

COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION

Decision mailed: 9/18/09  
Civil Service Commission CS

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

**JONATHAN SANGER,**  
*Appellant*

v.

**CITY OF GLOUCESTER,**  
*Respondent*

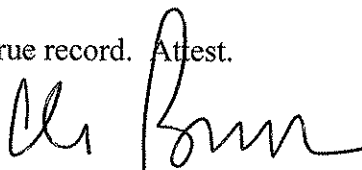
Case No.: D-08-247

**DECISION**

After careful review and consideration, the Civil Service Commission voted at an executive session on September 17, 2009 to acknowledge receipt of the report of the Administrative Law Magistrate dated July 27, 2009. No comments were received by the Commission from either party. The Commission voted to adopt 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 is hereby *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on September 17, 2009.

A true record. Attest.

  
\_\_\_\_\_  
Christopher C. Bowman  
Chairman

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)(I), 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:  
Jonathan Sanger, *pro se*  
Suzanne Egan, Esq. (for Appointing Authority)  
Richard Heidlage, Esq. (DALA)

THE COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF ADMINISTRATIVE LAW APPEALS  
98 NORTH WASHINGTON STREET, 4<sup>TH</sup> FLOOR  
BOSTON, MA 02114

SHELLY L. TAYLOR  
Chief Administrative Magistrate

Tel: 617-727-7060  
Fax: 617-727-7248

July 27, 2009

Christopher C. Bowman, Chairman  
Civil Service Commission  
One Ashburton Place, Room 503  
Boston, MA 02108

Re: Jonathan Sanger v. City of Gloucester  
DALA Docket No. CS-08-797

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,

  
Shelly Taylor  
Chief Administrative Magistrate

SLT/das

Enclosure

cc: Jonathan Sanger  
Suzanne Egan, Esq.

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Suffolk, ss.

Division of Administrative Law Appeals

**Jonathan Sanger,**  
Appellant

v.

Docket No. D-08-247  
DALA No. CS-08-797

**City of Gloucester,**  
Appointing Authority

**Appearance for Appellant:**

Jonathan Sanger, *pro se*  
[REDACTED]  
[REDACTED]

**Appearance for Appointing Authority:**

Suzanne Egan, Esq.  
City of Gloucester, City Hall  
9 Dale Avenue  
Gloucester, MA 01913

**Administrative Magistrate:**

**Maria A. Imparato**

**SUMMARY OF RECOMMENDED DECISION**

The Appointing Authority has met its burden of proving just cause for the imposition of a fourteen day suspension on the Appellant for working without a current EMT Paramedic card for two months and for failing to notify the Fire Department that his EMT certification had lapsed.

**RECOMMENDED DECISION**

Jonathan Sanger filed a timely appeal under G. L. c. 31, s. 43, the September 18, 2008 decision of the Mayor of the City of Gloucester ("City") to suspend him without pay for fourteen days from his position as a Firefighter-Paramedic with the Gloucester

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Fire Department for his failure to procure his EMT Paramedic recertification in a timely fashion; working without a current EMT Paramedic card for two months; and failing to notify the Fire Department that his EMT certification had lapsed. (Exs. 1, 2, 7.)

I held a hearing on January 22, 2009 at the office of the Division of Administrative Law Appeals, 98 North Washington Street, Boston, MA. I declared the hearing private because I did not receive a written request from either party to make the hearing public. I admitted documents into evidence. (Exs. 1 – 9) I took administrative notice of a prior decision of the Civil Service Commission, *Cathy A. Kelley v. Town of Winchester*, D-4781, July 20, 1994, at the request of the Appellant.

I denied, without hearing, the Appellant's Motion for Disclosure of Tapes dated January 20, 2009 for two reasons: the Appellant failed to serve a copy of the motion on the Appointing Authority, and the tapes of the Appointing Authority hearing have no probative value in this *de novo* hearing.

The City presented the testimony of Fire Chief Barry McKay, and the Gloucester Fire Department EMS (Emergency Medical Services) Coordinator, Sander Schultz.

Jonathan Sanger testified in his own behalf.

The record remained open to March 13, 2009 for briefs and proposed findings of fact. The Petitioner filed his brief on March 12, 2009, but he failed to provide a copy to the Appointing Authority. The submission was mailed back to the Petitioner, and on March 27, 2009 he re-filed his submission, indicating that a copy had been provided to the City of Gloucester. The record closed on March 27, 2009.

## **FINDINGS OF FACT**

1. Jonathan Sanger has worked for the City of Gloucester Fire Department as a Firefighter/EMT-Paramedic since 2000.
2. All EMTs must be recertified every two years on April 1<sup>st</sup> by the Department of Public Health Office of Emergency Medical Services ("OEMS"). All recertification paperwork must be submitted to OEMS by December 31<sup>st</sup> of the year prior to the recertification year. (Testimony, Schultz; 105 CMR 170.930(A).)
3. Within the two-year term of certification, an EMT-Paramedic must complete EMT-Paramedic refresher training, and complete 25 additional hours of continuing education. (Testimony, McKay; Schultz; 105 CMR 170.840(C)(2).)
4. Under the Gloucester Fire Department Standard Operating Procedures, EMTs "shall have their certification card on their person while on duty." (Ex. 3, Operations Manual Book 1, 11.02C.)
5. By letter of December 6, 2007, OEMS notified Mr. Sanger that he was required to complete an EMT-Paramedic refresher course by December 31, 2007 in order to recertify his EMT-Paramedic certification that was due to expire on April 1, 2008. (Ex. 9.)
6. Mr. Sanger spoke with Abdullah Rehayem, Director of OEMS. Mr. Rehayem agreed to allow Mr. Sanger to take and complete the refresher course in January 2008. Mr. Rehayem would then grant recertification to Mr. Sanger on April 1, 2008. (Testimony, Sanger.)

7. Mr. Sanger completed the refresher course in January 2008. (Testimony, Sanger.)
8. On April 1, 2008, Mr. Sanger did not receive his new recertification card. He did not call Mr. Rehayem, nor did he inform the Fire Chief. He knew that Mr. Rehayem had helped him and he wanted to give Mr. Rehayem time to straighten out the situation. From April 1 to June 9, 2008, Mr. Sanger worked as an EMT-Paramedic without a certification card. (Testimony, Sanger.)
9. Sander Schultz, the EMS Coordinator for the City of Gloucester, heard “scuttlebutt” in June 2008. He called OEMS on or about June 9, 2008 to find out if Mr. Sanger had been recertified; he was notified that Mr. Sanger had not been recertified on April 1, 2008. Mr. Schultz informed the Chief.  
(Testimony, Schultz.)
10. On June 10, 2008, OEMS issued a cease and desist order to Mr. Sanger, and a Notice of Serious Deficiencies #5202 to the City for failure of oversight of the Gloucester Fire Department Rescue “to ensure that members of the ambulance service maintain proper credentials.” (Ex. 4.)
11. On or about June 9, 2008, Mr. Sanger was reassigned to a firefighter’s position because he was unable to work as an EMT-Paramedic without certification. (Ex. 7; Testimony, McKay.)
12. On June 10, 2008, Mr. Sanger called Mr. Rehayem. Mr. Rehayem said he had not received paperwork indicating that Mr. Sanger had completed the refresher course. Mr. Sanger said it was in his file. Mr. Rehayem found the paperwork and said he would notify the Fire Chief that Mr. Sanger did

complete the required refresher course. Mr. Rehayem said he would issue Mr. Sanger's recertification card retroactive to April 1, 2008. (Testimony, Sanger.)

13. By letter of June 18, 2008, Fire Chief McKay directed Mr. Sanger to produce all correspondence between him and OEMS regarding his certification as an EMT-Paramedic, his recertification as an EMT-Paramedic, and documents relating to his status as an EMT-Paramedic, including the cease and desist order of June 10, 2008. Mr. Sanger did not produce those documents for the Chief. (Testimony, McKay.)
14. On August 19, 2008, the Mayor of the City of Gloucester issued a Notice of Contemplated Action to Mr. Sanger, notifying him of a hearing to be held on August 27, 2008 because of his failure to assure his recertification as a paramedic; his failure to notify the Fire Department; and the fact that he continued to function as a Paramedic without Paramedic certification. By letter of September 18, 2008, the Mayor notified Mr. Sanger that he would be suspended for fourteen days. (Exs. 1, 7.)
15. Mr. Sanger had been disciplined previously. He received a written reprimand and one punishment shift for an alcohol related incident on June 5, 2005; a written warning dated August 15, 2005 for excessive swaps; an oral warning in 2006 for his failure to recertify as a Paramedic in a timely manner; and a three day suspension for abuse of sick leave on September 2, 2007. (Ex. 7.)
16. In March 2006, Mr. Sanger had not completed his recertification requirements because he did not complete his refresher course before December 31, 2005.

The Fire Department OEMS Coordinator called OEMS, the Department of Public Health and a State Senator. OEMS allowed Mr. Sanger to complete his refresher course late, and he was recertified as of April 1, 2006. (Testimony, Schultz, McKay.)

### CONCLUSION AND RECOMMENDATION

The Appointing Authority, City of Gloucester, has demonstrated just cause for the imposition of a fourteen day suspension on Jonathan Sanger for working without a current EMT certification card for two months, and for failing to notify the Fire Department that his EMT certification had lapsed. I recommend that the Civil Service Commission affirm the action of the Appointing Authority.

The Civil Service Commission must determine “whether, on the basis of the evidence before it, the appointing authority had sustained its burden of proving that there was a reasonable justification for the action taken by the appointing authority.” *City of Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 303 (1997). “The question before the Commission is not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the Commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the Commission to have existed when the appointing authority made its decision.” *Police Department of Boston v. Collins*, 48 Mass. App. Ct. 408, 411, n. 5 (2000); *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983).

Although the Appellant did not receive his EMT-Paramedic recertification card on April 1, 2008 as the result of an error by OEMS, the Appellant compounded that error by failing to notify the Chief of that fact, by failing to contact OEMS to find out why his



card had not been issued, and by continuing to practice as an EMT-Paramedic without a valid card.

The Petitioner testified that he did not contact OEMS when he did not receive his recertification card because he knew Mr. Rehayem was aware that he finished the refresher course in January 2008 and he was waiting for Mr. Rehayem to straighten out the matter. The Appellant's argument is not persuasive. He knowingly continued to function as a Paramedic without a valid card, he took no steps to find out why his card had not been issued, and he took no steps to remedy the situation. He did not offer a reason for his failure to notify the Chief.

The Petitioner asks me to take administrative notice of the Commission's decision in the case of *Cathy A. Kelley v. Town of Winchester*, D-4781, July 20, 1994, in which the Commission reversed the imposition of a six month suspension of a Firefighter/EMT for the Town of Winchester who was disciplined for allowing her EMT certification to expire; for continuing to operate the ambulance and receive compensation during the period that the certification remained expired; and for failing to notify the Fire Chief that her EMT certification had expired.

In the *Kelley* case, the EMT mailed in a copy of her CPR card to OEMS which was required for recertification as an EMT. A month later she re-mailed the CPR card to OEMS. The Post Office lost the first mailing, and the CPR card was not delivered to OEMS until three months after mailing, after the EMT had received a six month suspension.

The Commission reversed the discipline because the EMT had done everything she was supposed to do to keep her EMT certification. The only reason that it appeared that her certification had lapsed was due to error by the Post Office.

The EMT alerted the Fire Chief in May that her certification had lapsed. She did not alert him sooner because she thought it was a technical problem that would be remedied by receipt of the CPR card by OEMS. She contacted OEMS in May. She did not contact OEMS sooner because OEMS asked EMTs not to call until six weeks after submitting material.

The *Kelley* case is distinguishable from the instant case. The instant Appellant did not notify the Chief that his certification had lapsed, nor did he contact OEMS. OEMS notified the Appellant and the Fire Department that the Appellant's certification had lapsed with a cease and desist order and a Notice of Serious Deficiency issued in June. The Appellant offered no reason for his failure to notify the Chief. The Appellant's reason for not contacting OEMS is unconvincing.

In view of the fact that the Appellant had allowed his EMT certification to lapse in 2006, he should have been diligent in notifying the Chief of a problem in 2008, and in contacting OEMS to find out why his recertification card had not been issued. He violated the Department's Standard Operating Procedures by practicing as an EMT without a valid certification card.

A fourteen day suspension is reasonable in light of the Appellant's previous discipline. I recommend that the Civil Service Commission affirm the action of the Appointing Authority.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Maria A. Imperato

Maria A. Imperato  
Administrative Magistrate

DATED: JUL 27 2009