

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

JAMIE O. SANTOS,
Appellant

v.

CITY OF GLOUCESTER,
Respondent

Docket Number: D-24-189

Appearance for Appellant: Neil Rossman, Esq.
Rossman & Rossman
8 Essex Center Drive
Peabody, MA 01960

Appearance for Respondent: Suzanne Egan, Esq.
City of Gloucester
Legal Department
City Hall, 9 Dale Avenue
Gloucester, MA 01930

Commissioner: Christopher C. Bowman

SUMMARY OF DECISION

Based on the specific facts related to this appeal, the Commission dismissed the discipline appeal of a Gloucester Fire Captain, as the discipline imposed does not fall under the jurisdiction of the civil service law.

DECISION ON RESPONDENT’S MOTION TO DISMISS

On December 11, 2024, the Appellant, Jamie O. Santos (Appellant), a Fire Captain in the City of Gloucester (City)’s Fire Department, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City’s Mayor to remove him from consideration from serving as an “acting” Deputy Fire Chief for three years.

On January 21, 2025, I held a remote pre-hearing conference which was attended by the Appellant, his counsel and counsel for the City. Pursuant to a Procedural Order issued on January 22, 2025, the City submitted a motion to dismiss the Appellant's appeal. The Appellant chose not to file a reply.

UNDISPUTED FACTS

1. The Appellant has been employed by the Gloucester Fire Department since October 2010.
2. According to City records, the Appellant has served as a Fire Captain since 2017.
3. The Appellant is a tenured civil service employee, in the position of Fire Captain.
4. In July 2024, the Appellant allegedly violated Department policies.
5. On September 19, 2024, the City's Fire Chief "permanently removed" the Appellant from the "Acting Deputy [Fire Chief] list".
6. On November 13, 2024, the City's Human Resources (HR) Director conducted a "Step 2 / Grievance" hearing.
7. On November 27, 2024, the HR Director issued a report to the Mayor, concluding that "discipline" was warranted, but that the "removal" from the "Acting Deputy list" should be limited to three years, as opposed to permanently.
8. That same day, the Mayor adopted the recommendation of the hearing officer.
9. The Appellant is still eligible for overtime in his permanent position as Fire Captain.
10. The deadline for the Appellant, via his local union, to file for arbitration, was extended by agreement to January 31, 2025.

APPLICABLE CIVIL SERVICE LAW

Section 41 of Chapter 31 states in relevant part:

Except for just cause and except in accordance with the provisions of this paragraph, a tenured employee shall not be discharged,

removed, suspended for a period of more than five days, laid off, ... lowered in rank or compensation without his written consent, nor his position be abolished.

Section 43 of Chapter 31 states in relevant part:

If a person aggrieved by a decision of an appointing authority made pursuant to section forty-one shall, within ten days after receiving written notice of such decision, appeal in writing to the commission, he shall be given a hearing before a member of the commission or some disinterested person designated by the chairman of the commission.

STANDARD FOR SUMMARY DISPOSITION

The Commission may, on motion or upon its own initiative, dismiss an appeal at any time for lack of jurisdiction or for failure to state a claim upon which relief can be granted. 801 CMR 1.01(7)(g)(3). A motion before the Commission, in whole or in part, via summary decision may be filed pursuant to 801 C.M.R. 1.01(7)(h). An appeal may be decided on summary disposition only when, “viewing the evidence in the light most favorable to the non-moving party”, the undisputed material facts affirmatively demonstrate that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case”. *See, e.g., Milliken & Co. v. Duro Textiles LLC*, 451 Mass. 547, 550 n.6 (2008); *Maimonides School v. Coles*, 71 Mass. App. Ct. 240, 249 (2008); *Lydon v. Massachusetts Parole Bd.*, 18 MCSR 216 (2005). *See also Mangino v. HRD*, 27 MCSR 34 (2014) and cases cited (“The notion underlying the summary decision process in administrative proceedings parallels the civil practice under Mass. R. Civ. P. 56, namely, when no genuine issues of material fact exist, the agency is not required to conduct a meaningless hearing.”); *Morehouse v. Weymouth Fire Dep’t*, 26 MCSR 176 (2013) (“a party may move for summary decision when . . . there is no genuine issue of fact relating to his or her claim or defense and the party is entitled to prevail as a matter of law.”)

ANALYSIS

The City argues that their decision here, to “remove” the Appellant from the “Acting Deputy list” for three years is not a form of discipline that can be appealed to the Commission. The Appellant, citing the language in Section 41 of the civil service law related to being “lowered in rank or compensation” argued at the pre-hearing conference that the Commission does have jurisdiction to hear this appeal.

The Appellant has not been discharged, removed or suspended from his permanent position of Fire Captain, nor has he been *lowered in rank or compensation* as it pertains to his permanent position of Fire Captain. Rather, the City is prohibiting the Appellant from serving the functions of, and receiving overtime for, the position of Deputy Fire Chief, for which the Appellant holds no civil service permanency. Therefore, the Commission lacks jurisdiction to hear this appeal. The Appellant’s appeal rights, if any, fall under the grievance and arbitration provisions of the applicable collective bargaining agreement.

Although the Commission lacks jurisdiction here, there are broader issues that warrant clarification. There is currently no active eligible list for Deputy Fire Chief in Gloucester. For that reason, the Fire Chief may make provisional promotion(s) from among any candidate in the next lower title of Fire Captain. Once an eligible list of at least three candidates is established, which is anticipated shortly, provisional promotions are not permitted.

According to the Appellant, he anticipates being ranked first on that eligible list and, also according to the Appellant, there is a current vacancy for Deputy Fire Chief which will need to be filled (either via a permanent or temporary promotional appointment).

When there is an active eligible list for a position, “acting, out-of-grade” appointments are not permitted by the civil service law or rules. The Commission has generally defined a “vacancy” to have occurred after an incumbent employee has not been serving in that position for 30 days. For example, using the senior person in the next lower title to fill in for an employee on vacation or short-term sick leave is not an illegal out-of-grade appointment. Using that practice when an incumbent employee is out on long-term disability, however, is an illegal out-of-grade appointment. See: [McCarthy, Joel et al v. Boston Police Department 5/14/15](#).

Applying the above to Gloucester, for example, if, after the upcoming establishment of the eligible list, the City chose to fill a Deputy Fire Chief vacancy through an illegal, acting-out-of-grade appointment, that would potentially be subject to review by the Commission, either on its own initiative or through an appeal or request for investigation. Further, if, after the establishment of the eligible list, the City promoted (via permanent or temporary appointment) a candidate to Deputy Fire Chief, any candidate bypassed for appointment would have the right to file an appeal with the Commission.

To ensure clarity, however, and in accordance with McCarthy, the Commission has no jurisdiction over the "covering" of shifts for vacation, sick and other short-term absences.

CONCLUSION

The Town’s Motion to Dismiss is allowed and the Appellant’s appeal Docket Number D-24-189 is *dismissed*.

CIVIL SERVICE COMMISSION

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Markey, McConney and Stein on February 20, 2025 [Dooley – Absent]).

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:

Neil Rossman, Esq. (for Appellant)

Suzanne Egan, Esq. (for Respondent)