

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

One Ashburton Place
Room 503
Boston, Massachusetts 02108

ENXHI QIRICI,
Appellant

v.

D1-19-088

BOSTON POLICE DEPARTMENT,
Respondent

Appearance for Appellant:

Iir Kavaja, Esq.
Paul Nevins, Esq.
Kavaja Law, P.C.
92 State Street, 8th Floor
Boston, MA 02109

Appearance for Respondent:

Winifred Gibbons, Esq.
Office of the Legal Advisor
Boston Police Department
One Schroeder Plaza
Boston, MA 02120

Commissioner:

Christopher C. Bowman

DECISION ON APPELLANT'S MOTION FOR RECONSIDERATION

1. On April 10, 2019, the Appellant, Enxhi Qirici (Ms. Qirici), filed an appeal with the Civil Service Commission, contesting the decision of the Boston Police Department (BPD) to terminate her employment on March 28, 2019. Attached to the appeal form was a notice of appearance from Ms. Qirici's counsel at the time, along with a personal check from Ms. Qirici for the \$50.00 filing fee.
2. On April 11, 2019, the Commission notified counsel for the parties that a pre-hearing conference would be held at the offices of the Commission on May 7, 2019 at 10:30 A.M.
3. On May 7, 2019 at 9:47 A.M., Ms. Qirici's counsel at the time sent an email to the Commission stating:

“Good Morning,

Per my discussion with Ms. Diaz yesterday, please allow this email to serve as notice of Ms. Qirici's voluntary dismissal of her above titled matter before the Civil Service Commission. If you require additional document(s) memorializing this, please let me know. In the meantime, you may remove this matter for the previously scheduled pre-hearing conference.

Thank you for your time and attention to this matter.”

4. That same day, at 10:30 A.M., counsel for the BPD appeared at the offices of the Commission and submitted a notice of appearance. Based on the email communication from Ms. Qirici’s counsel, and the failure of either Ms. Qirici or her counsel to appear, the pre-hearing did not go forward.
5. Later that day, at 12:53 P.M., I sent an email to Ms. Qirici’s counsel at the time, copied to the BPD, stating:

“Received.

An Order of Dismissal will enter based on the Appellant’s voluntary withdrawal of the appeal.

Chris Bowman”

6. On May 9, 2019, the Commission voted to dismiss Ms. Qirici’s appeal based on her voluntary withdrawal. Notice of the dismissal was sent to Ms. Qirici’s counsel at the time and counsel for BPD the same day via email. The “read receipt” indicates that the email, with the attached dismissal, was read by Ms. Qirici’s counsel at the time on May 9, 2019 at 5:20 P.M.
7. The May 9, 2019 decision dismissing Ms. Qirici’s appeal, along with the cover email, included language detailing the process and time frame for filing a motion for reconsideration with the Commission and/or an appeal with the Superior Court.
8. On June 14, 2019, the Commission received the following email from Ms. Qirici:

“Dear Mr. Bowman:

Two days ago, I called and spoke with Ms. Diaz, cc-ed here. I called to insure (sic) about the status of my case. I was informed that the case was closed because my previous attorney had communicated so to the Commission. I was shocked and surprised. Ms. Diaz instructed me to write this email and submit this email and submit whatever request / relief I believe to be appropriate. I am doing so now.

I respectfully request that the matter I filed with the Commission be re-instated to the docket. I hired [former attorney] to represent me in front of the Commission. The case was timely filed, and the proper fee was paid. Due to some miscommunication and misunderstanding, [former attorney] conveyed to the Commission that the case should be closed/withdrawn. This was made in error due to the previously mentioned miscommunication and misunderstanding. I am happy to submit an affidavit to that extent by [former attorney], as he no longer represents me going forward. I intend on retaining different counsel.

I pray that you grant my request. Apart from the matter having been timely filed and the fee having been paid, BPD has not suffered any prejudice or harm and would not suffer such harm by the reinstatement.

Please understand that this is my only course of remedy. Without it, I am left without a fair hearing and without any due process.”

9. On June 17, 2019, I issued a reply email to Ms. Qirici and counsel for the BPD stating that I would treat the June 14th email as a motion for reconsideration, allowing the BPD ten (10) days to file a reply.
10. On June 25, 2019, the BPD filed a response to Ms. Qirici's motion for reconsideration, arguing that the motion for reconsideration was untimely filed and, more substantively, that Ms. Qirici, at the time of her termination, was a probationary employee with no right to appeal her termination to the Commission.
11. On July 3, 2019, Ms. Qirici's new (current) counsel submitted a reply to BPD's opposition, effectively arguing that Ms. Qirici was a tenured employee at the time of her termination (March 28, 2019), given that she ***began attending the Boston Police Academy*** on September 11, 2017. Alternatively, Ms. Qirici argues that, even if she was not a permanent, tenured civil service employee, she has the right to appeal "punishment duty" pursuant to G.L. c. 31, s. 62.
12. Subsequent to receiving Ms. Qirici's reply, I forwarded an email to both parties to confirm the date that she graduated from the Boston Police Academy and the date that she was sworn in as a Boston Police Officer.
13. Counsel for Ms. Qirici confirmed that Ms. Qirici "graduated and took the oath" on April 10, 2018.

Applicable Law / Rules / Policies

G.L. c. 31, § 34 states in relevant part:

"During the probationary period, he may be subject to a performance evaluation during his first two months of service and a second evaluation may be conducted at least one month prior to his sixth month anniversary date of service. The appointing authority may extend the probationary period for a period of two months if the second evaluation of the probationary employee is unsatisfactory. Such evaluation may be utilized by the appointing authority, but in no instance shall the appointing authority be required to consider the results of such evaluation in a determination of granting such employee permanent or tenured status. Nothing contained herein shall require an appointing authority to evaluate a probationary employee and in no such instance shall such evaluation grant such probationary employee any greater rights than those contained in this section.

...

If the conduct or capacity of a person serving a probationary period or the character or quality of the work performed by him is not satisfactory to the appointing authority, he may, at any time after such person has served thirty days and prior to the end of such probationary period, give such person a written notice to that effect, stating in detail the particulars wherein his conduct or capacity or the character or quality of his work is not satisfactory, whereupon his service shall terminate. The appointing authority shall at the same time send a copy of such notice to the administrator. In default of such notice, such person shall be deemed to be a tenured employee upon the termination of such period.

If a full-time civil service employee is unable to work because of illness during the serving of his probationary period, the appointing authority may postpone the serving of such period, provided that such employee has served an amount of time adequate to satisfy the appointing authority that his services should be retained and provided, further, that such employee shall, upon resuming employment, be required to perform service equal to a full probationary period.

If a person at the time of his appointment or during the serving of his probationary period is not actually employed because of educational leave, he shall not be regarded as a tenured employee until he has served a full probationary period or the remainder thereof, as the case may be, following the termination of said educational leave and his commencing of or return to employment.

The probationary period of an employee shall not be deemed to be interrupted by his temporary appointment pursuant to section six to a position in a higher title in the same departmental unit, by his temporary promotional appointment pursuant to section seven, or by his provisional promotion pursuant to section fifteen.”

G.L. c. 31, § 41 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, transferred from his position without his written consent if he has served as a tenured employee since prior to October fourteen, nineteen hundred and sixty-eight, lowered in rank or compensation without his written consent, nor his position be abolished. 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. The appointing authority shall provide such employee a written notice of the time and place of such hearing at least three days prior to the holding thereof, except that if the action contemplated is the separation of such employee from employment because of lack of work, lack of money, or abolition of position the appointing authority shall provide such employee with such notice at least seven days prior to the holding of the hearing and shall also include with such notice a copy of sections thirty-nine and forty. If such hearing is conducted by a hearing officer, his findings shall be reported forthwith to the appointing authority for action. Within seven days after the filing of the report of the hearing officer, or within two days after the completion of the hearing if the appointing authority presided, the appointing authority shall give to such employee a written notice of his decision, which shall state fully and specifically the reasons therefor. Any employee suspended pursuant to this paragraph shall automatically be reinstated at the end of the first period for which he was suspended. In the case of a second or subsequent suspension of such employee for a period of more than five days, reinstatement shall be subject to the approval of the administrator, and the notice of contemplated action given to such employee shall so state. If such approval is withheld or denied, such employee may appeal to the commission as provided in paragraph (b) of section two.”

G.L. c. 31, § 61 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.”

HRD POLICY

Pursuant to a [memorandum from the state’s Human Resources Division \(HRD\) dated March 21, 2003](#), “... a police officer’s twelve-month probationary period begins upon successful completion of the police academy and allowed to perform the duties of a police officer.”

Analysis

The above-referenced HRD memorandum clearly states that a police officer’s probationary period does not begin until successful completion of the police academy and being actually allowed to perform the duties of a police officer.

In [Patterson v. Town of Plymouth](#), 21 MCSR 650 (2008), the Commission concluded that Mr. Patterson’s probationary period began upon graduating from the Police Academy and being sworn in as a police officer.

In [Board of Selectmen of Brookline v. Smith](#), 58 Mass.App.Ct. 813, 792 (2003), the Court concluded that time in the Police Academy did not count toward the probationary period.

Consistent with HRD policy and prior Commission and judicial decisions, Ms. Qirici’s probationary period did not begin until she graduated from the Police Academy and was sworn in as a police officer on April 10, 2018. Ms. Qirici was terminated on March 28, 2019. Since she had not performed the duties of a police officer for twelve (12) months as of March 28, 2019, she was still a non-tenured probationary employee. Non-tenured probationary employees have no right to contest their termination (or any other discipline, including punishment duty) to the Commission.

For this reason, Ms. Qirici’s motion for reconsideration, in which she seeks to re-open an appeal that was dismissed based on a voluntary withdrawal, is ***denied***.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman,
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on July 18, 2019.

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 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. 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:

Illir Kavaja, Esq. (for Appellant)

Paul Nevins, Esq. (for Appellant)

Winifred B. Gibbons, Esq. (for Respondent)