

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

CHRISTIAN SANTOS-AGOSTO,
Appellant

v.

D1-16-167

CITY OF BOSTON,
Respondent

Appearance for Appellant:

Pro Se
Christian Santos-Agosto

Appearance for Respondent:

Natacha Thomas, Esq.
Labor Counsel
City of Boston Office of Labor Relations
Boston City Hall, Room 624
Boston, MA 02201

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On October 21, 2016, the Appellant, Christian Santos-Agosto (Mr. Santos-Agosto), pursuant to G.L. c. 31, § 43, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Boston (City) to terminate him from his position as a Heavy Motor Equipment Operator (HMEO) / Laborer.

On December 6, 2016, I held a pre-hearing conference at the offices of the Commission, which was attended by Mr. Santos-Agosto, counsel for the City and a representative from the City.

Prior to the pre-hearing conference, the City filed a Motion to Dismiss Mr. Santos-Agosto's appeal. Based on the City's motion and the statements of the parties at the pre-hearing conference, the following facts do not appear to be disputed:

1. On April 11, 2016, Mr. Santos-Agosto began his employment with the City as a HMEO / Laborer.
2. On October 7, 2016, Mr. Santos-Agosto was terminated from his employment with the City.
3. Mr. Santos-Agosto received the notice of termination on October 7, 2016.

Legal Standard

Pursuant to G.L. c. 31, §41, an Appointing Authority may not impose certain types of discipline, including discharge, upon a "tenured employee" without "just cause." By the terms of the civil service statute, a "tenured employee" is defined as one "who is employed following... an original appointment to a position on a permanent basis and the actual performance of the duties of such position for the probationary period required by law." G. L. c. 31 § 1 (emphasis added). After receiving an original appointment as a permanent full-time civil service employee, a person must "perform the duties of such position on a full-time basis for a probationary period of six months before he shall be considered a full-time tenured employee..." G. L. c. 31, §34 (emphasis added). The Commission only has jurisdiction to hear disciplinary appeals of tenured employees. See Selectmen of Brookline v. Smith, 58 Mass. App. Ct. 813, 815 (2003). This is clear from the structure and content of the civil service law, which "provide an administrative hearing for tenured employees, G. L. c. 31 § 43, but not for probationary employees." New Bedford v. Civil Service Comm'n, 6 Mass. App. Ct. 549, 551 (1978). If a person is a probationary employee when he files an appeal of his termination with the Commission, the

Commission, accordingly, lacks jurisdiction over the appeal. See Brouillard v. City of Holyoke, 74 Mass. App. Ct. 1128 (2009).

Analysis

The Commission does not have jurisdiction to hear Mr. Santos-Agosto's appeal. Mr. Santos-Agosto was not a tenured employee because he began his employment with the City on April 11, 2016 and was terminated on October 7, 2016. This was within the six-month probationary period.

In order for the Commission to hear an appeal under G. L. c. 31 § 41, the Appellant must have been a tenured employee at the time of termination. At the time of his termination, Mr. Santos-Agosto had been employed with the City as a probationary employee for less than six months, which means that Mr. Santos-Agosto was not a tenured employee at the time of his termination. As Mr. Santos-Agosto was not a tenured employee at the time of his termination, the Commission cannot hear his appeal.

Conclusion

Based on the facts and the law provided herein, the Commission does not have jurisdiction to hear Mr. Santos Agosto's appeal. Therefore, Mr. Santos-Agosto's appeal to the Commission under Docket No. D1-16-167 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan) on December 22, 2016.

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)(l), 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 this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission 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:

Christian Santos-Agosto (Appellant)

Natacha Thomas, Esq. (for Respondent)