

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

CULLY ROSSI,
Appellant

v.

D-05-189

**TOWN OF DUXBURY
POLICE DEPARTMENT,**
Respondent

Appellant's Attorney:

Stephen C. Pfaff, Esq.¹
Merrick, Louison & Costello, LLP
67 Batterymarch Street
Boston, MA 02110

Respondent's Attorney:

Robert S. Troy, Esq.
Troy Wall Associates
90 Route 6A
Sandwich, MA 02563-1866

Commissioner:

John J. Guerin, Jr.

**DECISION ON APPELLANT'S AND RESPONDENT'S MOTIONS FOR
SUMMARY DECISION**

Procedural Background

Pursuant to G.L. c. 31, § 43, Appellant, Cully Rossi (hereafter "Rossi" or "Appellant") appealed the decision of the Town of Duxbury Police Department (hereafter "Department" or "Respondent") suspending him for six (6) months for failing to report for duty when ordered to do so. On July 20, 2007, the Appellant filed a Motion for

¹By written notice of January 16, 2008, the following attorneys entered their appearance on behalf of the Appellant: Austin Joyce, Michael Akerson, Andrew Gambaccini, and John Vigliotti.

Summary Decision. On August 27, 2007, the Respondent submitted a Motion for Summary Decision. On September 24, 2007, the Appellant filed a Reply and on October 5, 2007, the Respondent filed a response to the reply. On October 10, 2007, the Appellant filed a Supplemental Memorandum in Support of his Motion for Summary Decision.

Factual Background

As of December 2002, the Appellant had been a Police Officer for the Town of Duxbury for approximately ten (10) years. At that time, the Appellant arranged a shift swap with another officer and was subsequently informed by an e-mail from the Lieutenant in charge of operations, on December 22, 2002, that his request for the swap, as well as his request for time off on Christmas, was denied. While on duty on December 23, 2002, the Appellant and the same Lieutenant argued concerning the request denials and the Appellant stated that he was going home sick. After leaving the Police Station, the Appellant reportedly felt “shaky” and had a headache so he proceeded to the Town’s fire station to have his vital signs checked. His blood pressure was measured at the fire station as being 200/116 and 180/100 and he was subsequently admitted to a hospital overnight for elevated blood pressure and chest pain. The following day, the Appellant provided a doctor’s note to the Respondent from his primary care physician that stated that he was “unable to work on 12/23 and should be off till 12/31/02 for medical reasons.” On December 30, the Appellant submitted a second doctor’s note stating that he should be out at least two more weeks, until his medical issues were under control. He

subsequently requested to be placed on leave. His request was denied on January 15, 2003. A grievance was then filed by the Union over the denial of his request.

On the recommendation of his primary care physician, the Appellant remained out of work for management of his hypertension. The Appellant subsequently submitted additional documentation to the Respondent from doctors between mid January and mid March 2003. On March 25, 2003, a letter from an independent doctor who examined the Appellant stated that the Appellant had hypertension that increases in severity with stress. The doctor wrote that, after the interpersonal conflict with the Lieutenant in question is addressed, the Appellant should be able to return to work full time with no physical restrictions.

On March 27, 2003, the Chief of Police ordered the Appellant to return to work on March 30, 2003, stating that he would be transferred to the 16:00 - 24:00 (4 pm – midnight) shift, effective April 10, 2003. The Appellant did not report for work on March 30 or, as ordered to, on April 3, 2003. Instead, the Appellant called in sick on both occasions.

On July 7, 2003, the Duxbury Town Manager suspended the Appellant for six (6) months for his failure to report to duty on March 27, 2003 and April 3, 2003 after he was cleared to return to do so. This failure was in violation of Departmental Rules and Regulations, specifically Rule 3, Section 4 “Neglect of Duty”, Rule 3 Section 8 “Disobey Directives and Orders”, Rule 3 Section 10 “Reporting for Duty” and Rule 4, Section 3

“Police Officers Reporting for Duty as Ordered.” The Town Manager noted that since the Appellant was last paid on January 7, 2003, the suspension would retroactively commence on January 8, 2003.

Parties’ Summary Decision Motions/Grounds for Dismissal

In his Motion for Summary Decision, the Appellant argues that there is no just cause to impose a six (6) month suspension and requests that it be rescinded and that any lost benefits be restored to him. The Appellant bases his Motion on a May 15, 2007 Appeals Court decision in the Town of Duxbury v Cully Rossi, 69 Mass. App. Ct. 59 (2007). This decision upheld an earlier arbitrator’s decision that the Appellant was entitled to “injury on the job benefits” related to his being out of work subsequent to December 23, 2002.

However, the outcome of the dispute over benefits in the above case does not entitle the Appellant’s Motion for Summary Decision to be granted here. The issue, that the parties have since resolved, in that case is separate and tangential from the Department’s decision to suspend the Appellant for six (6) months.

In the Respondent’s Motion for Summary Decision, it argues that, as the Appellant has not reported to duty since December 22, 2002 in violation of the above named Department’s Rules and Regulations, it had just cause to suspend him. The Respondent’s position is supported by documentary evidence. The submitted exhibits indicate that an independent physician examined the Appellant on or about March 25, 2003 and determined that the Appellant was able to work full time with no physical

restrictions, if he were assigned to a shift where he would have no interaction with the Lieutenant he alleged caused him stress. The affidavit of the Town's Police Chief indicates that he reassigned the Appellant to a new shift where he would not have interaction with the Lieutenant in question. Although in his Reply, the Appellant alleges that he was not reassigned to a new shift, he did not support this contention. Further, evidence demonstrated that, although the Appellant was ordered to report for duty at a new shift on March 30, 2003, he called in sick on that date. He called in sick again after being ordered on April 3 to report for duty on April 5, 2003. As the Appellant has not reported to duty since December 22, 2002 in violation of the above named Department's Rules and Regulations, the Respondent – having made reasonable accommodations for the Appellant's return to service - was justified in imposing discipline on him in the form of a six (6) month suspension.

Conclusion

For all of the above reasons, the Respondent's Motion for Summary Decision is allowed and the Appellant's appeal filed under Docket D-03-303 is hereby *dismissed*.

Civil Service Commission

John J. Guerin, Jr.
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Taylor, Marquis and Guerin, Commissioners) on February 14, 2008.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a 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 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:
Stephen C. Pfaff, Esq.
Robert S. Troy, Esq.