

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

BERNADETTE SULLIVAN,

Appellant

v.

D1-07-260

CITY OF SOMERVILLE,

Respondent

Appellant's Attorney:

Robert A. Stewart, Esq.
Merrick, Louison & Costello
67 Batterymarch Street
Boston, MA 02110
(617) 439-0305

Respondent's Attorney:

Matthew J. Buckley, Esq.
City of Somerville
Law Department
93 Highland Avenue
Somerville, MA 02143
(617) 625-6600

Commissioner:

Donald R. Marquis

DECISION

The Appellant, Bernadette Sullivan, pursuant to G.L. c. 31, §§42 and 43, filed an appeal with the Commission on July 27, 2007 claiming that the City of Somerville did not have just cause to terminate her and did not provide her with a hearing. Attached to the appeal was a July 13, 2007 letter from the Appointing Authority stating in part,

“Congratulations on your appointment to the Boston Police Department. The City of Somerville has agreed to this lateral transfer at your request. Indeed, the City has cooperated in every way with your efforts to obtain this transfer. The City did so with the understanding that upon your actual appointment in Boston, you would be giving up your position in Somerville.

Despite the voluntary nature of your action, you have refused to submit a requested letter of resignation and refused to sign the Personnel Action sheet addressing your transfer to Boston. In order to avoid any possible confusion regarding your status, please be placed on notice that the City considers you to have voluntarily abandoned your position with the City of Somerville when you failed to appear for your regular shift on Monday, July 9, 2007.” (July 13, 2007 letter to Appellant from City of Somerville)

A pre-hearing conference was held by the Commission on October 3, 2007. The Appellant acknowledged that, at *her* request, she was voluntarily transferred to, and is currently employed by, the Boston Police Department. The Commission was informed by the parties that a settlement agreement and notice of withdrawal would be forthcoming. As of this date, neither of these documents has been received by the Commission.

G.L. c. 31, § 38, states in relevant part, “no person who has been reported as being on unauthorized absence under this section shall have recourse under sections forty-one through forty-five with respect to his separation from employment on account of such absence.” In such a case, the employee has no appeal rights to the Civil Service Commission and the Civil Service Commission lacks jurisdiction to review this matter. (see Police Commissioner of Boston v. Civil Service Commission, 29 Mass. App. Ct. 470 (1990).” (A case in which the court ruled that the Commission lacked jurisdiction despite a dispute regarding whether the Appellant gave notice of absences and whether the

discharge was for unauthorized absence exceeding 14 days was the precise issue left for decision.)

Pursuant to 801 CMR 1.01 (7)(g)(3) of the Standard Adjudicatory Rules of Practice and Procedure, the presiding officer “may at any time, on his own motion or that of a Party, dismiss a case for lack of jurisdiction to decide the matter, for failure of the Petitioner to state a claim upon which relief can be granted or because of the pendency of a prior, related action in any tribunal that should first be decided.”

As the Commission lacks jurisdiction in this matter, the appeal under Docket No. D1-07-260 is hereby *dismissed*.

Donald R. Marquis
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Guerin, Henderson, Marquis and Taylor, Commissioners) on November 15, 2007.

A true Copy. Attest:

Commissioner
Civil Service Commission

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)(l), 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:
Matthew J. Buckley, Esq. (for Appointing Authority)
Robert A. Stewart, Esq. (for Appellant)