

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

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

ARIC LUIS SANTOS,  
Appellant

v.

D1-19-187

CITY OF HOLYOKE,  
Respondent

Appearance for Appellant:

Carmenelisa Perez-Kudzma, Esq.  
Perez-Kudzma Law Office  
35 Main Street: Suite 1  
Wayland, MA 01778

Appearance for Respondent:

Gina Marie Paro, Esq.  
City of Holyoke  
Law Department  
20 Korean Veteran's Plaza  
Holyoke, MA 01040

Commissioner:

Christopher C. Bowman

**ORDER OF DISMISSAL**

1. On August 28, 2019, the Appellant, Aric Luis Santos (Appellant or Mr. Santos), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Holyoke (City) to terminate him from the position of permanent, part-time reserve police officer in the City's Police Department.
2. On September 4, 2019, the City filed a Motion to Dismiss, arguing that the Commission lacks jurisdiction to hear the Appellant's appeal as he was a probationary employee at the time of his termination.
3. G.L. c. 31, s. 34 states in relevant part that:

“Following his original appointment as a permanent employee to a less than full-time civil service position, including a reserve, intermittent, call, recurrent, or part-time position, a person shall serve a probationary period of six months immediately following such appointment, which shall include the actual performance of the duties of such position for not less than thirty working days or the equivalent thereof during such period, before he shall be

considered a less than full-time tenured employee, provided that if such person has not performed such duties for such thirty working days or the equivalent thereof, his probationary period shall be extended for an additional twelve months, at the end of which time such person, if his employment has not been terminated in accordance with the provisions of this section, shall be deemed to be a tenured employee.

Each appointing authority employing persons as permanent employees in less than full-time civil service positions shall, insofar as possible, provide such persons equal opportunity for work.

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.” (emphasis added)

4. On September 11, 2019, I held a pre-hearing conference at the Springfield State Building in Springfield, MA, which was attended by the Appellant, two (2) family members of the Appellant and counsel for the City.
5. The parties agreed that: a) the Appellant was appointed to the position of permanent, part-time reserve police officer by the City on April 10, 2019 and that he was terminated less than six (6) months later, on August 29, 2019, at which time he was provided with written notice of his termination.
6. The City was uncertain as to whether they had provided the Administrator (the state’s Human Resources Division) with a copy of the notice of termination, as required by Section 34, referenced above.
7. The Appellant indicated that he was in the process of obtaining counsel.
8. For all of the above reasons, I issued a Procedural Order on September 13, 2019: providing the City with ten (10) days to file an amended Motion to Dismiss, addressing the issue of HRD notification; providing the Appellant with thirty days thereafter to submit a reply to the Motion to Dismiss. The timeframe took into consideration the Appellant’s stated desire to obtain counsel and he was advised that, if and when this occurs, Appellant’s retained counsel should submit a notice of appearance with the Commission forthwith.
9. On September 16, 2019, the City filed an amended Motion to Dismiss, providing verification that the City had notified HRD of the Appellant’s termination on September 4, 2019, which falls within the six-month probationary period.
10. On October 15, 2019, I received a notice of appearance of counsel for the Appellant.

11. On October 25, 2019, I sent an email to counsel for the Appellant stating in part: “Pursuant to the Procedural Order ... the Appellant was required to submit an opposition to the City’s Amended Motion to Dismiss ... by October 16, 2019. Absent a reply to the contrary on or before October 28, 2019, I will proceed under the assumption that no reply will be filed.” I received no reply from counsel for the Appellant.

The Appellant had not completed his probationary period at the time of his termination and the City complied with the statutory requirements related to this termination (e.g. – notification to HRD). For these reasons, the Commission lacks jurisdiction to hear this appeal and the Appellant’s appeal under Docket No. D1-19-187 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on November 21, 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)(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:

Aric Luis Santos (Appellant)  
Carmenelisa Perez-Kudzma, Esq. (for Appellant)  
Gina Paro, Esq. (for Respondent)