLICE DEPARTMENT  
*Appointing Authority*

Docket No: D-04-329

**DECISION**

In a Recommended Decision dated April 25, 2007, the Division of  
Administrative Law Appeals (hereinafter “DALA”) found that,

“The Salem Police Department has shown just cause to discharge Patricia Murphy as a police officer because one of the job requirements of a police officer is the ability to carry a firearm, but Murphy lacks a firearms license that would allow her to do so. ... [T]he Police Department has not met its burden of proof as to the other two asserted grounds for discharge: fraudulent completion of firearms license applications and misuse of her authority as a police officer for personal gain.”

DALA Recommended Decision, p. 10. As required, DALA sent its Recommended

Decision to the parties for the thirty-day comment period. By letter to the DALA

Magistrate, dated May 21, 2007, the Appellant reported that, in light of the Magistrate’s

rejection of two reasons proffered by the Appointing Authority, the Appellant was now in the position to seek sufficient funds to obtain the medical evaluation earlier recommended by the Appointing Authority, that she had scheduled an appointment with a physician and a report would be forthcoming shortly. By letter dated May 23, 2007, the Magistrate referred the Appellant to this Commission with regard to her comments.

The Commission, in turn, wrote to the parties on June 11, 2007, requesting a copy of the medical report by June 22, 2007 and the Appointing Authority's comments thereon, if any, by July 6. The Commission received the report of Dr. Marc A. Whaley, apparently a Board certified psychiatrist, on June 20. Dr. Whaley's three-page report concludes,

“ I can find no psychiatric contraindication to her being licensed to carry a firearm and it would appear that her psychiatric history of depression was situationally based and probably secondary to the previously untreated attention problems which would have made her more vulnerable to becoming emotionally overwhelmed by certain situations. The successful treatment that she is having now would only enhance her abilities to function as a police officer and would in no way impair her fitness to exercise appropriate judgment and behavioral control in possessing, carrying and potentially using a firearm in the course of her duties.”

Id. The Appointing Authority responded by letter dated July 3 and asserted that Dr. Whaley's report should not be considered for a number of reasons. Among other reasons, it cites to G.L. c. 140, § 131 (b) for the premise that the Appointing Authority's actions were authorized by that law. By this reference, we read the Appointing Authority to be referring to the broad authority provided the gun licensing authority (the Appointing Authority here) to impose “such restrictions relative to the possession, use or carrying of such firearm as the licensing authority deems proper ....” We note that the Appointing Authority's role is broad also under G.L. c. 140, § 131(d). That statute provides that the

Appointing Authority may issue a license to carry a firearm if, “the applicant is a suitable person ....” The Appointing Authority also relies on G.L. c. 140, § 131(d)(iii) to require a physician’s affidavit that the appellant is “cured.” However, that statute applies to an individual who “is or has been under treatment for or confinement for drug addiction or habitual drunkenness,” which is not at issue here. The Appointing Authority may have intended to refer to subsection (ii) (as Police Chief St. Pierre had referred to in a letter to the Appellant), which refers to a person who, “is or has been confined to any hospital or institution for mental illness.” With regard to such persons, this applicable portion of the law requires,

“ ... an affidavit of a registered physician attesting that such physician is familiar with the applicant’s mental illness and that in such physician’s opinion the applicant is not disabled by such an illness in a manner that should prevent such applicant from possessing a firearm ....”

Id. It would appear that the report of Dr. Whaley provides the necessary information.

The Appellant’s attorney indicates that this information may be available in the form of an affidavit, apparently to satisfy the statute. Dr. Louie, the professional upon whom Chief St. Pierre relied in support of his decision to revoke the Appellant’s authority to carry a firearm) has a Ph.D. but is not a registered physician as required by the statute.

DALA Recommended Decision, p. 5, n.2. Moreover, Dr. Louie apparently indicated that in order to complete the report he had submitted to Chief St. Pierre, he required information from the Appellant’s treating professional. The Appellant authorized her treating professional to provide the information but he failed or refused to do so.

Consequently, the report on which Chief St. Pierre based at least part of this decision was incomplete. The Chief gave the Appellant an opportunity to obtain the necessary medical report, pursuant to G.L. c. 140, § 131(d)(2). Recommended Decision, p. 5. The

Appellant paid a doctor a \$3,000 retainer fee to this end but could not and/or did not pay the \$5,000 balance for such a report.

The Appointing Authority further points out that, under G.L. c. 140, § 131(f), a person may appeal the suspension or revocation of his or her license to the District Court within a prescribed 90-day period and the Appellant did not do so. The Appellant apparently did not pursue such an appeal because, even if she had produced the necessary medical affidavit, the Appointing Authority also alleged two additional reasons for its actions (mentioned above), making a medical affidavit (and expense therefor) futile. In fact, neither the Appellant nor the Appointing Authority could have known or foreseen that a civil service appeal would produce a Recommended Decision that found insufficient evidence to support two of the bases for the Appointing Authority's action.

Finally, we address the Appointing Authority's argument regarding the timeliness of the medical report. It is well established that the Commission's hearing de novo addresses the information on which the Appointing Authority's actions were based at the time. Taken together with the Appointing Authority's (as licensing authority under G.L. c. 140, §131) broad authority to issue, deny, suspend or revoke a firearm license, it would appear that the Commission is not in the position to act on the basis of a medical report issued at this point in time, leaving us to affirm the decision of DALA that there was not a preponderance of the evidence on the first two matters in this appeal but that there was

a preponderance of the evidence that the Appellant could not carry and possess firearms at the time of the Appointing Authority acted.

Thus, after careful review and consideration, the Civil Service Commission this day of July 26, 2007 voted at an executive session to acknowledge receipt of the report of the Administrative Law Magistrate dated April 25, 2007 and the parties' responding submissions. By this vote, the Commission adopted the findings of fact and the Recommended Decision of the Magistrate therein. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal under Docket No. D-04-329 is hereby dismissed.

With that said, we note that the civil service laws are intended to prevent civil service employers from taking actions without just cause, to prevent disparate treatment of civil service employees, and to ensure that civil service employees are protected from arbitrary and capricious actions, *inter alia*. G.L. c. 31, § 1 (defining "basic merit principles"). These protections should not be circumvented, directly or indirectly. With two of the three bases of the Appointing Authority's actions removed, all that remains of this appeal as a barrier to the Appellant working as a police officer is the absence of her authority to possess and carry firearms.<sup>1</sup> Neither party could have foreseen this end. If the law allows (and on this the Commission renders no opinion) and the Appellant chooses to again seek the Appointing Authority's approval of her authority to carry and possess firearms, it is the hope of the Commission that the determination will be made on

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<sup>1</sup> We do not address the Appellant's ability to meet other requirements of the job of police officer, such as fitness for duty.

an appropriate basis, including a complete medical report. Whether the Appointing Authority returns the Appellant (if she desires) to the position of police officer at this point in time is beyond the instant determination. Although this case is now closed, the Appointing Authority is reminded that the Commission has broad authority to pursue an investigation of such matters. G.L. c. 31, § 2(a).

By vote of the Civil Service Commission (Bowman, Chairman; Guerin, Henderson, Marquis, Taylor, Commissioners) on July 26, 2007.

A true record. Attest:

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Christopher C. Bowman  
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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.

Notice to:

Gerard S. McAuliffe, Esq. (for Appellant)  
Daniel B. Kulak, Esq. (for Appointing Authority)  
James P. Rooney, Esq. (Magistrate, DALA)