

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

DONALD SMITH,
Appellant

D-15-43

v.

WATERTOWN PUBLIC SCHOOLS,
Respondent

Appearance for Appellant:

Pro Se
Donald Smith

Appearance for Watertown Public Schools:

Colin R. Boyle, Esq.
Morgan, Brown & Joy LLP
200 State Street
Boston, MA 02109-2605

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On February 25, 2015, the Appellant, Donald Smith (Mr. Smith), pursuant to G.L. c. 31, §§ 42 & 43, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Watertown Public Schools (School Department) to place him on paid administrative leave (Section 43 appeal) and not following the proper procedures as part of ongoing disciplinary proceedings (Section 42 appeal).

On March 17, 2015, I held a pre-hearing conference at the offices of the Commission, which was attended by Mr. Smith, his union representative and counsel for the School Department. Based on the information provided at the pre-hearing conference, the following is undisputed, unless otherwise noted:

1. Mr. Smith has been employed by the School Department since 1997 and has been a permanent custodian since 1999.
2. On January 19, 2015, the School Department placed Mr. Smith on paid administrative leave and initiated an investigation in response to complaints against Mr. Smith alleging misconduct by him.
3. By letter dated February 6, 2015, the School Department notified Mr. Smith that a hearing would take place on February 12, 2015 to determine whether Mr. Smith should be disciplined. The School Department did not included a copy of G.L. c. 31, §§ 41-45 with the notice of hearing.
4. On February 10, 2015, the School Department hand-delivered a copy of G.L. c. 31, §§ 41-45 to Mr. Smith's house.
5. Also on February 10, 2015, a local union representative advised the School Department that Mr. Smith would be unable to attend the February 12, 2015 hearing for medical reasons. The School Department did not go forward with the hearing.
6. On February 25, 2015, Mr. Smith filed the instant appeal, contesting the decision to place him on paid administrative leave; and claiming he was prejudiced by the School Department's failure to attach the civil service law to his hearing notice.
7. On March 17th, as part of the pre-hearing conference, the School Department stated that Mr. Smith is now back at work and that it will be notifying Mr. Smith of a new hearing date in short order.
8. Also as part of the March 17th pre-hearing conference, Mr. Smith stated that he is aware that, if the School Department decides to terminate or suspend him, he may file an appeal with the Commission within ten (10) business days of being notified of said decision.

Analysis

The School Department's initial failure to attach the civil service law to the hearing notice did not prejudice Mr. Smith's rights under the civil service law. Prior to the hearing, the School Department hand-delivered a copy of the applicable law to Mr. Smith's house. Further, that hearing, due to medical reasons related to Mr. Smith, did not go forward and is being re-scheduled. It is undisputed that Mr. Smith is aware of his right to appeal any decision by the School Department to suspend or terminate him to the Commission. Thus, his rights have not been prejudiced and his Section 42 appeal must be dismissed.

Also, based on the facts presented here, and for the reasons cited in a decision being issued by the Commission on the same day as this decision (See Brenda James v. Boston Police Department, CSC Case No. D-14-298), the Commission does not have jurisdiction to hear Mr. Smith's appeal of the School Department's decision to place him on paid administrative leave for a short period of time pending a disciplinary investigation.

If and when the School Department decides to suspend or terminate Mr. Smith, he will have ten (10) business days from the day he is notified of said decision to file an appeal with the Commission.

Conclusion

For these reasons, Mr. Smith's appeal under Docket No. D-15-43 is hereby ***dismissed***.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on April 2, 2015.

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.

Notice:

Donald Smith (Appellant)

Colin R. Boyle, Esq. (for Respondent)