

(SEAL)  
PLYMOUTH, SS

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT  
CIVIL ACTION  
NO. 08-0357

CULLY ROSSI

v.

CIVIL SERVICE COMMISSION, et al.

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S  
MOTION FOR JUDGMENT ON THE PLEADINGS

The plaintiff, Cully Rossi, requests that the Civil Service Commission's decision to uphold his suspension from the Duxbury Police Department be reversed pursuant to G.L. c. 30A, § 14(7). The plaintiff now moves for judgment on the pleadings, pursuant to Mass. R. Civ. P. 12(c).

Review of Administrative Decisions Under G. L. c. 30A, § 14(7)

Pursuant to G.L. c. 30A, § 14(7), this court may reverse, remand, or modify an agency decision if "the substantial rights of any party may have been prejudiced" because the agency decision is based on an error of law or on unlawful procedure, is arbitrary and capricious, or is unwarranted by facts found by the agency and supported by substantial evidence. Rossi bears the burden of demonstrating the invalidity of the Commission's decision. *Merisme v. Board of Appeal on Motor Vehicle Liab. Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989). In reviewing an agency decision, the court is required to "give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary

authority conferred upon it" by statute. G.L. 30A, § 14(7); *Flint v. Commissioner of Pub. Welfare*, 412 Mass. 416, 420 (1992); *Seagram Distillers Co. v. Alcoholic Beverages Control Comm'n*, 401 Mass. 713, 721 (1988). The reviewing court may not substitute its judgment for that of the agency. *Southern Worcester County Regional Vocational Sch. v. Labor Relations Comm'n*, 386 Mass. 414, 420-21 (1982), citing *Olde Towne Liquor Store, Inc. v. Alcoholic Beverages Control Comm'n*, 372 Mass. 152, 154 (1977). Nor may a court reject an administrative agency's choice between two conflicting views, even though the court justifiably would have made a different choice had the matter been presented de novo. *Zoning Bd. of Appeals v. Housing Appeals Comm'n*, 385 Mass. 651, 657 (1982) (citations omitted).

#### **The Civil Service Commission's Decision**

On July 20, 2007, Rossi filed a motion for summary decision with the Commission appealing the decision of the Town of Duxbury Police Department suspending him for six months for failing to report for duty when ordered. Rossi now argues that their decision was not supported by substantial evidence and constituted an error of law.


The Commission's decision is supported by substantial evidence. In his request for a summary decision, Rossi stipulated to facts on which the Commission relied in reaching their decision. Having chosen a summary decision, Rossi cannot now challenge the procedure used by the Commission or the evidence relied on in reaching their decision. Rossi's reliance on earlier medical reports and an appeals court decision upholding his right to G.L. c. 41, § 111F benefits, were not pertinent to the Commission's decision and do not detract from the evidence that Rossi was cleared to return to duty once the conflict with his superior was addressed. The four documents the Commission relied on, including Dr. Kathleen Leslie's letter, the affidavit of

Police Chief Mark DeLuca, and pertinent records, rules, and regulations of the Duxbury Police Department, constitute sufficient evidence to support the Commission's decision to uphold Rossi's suspension.

Nor is the Commission's decision based upon an error of law. The letter from Dr. Leslie is clear that Rossi could return to active duty if the conflict with his superior was addressed. The affidavit of Mark Deluca details the steps he and the Duxbury Police Department took to minimize any interaction between Rossi and his superior, thus addressing the concern of Dr. Leslie. Rossi has not met his burden of establishing that the Commission's decision is based on an error of law.

**ORDER**

For the reasons stated above, the plaintiff's motion for judgment on the pleadings is **DENIED**. The Court hereby **ORDERS** that the plaintiff's Complaint be dismissed.

  
Robert C. Rufo  
Justice of the Superior Court

Date: May 27, 2009